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**MONTANA
ADMINISTRATIVE
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ISSUE NO. 21
NOVEMBER 10, 1994
PAGES 2878-2997



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 21

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

In the matter of the proposed)
amendment of ARM 2.43.509,) NOTICE OF PROPOSED AMENDMENT
2.43.513, and 2.43.514)
pertaining to periodic medical)
review of disability retirees) NO PUBLIC HEARING
and cancellation of disability) CONTEMPLATED
benefits)

TO: All Interested Persons.

1. On January 27, 1995, the Public Employees' Retirement Board proposes to amend ARM 2.43.509, 2.43.513, and 2.43.514 pertaining to travel costs associated with periodic medical review, information which the board may consider during a medical review, members affected by the effective date of cancellation of disability benefits, and employers which must be notified that a member is no longer disabled and is available for reemployment.

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

2.43.509 PERIODIC MEDICAL REVIEW OF DISABILITY RETIREES -- INITIAL NOTICE (1) The division will send written notification of medical review to a member receiving a disability retirement which is subject to review. The notice will be sent to the member at the most recent address provided and will inform the member of the division's determination of:

(a) the date by which medical information and records must be received, and

(b) any specific medical tests or diagnosis required for the review.

(2) The member will be required to have the results of a current medical examination, including any specifically required tests or diagnosis, submitted directly to the division by the examining medical authority(ies) within 60 calendar days of initial notification. The medical examination shall be performed by the member's treating physician or other competent medical authority. To be considered current, the date of a medical examination must be no earlier than six months prior to receipt by the division.

(3) Disabled retirees of the highway patrol officers', sheriffs', game wardens', municipal police officers' and firefighters' unified retirement systems will be reimbursed for travel necessary to obtain the required examinations or tests provided current medical examinations or tests are not otherwise available. Reimbursement for meals and mileage will be at the rates established for state employees in Title 2, chapter 18, MCA. The actual cost of lodging will be reimbursed up to a maximum of \$40 per day.

AUTH: 19-2-403 MCA

IMP: 19-3-1015, 19-5-612, 19-6-612, 19-7-612, 19-8-712,
19-9-904, and 19-13-804 MCA

2.43.513 CANCELLATION OF DISABILITY BENEFITS FOR REFUSAL TO COMPLY -- NOTICE (1) Failure to appropriately respond to the notice of suspension will be deemed refusal to submit to a medical review and cause for cancellation of the disability retirement benefit. Disability benefits will be cancelled and ~~the~~ The member will be notified of the effective date of cancellation of benefits by certified mail, return receipt requested.

(2) The effective date of cancellation will be the first day of the month following the date of the cancellation notice.

(3) The notice of cancellation will inform the member of appeal rights under the board's rules for contested cases and any rights for service retirement benefits or for requesting termination of membership from the retirement system.

AUTH: 19-2-403 MCA

IMP: 19-3-1015, 19-5-612, 19-6-612, 19-7-612, 19-8-712,
19-9-904, and 19-13-804 MCA

2.43.514 CANCELLATION OF DISABILITY BENEFITS DUE TO CHANGE OF MEDICAL STATUS (1) If the board determines the medical information available, including that provided by the member, does not demonstrate continuing disability, the monthly disability retirement benefit will be cancelled.

(2) The effective date of cancellation for members of public employees', judges and elected officials of the sheriffs' retirement systems will be the first day of the second month following board action (e.g. board action to cancel disability retirement benefits on January 28, would result in cancellation of the March benefit).

(3) Except in the case of a member of the judges' retirement system or an elected official of the public employees' and sheriffs' retirement systems. ~~The~~ the member's former employer will be notified of the member's eligibility for reinstatement to service.

AUTH: 19-2-403 MCA

IMP: 19-3-1015, 19-5-612, 19-6-612, 19-7-612, 19-8-712,
19-9-904, and 19-13-804 MCA

3. The amendment to 2.43.509 is necessary to establish standard reimbursement rates for disabled members of retirement systems which statutorily provide for reimbursement of travel costs to obtain required medical examinations and tests. The amendment to 2.43.513 is necessary to clarify that failure to comply with the rules will be cause for cancellation of the disability retirement benefit. The amendments to 2.43.514 are necessary to clarify when determining whether a member continues to be disabled, the board may consider any and all medical information related to the case and is not limited to information submitted by the disabled member; to clarify that the effective date of cancellation in these rules applies only to those persons not guaranteed a continuing benefit until the

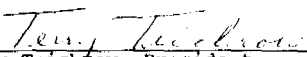
date of reemployment; and to specify the employers not required to be notified in the event the member is determined to be no longer disabled.

4. Interested persons may present their data, views, or arguments concerning the proposed amendments in writing no later than December 23, 1994 to:


Linda King, Administrator
Public Employees' Retirement Division
P.O. Box 200131
Helena, Montana 59620-0131

5. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, the person must make written request for a hearing and submit this request along with any written comments to the above address. A written request for hearing must be received no later than December 12, 1994.

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 action; 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 4,214 persons based on August 1994 payroll reports of active and retired members.



Terry Teichrow, President
Public Employees' Retirement Board



Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State on October 31, 1994.

BEFORE THE BOARD OF THE
STATE COMPENSATION INSURANCE FUND
OF THE STATE OF MONTANA

In the matter of the amendment) AMENDED NOTICE OF PUBLIC
of rule 2.55.327 pertaining) HEARING ON PROPOSED
to the Construction Industry) AMENDMENT OF 2.55.327
Premium Credit Program.)

TO: All Interested Persons:

1. On October 13, 1994, the State Fund published notice at page 2690 of the Montana Administrative Register, Issue No. 19 of the proposed amendment of the above-captioned rule. The notice of proposed agency action is amended as follows because the prior notice omitted the rationale on the credit percentage table change and the time for the public hearing has been rescheduled to November 30, 1994 at 2:00 p.m. in Room 302 of the State Compensation Insurance Fund Building, 5 South Last Chance Gulch, Helena, Montana.

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

2.55.327 CONSTRUCTION INDUSTRY PREMIUM CREDIT PROGRAM

(1) - (4)(c) remain the same.

(d) The following credit percentages in lieu of the tables in (a), (b), and (c) will be used for the fiscal year beginning July 1, 1995.

<u>Average Hourly Wage</u>	<u>Credit Percentage</u>
<u>\$13.97 or less</u>	<u>0.00%</u>
<u>\$13.98-\$14.47</u>	<u>8.00%</u>
<u>\$14.48-\$14.97</u>	<u>10.00%</u>
<u>\$14.98-\$15.47</u>	<u>12.00%</u>
<u>\$15.48-\$15.97</u>	<u>14.00%</u>
<u>\$15.98-\$16.47</u>	<u>15.00%</u>
<u>\$16.48-\$16.97</u>	<u>16.00%</u>
<u>\$16.98-\$17.47</u>	<u>17.00%</u>
<u>\$17.48-\$17.97</u>	<u>18.00%</u>
<u>\$17.98-\$18.97</u>	<u>19.00%</u>
<u>\$18.98-\$19.97</u>	<u>20.00%</u>
<u>\$19.98-\$20.97</u>	<u>21.00%</u>
<u>\$20.98 and above</u>	<u>22.00%</u>

(5) - (6) remain the same.

AUTH: Sec. 39-71-2315 and 39-71-2316 MCA; IMP: Sec. 39-71-2211, 39-71-2311 and 39-71-2316 MCA.

3. The rulemaking is being proposed for the following reasons:

The state's average weekly wage changes at the beginning of each fiscal year. The table in (d) reflects the average hourly rate credit percentage which will be used for the fiscal year beginning July 1, 1995 to take into consideration the increase in the state's average weekly wage effective July 1, 1994.

We are paralleling NCCI's method of computing the construction industry credit, but have accelerated discounts in the mid-range area. This amendment will increase the size of the percentage discounts at the lower wage levels. This amendment will further implement the statutory purpose of providing a method of computing premiums that does not impose a higher insurance premium solely because of an employer's higher rate of wages paid.

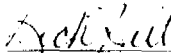
4. Interested persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to state fund attorney Nancy Butler, Legal Department, State Compensation Insurance Fund, 5 South Last Chance Gulch, Helena, Montana 59604-4759, and must be received no later than December 8, 1994.

5. The State Compensation Insurance Fund makes reasonable accommodations for persons with disabilities who wish to participate in this public hearing. Persons needing accommodations must contact the State Fund, Attn: Ms. Dwan Ford, P.O. Box 4759, Helena, MT 59604; telephone (406) 444-6480; TDD (406) 444-5971; fax (406) 444-6555, no later than 5:00 p.m., November 23, 1994, to advise as to the nature of the accommodation needed and to allow adequate time to make arrangements.

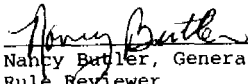
6. The State Fund Legal and Underwriting Departments have been designated to preside over and conduct the hearing.



Dal Smilie, Chief Legal Counsel
Rule Reviewer



Rick Hill
Chairman of the Board



Nancy Butler, General Counsel
Rule Reviewer

Certified to the Secretary of State October 31, 1994.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF A PROPOSED AMEND-
of ARM 4.10.202, ARM 4.10.203) MENT FOR PESTICIDE
and ARM 4.10.205 regarding) APPLICATORS
classification and standards for)
pesticide applicators)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On December 10, 1994, the Department of Agriculture proposes to amend the above mentioned rules.

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

4.10.202 CLASSIFICATION OF PESTICIDE APPLICATORS

(1) through (3)(a)(ii) remain the same.

(iii) Vertebrate classification includes any applicator using or supervising the use of pesticides in the management of vertebrate animals normally wild or ~~feret~~ feral, including certain predators, rodents and birds, which may adversely affect man's health or property or are a nuisance to man.

(3)(b) through (g) remain the same.

(i) School pest classification includes any applicator using or supervising the use of pesticides in the school environment, including but not limited to school yards, buildings, playing fields, and other property under the jurisdiction of the school districts.

(3)(h) through (k)(ii) remain the same.

AUTH: 80-8-105, MCA IMP: 80-8-105, MCA

4.10.203 COMPETENCY STANDARDS FOR LICENSING AND CERTIFICATION-LICENSING OF PESTICIDE APPLICATORS (1) through

(4)(a) remain the same.

(5)(a) Applicators shall be required to requalify for licensing prior to every fifth licensing period. The department has a staggered four-year requalification time period designed by applicator classification and subclassification. Applicator classifications will requalify by December 31 of the year given below. Thereafter the qualification period extends from January 1 through December 31 of the next four-year cycle.

CATEGORY	YEAR
(c) Agricultural Pest Control:	
(i) Plant	1988
(ii) Animal	1988

(iii) Vertebrate	1989
(d) Forest Pest Control	1986
(e) Ornamental and Turf Pest Control	1986
(f) Aquatic Pest Control	1986
(g) Right-of-Way Pest Control	1989
(h) Industrial, Institutional, Structural, and Health Related Pest Control:	
(i) School Pest	1987
(j) Wood Product Pest Control	1986
(j) Public Health Pest Control	1988
(k) Regulatory Pest Control:	
(i) Mosquito Abatement	1988
(ii) Predator	1989
(iii) Quarantine	1988
(iv) Rabid Skunk	1989
(v) Rodent	1989
(vi) Weed	1989
(l) Demonstration and Research Pest Control	1987

~~(b) Thereafter the qualification period extends from January 1 through December 31 of the next four-year cycle.~~ Applicant requalification shall be accomplished by either passing the complete examination series or by attending ~~twelve (12)~~ hours of training approved by the department. Courses must be either a minimum of ~~six (6)~~ hours of training (referred to as a long course) or ~~three (3)~~ hours of training (referred to as a short course). A long course shall satisfy 1/2 of the training required in a qualification period. A short course shall satisfy 1/4 of the training required in a qualification period. An applicant requalifying for licensing by attending pesticide training courses must have written verification of his attendance. The department retains the right to approve or disapprove training courses relative to meeting the qualifications for re-licensing. Training course sponsors must petition the department for approval of their courses at least ~~thirty (30)~~ days prior to being held. The petition must include dates, time, location, projected attendance, speakers and a synopsis of their presentations. The department may require applicants to pass an examination during any licensing period on new pesticide technology which applies to the applicator's classification.

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

4.10.205 SPECIFIC STANDARDS OF COMPETENCY FOR EACH APPLICATOR CLASSIFICATION (1)(a) through (g) remain the same.

(g)(i) School pest applicators must demonstrate a practical knowledge in the principles of integrated pest management and a knowledge of pesticides registered for use in the school environment, in addition to the knowledge required by applicators in the Industrial, Institutional, Structural, and Health-Related category.

(h) through (k) remain the same.

AUTH: 80-8-105, MCA IMP: 80-8-105, MCA

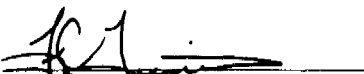
REASON: Under the existing rules, persons who apply pesticides in or around schools may do so under the government or commercial institutional category. The educational and training requirements for this category do not provide in depth education/training focusing on safety and integrated pest management with respect to schools and the school children environment. These amendments establishing a "school pest" licensing subcategory would provide such requirements.

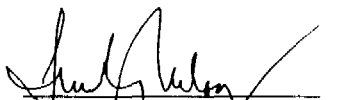
These amendments will also assist schools in implementing the Model School Integrated Pest Management Program established by the Model School Integrated Pest and Pesticide Management Safety Act (Sections 80-8-401 et. seq., MCA). This model program recommends that both environmental and safety considerations be emphasized in the School IPM program. School personnel applying for a School Pest pesticide applicators license will be trained specifically on environmental and safety issues relating to the use of pesticides and alternative pest control methods around school facilities.

3. Interested persons may submit their written data, views, or arguments concerning these amendments to Gary Gingery, Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201, no later than December 8, 1994.

4. If a party who is directly affected by the proposed amendment 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, Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201, no later than December 8, 1994.

5. If the department receives requests for a public hearing under section 2-4-315, MCA, on the proposed amendment, from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not fewer 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 151, based on the number of pesticide applicators in the state.


Leo A. Giacometto, Director
DEPARTMENT OF AGRICULTURE


Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State October 31, 1994.

BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of a rule pertaining) OF ARM 8.56.602A PERMITS
to permits)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 10, 1994, the Board of Radiologic Technologists proposes to amend the above-stated rule.
2. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined)

"8.56.602A PERMITS (1) will remain the same.

~~(a) must show evidence of employment from licensed practitioner or health facility administrator.~~

~~(b) (a) must have completed the minimum formal training in a board-approved course as outlined in ARM 8.56.602B, or have successfully completed 12 months of a 24-month board-approved x-ray course. A student enrolled in a 24-month board-approved x-ray course may apply for a permit as outlined in ARM 8.56.602 after the completion of 12 months of study.~~

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

Auth: Sec. 37-14-306, MCA; IMP, Sec. 37-14-306, MCA

REASON: This amendment is proposed to remove the requirement of employment prior to obtaining a permit, as such a requirement is inconsistent with the prohibition on unpermitted practice; also to clarify that students in their second year of study may apply for a permit and become employed to perform x-ray procedures.

"8.56.602C PERMIT EXAMINATIONS (1) through (3) will remain the same.

~~(4) Applicants may review their examination papers with board members at a regularly scheduled board meeting only administrative staff for the board at the Professional and Occupational Licensing Bureau, 111 North Jackson, Helena, Montana 59620.~~

(5) through (8) will remain the same."

Auth: Sec. 37-1-131, 37-14-202, 37-14-306, MCA; IMP, Sec. 37-14-306, MCA

REASON: This amendment is proposed to make it more convenient for applicants to review their examination papers.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Radiologic Technologists, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana

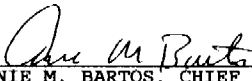
59620-0513, to be received no later than 5:00 p.m., December 8, 1994.

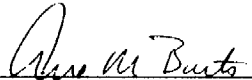
4. If a person who is directly affected by the proposed amendment wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Radiologic Technologists, Lower Level, 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, 1994.

5. If the Board receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 98 based on the 975 licensees in Montana.

BOARD OF RADIOLOGIC
TECHNOLOGISTS
JIM WINTER, RT, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 31, 1994.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF PROPOSED AMENDMENT
of Rule 11.2.203 pertaining to) OF RULE 11.2.203 PERTAINING
requests for hearings upon) TO REQUESTS FOR HEARINGS
notification of adverse) UPON NOTIFICATION OF ADVERSE
action.) ACTION

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On December 22, 1994, the Department of Family Services proposes to amend Rule 11.2.203 pertaining to requests for a hearing upon notification of adverse action.

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

11.2.203 OPPORTUNITY FOR HEARING (1) A claimant or provider who is aggrieved by an adverse action of the department shall be afforded the opportunity for a hearing as provided in this chapter.

(a) A request for a hearing is any clear written expression by the claimant, provider or an authorized representative to contest an adverse action.

(b) The freedom to request a hearing shall not be interfered with in any way by department employees. Department employees shall assist a claimant who seeks help in requesting a hearing.

(c) Cases in which the sole issue is one of state or federal policy may be consolidated for a single group hearing. Each claimant shall be permitted to present his own case.

(d) A request for a hearing must be submitted in writing and be postmarked within thirty (30) ten (10) days of the date of notice of the department's adverse action, excluding weekends and holidays, except that day care providers must submit a request for fair hearing within ten (10) days of the date of notice of the department's adverse action.

(2) There is no opportunity for hearing on departmental activities not defined as an adverse action in ARM 11.2.201. A dispute regarding a contract between the department and a provider is not an adverse action and there is no opportunity for fair hearing concerning such disputes.

AUTH: Sec. 2-4-201; 52-1-103 MCA. IMP: Sec. 2-4-201; 52-2-201, MCA.

3. The existing rule requires that a request for hearing follow within 30 days from the date of notification of the adverse action, except where the adverse action pertains to a day care provider. The rule requires day care providers to request the hearing within 10 days. The time-requirement should be uniform

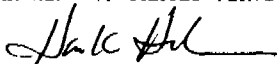
for all those with the right to request a hearing upon notification of adverse action. The ten-day requirement has proved to provide an appropriate amount of time for a decision to be made by the person or organization considering making a request for a hearing. The shorter length of time may also aid in reducing the delay between notification of the adverse action and administrative review of the adverse action. Having a specific requirement for a postmarked-written request will provide an objective measure for judging whether the request is timely. Therefore, the amendment is reasonably necessary to providing for procedure in requesting fair hearings.

4. Interested persons may submit their data, views or arguments to the proposed amendment in writing to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than December 12, 1994.

5. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments, to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than December 12, 1994.

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

DEPARTMENT OF FAMILY SERVICES



Hank Hudson, Director



John Melcher, Rule Reviewer

Certified to the Secretary of State, October 31, 1994.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption) NOTICE OF PROPOSED ADOPTION
of Rule I pertaining to day) OF RULE I PERTAINING TO DAY
care facilities.) CARE FACILITIES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On December 22, 1994, the Department of Family Services proposes to adopt Rule I pertaining to day care facilities.

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

Rule I SMOKE FREE ENVIRONMENT IN DAY CARE FACILITIES

(1) Children shall be afforded a smoke-free environment in all day care facilities.

(2) The registrant or licensee shall ensure that no smoking occurs within the facility while children are in care.

AUTH: Sec. 52-2-704, MCA. IMP: Sec. 52-2-704; 52-2-731, MCA.

3. No current rule addresses whether providers may expose children to smoke. Recent findings reveal significant health problems may result from exposure to smoking. Therefore, the administrative rules on facility licensing and registration should provide a prohibition to prevent exposure of children to smoke. This rule is reasonably necessary to providing standards for day care facilities.

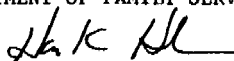
4. Interested persons may submit their data, views or arguments to the proposed amendment in writing to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than December 12, 1994.

5. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments, to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than December 12, 1994.

6. If the Department of Family Services receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from

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

DEPARTMENT OF FAMILY SERVICES



Hank Hudson, Director



John Melcher, Rule Reviewer

Certified to the Secretary of State, October 31, 1994.

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

In the matter of the amendment of)
rules 16.10.701-704, 706-707,)
710-711, 714-715, & 717 and new)
rules I-III regulating trailer)
courts and campgrounds.)

SUPPLEMENTAL NOTICE
OF EXTENDED COMMENT
PERIOD

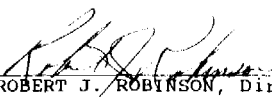
(Trailer Courts &
Campgrounds)

To: All Interested Persons

1. On September 22, 1994, the department published notice at page 2602 of the Montana Administrative Register, Issue No. 18, of the proposed amendment of the above-captioned rules and the adoption of three new rules. The proposed rules comprehensively amend existing department rules which regulate trailer courts and campgrounds for sanitation and public health purposes. The changes segregate design requirements for proposed campgrounds and trailer courts, and ongoing requirements for existing campgrounds and trailer courts. Campgrounds are also regulated by category.

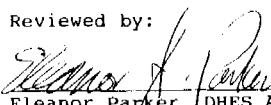
2. The department conducted a public hearing on these rules on October 12, 1994, and received written comment on the rules until October 22, 1994. However, commentators requested additional time to comment on the proposed rule changes. The department has agreed to extend the comment period to November 23, 1994.

3. Interested persons may submit their data, views, or arguments concerning the proposed amendments in writing to Robert J. Thompson, Department of Health and Environmental Sciences, Cogswell Building, PO Box 20090, Helena, Montana 59620-0901, and must submit them early enough so that they are received no later than 5:00 p.m., November 23, 1994.


ROBERT J. ROBINSON, Director

Certified to the Secretary of State October 31, 1994.

Reviewed by:


Eleanor Parker, DHES Attorney

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

In the matter of the proposed) NOTICE OF EXTENSION OF COMMENT
adoption of rules related to) PERIOD FOR THE PROPOSED ADOPTION
the workers' compensation) OF NEW RULES I THROUGH V
data base system and amendment) AND AMENDMENT OF 24.29.3802
of the attorney fee rule)

TO ALL INTERESTED PERSONS:

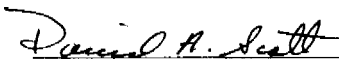
1. On September 8, 1994, at pages 2487 through 2490 of issue 17 of the Montana Administrative Register, pursuant to MAR Notice No. 24-29-59, the Department of Labor and Industry published notice of a public hearing concerning the proposed adoption of new rules concerning the workers' compensation data base established by 39-71-225, MCA, and the amendment of ARM 24.29.3802. That notice provided for a public hearing, which was held on October 6, 1994, in Helena, and further provided for written comment to be accepted up until 5:00 p.m., October 13, 1994.

2. Because the Department received numerous inquiries concerning the proposed rules at or near the deadline for submission of written comments, the Department has extended the period in which to submit written data, views or arguments. Written data, views or arguments may be submitted to:

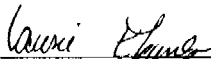
John W. Weida, Bureau Chief
Workers' Compensation Claims Assistance Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604-8011

and must be received by no later than 5:00 p.m., November 28, 1994.

3. Although the Department had originally proposed to make the new rules and amendments effective December 1, 1994, the adoption of the new rules will be delayed because of the extension of the comment period. The Department will appropriately adjust the implementation dates so as to allow affected parties sufficient time to timely report data following any adoption of the new rules.



David A. Scott
Rule Reviewer



Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: October 31, 1994.

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

In the Matter of Proposed) NOTICE OF PUBLIC HEARING
Adoption of Rules Pertaining) ON PROPOSED ADOPTION OF
to Motor Carriers of Property.) NEW RULES I THROUGH XII

TO: All Interested Persons

1. On Thursday, December 8, 1994 at 9:00 a.m. in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, the PSC will hold a hearing to consider the proposals identified in the above titles and described in the following paragraphs, all related to regulation of motor carriers of property.

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

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

RULE I. EFFECTIVE DATE (1) This sub-chapter is effective commencing January 1, 1995, for all Montana intrastate operations within the definition of "motor carrier of property."

AUTH: Sec. 69-12-201, MCA; IMP, Sec. 69-12-201, MCA

RULE II. DEFINITIONS (1) For purposes of this sub-chapter, "motor carrier of property" means a "motor carrier," as defined by section 69-12-101, MCA, except in transportation of passengers, household goods, or waste (ashes, trash, waste, refuse, rubbish, garbage, and organic and inorganic matter) or when the transportation is otherwise exempt by law.

(2) Unless the context clearly dictates otherwise, words used in this sub-chapter shall have their customary meaning in the context of motor carrier regulation.

AUTH: Sec. 69-12-201, MCA; IMP, Sec. 69-12-201, MCA

RULE III. FINANCIAL RESPONSIBILITY -- INSURANCE

(1) Except as provided in (New Rule IV), a motor carrier of property must comply with the motor carrier bodily injury and property damage liability insurance requirements of ARM 38.3.701, 38.3.702, 38.3.704, 38.3.705 and 38.3.706.

AUTH: Sec. 69-12-201, MCA; IMP, Sec. 69-12-402, MCA

RULE IV. FINANCIAL RESPONSIBILITY -- SELF-INSURANCE

(1) A motor carrier of property may apply to the commission for self-insurance approval pursuant to ARM 38.3.708 and 38.3.709.

AUTH: Sec. 69-12-201, MCA; IMP, Sec. 69-12-402, MCA

RULE V. ANNUAL PER VEHICLE REGISTRATION (1) A motor carrier of property must register vehicles annually, paying the prescribed fee (\$5.00 per vehicle), pursuant to ARM 38.3.201(1)(g) and 38.3.203.

AUTH: Sec. 69-12-201, MCA; IMP, Sec. 69-12-421, MCA

RULE VI. CERTIFICATE OF CARRIER COMPLIANCE (1) A motor carrier of property will not engage in transportation operations in this state without first having been issued a certificate of carrier compliance from the commission.

(2) A certificate of carrier compliance acknowledges that the motor carrier of property has demonstrated appropriate financial responsibility through insurance pursuant to (New Rule III) or self-insurance pursuant to (New Rule IV) and has registered vehicles with the commission pursuant to (New Rule V).

AUTH: Sec. 69-12-201, MCA; IMP, Secs. 69-12-201, 69-12-402 and 69-12-421, MCA

RULE VII. APPLICATION FOR CERTIFICATE (1) An application for a certificate of carrier compliance may be made to the commission on a form approved by the commission. The fee for application will be \$50.00, plus the per vehicle registration fee as prescribed by (New Rule V).

AUTH: Sec. 69-12-201, MCA; IMP: Secs. 69-12-201, 69-12-402 and 69-12-421, MCA

RULE VIII. CERTIFICATES FOR EXISTING MOTOR CARRIERS

(1) A motor carrier holding a certificate of public convenience and necessity issued by the commission on or before December 31, 1994, which, in whole or in part authorizes transportation within the definition of "motor carrier of property," shall be issued a certificate of carrier compliance, for operations and services within the definition of motor carrier of property, without application to the commission, so long as compliance with applicable insurance requirements of (New Rules III or IV) and vehicle registration requirements (New Rule V) are current as of the effective date of this sub-chapter.

(2) Motor carriers of property granted a certificate under this rule must thereafter comply with the certificate maintenance provisions of (New Rule IX).

AUTH: Sec. 69-12-201, MCA; IMP, Secs. 69-12-201, 69-12-402 and 69-12-421, MCA

RULE IX. MAINTENANCE OF CERTIFICATE (1) Unless the certificate of carrier compliance is under a period of voluntary suspension, approved by the commission, a motor carrier of property shall maintain a certificate of operating authority by maintaining proof of financial responsibility as required by (New Rules III and IV) and maintaining current per vehicle registration as required by (New Rule V).

AUTH: Sec. 69-12-201, MCA; IMP, Sec. 69-12-201, MCA

RULE X. RENEWAL OF CERTIFICATE (1) So long as a motor carrier of property maintains the certificate of compliance as required in (New Rule IX), renewal, annual or otherwise, will not be required.

AUTH: Sec. 69-12-201, MCA; IMP, Sec. 69-12-201, MCA

RULE XI. LEASE OF POWER UNITS (1) A motor carrier of property may lease power units pursuant to the provisions of: ARM 38.3.2001(2); ARM 38.3.2002(2)(a), (b), (c), (e) and (f); and ARM 38.3.2003(1)(a), (b) and (h). A copy of the lease must be carried in the leased power unit at all times

AUTH: Sec. 69-12-201, MCA; IMP, Secs. 69-12-201 and 69-12-611, MCA

RULE XII. TRANSFER OF CERTIFICATE (1) A certificate of carrier compliance cannot be transferred or leased.

AUTH: Sec. 69-12-201, MCA; IMP, Sec. 69-12-201, MCA

4. Rationale. Effective January 1, 1995 federal law preempts certain state economic regulation (rates, routes, and service) of motor carriers of property. The law preserves in the states certain safety and financial responsibility regulation. The rules proposed are necessary to provide adequate protection for the public, through requirements for minimum amounts of financial responsibility (insurance requirements and self-insurance authorization) and the administrative means to properly monitor that.


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 (original and 10 copies) to Martin Jacobson, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, phone (406) 444-6178, no later than December 8, 1994.

6. The Public Service Commission, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

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 OCTOBER 24, 1994.


Reviewed By

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF PUBLIC HEARING ON
of ARM 42.21.106, 42.21.107,) THE PROPOSED AMENDMENT of ARM
42.21.113, 42.21.122, 42.21.123,) 42.21.106, 42.21.107, 42.21.
42.21.124, 42.21.131, 42.21.132,) 113, 42.21.122, 42.21.123,
42.21.137, 42.21.138, 42.21.139,) 42.21.124, 42.21.131, 42.21.
42.21.140, 42.21.151, 42.21.155,) 132, 42.21.137, 42.21.138,
42.21.158, 42.21.159 and 42.21.) 42.21.139, 42.21.140, 42.21.
305 relating to Personal) 151, 42.21.155, 42.21.158
Property) 42.21.159, and 42.21.305
) relating to Personal Property

TO: All Interested Persons:

1. On November 30, 1994, at 1:00 p.m., a public hearing will be held in the fourth floor conference room of the Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.21.106, 42.21.107, 42.21.113, 42.21.122, 42.21.123, 42.21.124, 42.21.131, 42.21.132, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.155, 42.21.158, 42.21.159 and 42.21.305 relating to personal property.

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

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

(4) The trended depreciation schedule referred to in subsections (2) and (3) is listed below and shall be used for the ~~1994~~ 1995 tax year. The percentages approximate 80% of the average retail value of all trucks over 1 ton as calculated from the guidebook listed in subsection (1).

TRUCK TRENDED DEPRECIATION SCHEDULE

YEAR ACQUIRED	% GOOD
1994	80%
1993	43%
1992	37%
1991	34%
1990	28%
1989	23%
1988	20%
1987	18%
1986	15%
1985	14%
1984	13%
1983	12%
1982	11%
1981 and before	10%

<u>1995</u>	<u>80%</u>
<u>1994</u>	<u>41%</u>
<u>1993</u>	<u>37%</u>
<u>1992</u>	<u>32%</u>
<u>1991</u>	<u>30%</u>
<u>1990</u>	<u>25%</u>
<u>1989</u>	<u>23%</u>
<u>1988</u>	<u>20%</u>
<u>1987</u>	<u>19%</u>
<u>1986</u>	<u>17%</u>
<u>1985</u>	<u>15%</u>
<u>1984</u>	<u>13%</u>
<u>1983</u>	<u>11%</u>
<u>1982 and before</u>	<u>10%</u>

(5) through (6) remain the same.

(7) This rule is effective for tax years beginning after December 31, ~~1993~~ 1994.

AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-6-138 and 61-3-321 MCA.

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

(e) The trended depreciation schedules referred to in subsections (1)(b), (c), and (d) ~~are~~ is listed below and shall be used for the ~~1994~~ 1995 tax year.

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

<u>YEAR NEW/ACQUIRED</u>	<u>% GOOD</u>
<u>1994</u>	<u>80%</u>
<u>1993</u>	<u>60%</u>
<u>1992</u>	<u>58%</u>
<u>1991</u>	<u>54%</u>
<u>1990</u>	<u>51%</u>
<u>1989</u>	<u>48%</u>
<u>1988</u>	<u>45%</u>
<u>1987</u>	<u>42%</u>
<u>1986</u>	<u>41%</u>
<u>1985</u>	<u>40%</u>
<u>1984</u>	<u>38%</u>
<u>1983</u>	<u>36%</u>
<u>1982</u>	<u>34%</u>
<u>1981</u>	<u>32%</u>
<u>1980</u>	<u>30%</u>
<u>1979</u>	<u>28%</u>
<u>1978</u>	<u>26%</u>
<u>1977</u>	<u>24%</u>
<u>1976</u>	<u>22%</u>
<u>1975</u>	<u>20%</u>
<u>1974 & Before</u>	<u>15%</u>

<u>1995</u>	<u>80%</u>
<u>1994</u>	<u>59%</u>
<u>1993</u>	<u>57%</u>
<u>1992</u>	<u>54%</u>
<u>1991</u>	<u>51%</u>
<u>1990</u>	<u>48%</u>
<u>1989</u>	<u>45%</u>
<u>1988</u>	<u>42%</u>
<u>1987</u>	<u>41%</u>
<u>1986</u>	<u>40%</u>
<u>1985</u>	<u>38%</u>
<u>1984</u>	<u>36%</u>
<u>1983</u>	<u>34%</u>
<u>1982</u>	<u>32%</u>
<u>1981</u>	<u>30%</u>
<u>1980</u>	<u>28%</u>
<u>1979</u>	<u>26%</u>
<u>1978</u>	<u>24%</u>
<u>1977</u>	<u>22%</u>
<u>1976</u>	<u>20%</u>
<u>1975 & Before</u>	<u>15%</u>

(2) through (2) (d) remain the same.

(e) The trended depreciation schedule mentioned in sub-sections (2) (b) and (c) is listed below and shall be used for the ~~1994~~ 1995 tax year. It is the same schedule as used in ARM 42.21.106(4).

TRAILERS 18,001 - 25,999 LBS. G.V.W.

<u>YEAR ACQUIRED</u>	<u>% GOOD</u>
<u>1994</u>	<u>80%</u>
<u>1993</u>	<u>43%</u>
<u>1992</u>	<u>37%</u>
<u>1991</u>	<u>34%</u>
<u>1990</u>	<u>28%</u>
<u>1989</u>	<u>23%</u>
<u>1988</u>	<u>20%</u>
<u>1987</u>	<u>18%</u>
<u>1986</u>	<u>15%</u>
<u>1985</u>	<u>14%</u>
<u>1984</u>	<u>13%</u>
<u>1983</u>	<u>12%</u>
<u>1982</u>	<u>11%</u>
<u>1981 and before</u>	<u>10%</u>
<u>1995</u>	<u>80%</u>
<u>1994</u>	<u>41%</u>
<u>1993</u>	<u>37%</u>
<u>1992</u>	<u>32%</u>
<u>1991</u>	<u>30%</u>
<u>1990</u>	<u>25%</u>

<u>1989</u>	<u>23%</u>
<u>1988</u>	<u>20%</u>
<u>1987</u>	<u>19%</u>
<u>1986</u>	<u>17%</u>
<u>1985</u>	<u>15%</u>
<u>1984</u>	<u>13%</u>
<u>1983</u>	<u>11%</u>
<u>1982 and before</u>	<u>10%</u>

(3) This rule is effective for tax years beginning after December 31, ~~1993~~ 1994.

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

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

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

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

(2) remains the same.

(3) The trended depreciation schedules referred to in subsections (1) and (2) ~~are~~ is listed below and shall be used for tax year ~~1994~~ 1995.

Year			
<u>New/Acquired</u>	<u>\$0 - 500</u>	<u>\$501 - 1500</u>	<u>\$1,501 or Greater</u>
1993	70%	85%	85%
1992	44%	69%	71%
1991	19%	53%	56%
1990	9%	35%	39%
1989 and older	9%	20%	24%
<u>1994</u>	<u>70%</u>	<u>85%</u>	<u>85%</u>
<u>1993</u>	<u>45%</u>	<u>69%</u>	<u>66%</u>
<u>1992</u>	<u>20%</u>	<u>52%</u>	<u>51%</u>
<u>1991</u>	<u>9%</u>	<u>35%</u>	<u>39%</u>
<u>1990 and older</u>	<u>9%</u>	<u>20%</u>	<u>24%</u>

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

(5) remains the same.

(6) This rule is effective for tax years beginning after December 31, ~~1993~~ 1994.

AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-6-136 MCA

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

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

(a) mules, asses, shetland ponies, donkeys and burrows - 24 months and older (.75);

(b) saddle horses, and brood mares - 24 months - through 14 years (1.5);

(c) work and pack horses, riding and pack mules - 24 months - through 14 years (1.75);

(d) show, race and roping horses - 24 months - through 14 years (2.5);

(e) stallions - 24 months - through 14 years (3.75); and

(f) horses - 15 years and older (1.00).

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

~~(4)~~ For the purposes of this subsection, livestock are defined pursuant to 15-1-101~~(4)~~(4), MCA.

(5) Miscellaneous livestock shall be valued as follows:

(a) male elk, yaks & buffalo shall be valued the same as purebred bulls;

(b) female elk, yaks & buffalo shall be valued the same as purebred cattle, 33 months & older;

(c) male Llamas shall be valued the same as horses, 15 years & older;

(d) neutered Llamas and deer shall be valued the same as mules, shetland ponies, etc.;

(e) female Llamas and miniature horses shall be valued the same as show, roping & race horses;

(f) exotic goats shall be valued the same as doe goats;
and.

(g) exotic pigs shall be valued the same as boars.

~~(5)~~(6) This rule is effective for tax years beginning after December 31, 1990 1994.

AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-6-136 and 15-6-207, MCA

42.21.123 FARM MACHINERY AND EQUIPMENT (1) and (2) remain the same.

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

same as those mentioned in ARM 42.21.106(2).

(4) remains the same.

(5) The trended depreciation schedule referred to in subsections (2) through (4) is listed below and shall be used for tax year ~~1994~~ 1995. The schedule is derived by using the guidebook listed in subsection (1) and the "Farm Tractor Trade-In Guide" and "Farm Equipment Trade-In Guide" of the current year of assessment and are incorporated by reference, Technical Publications Division, Intertec Publishing Corporation, Box 12901, Overland Park, Kansas 66212, as the data base. The trended depreciation schedule will approximate average loan value.

<u>YEAR</u>	<u>TRENDED % GOOD AVERAGE LOAN</u>
1994	65%
1993	53%
1992	49%
1991	45%
1990	41%
1989	40%
1988	37%
1987	35%
1986	35%
1985	33%
1984	33%
1983	32%
1982	32%
1981	31%
1980	30%
1979	29%
1978	27%
1977	26%
1976	27%
1975	26%
1974	25%
1973	23%
1972	22%
1971	21%
1970 and before	20%
<u>1995</u>	<u>65%</u>
<u>1994</u>	<u>52%</u>
<u>1993</u>	<u>49%</u>
<u>1992</u>	<u>46%</u>
<u>1991</u>	<u>43%</u>
<u>1990</u>	<u>40%</u>
<u>1989</u>	<u>39%</u>
<u>1988</u>	<u>36%</u>
<u>1987</u>	<u>33%</u>
<u>1986</u>	<u>34%</u>
<u>1985</u>	<u>33%</u>

<u>1984</u>	<u>32½</u>
<u>1983</u>	<u>31½</u>
<u>1982</u>	<u>31½</u>
<u>1981</u>	<u>31½</u>
<u>1980</u>	<u>32½</u>
<u>1979</u>	<u>33½</u>
<u>1978</u>	<u>31½</u>
<u>1977</u>	<u>29½</u>
<u>1976</u>	<u>27½</u>
<u>1975</u>	<u>25½</u>
<u>1974</u>	<u>24½</u>
<u>1973</u>	<u>23½</u>
<u>1972</u>	<u>22½</u>
<u>1971 and before</u>	<u>20½</u>

(6) and (7) remain the same.

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

42.21.124 PER CAPITA LIVESTOCK TAX REPORTING PROCEDURE

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

(a) All horses, mules, asses, shetland ponies, donkeys and burros - 9 months and older;

(b) All bulls and cattle - 9 months and older;

(c) All goats - 9 months and older;

(d) All swine - 3 months and older;

~~All buffalo, elk, llamas, deer & other domestic ungulates - 9 months and older~~

(e) All buffalo - 9 months and older;

(f) All elk, llamas, deer & other domestic ungulates - 9 months and older;

(g) Poultry;

(h) Bees; and

(i) All sheep - 9 months and older.

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

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

(5) The trended depreciation schedules referred to in subsections (2), (3) and (4) ~~are~~ is listed below and shall be used for tax year ~~1994~~ 1995. The percentages approximate the "quick sale" values as calculated in the guidebooks listed in subsection (1).

HEAVY EQUIPMENT TRENDED DEPRECIATION SCHEDULE

<u>YEAR</u>	<u>1/3 GOOD WHOLESALE</u>
1994	80%
1993	65%
1992	47%
1991	44%
1990	41%
1989	39%
1988	37%
1987	35%
1986	30%
1985	28%
1984	26%
1983	25%
1982	26%
1981	26%
1980	27%
1979	27%
1978	27%
1977	27%
1976	22%
1975	21%
1974	21%
1973 & Before	21%
<u>1995</u>	<u>80%</u>
<u>1994</u>	<u>65%</u>
<u>1993</u>	<u>51%</u>
<u>1992</u>	<u>45%</u>
<u>1991</u>	<u>41%</u>
<u>1990</u>	<u>37%</u>
<u>1989</u>	<u>36%</u>
<u>1988</u>	<u>35%</u>
<u>1987</u>	<u>31%</u>
<u>1986</u>	<u>28%</u>
<u>1985</u>	<u>27%</u>
<u>1984</u>	<u>25%</u>
<u>1983</u>	<u>25%</u>
<u>1982</u>	<u>25%</u>
<u>1981</u>	<u>27%</u>
<u>1980</u>	<u>25%</u>
<u>1979</u>	<u>26%</u>
<u>1978</u>	<u>26%</u>
<u>1977</u>	<u>27%</u>
<u>1976</u>	<u>25%</u>
<u>1975</u>	<u>25%</u>
<u>1974</u>	<u>23%</u>
<u>1973 & Before</u>	<u>21%</u>

(6) This rule is effective for tax years beginning after

December 31, ~~1993~~ 1994, and applies to all heavy equipment ~~not listed in ARM 42.21.139.~~

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

42.21.132 MINING EQUIPMENT (1)(a) All machinery and equipment used in the mining process is classified in taxable classification 8, 15-6-138(b), MCA. Mining machinery and equipment included in taxable classification 8 shall be that equipment engaged in the extraction, excavation, burrowing or otherwise freeing raw material from the earth.

(b) remains the same.

(2) and (3) remain the same.

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

42.21.137 SEISMOGRAPH UNITS AND ALLIED EQUIPMENT

(1) through (3) remain the same.

(4) The trended depreciation schedules referred to in subsections (1) through (3) are listed below and shall be used for tax year ~~1994~~ 1995.

SEISMOGRAPH UNITS

TRENDED		TREND		WHOLESALE	
YEAR	% GOOD	FACTOR	% GOOD	FACTOR	% GOOD
1994	100%	1.000	100%	80%	80%
1993	85%	1.000	85%	80%	68%
1992	69%	1.010	70%	80%	56%
1991	52%	1.018	53%	80%	42%
1990	34%	1.040	35%	80%	28%
1989	20%	1.067	21%	80%	17%
1988 & older	5%	1.128	6%	80%	5%
1995	100%	1.000	100%	80%	80%
1994	85%	1.000	85%	80%	68%
1993	69%	1.016	70%	80%	56%
1992	52%	1.029	54%	80%	43%
1991	34%	1.037	35%	80%	28%
1990	20%	1.060	21%	80%	17%
1989 & older	5%	1.087	5%	80%	4%

SEISMOGRAPH ALLIED EQUIPMENT

YEAR	% GOOD	TREND	TRENDED
ACQUIRED		FACTOR	% GOOD
1993	100%	1.000	100%
1992	85%	1.000	85%
1991	69%	1.010	70%
1990	52%	1.018	53%

1989	34%	1.040	35%
1988	20%	1.067	21%
1987 & older	5%	1.128	6%
<u>1995</u>	<u>100%</u>	<u>1.000</u>	<u>100%</u>
<u>1994</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>
<u>1993</u>	<u>69%</u>	<u>1.016</u>	<u>70%</u>
<u>1992</u>	<u>52%</u>	<u>1.029</u>	<u>54%</u>
<u>1991</u>	<u>34%</u>	<u>1.037</u>	<u>35%</u>
<u>1990</u>	<u>20%</u>	<u>1.060</u>	<u>21%</u>
<u>1988 & older</u>	<u>5%</u>	<u>1.087</u>	<u>5%</u>

(5) This rule is effective for tax years beginning after December 31, ~~1993~~ 1994.

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

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

(3) The trended depreciation schedule referred to in subsections (1) and (2) is listed below and shall be used for tax year ~~1994~~ 1995.

<u>OIL AND GAS FIELD PRODUCTION EQUIPMENT TRENDED DEPRECIATION SCHEDULE</u>			
<u>YEAR</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1994	100%	1.000	100%
1993	95%	1.000	95%
1992	89%	1.010	90%
1991	83%	1.018	84%
1990	77%	1.040	80%
1989	71%	1.067	76%
1988	65%	1.128	73%
1987	58%	1.176	68%
1986	51%	1.199	61%
1985	45%	1.194	54%
1984	39%	1.211	47%
1983	33%	1.243	41%
1982	28%	1.262	35%
1981	23%	1.328	31%
1980 & Older	20%	1.477	30%
<u>1995</u>	<u>100%</u>	<u>1.000</u>	<u>100%</u>
<u>1994</u>	<u>95%</u>	<u>1.000</u>	<u>95%</u>
<u>1993</u>	<u>89%</u>	<u>1.016</u>	<u>90%</u>
<u>1992</u>	<u>83%</u>	<u>1.029</u>	<u>85%</u>
<u>1991</u>	<u>77%</u>	<u>1.037</u>	<u>80%</u>
<u>1990</u>	<u>71%</u>	<u>1.060</u>	<u>75%</u>
<u>1989</u>	<u>65%</u>	<u>1.087</u>	<u>71%</u>
<u>1988</u>	<u>58%</u>	<u>1.142</u>	<u>66%</u>
<u>1987</u>	<u>51%</u>	<u>1.198</u>	<u>61%</u>
<u>1986</u>	<u>45%</u>	<u>1.211</u>	<u>54%</u>

<u>1985</u>	<u>39%</u>	<u>1.217</u>	<u>47%</u>
<u>1984</u>	<u>33%</u>	<u>1.234</u>	<u>41%</u>
<u>1983</u>	<u>28%</u>	<u>1.267</u>	<u>35%</u>
<u>1982</u>	<u>23%</u>	<u>1.385</u>	<u>30%</u>
<u>1981 & Older</u>	<u>20%</u>	<u>1.353</u>	<u>30%</u>

(4) remains the same.

(5) This rule is effective for tax years beginning after December 31, ~~1993~~ 1994.

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

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

(5) The trended depreciation schedule referred to in subsections (2) and (4) is listed below and shall be used for tax year ~~1994~~ 1995.

SERVICE AND WORKOVER RIG % GOOD SCHEDULE

<u>YEAR</u>	<u>% GOOD</u>	<u>WHOLESALE FACTOR</u>	<u>TRENDED WHOLESALE % GOOD</u>
1994	100%	80%	80%
1993	92%	80%	74%
1992	84%	80%	67%
1991	76%	80%	61%
1990	67%	80%	54%
1989	58%	80%	46%
1988	49%	80%	39%
1987	35%	80%	28%
1986	30%	80%	24%
1985	24%	80%	19%
1984 & Older	20%	80%	16%
<u>1995</u>	<u>100%</u>	<u>80%</u>	<u>80%</u>
<u>1994</u>	<u>92%</u>	<u>80%</u>	<u>74%</u>
<u>1993</u>	<u>84%</u>	<u>80%</u>	<u>67%</u>
<u>1992</u>	<u>76%</u>	<u>80%</u>	<u>61%</u>
<u>1991</u>	<u>67%</u>	<u>80%</u>	<u>54%</u>
<u>1990</u>	<u>58%</u>	<u>80%</u>	<u>46%</u>
<u>1989</u>	<u>49%</u>	<u>80%</u>	<u>39%</u>
<u>1988</u>	<u>35%</u>	<u>80%</u>	<u>28%</u>
<u>1987</u>	<u>30%</u>	<u>80%</u>	<u>24%</u>
<u>1986</u>	<u>24%</u>	<u>80%</u>	<u>19%</u>
<u>1985 & Older</u>	<u>20%</u>	<u>80%</u>	<u>16%</u>

(6) This rule is effective for tax years beginning after December 31, ~~1993~~ 1994.

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

42.21.140 OIL DRILLING RIGS (1) remains the same.

(2) The department of revenue shall prepare a 10-year

trended depreciation schedule for oil drilling rigs. The trended depreciation schedule shall be derived from depreciation factors published by "Marshall and Swift Publication Company". The trended depreciation schedule for tax year ~~1994~~ 1995 is listed below.

<u>DRILL RIG % GOOD SCHEDULE</u>	
<u>YEAR</u>	<u>TRENDED % GOOD</u>
1994	100%
1993	92%
1992	84%
1991	76%
1990	67%
1989	58%
1988	49%
1987	35%
1986	30%
1985	24%
1984 and Older	20%
<u>1995</u>	<u>100%</u>
<u>1994</u>	<u>92%</u>
<u>1993</u>	<u>84%</u>
<u>1992</u>	<u>76%</u>
<u>1991</u>	<u>67%</u>
<u>1990</u>	<u>58%</u>
<u>1989</u>	<u>49%</u>
<u>1988</u>	<u>35%</u>
<u>1987</u>	<u>30%</u>
<u>1986</u>	<u>24%</u>
<u>1985 and Older</u>	<u>20%</u>

(3) remains the same.

(4) This rule is effective for tax years beginning after December 31, ~~1993~~ 1994.

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

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

(4) The trended depreciation schedules referred to in subsections (2) and (3) are listed below and shall be in effect for tax year ~~1994~~ 1995.

TABLE 1: .5-YEAR "DISHES"

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1993	85%	1.000	85%
1992	69%	1.012	70%
1991	52%	1.029	53%
1990	34%	1.045	36%

1989 & older	20%	1.073	22%
<u>1994</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>
<u>1993</u>	<u>69%</u>	<u>1.024</u>	<u>71%</u>
<u>1992</u>	<u>52%</u>	<u>1.043</u>	<u>54%</u>
<u>1991</u>	<u>34%</u>	<u>1.056</u>	<u>36%</u>
<u>1990 & older</u>	<u>20%</u>	<u>1.077</u>	<u>22%</u>

TABLE 2: 10-YEAR "TOWERS"

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
92%	1.000	92%	
84%	1.012	85%	
76%	1.025	78%	
67%	1.045	70%	
58%	1.073	62%	
49%	1.131	55%	
39%	1.179	46%	
30%	1.196	36%	
24%	1.208	29%	
20%	1.225	25%	
<u>92%</u>	<u>1.000</u>	<u>92%</u>	
<u>84%</u>	<u>1.024</u>	<u>86%</u>	
<u>76%</u>	<u>1.043</u>	<u>79%</u>	
<u>67%</u>	<u>1.056</u>	<u>71%</u>	
<u>58%</u>	<u>1.077</u>	<u>62%</u>	
<u>49%</u>	<u>1.106</u>	<u>54%</u>	
<u>39%</u>	<u>1.165</u>	<u>46%</u>	
<u>30%</u>	<u>1.215</u>	<u>36%</u>	
<u>24%</u>	<u>1.233</u>	<u>30%</u>	
<u>20%</u>	<u>1.245</u>	<u>25%</u>	

(5) This rule is effective for tax years beginning after December 31, 1993 1994.

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

42.21.155 DEPRECIATION SCHEDULES (1) remains the same.

(2) The trended depreciation schedules for tax year 1994 1995 are listed below. The categories are explained in ARM 42.21.156. The trend factors are derived according to ARM 42.21.156 and 42.21.157.

CATEGORY 1

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
70%	1.000	70%	
45%	0.969	44%	
20%	0.935	19%	
10%	0.915	9%	

1994	<u>70%</u>	1.000	70%
1993	<u>45%</u>	1.009	45%
1992	<u>20%</u>	0.980	20%
1991 and older	<u>10%</u>	0.946	<u>9%</u>

CATEGORY 2

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1993	85%	1.000	85%
1992	69%	1.000	69%
1991	52%	1.015	53%
1990	34%	1.006	34%
1989 and older	20%	1.023	20%

1994	<u>85%</u>	1.000	85%
1993	<u>69%</u>	1.005	69%
1992	<u>52%</u>	1.005	52%
1991	<u>34%</u>	1.020	35%
1990 and older	<u>20%</u>	1.011	20%

CATEGORY 3

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1993	85%	1.000	85%
1992	69%	1.013	70%
1991	52%	1.029	53%
1990	34%	1.030	35%
1989 and older	20%	1.035	21%

1994	<u>85%</u>	1.000	85%
1993	<u>69%</u>	1.000	69%
1992	<u>52%</u>	0.997	52%
1991	<u>34%</u>	0.990	34%
1990 and older	<u>20%</u>	1.014	20%

CATEGORY 4

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1993	85%	1.000	85%
1992	69%	1.013	70%
1991	52%	1.029	54%
1990	34%	1.030	35%
1989 and older	20%	1.035	21%

1994	<u>85%</u>	1.000	85%
1993	<u>69%</u>	0.994	69%
1992	<u>52%</u>	1.006	52%
1991	<u>34%</u>	1.022	35%
1990 and older	<u>20%</u>	1.030	21%

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CATEGORY 5

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND</u> <u>FACTOR</u>	<u>TRENDED</u> <u>% GOOD</u>
1993	85%	1.000	85%
1992	69%	1.009	70%
1991	52%	1.021	53%
1990	34%	1.037	35%
1989 and older	20%	1.068	21%
1994	85%	1.000	85%
1993	69%	1.018	70%
1992	52%	1.027	53%
1991	34%	1.039	35%
1990 and older	20%	1.056	21%

CATEGORY 6

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND</u> <u>FACTOR</u>	<u>TRENDED</u> <u>% GOOD</u>
1993	85%	1.000	85%
1992	69%	1.030	71%
1991	52%	1.072	56%
1990	34%	1.134	39%
1989 and older	20%	1.201	24%
1994	85%	1.000	85%
1993	69%	0.958	66%
1992	52%	0.987	51%
1991	34%	1.026	39%
1990 and older	20%	1.086	24%

CATEGORY 7

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND</u> <u>FACTOR</u>	<u>TRENDED</u> <u>% GOOD</u>
1993	92%	1.000	92%
1992	84%	1.022	86%
1991	76%	1.053	80%
1990	67%	1.095	73%
1989	58%	1.141	66%
1988	49%	1.185	58%
1987	39%	1.209	47%
1986	30%	1.229	37%
1985	24%	1.253	30%
1984 and older	20%	1.287	26%
1994	92%	1.000	92%
1993	84%	1.021	86%
1992	76%	1.044	80%
1991	67%	1.075	72%
1990	58%	1.118	65%

<u>1989</u>	<u>49%</u>	<u>1.165</u>	<u>57%</u>
<u>1988</u>	<u>39%</u>	<u>1.210</u>	<u>47%</u>
<u>1987</u>	<u>30%</u>	<u>1.235</u>	<u>37%</u>
<u>1986</u>	<u>24%</u>	<u>1.255</u>	<u>30%</u>
<u>1985 and older</u>	<u>20%</u>	<u>1.280</u>	<u>26%</u>

CATEGORY 8

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
<u>1993</u>	<u>92%</u>	<u>1.000</u>	<u>92%</u>
<u>1992</u>	<u>84%</u>	<u>1.016</u>	<u>85%</u>
<u>1991</u>	<u>76%</u>	<u>1.030</u>	<u>78%</u>
<u>1990</u>	<u>67%</u>	<u>1.058</u>	<u>71%</u>
<u>1989</u>	<u>58%</u>	<u>1.099</u>	<u>64%</u>
<u>1988</u>	<u>49%</u>	<u>1.150</u>	<u>56%</u>
<u>1987</u>	<u>39%</u>	<u>1.191</u>	<u>46%</u>
<u>1986</u>	<u>30%</u>	<u>1.222</u>	<u>37%</u>
<u>1985</u>	<u>24%</u>	<u>1.272</u>	<u>31%</u>
<u>1984 and older</u>	<u>20%</u>	<u>1.314</u>	<u>26%</u>

<u>1994</u>	<u>92%</u>	<u>1.000</u>	<u>92%</u>
<u>1993</u>	<u>84%</u>	<u>1.023</u>	<u>86%</u>
<u>1992</u>	<u>76%</u>	<u>1.040</u>	<u>79%</u>
<u>1991</u>	<u>67%</u>	<u>1.054</u>	<u>71%</u>
<u>1990</u>	<u>58%</u>	<u>1.083</u>	<u>63%</u>
<u>1989</u>	<u>49%</u>	<u>1.125</u>	<u>55%</u>
<u>1988</u>	<u>39%</u>	<u>1.177</u>	<u>46%</u>
<u>1987</u>	<u>30%</u>	<u>1.219</u>	<u>37%</u>
<u>1986</u>	<u>24%</u>	<u>1.250</u>	<u>30%</u>
<u>1985 and older</u>	<u>20%</u>	<u>1.301</u>	<u>26%</u>

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

42.21.158 PROPERTY REPORTING TIME FRAMES (1) through (4) remain the same.

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

(6) This rule is effective for tax years beginning after December 31, 1990 1994.

AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-8-303, 15-24-902, 15-24-903, 15-24-905, and 15-24-920 MCA.

42.21.159 COMMERCIAL PERSONAL PROPERTY AUDITS (1) through (5) remain the same.

(6) The department of revenue will seek access to the following records for purposes of conducting the audits, pursuant to 15-8-304(b), MCA:

(a) through (d) remain the same.

AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-8-104 MCA.

42.21.305 TRENDED DEPRECIATION SCHEDULES (1) 1994 1995
trended percent depreciation schedule for licensed motorcycles
and licensed quadricycles:

<u>Year</u>	<u>Trended % Good</u>
<u>1994</u>	<u>80%</u>
<u>1993</u>	<u>57%</u>
<u>1992</u>	<u>55%</u>
<u>1991</u>	<u>49%</u>
<u>1990</u>	<u>44%</u>
<u>1989</u>	<u>41%</u>
<u>1988</u>	<u>38%</u>
<u>1987</u>	<u>37%</u>
<u>1986</u>	<u>29%</u>
<u>1985</u>	<u>28%</u>
<u>1984</u>	<u>24%</u>
<u>1983</u>	<u>20%</u>
<u>1982</u>	<u>18%</u>
<u>1981</u>	<u>19%</u>
<u>1980</u>	<u>17%</u>
<u>1979 & Older</u>	<u>17%</u>
<u>1995</u>	<u>80%</u>
<u>1994</u>	<u>64%</u>
<u>1993</u>	<u>58%</u>
<u>1992</u>	<u>55%</u>
<u>1991</u>	<u>49%</u>
<u>1990</u>	<u>45%</u>
<u>1989</u>	<u>43%</u>
<u>1988</u>	<u>41%</u>
<u>1987</u>	<u>41%</u>
<u>1986</u>	<u>34%</u>
<u>1985</u>	<u>33%</u>
<u>1984</u>	<u>29%</u>
<u>1983</u>	<u>26%</u>
<u>1982</u>	<u>23%</u>
<u>1981</u>	<u>23%</u>
<u>1980 & Older</u>	<u>21%</u>

(2) 1994 1995 trended depreciation schedule for
automobiles and trucks with a rated capacity of 1 ton and less:

<u>Year</u>	<u>Trended % Good</u>
<u>1994</u>	<u>80% of FOB</u>
<u>1993</u>	<u>79%</u>
<u>1992</u>	<u>68%</u>
<u>1991</u>	<u>57%</u>
<u>1990</u>	<u>46%</u>
<u>1989</u>	<u>39%</u>

1988	33%
1987	27%
1986	21%
1985	17%
1984	13%
1983	11%
1982	9%
1981	7%
1980	7%
1979	6%
1978	6%
1977 & Older	5%

1995	80% of FOB
1994	80%
1993	72%
1992	61%
1991	52%
1990	43%
1989	35%
1988	30%
1987	24%
1986	19%
1985	16%
1984	12%
1983	10%
1982	8%
1981	7%
1980	7%
1979	7%
1978 & Older	7%

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

3. The department is proposing the amendments because 15-8-111, MCA, requires the department to assess all property at 100% of its market value except as provided in 15-7-111, MCA. The statute does not address in detail how the department is to arrive at market value.

To determine the market value of certain property the department has historically used and adopted the concept of trending and depreciation. The method by which trended depreciation schedules are derived is described in the existing rules, and that method is not being changed. However, the method does result in annual changes to the schedules. The district court has indicated that those schedules must be a part of the rule.

Additionally, ARM 42.21.158 is amended to reflect 1993 legislation that changed the date livestock are taxable from March 1 to February 1. ARM 42.21.122 is amended to include a valuation category for miscellaneous livestock. ARM 42.21.124 is amended to segregate buffalo into its own category to

accommodate the Department of Livestock per capita tax.

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

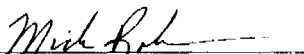
Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than December 9, 1994.

5. 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 October 31, 1994.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

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

TO: All Interested Persons:

1. On November 30, 1994, 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 42.22.1311 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. Each major industry has its own trend table.~~ 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
1993 - 1994

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

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)
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 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 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	10
Concrete Products	10
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 Beneficiation	20
Nonferrous Smelting	15
Open Pit Mining & Quarrying	15
Ore Milling & Concentrating	15
Phosphate Beneficiation	20
Stone Products	15
Tale Beneficiation	20
Underground Mining	10
Vermiculite Processing	20

1995 INDUSTRIAL MACHINERY & EQUIPMENT TREND FACTORS

Trend Table	Description	Life
(1)	<u>Aircraft/Airframe Mfg.</u>	15
(4)	<u>Alcohol Plant</u>	15
(2)	<u>Baking</u>	12
(21)	<u>Bentonite</u>	20
(3)	<u>Bottling</u>	12
(4)	<u>Brewing & Distilling</u>	20
(5)	<u>Candy & Confectionery</u>	20
(25)	<u>Cardboard Container</u>	20
(6)	<u>Cement Manufacturing</u>	20
(14)	<u>Cereal Products</u>	16
(7)	<u>Chemical Manufacturing</u>	12
(8)	<u>Clay Products</u>	15
(21)	<u>Coal Crushing & Handling</u>	20
(28)	<u>Coal Fired Power Gener.</u>	16
(6)	<u>Concrete Products</u>	18

<u>(6)</u>	<u>Concrete Ready Mix</u>	<u>18</u>
<u>(9)</u>	<u>Contractor Equipment</u>	<u>10</u>
<u>(10)</u>	<u>Creamery & Dairy</u>	<u>12</u>
<u>(16)</u>	<u>Egg Packing</u>	<u>20</u>
<u>(11)</u>	<u>Electric Power Equipment</u>	<u>16</u>
<u>(12)</u>	<u>Electrical Equipment Mfg.</u>	<u>10</u>
<u>(12)</u>	<u>Electronic Component Mfg.</u>	<u>10</u>
<u>(14)</u>	<u>Feed Milling</u>	<u>16</u>
<u>(30)</u>	<u>Fertilizer Distribution</u>	<u>10</u>
<u>(7)</u>	<u>Fertilizer Manufacturing</u>	<u>12</u>
<u>(13)</u>	<u>Fish Cannery</u>	<u>12</u>
<u>(14)</u>	<u>Flour, Cereal & Feed</u>	<u>16</u>
<u>(14)</u>	<u>Flour Milling</u>	<u>16</u>
<u>(20)</u>	<u>Foundry</u>	<u>15</u>
<u>(15)</u>	<u>Fruit Cannery</u>	<u>12</u>
<u>(16)</u>	<u>Fruit Packing</u>	<u>12</u>
<u>(31)</u>	<u>Furniture Manufacturing</u>	<u>10</u>
<u>(4)</u>	<u>Gasohol Plant</u>	<u>15</u>
<u>(32)</u>	<u>Glass Manufacturing</u>	<u>15</u>
<u>(14)</u>	<u>Grain Handling Facilities</u>	<u>16</u>
<u>(21)</u>	<u>Graphite Products</u>	<u>20</u>
<u>(21)</u>	<u>Gypsum</u>	<u>20</u>
<u>(21)</u>	<u>Heap Leach Mechanical</u>	<u>20</u>
<u>(21)</u>	<u>Heap Leach Pads</u>	<u>5</u>
<u>(15)</u>	<u>Honey Processing</u>	<u>12</u>
<u>(11)</u>	<u>Hydroelectric Generation</u>	<u>20</u>
<u>(9)</u>	<u>Industrial Shop Equipment</u>	<u>10</u>
<u>(17)</u>	<u>Laundry & Drycleaning</u>	<u>10</u>
<u>(29)</u>	<u>Leather Fabrication</u>	<u>20</u>
<u>(21)</u>	<u>Lime/Calcium Benefication</u>	<u>20</u>
<u>(18)</u>	<u>Logging Equipment</u>	<u>10</u>
<u>(19)</u>	<u>Meat Packing</u>	<u>12</u>
<u>(20)</u>	<u>Metal Fabrication</u>	<u>20</u>
<u>(20)</u>	<u>Metal Machining & Milling</u>	<u>15</u>
<u>(20)</u>	<u>Metal Working</u>	<u>20</u>
<u>(21)</u>	<u>Mining & Milling</u>	<u>15</u>
<u>(23)</u>	<u>Natural Gas Processing</u>	<u>16</u>
<u>(21)</u>	<u>Nonferrous Smelting</u>	<u>15</u>
<u>(23)</u>	<u>Oil Refining</u>	<u>16</u>
<u>(21)</u>	<u>Open Pit Mining/Quarrying</u>	<u>15</u>
<u>(21)</u>	<u>Ore Milling/Concentrating</u>	<u>15</u>
<u>(7)</u>	<u>Oxygen Generation</u>	<u>20</u>
<u>(22)</u>	<u>Paint Manufacturing</u>	<u>12</u>
<u>(30)</u>	<u>Peat Moss/Compost Plant</u>	<u>20</u>
<u>(23)</u>	<u>Petroleum</u>	<u>16</u>
<u>(21)</u>	<u>Phosphate Benefication</u>	<u>20</u>
<u>(32)</u>	<u>Plastic Products Mfg.</u>	<u>20</u>
<u>(18)</u>	<u>Pole Treating Equipment</u>	<u>10</u>
<u>(32)</u>	<u>Polystyrene</u>	<u>20</u>
<u>(24)</u>	<u>Printing</u>	<u>12</u>
<u>(25)</u>	<u>Pulp & Paper Mfg.</u>	<u>13</u>
<u>(26)</u>	<u>Refrigeration</u>	<u>12</u>

(20)	<u>Rifle Manufacturing</u>	15
(27)	<u>Rubber & Vulcanizing</u>	15
(18)	<u>Sawmill Equipment</u>	12
(14)	<u>Seed Treating & Cleaning</u>	16
(6)	<u>Stationary Asphalt Plant</u>	15
(28)	<u>Steam Power Generation</u>	16
(21)	<u>Stone Products</u>	15
(23)	<u>Sugar Refinery</u>	18
(23)	<u>Sulphur Manufacturing</u>	12
(21)	<u>Talc Beneficiation</u>	20
(29)	<u>Textile Fabrication</u>	10
(21)	<u>Underground Mining</u>	10
(14)	<u>Vegetable Oil Extraction</u>	20
(21)	<u>Vermiculite Processing</u>	20
(30)	<u>Warehousing</u>	10
(14)	<u>Wood Pellet Plant</u>	16
(31)	<u>Wood Products, Reconstituted</u>	12
(31)	<u>Woodworking</u>	12

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

<u>Year</u>	<u>(1)</u>	<u>(2)</u>	<u>(3)</u>	<u>(4)</u>	<u>(5)</u>
1994	1.000	1.000	1.000	1.000	1.000
1993	1.021	1.026	1.022	1.019	1.026
1992	1.037	1.046	1.039	1.035	1.045
1991	1.044	1.059	1.049	1.046	1.059
1990	1.061	1.083	1.069	1.070	1.085
1989	1.084	1.113	1.096	1.100	1.117
1988	1.138	1.174	1.160	1.165	1.181
1987	1.190	1.227	1.216	1.217	1.235
1986	1.204	1.248	1.231	1.233	1.257
1985	1.209	1.269	1.240	1.244	1.280
1984	1.225	1.294	1.255	1.262	1.306
1983	1.258	1.324	1.288	1.293	1.336
1982	1.282	1.343	1.307	1.311	1.353
1981	1.338	1.408	1.364	1.373	1.419
1980	1.475	1.557	1.503	1.518	1.573
1979	1.633	1.721	1.661	1.681	1.743
1978	1.792	1.885	1.814	1.829	1.908
1977	1.923	2.026	1.952	1.966	2.050
1976	2.025	2.136	2.052	2.069	2.163
1975	2.151	2.273	2.173	2.187	2.297

<u>Year</u>	<u>(6)</u>	<u>(7)</u>	<u>(8)</u>	<u>(9)</u>	<u>(10)</u>
1994	1.000	1.000	1.000	1.000	1.000
1993	1.019	1.016	1.020	1.021	1.022
1992	1.035	1.029	1.038	1.049	1.039
1991	1.043	1.037	1.048	1.069	1.052
1990	1.064	1.060	1.070	1.094	1.077
1989	1.093	1.087	1.102	1.130	1.108

<u>1988</u>	<u>1.148</u>	<u>1.149</u>	<u>1.159</u>	<u>1.184</u>	<u>1.175</u>
<u>1987</u>	<u>1.188</u>	<u>1.198</u>	<u>1.201</u>	<u>1.223</u>	<u>1.230</u>
<u>1986</u>	<u>1.200</u>	<u>1.211</u>	<u>1.216</u>	<u>1.240</u>	<u>1.250</u>
<u>1985</u>	<u>1.208</u>	<u>1.217</u>	<u>1.226</u>	<u>1.250</u>	<u>1.269</u>
<u>1984</u>	<u>1.225</u>	<u>1.234</u>	<u>1.246</u>	<u>1.265</u>	<u>1.292</u>
<u>1983</u>	<u>1.255</u>	<u>1.267</u>	<u>1.283</u>	<u>1.291</u>	<u>1.322</u>
<u>1982</u>	<u>1.275</u>	<u>1.285</u>	<u>1.307</u>	<u>1.319</u>	<u>1.339</u>
<u>1981</u>	<u>1.345</u>	<u>1.353</u>	<u>1.381</u>	<u>1.394</u>	<u>1.403</u>
<u>1980</u>	<u>1.494</u>	<u>1.504</u>	<u>1.531</u>	<u>1.555</u>	<u>1.553</u>
<u>1979</u>	<u>1.644</u>	<u>1.668</u>	<u>1.685</u>	<u>1.717</u>	<u>1.725</u>
<u>1978</u>	<u>1.795</u>	<u>1.814</u>	<u>1.836</u>	<u>1.881</u>	<u>1.882</u>
<u>1977</u>	<u>1.931</u>	<u>1.954</u>	<u>1.972</u>	<u>2.027</u>	<u>2.018</u>
<u>1976</u>	<u>2.041</u>	<u>2.058</u>	<u>2.095</u>	<u>2.139</u>	<u>2.124</u>
<u>1975</u>	<u>2.166</u>	<u>2.176</u>	<u>2.237</u>	<u>2.279</u>	<u>2.253</u>

<u>Year</u>	<u>(11)</u>	<u>(12)</u>	<u>(13)</u>	<u>(14)</u>	<u>(15)</u>
<u>1994</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>
<u>1993</u>	<u>1.014</u>	<u>1.018</u>	<u>1.028</u>	<u>1.022</u>	<u>1.030</u>
<u>1992</u>	<u>1.021</u>	<u>1.029</u>	<u>1.048</u>	<u>1.039</u>	<u>1.054</u>
<u>1991</u>	<u>1.017</u>	<u>1.030</u>	<u>1.063</u>	<u>1.048</u>	<u>1.073</u>
<u>1990</u>	<u>1.024</u>	<u>1.042</u>	<u>1.087</u>	<u>1.070</u>	<u>1.098</u>
<u>1989</u>	<u>1.041</u>	<u>1.063</u>	<u>1.118</u>	<u>1.098</u>	<u>1.129</u>
<u>1988</u>	<u>1.105</u>	<u>1.123</u>	<u>1.181</u>	<u>1.158</u>	<u>1.192</u>
<u>1987</u>	<u>1.176</u>	<u>1.188</u>	<u>1.236</u>	<u>1.209</u>	<u>1.246</u>
<u>1986</u>	<u>1.185</u>	<u>1.201</u>	<u>1.257</u>	<u>1.225</u>	<u>1.268</u>
<u>1985</u>	<u>1.191</u>	<u>1.206</u>	<u>1.277</u>	<u>1.239</u>	<u>1.289</u>
<u>1984</u>	<u>1.203</u>	<u>1.221</u>	<u>1.301</u>	<u>1.258</u>	<u>1.312</u>
<u>1983</u>	<u>1.234</u>	<u>1.255</u>	<u>1.334</u>	<u>1.287</u>	<u>1.344</u>
<u>1982</u>	<u>1.248</u>	<u>1.275</u>	<u>1.354</u>	<u>1.301</u>	<u>1.367</u>
<u>1981</u>	<u>1.290</u>	<u>1.319</u>	<u>1.419</u>	<u>1.362</u>	<u>1.428</u>
<u>1980</u>	<u>1.410</u>	<u>1.446</u>	<u>1.567</u>	<u>1.506</u>	<u>1.574</u>
<u>1979</u>	<u>1.583</u>	<u>1.616</u>	<u>1.731</u>	<u>1.668</u>	<u>1.733</u>
<u>1978</u>	<u>1.741</u>	<u>1.776</u>	<u>1.898</u>	<u>1.824</u>	<u>1.902</u>
<u>1977</u>	<u>1.846</u>	<u>1.894</u>	<u>2.045</u>	<u>1.957</u>	<u>2.056</u>
<u>1976</u>	<u>1.936</u>	<u>1.989</u>	<u>2.159</u>	<u>2.059</u>	<u>2.172</u>
<u>1975</u>	<u>2.053</u>	<u>2.104</u>	<u>2.294</u>	<u>2.183</u>	<u>2.305</u>

<u>Year</u>	<u>(16)</u>	<u>(17)</u>	<u>(18)</u>	<u>(19)</u>	<u>(20)</u>
<u>1994</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>
<u>1993</u>	<u>1.032</u>	<u>1.022</u>	<u>1.024</u>	<u>1.025</u>	<u>1.021</u>
<u>1992</u>	<u>1.063</u>	<u>1.042</u>	<u>1.047</u>	<u>1.045</u>	<u>1.036</u>
<u>1991</u>	<u>1.086</u>	<u>1.052</u>	<u>1.063</u>	<u>1.050</u>	<u>1.045</u>
<u>1990</u>	<u>1.110</u>	<u>1.074</u>	<u>1.085</u>	<u>1.087</u>	<u>1.067</u>
<u>1989</u>	<u>1.143</u>	<u>1.104</u>	<u>1.114</u>	<u>1.120</u>	<u>1.096</u>
<u>1988</u>	<u>1.205</u>	<u>1.163</u>	<u>1.166</u>	<u>1.182</u>	<u>1.150</u>
<u>1987</u>	<u>1.253</u>	<u>1.211</u>	<u>1.208</u>	<u>1.229</u>	<u>1.200</u>
<u>1986</u>	<u>1.273</u>	<u>1.229</u>	<u>1.223</u>	<u>1.250</u>	<u>1.215</u>
<u>1985</u>	<u>1.289</u>	<u>1.240</u>	<u>1.232</u>	<u>1.270</u>	<u>1.223</u>
<u>1984</u>	<u>1.307</u>	<u>1.258</u>	<u>1.248</u>	<u>1.295</u>	<u>1.246</u>
<u>1983</u>	<u>1.342</u>	<u>1.294</u>	<u>1.279</u>	<u>1.329</u>	<u>1.279</u>

<u>1982</u>	<u>1.369</u>	<u>1.317</u>	<u>1.305</u>	<u>1.349</u>	<u>1.309</u>
<u>1981</u>	<u>1.427</u>	<u>1.378</u>	<u>1.377</u>	<u>1.418</u>	<u>1.368</u>
<u>1980</u>	<u>1.571</u>	<u>1.518</u>	<u>1.530</u>	<u>1.572</u>	<u>1.516</u>
<u>1979</u>	<u>1.719</u>	<u>1.666</u>	<u>1.682</u>	<u>1.733</u>	<u>1.685</u>
<u>1978</u>	<u>1.884</u>	<u>1.814</u>	<u>1.845</u>	<u>1.890</u>	<u>1.848</u>
<u>1977</u>	<u>2.042</u>	<u>1.944</u>	<u>1.990</u>	<u>2.028</u>	<u>1.989</u>
<u>1976</u>	<u>2.158</u>	<u>2.042</u>	<u>2.101</u>	<u>2.136</u>	<u>2.095</u>
<u>1975</u>	<u>2.332</u>	<u>2.160</u>	<u>2.245</u>	<u>2.271</u>	<u>2.227</u>

<u>Year</u>	<u>(21)</u>	<u>(22)</u>	<u>(23)</u>	<u>(24)</u>	<u>(25)</u>
<u>1994</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>
<u>1993</u>	<u>1.024</u>	<u>1.020</u>	<u>1.016</u>	<u>1.020</u>	<u>1.025</u>
<u>1992</u>	<u>1.046</u>	<u>1.037</u>	<u>1.026</u>	<u>1.036</u>	<u>1.049</u>
<u>1991</u>	<u>1.064</u>	<u>1.046</u>	<u>1.034</u>	<u>1.039</u>	<u>1.063</u>
<u>1990</u>	<u>1.088</u>	<u>1.067</u>	<u>1.061</u>	<u>1.054</u>	<u>1.084</u>
<u>1989</u>	<u>1.122</u>	<u>1.095</u>	<u>1.088</u>	<u>1.071</u>	<u>1.112</u>
<u>1988</u>	<u>1.182</u>	<u>1.156</u>	<u>1.144</u>	<u>1.130</u>	<u>1.173</u>
<u>1987</u>	<u>1.220</u>	<u>1.207</u>	<u>1.191</u>	<u>1.183</u>	<u>1.221</u>
<u>1986</u>	<u>1.231</u>	<u>1.222</u>	<u>1.195</u>	<u>1.202</u>	<u>1.237</u>
<u>1985</u>	<u>1.237</u>	<u>1.229</u>	<u>1.196</u>	<u>1.215</u>	<u>1.245</u>
<u>1984</u>	<u>1.251</u>	<u>1.247</u>	<u>1.209</u>	<u>1.231</u>	<u>1.260</u>
<u>1983</u>	<u>1.277</u>	<u>1.282</u>	<u>1.231</u>	<u>1.272</u>	<u>1.295</u>
<u>1982</u>	<u>1.306</u>	<u>1.303</u>	<u>1.243</u>	<u>1.296</u>	<u>1.318</u>
<u>1981</u>	<u>1.379</u>	<u>1.366</u>	<u>1.325</u>	<u>1.345</u>	<u>1.380</u>
<u>1980</u>	<u>1.530</u>	<u>1.510</u>	<u>1.485</u>	<u>1.476</u>	<u>1.522</u>
<u>1979</u>	<u>1.679</u>	<u>1.668</u>	<u>1.650</u>	<u>1.633</u>	<u>1.672</u>
<u>1978</u>	<u>1.838</u>	<u>1.819</u>	<u>1.803</u>	<u>1.793</u>	<u>1.822</u>
<u>1977</u>	<u>1.987</u>	<u>1.956</u>	<u>1.946</u>	<u>1.928</u>	<u>1.966</u>
<u>1976</u>	<u>2.105</u>	<u>2.060</u>	<u>2.059</u>	<u>2.032</u>	<u>2.073</u>
<u>1975</u>	<u>2.253</u>	<u>2.178</u>	<u>2.176</u>	<u>2.158</u>	<u>2.206</u>

<u>Year</u>	<u>(26)</u>	<u>(27)</u>	<u>(28)</u>	<u>(29)</u>	<u>(30)</u>
<u>1994</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>
<u>1993</u>	<u>1.022</u>	<u>1.020</u>	<u>1.017</u>	<u>1.022</u>	<u>1.029</u>
<u>1992</u>	<u>1.041</u>	<u>1.040</u>	<u>1.028</u>	<u>1.042</u>	<u>1.053</u>
<u>1991</u>	<u>1.053</u>	<u>1.050</u>	<u>1.033</u>	<u>1.055</u>	<u>1.068</u>
<u>1990</u>	<u>1.077</u>	<u>1.074</u>	<u>1.050</u>	<u>1.078</u>	<u>1.087</u>
<u>1989</u>	<u>1.106</u>	<u>1.104</u>	<u>1.078</u>	<u>1.106</u>	<u>1.112</u>
<u>1988</u>	<u>1.167</u>	<u>1.161</u>	<u>1.142</u>	<u>1.161</u>	<u>1.162</u>
<u>1987</u>	<u>1.215</u>	<u>1.206</u>	<u>1.196</u>	<u>1.210</u>	<u>1.199</u>
<u>1986</u>	<u>1.232</u>	<u>1.226</u>	<u>1.209</u>	<u>1.230</u>	<u>1.216</u>
<u>1985</u>	<u>1.242</u>	<u>1.236</u>	<u>1.214</u>	<u>1.244</u>	<u>1.224</u>
<u>1984</u>	<u>1.261</u>	<u>1.258</u>	<u>1.233</u>	<u>1.262</u>	<u>1.238</u>
<u>1983</u>	<u>1.298</u>	<u>1.297</u>	<u>1.274</u>	<u>1.299</u>	<u>1.267</u>
<u>1982</u>	<u>1.322</u>	<u>1.323</u>	<u>1.291</u>	<u>1.321</u>	<u>1.282</u>
<u>1981</u>	<u>1.390</u>	<u>1.397</u>	<u>1.348</u>	<u>1.382</u>	<u>1.339</u>
<u>1980</u>	<u>1.538</u>	<u>1.556</u>	<u>1.491</u>	<u>1.526</u>	<u>1.482</u>
<u>1979</u>	<u>1.695</u>	<u>1.713</u>	<u>1.654</u>	<u>1.670</u>	<u>1.613</u>
<u>1978</u>	<u>1.845</u>	<u>1.875</u>	<u>1.796</u>	<u>1.817</u>	<u>1.759</u>
<u>1977</u>	<u>1.979</u>	<u>2.025</u>	<u>1.920</u>	<u>1.952</u>	<u>1.894</u>

<u>1976</u>	<u>2.078</u>	<u>2.131</u>	<u>2.018</u>	<u>2.052</u>	<u>1.998</u>
<u>1975</u>	<u>2.197</u>	<u>2.261</u>	<u>2.142</u>	<u>2.186</u>	<u>2.160</u>

<u>Year</u>	<u>(31)</u>	<u>(32)</u>
<u>1994</u>	<u>1.000</u>	<u>1.000</u>
<u>1993</u>	<u>1.029</u>	<u>1.018</u>
<u>1992</u>	<u>1.065</u>	<u>1.033</u>
<u>1991</u>	<u>1.086</u>	<u>1.039</u>
<u>1990</u>	<u>1.104</u>	<u>1.057</u>
<u>1989</u>	<u>1.133</u>	<u>1.083</u>
<u>1988</u>	<u>1.196</u>	<u>1.144</u>
<u>1987</u>	<u>1.244</u>	<u>1.195</u>
<u>1986</u>	<u>1.262</u>	<u>1.209</u>
<u>1985</u>	<u>1.269</u>	<u>1.215</u>
<u>1984</u>	<u>1.286</u>	<u>1.230</u>
<u>1983</u>	<u>1.322</u>	<u>1.263</u>
<u>1982</u>	<u>1.352</u>	<u>1.281</u>
<u>1981</u>	<u>1.410</u>	<u>1.339</u>
<u>1980</u>	<u>1.546</u>	<u>1.476</u>
<u>1979</u>	<u>1.697</u>	<u>1.634</u>
<u>1978</u>	<u>1.855</u>	<u>1.784</u>
<u>1977</u>	<u>2.012</u>	<u>1.914</u>
<u>1976</u>	<u>2.129</u>	<u>2.018</u>
<u>1975</u>	<u>2.286</u>	<u>2.141</u>

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.

Table on 42-2263 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~~ 12 years
 1994~~5~~ Table - ~~Group 1~~ Table 69

Case	I	II
Equipment - Motor		
Original Installed Cost	\$ 200	\$ 100
Year Installed	1987	1974

<u>Case I</u>		<u>Case II</u>	
Cost	\$ 200	Cost	\$ 100
x Trend	1.1816	x Trend	1.2261*
RCN	236	RCN	123
x % Good	.39	x % Good	.20
Sound Value	\$ 92	Sound Value	\$ 25
<u>Cost</u>	<u>\$ 200</u>	<u>Cost</u>	<u>\$ 100</u>
<u>x Trend</u>	<u>1.208</u>	<u>x Trend</u>	<u>1.279*</u>
<u>RCN</u>	<u>242</u>	<u>RCN</u>	<u>128</u>
<u>x % Good</u>	<u>.43</u>	<u>x % Good</u>	<u>.20</u>
<u>Sound Value</u>	<u>\$ 104</u>	<u>Sound Value</u>	<u>\$ 26</u>

*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~~ 12th year trend.

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

3. The department is proposing the amendments for the annual review and clean-up of Chapter 22 rules. Some sections of language have been clarified, trend tables updated, and reporting requirements specified.

The industrial trend tables are derived from the Marshall & Swift (MS) Valuation Service Cost Indexes on an annual basis. MS quarterly updates the cost indexes for equipment from forty-eight classifications of business equipment cost types. Of these forty-eight classifications, the Centralized Assessment Bureau (CAB) selected thirty-two which best describe the types of industrial processes in Montana. Additionally, fifty-three classifications of industrial process equipment were created by CAB to further define and refine the MS cost indexes. CAB determined which of the existing MS classifications these new CAB classifications would be most similar to, based on information acquired from MS.

For 1994 and previous years, CAB would group the MS classifications by the mathematical concept of standard deviation and limit the number of trend tables to approximately seven. This resulted in a degree of averaging for the trend tables. For 1995, CAB determined that a more correct method of

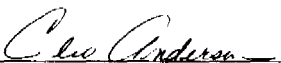
trend table creation would be to have all thirty-two MS classifications have their own distinct trend table with no standard deviations or averaging. The fifty-three CAB classifications would still use the most appropriate MS trend table.

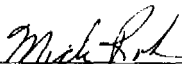
4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:

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

no later than December 9, 1994.

5. 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 October 31, 1994.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the general)
revision of the rules regarding) NOTICE OF AMENDMENT
small employer health benefit) AND ADOPTION
plans and reinsurance)

TO: All Interested Persons.

1. On September 22, 1994, the state auditor and commissioner of insurance of the state of Montana published notice of public hearing with respect to the proposed adoption of revision of rules regarding small employer health benefit plans and reinsurance. The notice was published at page 2562 of the 1994 Montana Administrative Register, issue number 18.

2. The agency has amended 6.6.5001, 6.6.5040, 6.6.5044, 6.6.5078, 6.6.5105, 6.6.5121, and 6.6.5125 as proposed.

3. The agency has amended 6.6.5008, 6.6.5012, 6.6.5024, 6.6.5036, 6.6.5050, and 6.6.5058, and adopted NEW RULE 1 (6.6.5060), with the following changes (added material underlined, deleted material stricken):

6.6.5008 COVERED SERVICES OF POLICIES UNDER STANDARD PLAN (1) through (1)(c) remain the same.

(d) Coverage for obstetrical care delivery services, including services of physicians, certified nurse midwives and other nurse specialists, physician assistants, costs of delivery room, and other medically necessary services directly associated with the delivery.

(e) Coverage for services of physicians and other health care professionals, subject to the freedom of choice of practitioners of 33-22-111, MCA, except as provided in section 33-30-102(1), MCA.

(f) Coverage for medical nutrition services deemed medically necessary, including nutrition assessment and counseling ~~for t~~—The following disease conditions. Costs must be reimbursed for nutrition consultations at a total cost of no more than \$240 per benefit period, unless with prior approval of insurer:

(1)(f)(i) through (2)(c) remain the same.

AUTH: 33-1-313 and IMP: 33-22-1802 and
33-22-1822 MCA 33-22-1812 MCA

6.6.5012 COVERED PREVENTIVE CARE AND HEALTH MAINTENANCE SERVICES OF POLICIES UNDER STANDARD PLAN

(1) through (1)(c)(i) remain the same.

(ii) Pregnancy related services, including prenatal care;
and

(1)(c)(iii) remains the same.

(d) Policies of insurance offered under the standard health benefit plan contemplated by 33-22-1812, MCA, must provide full coverage, after a copayment of \$25 per consultation, for 4 visits per year to health care providers as listed under 33-22-111 and 33-22-114, MCA, of the patient's choice, except as provided in Section 33-30-102(1), MCA. This coverage must not be subject to deductible or coinsurance provision, but must be subject to a copayment of \$25 per consultation and be applied toward meeting the out-of-pocket limit. This benefit must cover professional service fees only, and not the cost of tests, medications, or other items.

(2) remains the same.

AUTH: 33-1-313 and
33-22-1822 MCA

IMP: 33-22-1802 and
33-22-1812 MCA

6.6.5024 HMO COST SHARING SCHEDULE AND EXCEPTION TO STANDARD PLAN PROVISIONS (1) remains the same.

(2) Standard plans offered by HMOs are exempt from the deductible charges, and coinsurance provisions of ARM 6.6.5020, but must comply with the maximum annual out-of-pocket and lifetime maximum requirements of ARM 6.6.5020. HMO plans must include the following cost sharing schedule:

INPATIENT HOSPITAL SERVICES

Semi-Private Room and Board Charges:	
Copayment Per day	\$200
Other Medically Necessary Hospital Charges	No copayment

OUTPATIENT HOSPITAL SERVICES

Outpatient Therapy	\$15 copayment
Other Non-emergency	No copayment

HOSPITAL EMERGENCY ROOM

If admitted to the hospital	No copayment for emergency room; inpatient copayment applies
If not admitted to the hospital	\$75 copayment

OBSTETRICAL SERVICES

Inpatient delivery services	\$200 per day
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PHYSICIANS AND OTHER MEDICAL PROFESSIONALS

Hospital inpatient visits	No copayment
Physician office or home visits	\$10 copayment

After hours visits (in- or outpatient) \$10 copayment
Referred Services \$15 copayment

MEDICAL NUTRITION SERVICES

\$15 copayment
\$240 limit per
benefit period,
unless with prior
approval of
insurer

HOME HEALTH CARE

No copayment

CHIROPRACTIC SERVICES

Copayment \$10 per visit
Maximum covered charge \$25 per visit
Covered treatments per year 24 visits, plus an
additional 11
visits with the
HMO's approval

MENTAL HEALTH SERVICES

Inpatient
Copayment \$200 per day
Days of covered treatment 30 days per year

Outpatient
Copayment \$25 per visit
Maximum covered charge \$1,000 combined with
substance abuse
treatment

SUBSTANCE ABUSE TREATMENT

Inpatient
Copayment \$150 per day
Maximum covered charge \$4,000 per 24-month
period
Lifetime maximum \$8,000

Outpatient
Copayment \$25 per visit
Maximum covered charge \$1,000 combined with
mental health
service

PRESCRIPTION DRUGS

Generic and brand name, if generic \$5 copayment
not available
Brand name at patient's request \$5 Copayment plus
the difference
between generic
and brand name

<u>DIAGNOSTIC X-RAY AND LABORATORY</u>	No copayment
<u>AMBULANCE</u>	
Ground ambulance	\$50 copayment
Air ambulance	\$250 copayment
<u>DURABLE MEDICAL EQUIPMENT</u>	20% copayment
<u>RADIATION THERAPY AND CHEMOTHERAPY</u>	20% copayment
<u>HOSPICE SERVICE</u>	No copayment
<u>PREVENTIVE CARE SERVICES</u>	
Adult preventative care	No copayment
Children preventative care	No copayment
Reproductive and prenatal health care	No copayment

(3) The health maintenance visits contemplated in 6.6.5012(1)(d) do not apply to HMO plans.

AUTH: 33-1-313 and IMP: 33-22-1802 and
33-22-1822 MCA 33-22-1812 MCA

6.6.5036 CALCULATION OF BENEFIT VALUES

(1) through (1)(d) remain the same.
(e) Calculations must be made for each health benefit plan offered by the carrier and compared to the benefit value of the standard health benefit plan. The standard plan's benefit value, calculated from the formula in (c) and the values in (d), is \$126.40.

(2) remains the same.

(3) A benefit value for HMO plans cannot be calculated using the formula described in (1)(a). The benefit value and certification as standard or basic HMO plans will be determined by the department.

AUTH: 33-1-313 and IMP: 33-22-1802, 33-22-1809,
33-22-1822 MCA and 33-22-1812 MCA

6.6.5050 STATUS OF CARRIERS AS SMALL EMPLOYER CARRIERS

(1) through (5) remain the same.
(a) Carriers who have had no small group health benefit plans in force in Montana since January 1, 1993, and file notice that the carrier does not intend to operate as a small group carrier may choose to declare intent to be a small group carrier at any time.

AUTH: 33-1-313 and IMP: 33-22-1802, 33-22-1812,
33-22-1822 MCA and 33-22-1814 MCA

6.6.5058 REQUIREMENT TO INSURE ENTIRE GROUPS

(1) through (7)(b) remain the same.

(8) New entrants to a small employer group must be offered an opportunity to enroll in the health benefit plan currently held by such group by the ~~45th day~~ end of six months of employment. Any new entrant that does not exercise the opportunity to enroll in the health benefit plan within the period provided by the small employer carrier may be treated as a late enrollee by the carrier, provided that the time within which to enroll in the health benefit plan extends at least 30 days after the date the new entrant is notified of his or her opportunity to enroll. If a small employer carrier has offered more than one health benefit plan to a small employer group pursuant to (2), the new entrant must be offered the same choice of health benefit plans as the other members of the group.

(8)(a) through (9)(b)(iv) remain the same.

AUTH: 33-1-313 and
33-22-1822 MCA

IMP: 33-22-1802, 33-22-1811,
and 33-22-1812 MCA

NEW RULE I (6.6.5060) COVERAGE THROUGH ASSOCIATIONS

(1) Associations providing health insurance to small groups must comply with this act and its regulations. Associations are exempt from this act only if they do not deny coverage to any member of the association or any employee of its members who apply for coverage as part of a group.

(2) Associations must apply to the department for this exemption and submit evidence that their policies are guaranteed issue.

(3) Associations that have received exemption must provide guaranteed issue policies by January 1, 1995.

(4) Associations must provide an open enrollment period of 60 days to all employees ~~and of member groups~~ currently enrolled with the association's health care plan except those employees previously denied coverage as late enrollees. A notice regarding the open enrollment period must be sent to all employees member organizations currently enrolled in the association's health care plan, instructing employers to notify employees of the open enrollment period.

AUTH: 33-1-313, 33-1-501,
and 33-22-1822 MCA

IMP: 33-20-1802 and
33-22-1803 MCA

4. A public hearing on the proposed new rule and amendments was held on October 16, 1994. 14 interested persons attended the hearing. At the hearing on the proposed rule and amendments, there were representatives of the health insurance industry and health services industry. The agency has fully considered all written and oral submissions respecting the proposed rules and responds as follows:

COMMENTS REGARDING 6.6.5012:

COMMENT: Additional punctuation and citation of 33-30-102(1), MCA, was requested for clarification.

RESPONSE: Both requests were added to the adopted rules.

COMMENTS REGARDING 6.6.5024:

COMMENT: Proposed rule change strikes the provision that the inpatient mental health benefit is limited to 30 days combined with inpatient substance abuse treatment. This was objected to as an expansion of benefits beyond the mandated benefit.

RESPONSE: The proposed rule change makes the benefit consistent with 33-22-703, MCA, the mandated benefit for mental illness and substance abuse. The department has historically interpreted the inpatient mental health and substance abuse benefits to be separate. For mental illness, there is a maximum benefit of 30 inpatient days. For substance abuse, the inpatient benefit is \$4,000 per 24 months and \$8,000 in a lifetime. The rule change is adopted.

COMMENT: Omitting the copayment for preventive care services means that the patient does not share in the cost of preventive services and may cause claim processing confusion.

RESPONSE: Under the HMO cost-sharing schedule, the proposed rule change omits a copayment for preventive health care services because under an indemnity plan there is no coinsurance requirement. The rule change is adopted.

COMMENT: The health maintenance visits described in ARM 6.6.5012 for an indemnity plan situation do not fit an HMO setting.

RESPONSE: The department agrees and exempts the HMOs from the health maintenance visits in the addition of section (3) to ARM 6.6.5024.

COMMENT: Numerous comments requested a change in the medical nutrition services benefit expanding the coverage from a limit of \$240 "per benefit period" to \$240 per physician order. Other comments objected to the expansion of coverage.

RESPONSE: The commissioner has added language clarifying that insurers can allow for more coverage beyond a \$240 per benefit period limit. The commissioner urges insurers to allow for more coverage if recommended by managed care in consultation with a patient's physician. As with all benefits, the insurer can decide to provide more coverage beyond what is stipulated in a policy. This clarification is not meant to preclude insurers from extending coverage for other benefits.

COMMENTS REGARDING 6.6.5036:

COMMENT: The formula for calculating benefit values does not work for HMO plans and should be clarified in rule.

RESPONSE: The department never intended for the benefit value formula to be used for HMO plans and has clarified this in the addition of section (3) to 6.6.5036.

COMMENT: The benefit value formula is tantamount to price control on health insurance premiums.

RESPONSE: This formula has no impact on the price of a policy. It merely determines if the value of the benefits in a plan are richer or less rich than the standard plan. Less rich plans qualify as basic plans and must be guaranteed issue.

COMMENTS REGARDING 6.6.5044:

COMMENT: The revision imposes a second review of previously filed plans that are neither basic nor standard. It also extends the approval deadline from 30 to 60 days which may make it more difficult for insurers to have products available in December.

RESPONSE: It is necessary for the department to review all small group products and classify them as basic, standard, or neither. If a product is neither basic nor standard it will be approved for underwriting. The department would also like to ensure that all products comply with current Montana law. Extending the review period is intended to add flexibility to the review process, and diminish denial of products because the review period is ending. The department is making every effort to see that insurers receive approval on their products as soon as possible. Additional staff and a high priority to review small group products hopefully will help the review process be completed in as short a time period as possible.

COMMENT: The reference in subsection (10) at line 7 to ARM 6.6.5028 should be changed to 6.6.5032.

RESPONSE: The correct is 6.6.5032 and has been changed in the adopted rule change.

COMMENTS REGARDING 6.6.5050:

COMMENT: A request to clarify (1) (a) on whether it applies to companies that have been marketing to only large groups or have no group policies, large or small, in force since January 1, 1993.

RESPONSE: The commissioner would like to encourage any carrier not servicing small groups to enter the market. Therefore, the clarification is added to the adopted rule change.

COMMENTS REGARDING 6.6.5058:

COMMENT: Several comments objected to the provision that requires employers to offer health insurance coverage to a new employee by at least the 45th day of employment. Some felt that health insurance should be offered by at least the end of one year, another suggested by the end of 90 days.

RESPONSE: The proposed rule was not intended to restrict an employer's probationary period as far as security of employment or other benefits. The commissioner feels that new employees should be offered health insurance coverage in a reasonable time period, regardless of other aspects of their probationary period. The proposed rule change of 45 days is perhaps too restrictive, therefore the adopted rule requires that employers offer health insurance to new employees by the end of six months. The commissioner encourages employers to offer health insurance coverage to new employees as soon as possible.

COMMENTS REGARDING NEW RULE I (6.6.5060):

COMMENT: Several comments requested the deletion of subsection (4) requiring an open enrollment period and notification to employees. It was pointed out that associations do not have employee mailing lists, but only addresses of member groups.

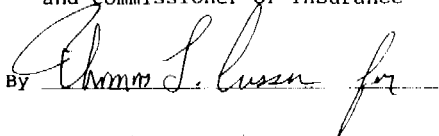
RESPONSE: The commissioner feels that associations should offer an open enrollment period as an important element of providing guaranteed issue. To have guaranteed issue for only new groups and their employees, but not extending that option to currently enrolled groups does not meet the guaranteed issue requirement. Any employee previously denied coverage for health reasons should be offered coverage. The commissioner recognizes the difficulty in notifying all employees. Therefore, subsection (4) is amended to require notification be sent to employers requesting that they notify their employees of an open enrollment period.

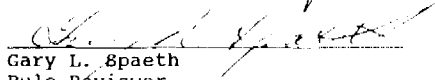
COMMENT: The department has no statutory authority to promulgate NEW RULE I.

RESPONSE: Under 33-22-1803(25), MCA, the department has the authority to determine whether an association provides health benefits to its members as a group and that it does not deny coverage to any member of its association or any employer of its members.

MARK O'KEEFE, State Auditor
and Commissioner of Insurance

By

 Thomas L. Lusan for


Gary L. Spaeth
Rule Reviewer

Certified to the Secretary of State this 31st day of October,
1994.

BEFORE THE BOARD OF PROFESSIONAL
ENGINEERS AND LAND SURVEYORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
of rules pertaining to national) 8.48.407 AFFILIATION WITH
associations and the complaint) NATIONAL ASSOCIATIONS AND
process) 8.48.1106 COMPLAINT PROCESS

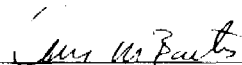
TO: All Interested Persons:

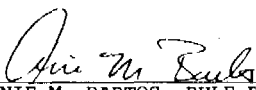
1. On June 23, 1994, the Board of Professional Engineers and Land Surveyors published a notice of proposed amendment of the above-stated rules at page 1625, 1994 Montana Administrative Register, issue number 12.

2. The Board has amended the rules exactly as proposed.

3. No comments or testimony were received.

BOARD OF PROFESSIONAL ENGINEERS
AND LAND SURVEYORS
RICHARD A. AINSWORTH, CHAIRMAN

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


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 31, 1994.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION OF RULE I
of Rule I pertaining to Youth) PERTAINING TO YOUTH CARE
Care Facilities.) FACILITIES

TO: All Interested Persons

1. On September 22, 1994, the Department of Family Services published notice of the proposed adoption of Rule I pertaining to Youth Care Facilities at page 2594 of the 1994 Montana Administrative Register, issue no. 18.

2. The department has adopted Rule I as proposed with the following changes:

1. [11.12.111] PERSONS AFFECTED BY DEPARTMENT RECORDS - YOUTH CARE FACILITIES (1) A person, organization or existing youth care facility subject to denial of application or negative licensing action based on findings in department "case records," as defined by ARM 11.5.602, or a person whose presence in a youth care facility is prohibited or restricted based on findings in "case records," as defined by ARM 11.5.602, may request amendment of the records pursuant to ARM 11.5.609. Prior to consideration of the request for amendment, the department may require consent from any person who is a subject of the findings in the case record prior to consideration of the request for amendment, if such person the subject of the findings is not the applicant person, organization or licensee youth care facility requesting the amendment.

~~(2) A person whose presence in a youth care facility is prohibited or restricted based on findings in "case records," as defined by ARM 11.5.602, may contest the prohibition or restriction as provided in subsection (1).~~

~~(3)~~(2) Any amendment of findings arising from proceedings authorized under this rule may be limited to the particular prohibition or restriction leading to the request for amendment.

~~(4)~~(3) Decisions on records under this rule may be in addition to, or in conjunction with, contested case proceedings arising from adverse actions affecting community home licenses.

AUTH: Section 52-2-704, MCA. IMP: Sections 52-2-702; 52-2-704; 52-2-731, MCA.

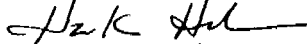
3. The department has thoroughly considered all comments received:

COMMENT: The reference to persons whose presence in the facilities in (2) should be incorporated into (1). (2) as it exists is confusing in regard to contesting findings. The wording of the last sentence of (1) should also be changed to clarify when

additional consent may be required.

RESPONSE: The department agrees and in this notice has inserted the language from (2) into (1), deleted (2), and re-numbered the remaining sections. The wording of the last sentence of (1) has also been changed to attempt to clarify when additional consent may be required.

DEPARTMENT OF FAMILY SERVICES



Hank Hudson, Director



John Melcher, Rule Reviewer

Certified to the Secretary of State, October 31, 1994.

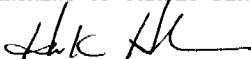
BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF RULE
of Rule 11.14.104 pertaining) 11.14.104 PERTAINING TO DAY
to Day Care Facilities.) CARE FACILITIES

1. On September 22, 1994, the Department of Family Services published notice of the proposed amendment of Rule 11.14.104 pertaining to Day Care Facilities at page 2598 of the 1994 Montana Administrative Register, issue no. 18.

2. The department has amended the rule as proposed.
3. No comments were received.

DEPARTMENT OF FAMILY SERVICES



Hank Hudson, Director



John Melcher, Rule Reviewer

Certified to the Secretary of State, October 31, 1994.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION OF RULE I
of Rule I and Rule II) AND RULE II PERTAINING TO
pertaining to Community Homes) COMMUNITY HOMES FOR THE
for the Developmentally or) DEVELOPMENTALLY AND
Physically Disabled.) PHYSICALLY DISABLED

TO: All Interested Persons

1. On September 22, 1994, the Department of Family Services published notice of the proposed adoption of Rule I and Rule II pertaining to Community Homes for the Developmentally or Physically Disabled at page 2596 of the 1994 Montana Administrative Register, issue no. 18.

2. The department has adopted Rule I and Rule II as proposed with the following changes:

I. [11.18.108] PERSONS AFFECTED BY DEPARTMENT RECORDS - COMMUNITY HOMES FOR THE DEVELOPMENTALLY DISABLED (1) A person, organization or existing community home subject to denial of application or negative licensing action based on findings in department "case records," as defined by ARM 11.5.602, or a person whose presence in a community home is prohibited or restricted based on findings in "case records," as defined by ARM 11.5.602, may request amendment of the records pursuant to ARM 11.5.609. Prior to consideration of the request for amendment, The department may require consent from any person who is a subject of the findings in the case record prior to consideration of the request for amendment, if such person the subject of the findings is not the applicant person, organization or licensee community home requesting the amendment.

~~(2) A person whose presence in a community home is prohibited or restricted based on findings in "case records," as defined by ARM 11.5.602, may contest the prohibition or restriction as provided in subsection (1).~~

~~(3)(2)~~ Any amendment of findings arising from proceedings authorized under this rule may be limited to the particular prohibition or restriction leading to the request for amendment.

~~(4)(3)~~ Decisions on records under this rule may be in addition to, or in conjunction with, contested case proceedings arising from adverse actions affecting community home licenses.

AUTH: Section 53-20-305; 2-4-201, MCA. IMP: Sections 53-20-305; 2-4-201, MCA.

II. [11.19.104] PERSONS AFFECTED BY DEPARTMENT RECORDS - COMMUNITY HOMES FOR THE PHYSICALLY DISABLED (1) A person, organization or existing community home subject to denial of application or negative licensing action based on findings in department "case records," as defined by ARM 11.5.602, or a person

whose presence in a community home is prohibited or restricted based on findings in "case records," as defined by ARM 11.5.602, may request amendment of the records pursuant to ARM 11.5.609. Prior to consideration of the request for amendment, The department may require consent from any person who is a subject of the findings in the case record prior to consideration of the request for amendment, if such person the subject of the findings is not the applicant person, organization or licensee community home requesting the amendment.

~~(2) A person whose presence in a community home is prohibited or restricted based on findings in "case records," as defined by ARM 11.5.602, may contest the prohibition or restriction as provided in subsection (1).~~

~~(3)(2) Any amendment of findings arising from proceedings authorized under this rule may be limited to the particular prohibition or restriction leading to the request for amendment.~~

~~(4)(3) Decisions on records under this rule may be in addition to, or in conjunction with, contested case proceedings arising from adverse actions affecting community home licenses.~~

AUTH: Section 53-20-305 52-4-205; 2-4-201, MCA. IMP: Sections 53-20-305 52-4-203; 2-4-201, MCA.

3. The department has thoroughly considered all comments received:

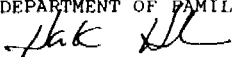
COMMENT: The reference to persons whose presence in the facilities in (2) of both rules should be incorporated into (1). (2) as it exists is confusing in regard to contesting findings. The wording of the last sentence of (1) should also be changed to clarify when additional consent may be required.

RESPONSE: The department agrees and in this notice has inserted the language from (2) into (1), deleted (2), and re-numbered the remaining sections. The wording of the last sentence of (1) has also been changed to attempt to clarify when additional consent may be required.

COMMENT: The authorizing and implementing statutes for Rule II are incorrect.

RESPONSE: The department agrees and has amended the statutes for Rule II in this notice by deleting statutes pertaining to Community Homes for the Developmentally Disabled and inserting statutes pertaining to Community Homes for the Physically Disabled.

DEPARTMENT OF FAMILY SERVICES


Hank Hudson, Director


John Melcher, Rule Reviewer

Certified to the Secretary of State, October 31, 1994.

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

In the matter of the amendment of)	NOTICE OF AMENDMENT
16.10.239, 303, 633, and 1311, and)	OF RULES AND ADOPTION
the adoption of new rules I-XIII)	OF NEW RULES I-XIII
dealing with minimum performance)	
requirements for local health)	(Food and Consumer
authorities)	Safety)

To: All Interested Persons

1. On July 7, 1994, the Department published notice of public hearing on the above stated proposed amendment of rules and adoption of new rules at page 1797 of the 1994 Montana Administrative Register, issue number 13.

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

16.10.239 INSPECTIONS (1) The local health officer or a sanitarian or sanitarian-in-training employed by or contracted with the local board of health must perform an inspection of each food service establishment within the jurisdiction of the local board of health at least ~~once every 6~~ twice every 12 months unless that schedule is modified by signed agreement with the department. Additional inspections of the food service establishment shall be performed as often as necessary for the enforcement of this subchapter.

(2) Same as proposed.

(3) Whenever an inspection of a food service establishment is made, the findings must be recorded on an inspection form authorized by the department. The inspection report form shall summarize the requirements of this subchapter and shall set forth a weighted point value for each requirement. Inspection remarks must be written to reference ~~each rule~~ the item violated and shall state the correction to be made. The rating score of the establishment will be the total of the weighted point values for all violations subtracted from 100. A copy of the completed inspection report form must be furnished to the person in charge of the establishment at the conclusion of the inspection. The completed inspection report form is a public document that must be made available for public review or distribution upon payment of copying costs to any person upon request.

(4)-(5) Same as proposed.

(6) In the case of 4 and 5-point weighted items, the local health officer, sanitarian, or sanitarian-in-training must, ~~within 10 days after the last day given for corrective action,~~ conduct a follow-up inspection to check for correction compliance and record the results on an inspection form authorized by the department.

RULE 1 (16.10.243) MINIMUM PERFORMANCE REQUIREMENTS FOR LOCAL HEALTH AUTHORITIES (1) To qualify for reimburse-

ment under 50-50-305, MCA, a local board of health must either enter into a written, signed cooperative agreement with the department that establishes the duties and responsibilities of the local board of health and the department consistent with this subchapter, or meet each of the following requirements:

(a) At least one sanitarian working with or for the local board of health must receive training from the department in standardized food service inspection techniques ~~and/or hazard analysis critical control point (HACCP) inspection~~. The department is responsible for making training and standardization review available on a periodic basis.

(b) The local board of health must ensure that the following are done by the local health officer, sanitarian, or sanitarian-in-training:

(i) Same as proposed.

(ii) Each food service establishment within the jurisdiction of the local board of health is inspected at least ~~once every 6~~ twice every 12 months, or on the schedule specified in a signed agreement with the department.

(iii)-(v) Same as proposed.

~~(vi) Quarterly local board inspection fund account balance reports are sent to the department within 30 days following the close of each quarter of the fiscal year.~~

(2) Same as proposed.

16.10.303 PRELIMINARY INSPECTION Same as proposed.

RULE II (16.10.333) INSPECTIONS Same as proposed.

RULE III (16.10.334) MINIMUM PERFORMANCE REQUIREMENTS FOR LOCAL HEALTH AUTHORITIES (1) To qualify for reimbursement under 50-50-305, MCA, a local board of health must either enter into a written, signed cooperative agreement with the department that establishes the duties and responsibilities of the local board of health and the department consistent with this subchapter, or meet each of the following requirements:

(a) At least one sanitarian working with or for the local board of health must receive training from the department in food retail, ~~and/or~~ food processing, ~~and/or hazard analysis critical control point (HACCP) inspection~~ techniques. The department is responsible for making training and standardization review available on a periodic basis.

(b) The local board of health must ensure that the following are done by the local health officer, sanitarian, or sanitarian-in-training:

(i) Same as proposed.

(ii) Each food processing establishment is inspected at least ~~once every 6~~ twice every 12 months, or on the schedule specified in a signed agreement with the department.

(iii)-(v) Same as proposed.

~~(vi) Quarterly local board inspection fund account balance reports are sent to the department within 30 days fol-~~

~~lowing the close of each quarter of the fiscal year.~~

(2) Same as proposed.

RULE IV (16.10.417) INSPECTIONS (1) The local health officer or sanitarian or sanitarian-in-training employed by or contracted with the local board of health must perform an inspection of each licensed commissary or machine located within the board's jurisdiction at least ~~once every 6~~ twice every 12 months, unless that schedule is modified by signed agreement with the department.

(2)-(5) Same as proposed.

RULE V (16.10.418) MINIMUM PERFORMANCE REQUIREMENTS FOR LOCAL HEALTH AUTHORITIES (1) To qualify for reimbursement under 50-50-305, MCA, a local board of health must either enter into a written, signed cooperative agreement with the department that establishes the duties and responsibilities of the local board of health and the department consistent with this subchapter, or ensure that the following are done by the local health officer, sanitarian, or sanitarian-in-training:

(a) Each licensed commissary or machine located within the jurisdiction of the local board of health is inspected at least ~~once every 6~~ twice every 12 months, or on the schedule specified in a signed agreement with the department.

(b)-(c) Same as proposed.

~~(d) Quarterly local board inspection fund account balance reports are sent to the department within 30 days following the close of each quarter of the fiscal year.~~

(2) Same as proposed.

RULE VI (16.10.504) MINIMUM PERFORMANCE REQUIREMENTS FOR LOCAL HEALTH AUTHORITIES (1) To qualify for reimbursement under 50-50-305, MCA, for regulation of sources of drinking water and ice, a local board of health must either enter into a written, signed cooperative agreement with the department that establishes the duties and responsibilities of the local board of health and the department consistent with this subchapter, or ensure that the following are done by the local health officer, sanitarian, or sanitarian-in-training:

(a)-(c) Same as proposed.

~~(d) Send quarterly local board inspection fund account balance reports to the department within 30 days following the close of each quarter of the fiscal year.~~

(2) Same as proposed.

16.10.633 LICENSURE, RENEWAL, AND INSPECTION Same as proposed.

AUTH: 50-51-103, 50-51-305 303, MCA; IMP: 50-51-103, 50-51-301, 50-51-305 303, MCA

RULE VII (16.10.643) MINIMUM PERFORMANCE REQUIREMENTS FOR LOCAL HEALTH AUTHORITIES (1) To qualify for reimburse-

ment under 50-51-303, MCA, the local board of health must either enter into a written, signed cooperative agreement with the department that establishes the duties and responsibilities of the local board of health and the department consistent with this subchapter, or meet each of the following requirements:

(a) Same as proposed.
(b) The local board of health must ensure that the following are done by the local health officer, sanitarian, or sanitarian-in-training:

(i)-(iv) Same as proposed.
~~(v) Quarterly local board inspection fund account balance reports are sent to the department within 30 days following the close of each quarter of the fiscal year.~~

(2) Same as proposed.

RULE VIII (16.10.816) INSPECTIONS Same as proposed.

RULE IX (16.10.817) MINIMUM PERFORMANCE REQUIREMENTS FOR LOCAL HEALTH AUTHORITIES (1) To qualify for reimbursement under 50-52-302, MCA, the local board of health must either enter into a written, signed cooperative agreement with the department that establishes the duties and responsibilities of the local board of health and the department consistent with this subchapter, or meet each of the following requirements:

(a)-(c) Same as proposed.
~~(d) Quarterly local board inspection fund account balance reports are sent to the department within 30 days following the close of each quarter of the fiscal year.~~

(2) Same as proposed.

RULE X (16.10.913) INSPECTIONS Same as proposed.

RULE XI (16.10.914) MINIMUM PERFORMANCE REQUIREMENTS FOR LOCAL REGULATORY AUTHORITIES (1) To qualify for reimbursement under 50-52-302, MCA, the local board of health must either enter into a written, signed cooperative agreement with the department that establishes the duties and responsibilities of the local board of health and the department consistent with this subchapter, or meet each of the following requirements:

(a)-(c) Same as proposed.
~~(d) Quarterly local board inspection fund account balance reports are sent to the department within 30 days following the close of each quarter of the fiscal year.~~

(2) Same as proposed.

16.10.1311 INSPECTIONS (1) ~~The local health officer, or a sanitarian or sanitarian-in-training employed or contracted by the local board of health, must conduct annually at least one full facility inspection and one critical point inspection of each. Whenever a local board of health conducts the inspections required by 50-53-209, MCA, of a public swim-~~

ming pool or public bathing place operated year-round and within the local board's jurisdiction, ensuring, it must ensure that at least one inspection occurs is conducted every 6 months, and at least one full facility inspection annually of each seasonal public bathing place within that jurisdiction by the local health officer, or a sanitarian or sanitarian-in-training employed or contracted with the local board of health. In addition, the foregoing individuals and a designated representative of the department are authorized to conduct the inspections as deemed necessary to insure compliance with the provisions of this subchapter.

RULE XII (16.10.1312) MINIMUM PERFORMANCE REQUIREMENTS FOR LOCAL REGULATORY AUTHORITIES (1) To qualify for reimbursement under 50-53-218, MCA, the local board of health must either enter into a written, signed cooperative agreement with the department that establishes the duties and responsibilities of the local board of health and the department consistent with this subchapter, or meet each of the following requirements:

- (a) Same as proposed.
- (b) The local board of health must ensure that the following are done by the local health officer, sanitarian, or sanitarian-in-training:
 - (i)-(iv) Same as proposed.
 - ~~(v) Quarterly local board inspection fund account balance reports are sent to the department within 30 days following the close of each quarter of the fiscal year.~~
- (2) Same as proposed.

RULE XIII (16.10.1531) MINIMUM PERFORMANCE REQUIREMENTS FOR LOCAL HEALTH AUTHORITIES (1) To qualify for reimbursement under 50-53-218, MCA, the local board of health must either enter into a written, signed cooperative agreement with the department that establishes the duties and responsibilities of the local board of health and the department consistent with this subchapter, or meet each of the following requirements:

- (a) Same as proposed.
- (b) The local board of health must ensure that the following are done by the local health officer, sanitarian, or sanitarian-in-training:
 - (i)-(iv) Same as proposed.
 - ~~(v) Quarterly local board inspection fund account balance reports are sent to the department within 30 days following the close of each quarter of the fiscal year.~~
- (2) Same as proposed.

3. The Department has thoroughly considered all commentary received. If an amendment was made based upon comment and that amendment was relevant to another rule as well, a parallel change was also made in the latter.

Comment - 16.10.239(1): One person commented that this sec-

tion should be revised to require the state to cover those inspections in counties without a local sanitarian.

Four people commented that the language "at least once every 6 months" should be modified to "twice per year" or "two times every 12 months" to provide needed flexibility in inspection scheduling.

One person commented that we should be working towards uniformity of inspections and allowing modified agreements counters that goal.

One person commented that requiring additional inspections to be performed as often as necessary is too costly, and no one is ever in complete compliance.

Response: The Department has reviewed the first comment, and notes that the reason for amending this inspection rule is to conform it with the minimum performance standards rules which are being promulgated. Therefore, the Department does not believe revising this language is required.

The Department agrees with the second comment and has amended this rule, as well as other similar rules, accordingly.

The Department notes the third comment, but disagrees that modified agreements should not be allowed, as this provides local programs with needed flexibility.

The Department notes that the fourth comment is directed at existing rule language and, upon review, believes the same is appropriate and should not be repealed. The purpose of this rule is to assure compliance with public health laws while allowing each local program discretion with each individual establishment.

Comment - 16.10.239(3): One person commented that citing each and every violation by rule number is cumbersome and time consuming and suggested that the inspection form could be altered to indicate corresponding rules, at least in the case of critical item violations.

Response: The Department agrees and has amended the rule accordingly.

Comment - 16.10.239(6): Nine people commented that this requirement should be deleted. The reasoning varied from "most counties already attempt to do this, but it should not be required, as some single sanitarian departments may try to find ways to justify not marking a four or five point item to avoid the mandated 10 day reinspection" to "this could double the number of required inspections" to "counties with part-time sanitarians would have trouble meeting this."

Response: The Department agrees and has amended the rule accordingly to remove the ten day reinspection mandate.

Comment - RULE I(1)(a): One person commented that a specific number of hours or a specific standard should be required.

Also, training by other agencies should be allowed, as the Department does not have adequate staff to provide training and standardization on an individual basis, and obtaining training is expensive.

Response: The Department has carefully considered this comment but does not wish to include a minimum amount of training. The intent is not to limit the training to any one area or to one specific type of training (i.e., classroom) but to allow each person a broader range of training opportunities. The Department will reevaluate this requirement as programs progress to see if requiring a specific number of hours is warranted.

Comment - RULE I(1)(b)(vi): Four people commented that this requirement needs to be deleted; it has never been required in the past and there is no justifiable reason to begin requiring it now. Because we are reimbursed only once a year, there are no balances to report each quarter. This comment applies to the other standards as well.

Response: The Department has reviewed these comments and has amended the rule accordingly. Amendment to similar language in the performance standards has also been made. However, the department still believes some method must be in place to track program accountability and alternative language will be proposed at a later date.

Comment - RULE I(2): Three people commented that the Department should not have sole authority for determining how much funding is withheld. This section should be amended to read "in an amount to be jointly determined by the department and local health board, health officer, or sanitarian." This applies to the other standards, as well.

One person questioned whether a failure to inspect one pool could result in the withholding of food establishment money.

Response: The Department has reviewed these comments but disagrees that it should be amended. The Department always attempts to negotiate the amount of reimbursement to be made with the local board; however, statutorily, the Department has been given the authority to determine standards to be met and reimbursement to be made. Therefore, if an agreement cannot be made, the Department is the entity with the authority to determine reimbursement amounts.

As to the second comment, the Department notes that each program is separate from the others and the failure to inspect a pool would not result in the withholding of food establishment funds.

Comment - RULE III(1)(a): Two people commented that this requirement should be deleted until the new food code is adopted. The department should not incorporate requirements

and policies which are part of the new food code without adopting the appropriate parts of the code, and "hazard analysis critical control point (HACCP)" is not otherwise defined in any DHES regulation.

Response: The Department agrees and has amended the rules accordingly to delete the HACCP reference.

Comment - RULE IV: One person commented that this rule should be deleted because there is no public health need to inspect vending machines and their locations, and few, if any, local departments do this. Warehouses where products are stored are inspected, but there is not time to inspect every vending machine twice a year.

One person questioned whether pop machines must be inspected.

Response: The Department has reviewed this comment and notes that § 50-50-102(7), MCA, specifically includes food or drink vending machines within the definition of food service establishment, with the exception of "vending machines which sell or serve only packaged nonperishable foods in their unbroken original containers." Therefore, these machines are required to be inspected by statute and the rule has not been deleted.

As for the second comment, the Department notes that pop machines selling only soda in its unbroken original container are statutorily excluded from the definition of food service establishment and, thus, inspection.

Comment - RULE V: One person commented that this rule needs to be deleted. There is no public health need to inspect vending machines and their locations, and few, if any, local departments do this. Warehouses where products are stored are inspected, but there is not time to inspect every vending machine twice a year.

Response: The Department has reviewed this comment but declines to delete the rule for the reasons stated directly above.

Comment - 16.10.633: One person commented that the cited implementing section, 50-51-305, MCA, should be 50-51-303, MCA.

Response: The department agrees and has amended the rule accordingly.

Comment - RULE VII(1)(a): One person commented that there is little need to require training in public accommodations, especially with limited state staff. It is more appropriate to concentrate on developing training and educational materials in food service and swimming pools where a much greater public health risk exists.

Response: The Department has reviewed this comment but believes that some training is appropriate. Such training is not limited to staff field visits but also allows written materials or video. As changes occur in programs, training is needed so local personnel carrying out those programs can be informed and kept up-to-date.

Comment - 16.10.1311(1): Two people commented that this should be prefaced "If the department and a local board of health enter into a cooperative agreement pursuant to MCA 50-53-209" because the rules cannot supersede the clear intent of the legislature to allow local boards of health to conduct these inspections as an option, not a requirement (see §§ 50-53-209/218, MCA).

One person also commented that the requirement for a second pool or spa inspection should be deleted because there is no evidence that the number of inspections for pools and spas is based on a proven need, making the requirement arbitrary.

Response: As to the first comment, the Department acknowledged that 50-53-209, MCA, states when a local board of health is responsible for inspections and, since the Montana Administrative Procedure Act precludes unnecessary repetition in a rule of statutory language, the department deleted the repetitious language.

As to the second comment, the Department notes that § 50-53-209, MCA, specifically requires a second inspection for a pool or spa open year-round and therefore declines to delete this rule.

General Comments on the Rules:

One person commented that DHES must be accountable to local health authorities and must provide regular training if these programs are to grow and stay consistent with current public health practices and to become more standardized in inspections.

One person questioned why an administrative rule hearing is sufficient to change these rules.

One person commented that it appears in some cases contracted sanitarians are included in the list of those who may conduct an inspection and sometimes this group is omitted. Please be certain that the intent of the rules, to include contract sanitarians, is clearly stated.

One person commented that the rule changes seem generally appropriate and flexible enough to serve the needs of local departments.

One person commented that the state should assume more responsibility, and questioned how much liability local health programs have when they administer state programs by state standards and rules but the local boards have to do all the inspections and assume responsibility and liabilities.

One person noted that he likes modified programs on some establishments because those that sell candy bars and pop

don't need to be inspected as frequently, and the time spent checking these places would be more wisely invested in places with potential for hazards. The inspection programs are fine the way they are and the commenter would like the contract to reflect that.

Response: As to the first comment, the Department notes that it has taken on the responsibility of providing training for inspections in order to keep all programs current with national standards as well as to become more standardized.

As to the second comment, the Department notes that these are administrative rules which are subject to the Montana Administrative Procedure Act, §§ 2-4-101, et seq., MCA. The Act has been followed in all aspects of this rulemaking process.

As to the third comment, the Department states that no distinction has been made or is intended between sanitarians and contract sanitarians, both of which act as an agent of the appropriate regulatory authority in carrying out the responsibilities of these rules.

The Department notes the fourth comment and appreciates the same.

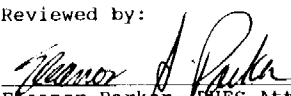
As to the fifth comment, the Department notes that it is statutorily mandated to establish rules governing the various types of establishments, which it has done. The Department is not in a position to respond to the concern regarding the liability issue because it is carrying out a statutorily-mandated duty.

As to the sixth comment, the Department notes that it has provided for modified agreements which will allow this desired flexibility.


ROBERT J. ROBINSON, Director

Certified to the Secretary of State October 31, 1994 .

Reviewed by:


Eleanor Parker, DRES Attorney

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

In the matter of the) CORRECTED NOTICE OF AMENDMENT
amendment of rules related to) OF ARM 24.11.464
unemployment insurance benefit)
eligibility)

TO ALL INTERESTED PERSONS:

1. On October 27, 1994, the Department published notice at pages 2835 to 2841 of the Montana Administrative Register, Issue No. 20, amending the above-captioned rule.

2. The notice of amendment incorrectly included the term "claimant" in the portion of ARM 24.11.464(1)(e)(i)(B) defining "reasonable assurance", when the proper word should have been "employee". The correct rule amendment reads as follows:

24.11.464 BENEFITS BASED ON SERVICES IN EDUCATIONAL INSTITUTIONS AND EDUCATIONAL SERVICE AGENCIES

(1)(a) through (e)(i)(A) Remains the same.

(B) the circumstances under which the ~~claimant~~ EMPLOYEE would be employed are within the control of the employer or the employer can provide evidence that the employee would normally or customarily perform services under similar circumstances in the following academic year or term; or

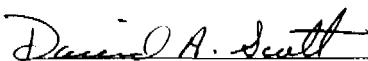
(ii) Remains the same.

(f) Remains the same.

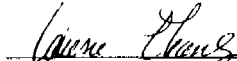
(2) through (6) Remains the same.

AUTH: Sec. 39-51-301, 39-51-302, MCA

IMP: Sec. 39-51-2108, MCA



David A. Scott
Rule Reviewer



Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: October 31, 1994.

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

In the matter of the adoption of)
new Rules I through XXV, the)
repeal of ARM 26.4.101, and the) NOTICE OF ADOPTION
amendment of ARM 26.4.102,) AND AMENDMENT
26.4.103, 26.4.104, and 26.4.105,)
all pertaining to regulation of)
hard rock mining or exploration.)

1. On July 21, 1994, the Board of Land Commissioners and the Department of State Lands published notice of proposed adoption of new Rules I through XXV, amendment of ARM 26.4.102, 26.4.103, 26.4.104, and 26.4.105, and repeal of ARM 26.4.101, all pertaining to regulation of hard rock mining or exploration, at page 1956 of the 1994 Montana Administrative Register, Issue No. 14.

2. The agency has adopted Rule I (26.4.107A), Rule III (26.4.107C), Rule IV (26.4.107D), Rule V (26.4.107E), Rule VI (26.4.107F), Rule VII (26.4.107G), Rule VIII (26.4.107K), Rule XII (26.4.107O), Rule XIII (26.4.107P), Rule XIV (26.4.107Q), Rule XV (26.4.107T), Rule XVI (26.4.107U), Rule XVII (26.4.107V), Rule XVIII (26.4.107W), Rule XIX (26.4.107X), Rule XX (26.4.107Y), Rule XXI (26.4.107Z), Rule XXII (26.4.101A), Rule XXIV (26.4.104A), and Rule XXV (26.4.105A) as proposed.

3. The agency has amended ARM 26.4.102 and 26.4.104 as proposed.

4. The agency has repealed ARM 26.4.101 as proposed.

5. The agency has adopted Rule II (26.4.107B), Rule IX (26.4.107L), Rule X (26.4.107M), Rule XI (26.4.107N), and Rule XXIII (26.4.101B) with the following modifications:

RULE II (26.4.107B) ANNUAL REPORT

(1) through (13) same as proposed.

(14) If a permittee fails to file an annual report within 30 days of receipt of a notice pursuant to ~~(12)~~ (13), the department shall suspend the permit.

AUTH: Sec. 82-4-321, MCA

IMP: Secs. 82-4-335, 336, 337, 338, 339, and 362, MCA

RULE IX (26.4.107L) INSPECTIONS: RESPONSE TO CITIZEN COMPLAINTS

(1) Any person may request an inspection by the department of any operation by furnishing the department with a signed statement, or an oral report followed by a signed statement, giving the department reason to believe that there exists a violation of the Act, the rules adopted pursuant thereto, or the permit or that there exists a condition or practice that creates

an imminent danger to the public or that is causing or can be reasonably expected to cause a significant, imminent environmental harm to land, air, or water resources. The statement must identify the basis for the allegation or provide corroborating evidence. The statement must be placed in the permittee's file and becomes a part of the permanent record. The identity of the person supplying information to the department must remain confidential with the department, if requested by that person.

(2) and (3) same as proposed.

AUTH: Sec. 82-4-321, MCA

IMP: Secs. 82-4-337 and 354, MCA; Article II Sec. 9, MONT CONST

RULE X (26.4.107M) ENFORCEMENT: PROCESSING OF VIOLATIONS AND PENALTIES

(1) Except as provided in (5), the department shall issue a notice of noncompliance, by certified mail, if a violation of the Act, this chapter, or the permit, license, or exclusion is identified as a result of any inspection. The notice shall state that:

(a) the alleged violator, may, by filing a response within 30 days of receipt of the notice, provide facts to be considered in further assessing whether a violation occurred and in assessing the penalty; and

(b) by filing a written request within 30 days of receipt of the notice, the alleged violator may obtain an informal conference on the issues of whether the alleged violation occurred or whether the abatement is reasonable, or both.

(2) through (4) same as proposed.

(5) Whenever an authorized representative of the department observes a minor violation that clearly does not represent a potential harm to public health, public safety, or the environment and clearly does not impair administration of the act or this subchapter, the representative may issue a 10-day notice to the person. The notice must describe the violation and how the violation can be corrected. If, within 10 days, the person provides the department with documentation that the violation has been corrected, the department shall waive the imposition of penalty. If the person does not provide that documentation within 10 days, the department shall issue a notice of noncompliance pursuant to (1).

AUTH: Sec. 82-4-321, MCA

IMP: Secs. 82-4-337 and 339, MCA

RULE XI (26.4.107N) ENFORCEMENT: ABATEMENT OF VIOLATIONS AND PERMIT SUSPENSION

(1) through (4) same as proposed.

AUTH: Sec. 82-4-321, MCA

IMP: Secs. 82-4-357, 361, and 362, MCA

RULE XXIII (26.4.101B) DEFINITIONS As used in the Act and this subchapter, the following definitions apply.

(1) through (18) same as proposed.

(19) "Reclamation" means the return of lands disturbed by mining or mining-related activities to an approved postmining land use which has stability and utility comparable to that of the premining landscape except for rock faces and open pits which may not be feasible to reclaim to this standard. Those rock faces and open pits must be reclaimed in accordance with 82-4-336, MCA. The term "reclamation" does not mean restoring the landscape to its pre-mining condition. Reclamation, where appropriate, may include but is not limited to neutralizing cyanide or other processing chemicals; closure activities for heaps, waste rock dumps, and tailing impoundments; closure activities for surface openings; grading, soiling and revegetating disturbed lands; salvage of buildings; other steps necessary to assure long-term compliance with Title 75, Chapter 2 and 5; and other steps necessary to protect public health and safety at closure.

(20) through (24) same as proposed.

AUTH: Sec. 82-4-321, MCA

IMP: Secs. 82-4-303, 305, 309, 310, and 331(2), MCA

6. The agency has adopted the amendments to ARM 26.4.103 and 26.4.105 with the following modifications:

26.4.103 EXPLORATION (TEMPORARY) ROADS

(1) through (8) same as proposed.

(9) Trees and vegetation may be cleared for only the essential width necessary to maintain soil stability and to serve traffic needs. Trees must be felled prior to road construction. When slopes are 15 percent (8.5 degrees) or less, trees and other vegetative debris from clearing operations must be completely disposed of, or stockpiled at specified areas. OR USED AS A SEDIMENT FILTER BELOW THE ROAD CUT. When slopes are steeper than 15 percent (8.5 degrees), trees and vegetative debris shall be piled neatly below and parallel to the toe of the fill.

(10) same as proposed.

(11) Adequate diagonal drainage barriers (i.e. water bars, DRAIN DIPS OR SIMILARLY EFFECTIVE FEATURES), ~~open tops of Kelly dips~~ must be placed at the following specified intervals:

<u>Grade--Percent(%)</u>	<u>Maximum Spacing (feet)</u>
0 - 2	200
3 - 8	150
9 -12	80

(12) same as proposed.

AUTH: Sec. 82-4-321, MCA

IMP: Secs. 82-4-302, 332, and 336, MCA

26.4.105 REVEGETATION RECLAMATION REQUIREMENTS -- EXPLORATION

(1) through (3) same as proposed.

(4) Drill sites constructed by the licensee must be returned to A STABLE CONFIGURATION THAT APPROXIMATES the original contour to the extent possible. Where the department determines that this is not possible, compacted surfaces must be ripped or

otherwise loosened and appropriate drainage must be provided. This requirement may be waived by the department if the landowner requests in writing that the drill site be left in place for an identified, feasible and practicable purpose.

(5) through (13) same as proposed.

AUTH: Sec. 82-4-321, MCA

INP: Secs. 82-4-302, 332, 355(2)(b) and 75-5-605, MCA

7. A summary of comments objecting to or proposing modification of the rules, and the agency's responses to those comments, are as follows:

COMMENT 1: It appears that the language in Rule II(14) "pursuant to (12)" should be changed to "pursuant to (13)."

RESPONSE: The correction has been made.

COMMENT 2: Our primary concern with the rules is in Rule IV, Permit Revisions. The rules should provide a clear road map of the process. In our opinion, this particular rule does not. There should be some more specific guidance as far as revisions and what constitutes a major or minor amendment to a permit application. Other than that, we would submit our testimony in favor of the proposed rules.

RESPONSE: The definitions of "amendment," "major amendment," "minor amendment," and "revision" are contained in Rule XXIII. The definitions of the first three terms are statutory. The difference between major and minor amendments hinges on whether there will be significant impact on the environment. In drafting the proposed rules, the Department initially attempted to set more detailed criteria for major and minor amendments. However, such detailed criteria required detailed exceptions that increased the complexity of the definitions to an unacceptable level. The comment does not suggest more specific criteria that might be acceptable and none have been added.

COMMENT 3: For clarification, the phrase "by the department" should be inserted in Rule IX(1) after "Any person may request an inspection."

RESPONSE: The suggested language has been added.

COMMENT 4: Another classification for noncompliance is recommended in Rule X for minor violations. Similar to the enforcement actions of other agencies, a notice of violation could be issued during an inspection for minor violations that do not threaten public health, safety, or the environment. The violation would require a follow-up visit by the Department within three days to either dismiss the violation if it has been corrected or escalate it to a notice of noncompliance.

RESPONSE: The Department believes that this proposal has merit because it will decrease paperwork for violations that are clearly minor. However, the Department staffing levels do not allow for follow-up inspections. Therefore, the rule has been amended to authorize issuance of a ten-day notice and require the violator to provide documentation that the violation has been abated. In addition, the Department has added "and suspensions" to the title in Rule XI. This makes no substantive

change in the rule but provides a catchphrase that more accurately reflects the body of the rule.

COMMENT 5: The proposed definition of "reclamation" in Rule XXIII(19) fails to comply with Judge Honzel's decision.

RESPONSE: The decision to which the commentor refers is the September 1, 1994, opinion of Lewis and Clark District Court in National Wildlife Federation, et al. v. DSL, Golden Sunlight, CDV 92-486. In that opinion, Judge Honzel gave his opinion that the exclusion from reclamation in 82-4-336(7), MCA, is in conflict with Article IX, Section 2, of the Montana Constitution, which requires reclamation of all lands disturbed by the taking of natural resources. The proposed rule paraphrased the exclusion in 82-4-336(7). It has been amended to reference that statute. In this manner the court's judgment and subsequent legislative amendments will be automatically incorporated into the rule.

COMMENT 6: ARM 26.4.103(9) should be amended to provide that, regardless of slope conditions, slash (unless it is excessive) should be stockpiled along the toe of the fill when constructing temporary roads. During the life of the road, the slash will function as a sediment filter. During reclamation, the slash should be spread over the disturbance to reduce erosion, accelerate revegetation and discourage vehicular use of the area.

RESPONSE: Your suggestion has been incorporated.

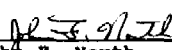
COMMENT 7: When road grades are suitable, drain dips are often superior to water bars. Water bars on out-sloped roads in steep terrain can also be dangerous for exploration personnel driving equipment. Drain dips should therefore be considered as "diagonal drainage barriers" in ARM 26.4.103(11).

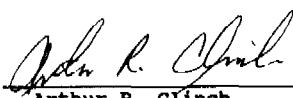
RESPONSE: Your suggestion has been incorporated.

COMMENT 8: The phrase "returned to the original contour to the extent possible" in ARM 26.4.105(4) for drill sites should be changed to "a stable slope that approximates the original contour to the extent possible" as required for access roads in ARM 26.4.105(3).

RESPONSE: Construction of drill sites results in a swelling of the materials volume. In order to adjust for swell, contours can only be approximate. ARM 26.4.105(4) has been revised to be consistent with ARM 26.4.105(3).

Reviewed by:


John F. North
Chief Legal Counsel


Arthur R. Cline
Commissioner

Certified to the Secretary of State October 31, 1994.

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

In the matter of adoption of new)
Rules I through III and amendment)
of ARM 26.4.301, 26.4.303,)
26.4.304, 26.4.308, 26.4.314,)
26.4.321, 26.4.404, 26.4.405,)
26.4.410, 26.4.501A, 26.4.505,)
26.4.519A, 26.4.524, 26.4.601,)
26.4.602, 26.4.603, 26.4.605,)
26.4.623, 26.4.633, 26.4.634,)
26.4.638, 26.4.639, 26.4.642,)
26.4.645, 26.4.646, 26.4.702,)
26.4.711, 26.4.721, 26.4.724,)
26.4.725, 26.4.726, 26.4.821,)
26.4.825, 26.4.924, 26.4.927,)
26.4.930, 26.4.932, 26.4.1116,)
26.4.1141, and 26.4.1212,)
pertaining to the regulation of)
strip and underground mining)
for coal and uranium.)

NOTICE OF ADOPTION
AND AMENDMENT

1. On August 11, 1994, the Board of Land Commissioners and the Department of State Lands published notice of proposed adoption of new Rules I through III and amendment of ARM 26.4.301, 26.4.303, 26.4.304, 26.4.308, 26.4.314, 26.4.321, 26.4.404, 26.4.405, 26.4.410, 26.4.501A, 26.4.505, 26.4.519A, 26.4.524, 26.4.601, 26.4.602, 26.4.603, 26.4.605, 26.4.623, 26.4.633, 26.4.634, 26.4.638, 26.4.639, 26.4.642, 26.4.645, 26.4.646, 26.4.702, 26.4.711, 26.4.721, 26.4.724, 26.4.725, 26.4.726, 26.4.821, 26.4.825, 26.4.924, 26.4.927, 26.4.930, 26.4.932, 26.4.1116, 26.4.1141, and 26.4.1212, pertaining to the regulation of strip and underground mining of coal and uranium, at page 2064 of the 1994 Montana Administrative Register, Issue No. 15.

2. The agency has adopted Rule I (26.4.1116A), Rule II (26.4.405A), and Rule III (26.4.405B), as proposed.

3. The agency has amended ARM 26.4.303, 26.4.304, 26.4.321, 26.4.404, 26.4.405, 26.4.410, 26.4.501A, 26.4.519A, 26.4.524, 26.4.601, 26.4.602, 26.4.603, 26.4.605, 26.4.623, 26.4.633, 26.4.638, 26.4.639, 26.4.642, 26.4.645, 26.4.646, 26.4.702, 26.4.711, 26.4.724, 26.4.726, 26.4.821, 26.4.927, 26.4.932, 26.4.1116, 26.4.1141, and 26.4.1212 as proposed.

4. The agency has not amended ARM 26.4.725.

5. The agency has amended ARM 26.4.301, 26.4.308, 26.4.314, 26.4.505, 26.4.634, 26.4.721, 26.4.825, 26.4.924, and 26.4.930 with the following modifications:

26.4.301 DEFINITIONS The following definitions apply to all terms used in the Strip and Underground Mine Reclamation Act and sub-chapters 3 through 13 of this chapter:

Sections (1) through (77) same as proposed.

~~(78) "Owned or controlled" and "owns or controls" mean any one or a combination of the following relationships:~~

~~(a) being a permittee of a surface coal mining operation;~~

~~(b) based on instruments of ownership or voting securities, owning of record in excess of 50 percent of an entity;~~

~~(c) having any other relationship which gives one person authority, directly or indirectly, to determine the manner in which an applicant, operator, or other entity conducts strip or underground coal mining operations; or~~

~~(d) unless it is demonstrated that the person does not in fact have the authority, directly or indirectly, to determine the manner in which the relevant coal mining operation is conducted;~~

~~(i) being an officer or director of an entity;~~

~~(ii) being the operator of a coal mining operation;~~

~~(iii) having the ability to commit the financial or real property assets or working resources of an entity;~~

~~(iv) being a general partner in a partnership;~~

~~(v) based on the instruments of ownership or the voting securities of a corporate entity, owning of record 10 through 50 percent of the entity; or~~

~~(vi) owning or controlling coal to be mined by another person under a lease, sublease, or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts this coal mining operation.~~

Sections (78) through (118) remain the same.

~~(119) (120) (119)~~ "Test pit" means an excavation for prospecting by means other than drilling. Materials obtained from a test pit are used for test purposes ~~or for the purpose of developing a market~~ and not for direct economic profit.

Sections (120) through (132) remain the same.

~~(134) (133)~~ "Waste disposal structure" means a facility ~~PILE, HILL, MOUND, OR OTHER SIMILAR SURFACE FEATURE~~ for the disposal of underground development waste or coal processing waste outside the mine workings and the mined-out surface EXCAVATION area. The term does not include AN impoundment or embankment.

Sections (133) through (135) remain the same, except they are renumbered Sections ~~(135) (134) through (137) (136)~~.

(AUTH: Sec. 82-4-204, 205, MCA; IMP, Sec. 82-4-203, MCA.)

26.4.308 OPERATIONS PLAN Each application must contain a description of the mining operations proposed to be conducted during the life of the mine within the proposed mine plan area, including at a minimum, the following:

(1) remains the same.

(2) a narrative, with appropriate cross sections, design drawings and other specifications sufficient to demonstrate compliance with ARM 26.4.609, explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facilities is necessary for postmining land use as specified in ARM 26.4.762):

(a) through ~~(c)~~ (d) same as proposed.

~~(e) mine facilities;~~

~~(f) (E) other support facilities as designated in ARM 26.4.609;~~

~~(g) (F) water and air pollution control facilities; and~~

~~(h) (G) any additional information the department deems useful;~~

(3) through (5) same as proposed.

(AUTH: Sec. 82-4-204, 205, MCA; IMP, Sec. 82-4-222, MCA.)

26.4.314 PLAN FOR PROTECTION OF THE HYDROLOGIC BALANCE

(1) through (4) same as proposed.

(5) The department shall provide an assessment of the probable cumulative hydrologic impacts of the proposed operation and all anticipated mining upon surface and groundwater systems in the cumulative impact area. The cumulative hydrologic impact assessment must be sufficient to determine, for purposes of a permit decision, whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The department may allow the applicant to submit data and analyses relevant to the cumulative hydrologic impact assessment with the permit application.

(AUTH: Sec. 82-4-204, 205, MCA; IMP, Sec. 82-4-222, MCA.)

26.4.505 BURIAL AND TREATMENT OF WASTE MATERIALS

(1) and (2) same as proposed.

~~(3) Wastes must be hauled or conveyed and placed for final placement in a controlled manner to:~~

~~(a) minimize adverse effects of leachate and surface water runoff on surface and groundwater quality and quantity;~~

~~(b) ensure mass stability and prevent mass movement during and after construction;~~

~~(c) ensure that the final disposal facility is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use;~~

~~(d) not create a public hazard; and~~

~~(e) prevent combustion;~~

~~(4) The disposal facility shall be designed using current, prudent engineering practices and shall meet any design criteria established by the department. A qualified registered professional engineer, experienced in the design of similar facilities, shall certify the design of the facility. The facility shall be designed to attain a minimum long-term static safety factor of 1.5, except that waste disposed of in the mine workings or excavation must attain a long-term static safety factor of 1.3. The foundation abutments must be stable under all conditions of construction;~~

~~(5) Sufficient foundation investigations, as well as any~~

~~necessary laboratory testing of foundation material, must be performed in order to determine the design requirements for foundation stability. The analyses of the foundation conditions must take into consideration the effect of underground mine workings, if any, upon the stability of the disposal facility.~~

(6) through (9) same as proposed, but renumbered (3) through (6).

~~(7) If any examination or inspection discloses that a potential hazard exists at a waste disposal facility SITE, the department must be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the department must be notified immediately. The department shall then notify the appropriate agencies that other emergency procedures are required to protect the public.~~

(11) same as proposed, but renumbered (8).

(AUTH: Sec. 82-4-204, 205, MCA; IMP, Sec. 82-4-231, MCA.)

26.4.634 RECLAMATION OF DRAINAGES

(1) same as proposed.

(2) ~~At least 120 days prior to reclamation of a significant drainage as determined in consultation with and requiring approval by the department, channel depicted on the postmining drainage TOPOGRAPHIC map, or these channels indicated to the operator by the department, the operator shall, UNLESS THE DEPARTMENT IN WRITING EXEMPTS ALL OR PORTIONS OF THE DRAINAGE CHANNEL FROM THIS REQUIREMENT, submit to the department detailed designs for the drainage channel or any modifications from the approved design based on sound geomorphic and engineering principles. These designs must be certified by a qualified registered professional engineer meeting, and must meet the performance standards and applicable design criteria set by these rules. These designs must represent the state-of-the-art in reconstruction of geomorphically stable channels and must be approved by the department before construction begins. The operator shall notify the department when construction begins. The regraded drainage channel must not be resoiled or seeded until it is inspected and approved by the department.~~

(3) and (4) same as proposed.

(AUTH: Sec. 82-4-204, MCA; IMP, Sec. 82-4-231, MCA.)

26.4.721 ERADICATION OF RILLS AND GULLIES

(1) and (2) same as proposed.

~~(3) If reclaimed areas have experienced extensive rill or gully erosion, THE DEPARTMENT MAY REQUIRE submittal of a plan of mitigation for such features the department may require for AND department approval prior to implementation of repair work.~~

(AUTH: Sec. 82-4-204, MCA; IMP, Sec. 82-4-233, 235, MCA.)

26.4.825 ALTERNATE RECLAMATION: ALTERNATE REVEGETATION

(1) through (3) same as proposed.

(4)(a) If an area is proposed for special use pasture or hayland after disturbance, the area must have a history of being utilized for special use pasture or hayland cropland for at

least 5 years prior to operator lease, purchase or control. The department may allow deviations of the proposed postmining location from the exact premining location of the special use pasture or hayland OR CROPLAND whenever the applicant demonstrates that the proposed location is more appropriate for the approved postmining land use and is in an area in which the postmining landscape is more conducive to establishment of this alternate use.

(b) and (c) same as proposed.

(5) and (6) same as proposed.

(AUTH: Sec. 82-4-204, 205, MCA; IMP, Sec. 82-4-233, MCA.)

26.4.924 DISPOSAL OF UNDERGROUND DEVELOPMENT WASTE:
GENERAL REQUIREMENTS

(1) through (20) same as proposed.

~~(21) Disposal of underground waste in the mined out surface area BY INCORPORATION INTO SPOILS BACKFILL OF EXCAVATION AREAS must be in accordance with sections 3 AND 20 through 6, 8, 9, and 12 through 19 of this rule, except that a long-term static safety factor of 1.2 must be achieved.~~

(AUTH: Sec. 82-4-204, 205, and 231(10)(h), MCA; IMP, Sec. 82-4-227, 231, 232, and 233, MCA.)

26.4.930 PLACEMENT AND DISPOSAL OF COAL PROCESSING WASTE:
SPECIAL APPLICATION REQUIREMENTS

(1) and (2) same as proposed.

(3) If the application includes a proposal to impound coal processing waste, the following is required:

(a) design information AND IMPOUNDMENT OPERATION that meets the requirements of ARM 26.4.505(4)(5):

(b) through (d) same as proposed.

(AUTH: Sec. 82-4-204, 205, and 231, MCA; IMP, Sec. 82-4-222, MCA.)

6. A summary of comments objecting to or proposing modification of the rules, and the agency's responses to those comments, are as follows:

GENERAL COMMENTS

COMMENT 1: In reference to the performance standards and environmental protection standards a comment questions how the operator knows what standards to meet and how the department personnel know what to enforce. Further the commentator is not pleased with the cross-referencing of rules throughout the regulatory provisions.

RESPONSE: It is certainly the case that the coal and uranium regulatory provisions are complex. Any prudent operator will have staff available to track the regulatory provisions so that the operator's mine is in compliance with the law and regulations. Likewise, the Coal and Uranium Bureau must maintain a qualified staff of professionals capable of analyzing mining applications and monitoring, inspecting and enforcing those same provisions. This is accomplished through the work of

an inter-disciplinary staff, maintenance of detailed computerized tracking systems, frequent on-site mine inspections and an active and stringent enforcement program.

COMMENT 2: A comment was made that the regulatory provisions now contain definitions of "material damages" and "hydrologic balance" adopted without discussion with appropriate parties.

RESPONSE: No rule changes have been made since 1990. There have been no new definitions proposed or utilized as suggested. There is no regulatory definition of "material damages" as suggested. There has been some legal investigative work done on and internal discussion of material damage with the eventual goal of developing at least a working definition of this term.

COMMENT 3: Errors in the notice are pointed out with regard to 26.4.407 and 26.4.405(8).

RESPONSE: There is a single error in reference to the notice which at one location lists 407 instead of 410. However, a reader can readily sort out the typographical error and determine the intent by comparing the listing at the front of the notice and the fact that no changes are proposed to 26.4.407. The commentor suggests that 26.4.405(8) is missing. This is not the case. The notice refers to changes to 26.4.405, which in its specific language states that section (8) remains the same.

COMMENT 4: The grammar changes in the rules are a waste of time and some still exist in the rules.

RESPONSE: Grammatical changes can, in fact, affect interpretation significantly.

RULE-SPECIFIC COMMENTS

COMMENT 5: How was the term "owned or controlled" in ARM 26.4.301(78) interpreted prior to this proposed definition? Does this new definition strengthen or weaken the old definition?

RESPONSE: This definition pertains to amendments to ARM 26.4.303, 26.4.404, 26.4.405, 26.4.407, and 26.4.1206, that were proposed on September 8, 1994, on page 2498 of the 1994 Montana Administrative Register. This definition has been re-published with those proposed rules. The comment will be deemed to have been submitted with regard to those amendments and will be fully considered with other comments on these rules. The definition will not be adopted in this rulemaking proceeding.

COMMENT 6: A commentor questions the use of the word "facility" in the definition of "waste disposal structure" in ARM 26.4.301(134), suggesting that "facility" connotes treatment of waste or the use of a building for disposal. The commentor indicates that the words "site" or "area" would be more appropriate.

RESPONSE: The Department agrees that the word "facility" is misleading in this context. That word will be replaced with the following: "pile, hill, mound, or other similar surface feature". Also, the term "mined out surface area" will be replaced with "surface excavation area", in the interest of consistency with the response to comments on proposed changes to 26.4.505.

COMMENT 7: Does the proposed deletion of language in ARM 26.4.304(5) mean that an application will now be acceptable without it? Also, because [baseline] testing for iron concentrations [in water] has been removed from this rule, will the Department still require it?

RESPONSE: The essential features of the language in section (5) proposed for deletion are being proposed to be added to subsection (6)(a); the reason for this is to simply place all requirements for groundwater baseline data in one location in this rule. In doing this, the Department is also replacing specific reference to analysis of iron and manganese with analysis of "dissolved metals as prescribed by the department". Other metals besides iron and manganese generally have more significance in the primary coal-mining areas of Montana; with this proposed change, any metal, including iron and manganese, can be specified in the parameters to be analyzed. A similar change, and for the same reasons, is being made for surface water under (6)(b)(ii)(B) of this rule.

COMMENT 8: What is the distinction between "mine facilities" as referred to in (2)(e) of ARM 26.4.308(2)(c) and "other support facilities" as referred to in proposed (2)(f), implying that these terms appear to mean the same thing.

RESPONSE: The Department agrees with this comment and has deleted "mine facilities" from (2)(e) of this rule.

COMMENT 9: In the proposed change in ARM 26.4.314(3)(b), is there a difference between "hydrologic impacts" and "hydrological consequences" or is the proposed change from the first term to the second term just "stylistic".

RESPONSE: The proposed changes in (3)(b) were designed to replace (3)(d) of this rule (summarizing probable hydrologic consequences) while also adding the list of specific items (mandated by OSM) to be addressed under the summary. In addition, the term "probable hydrologic impacts" is not defined in the rules, whereas "probable hydrologic consequences" is defined in ARM 26.4.301 to mean "the hydrologic impacts of". Therefore, the proposed changes in this rule are attempts to provide for consistency in terminology and ease of comprehension, while at the same time addressing federal requirements. The term "cumulative hydrologic impacts" refers to the impacts of all anticipated mining in the area. In order to further remove confusion, section (5) has been amended by removing the term "probable" before "cumulative hydrologic impacts."

COMMENT 10: The word "established" in ARM 26.4.321(1)(f)

should be replaced with "promulgated" to enforce design criteria required by law.

RESPONSE: The proposed language is contained in 30 CFR 780.38(b). It refers to the criteria that might be developed by the Department on a case-by-case basis, as necessary. The use of "established" in this proposed provision is therefore appropriate.

COMMENT 11: Proposed ARM 26.4.321(1)(g) is "preposterously vague", because it does not list the specific standards in the cited subchapters with which operators must comply. This will be confusing to operators. Is there a difference between a qualified registered professional engineer and a registered professional engineer and who determines the qualifications?

RESPONSE: The interpretation to be attached to the proposed new subsection (1)(g) is that the description of measures for reclamation of roads that will not be included in the reclamation of mine excavation areas must not be at variance with standards in the cited subchapters. In the development of such measures, the operator is obligated to show that this is the case. After reviewing plans for such measures, the Department is obligated to verify that this is the case. If it is not, the operator must revise the measures accordingly. Determining compliance with the cited subchapters requires substantial knowledge and experience of staff associated with both the operator and the Department. This is what the job requires. The term "qualified registered professional engineer", as found in 26.4.321(3), means an engineer experienced in the design of roads. A person being registered in the state as a professional engineer does not mean that that person can adequately perform any engineering task at a coal mining operation.

COMMENT 12: The proposed deletion of certification of road designs by a registered land surveyor in ARM 26.4.321(3) is questioned. OSM would allow land surveyor certification if authorization in state law could be found or if such authorization was amended into the Montana Strip and Underground Mine Reclamation Act.

RESPONSE: The Department agrees that the options suggested could be pursued. The Montana registration law does not provide for registered land surveyors certifying road design work. Thirty CFR 780.37(b) and 784.26(b) allow surveyors to certify road construction plans only if the state surveyor registration statutes allow it. Such authorization would require action by the Montana Legislature. Until the Legislature amends the statute, the proposed amendment to ARM 26.4.321(3) must be made.

COMMENT 13: In relation to the proposed reference change in ARM 26.4.405(6)(1) of this rule (from 26.4.309 to 26.4.1302), some problems exist with 26.4.1302. First, unspecified standards in several subchapters that existing structures must comply with are cited; also apparently non-existent "design criteria within subchapter 13 itself" are cited. Secondly, there is no definition of "non-conforming structure" [which is

the title of 26.4.1302 and is used one other time in this rule].

Also section 4 of the rulemaking notice indicates that OSM had proposed an amendment to 26.4.405(8). However, no change to 26.4.405(8) is actually proposed.

RESPONSE: The sole purpose for the proposed change is to correct an erroneous cross-reference. Any changes to ARM 26.4.1302 are beyond the scope of this rulemaking and could only be addressed in another rulemaking proceeding.

The portion of section 4 of the rulemaking notice to which the commentor refers was erroneously listed as "26.4.405(8)." It should have read "26.4.405(6)(1)."

COMMENT 14: The amendment to 26.4.501A to allow backfilling to be 4 spoil ridges behind the pit would reduce the amount of regraded acreage available for soil laydown and impact direct haul of soil material, increase the amount of time that soil remains in stockpiles, impact reclamation bond levels, and delay the reclamation process.

RESPONSE: The Department feels that the rule change to allow 4 spoil ridges will not adversely impact mining and reclamation activities for the following reasons:

- The present provisions in this rule already allow variances from the 2-spoil ridge requirement. Over the years, the Department has approved many variances, which vary from relatively confined to wide-spread situations and from short-term to long-term examples. No adverse impacts have resulted from these variances. This change will have no appreciable impact on reclamation progress, and will cut down on some of the administrative review and paperwork required for granting of variances.
- Some portions of land being mined require spoil material from a relatively large area to achieve approved post-mining topography. These locales may include final pit locations and areas where extremely thick coal seams are being mined with only a thin veneer of overburden. The 4-spoil ridge approach would allow greater opportunity for providing material necessary to achieve approved post-mining contours, without having to go through an administrative review and approval process first.
- The reclamation bond amount must be based upon the maximum level of disturbance needing reclamation during a designated time period. The total volume of material (overburden and soil) that would have to be moved to accomplish this and must be accounted for in the bond calculation. This must be done, whether the mining and reclamation plan is based upon 2 or 4 spoil ridges. Therefore, to the extent that the proposed rule change to 4 spoil ridges results in any increased reclamation costs at any operation, the bond would need to be increased, accordingly.
- The rule change will have no impact on soil handling methodologies. Mining operations that are currently direct-hauling soil materials from salvage areas to regraded spoils (i.e., without stockpiling) will continue

to do so under the 4-spoil ridge scenario. Coal mining companies prefer to direct-haul soil to avoid the additional cost associated with multiple handling of this material. This soil handling technique is promoted by the Department to take advantage of viable propagules, organics, and microorganisms available in the live haul material.

COMMENT 15: Regarding ARM 26.4.505(2), referring to protection of drainages from deleterious wastes, does the Department likewise have a policy to prevent burying or storing of deleterious materials in proximity to groundwater?

RESPONSE: There are provisions in the rules to protect groundwater from deleterious wastes. ARM 26.4.505(2) provides: "If necessary, these materials must be tested to determine necessary mitigations to neutralize acidity, to nullify toxicity, to prevent water pollution...", which includes groundwater. It further provides: "...the department may specify thicker amounts of [suitable] cover or the use of special compaction and isolation techniques to prevent contact of these materials with groundwater." ARM 26.4.643(2) requires the placement of materials in the backfill to minimize adverse effects on groundwater.

COMMENT 16: In ARM 26.4.505(3), what is the difference between handling wastes in a "controlled" vs. an "uncontrolled" manner? Can waste disposal be allowed on the surface or would it need to be buried? The broad and indiscriminate use of the terms "waste disposal facility" and "waste disposal structure" is a source of much confusion. Section (3) is a repetition of section (2). When compared, sections (4) and (7) are confusing, e.g., the requirements for safety factor, 1.5 vs 1.3, with respect to waste disposal at strip mines.

RESPONSE: The Department agrees that from a practical standpoint the requirements of section (2) will be met by compliance with section (3). As provided in (7), waste from a strip mine could not be disposed of in a structure on the surface. Therefore, waste from a strip mine would need to be incorporated into the backfill of the mining operation; disposal of deleterious waste and associated protection of water in this manner is essentially covered by (2) of this rule and by ARM 26.4.643. Although it is arguable that proposed sections (4) and (5) are required by 30 CFR 816.81(c) and (d), they would in practice serve no purpose because burial of the waste is required. The Department has therefore revised its original proposed changes to ARM 26.4.505 by deleting sections (3), (4), and (5), renumbering the remaining sections, and replacing the term "facility" with "site" in the second line of section (10), to reflect the proposed requirement that the only kind of waste disposal that will be allowed at strip mines is within backfill areas or within temporary waste impoundments.

COMMENT 17: Will extended blasting periods in ARM 26.4.623 increase the chances of damage to property off of mine permit

areas?

RESPONSE: Increasing the total scheduled blasting time from 4 hours to 8 hours per day should not yield any increase in and may actually decrease off-site damage for the following reasons:

- The blasting crews will not be as rushed because the time restraints will be more flexible. Therefore more attention can be applied to safety and caution.
- The amount of blasting for each mine will not increase with an increase in the allowable blasting period.
- All mines will still have to comply with all blasting rules and regulations. The size and pattern of any particular blast will still be regulated as it has always been to protect public health and welfare.

COMMENT 18: In amending ARM 26.4.634(2), the Department seems to be taking a more passive oversight role.

RESPONSE: The purpose of the proposed change in the language is to provide more definite criteria as to which drainages, or portions thereof, will need to be approved by the Department 120 days prior to reclamation. The rule does not reduce the number of drainages for which detailed plans are required. The Department believes the change will promote better communication and more systematic planning of drainage networks in advance of drainage reclamation.

COMMENT 19: The proposed and existing language in ARM 26.4.634(2) appears to be broader than what was intended, and is somewhat redundant regarding certification because postmining drainage maps must be certified by a professional engineer. The following alternative version is proposed:

At least 120 days prior to reclamation of an significant eligible drainage channel, as determined in consultation with ~~and requiring approval by the department and depicted on the post-mining drainage map~~, the operator shall submit to the department a detailed design for the drainage channel or any modifications from the ~~an approved design based on sound geomorphic and engineering principles. These designs must be certified by a qualified registered professional engineer meeting the performance standards and applicable design criteria set by these rules. These designs must represent the state of the art in reconstruction of geomorphically stable channels and must be approved by the department before construction begins.~~ The regraded drainage channel must not be resoled or seeded until it is inspected and approved by the Department. (WRI)

RESPONSE: Please see the previous response. Also, the requirement for the designs to be certified by an engineer is not duplicative because the certification required by this rule is for the actual drainage design and not just for the postmining contour map.

COMMENT 20: The proposed revision to ARM 26.4.634 would force companies to rehandle additional spoil material. Also detailed designs would be required for all of the drainages shown on the postmining drainage maps. The following alternative changes to section (2) are suggested:

- the 120-day submittal-of-design requirement before reclamation should be changed to 30 days before topsoiling;
- remove the proposed reference to channels depicted on the postmining drainage map;
- add the following sentence:

Detailed design is not required for drainages where runoff from the 25-year, 24-hour event is less than 75 cfs [cubic feet per second] or drainages designated by the department.

RESPONSE: Because the proposed rule would require detailed design plans for the reconstruction of drainages to be submitted 120 days before reconstruction work actually begins, there should be minimal chance of spoil rehandling. In addition, the rule change would promote systematic planning of drainage networks in advance of spoil regrading, which should minimize the amount of spoil rehandle. Also, please see the previous response to comment. The Department does not anticipate the need for the smaller tributaries to have detailed designs. The determination of which channels would require detailed designs would be based on geomorphic and stability requirements of each basin in question. The Department does not agree with the proposal to remove the reference to the channels depicted on the postmining drainage map, because that is the basis for the entire reclamation drainage network approved for every permitted mining operation. However, the Department agrees that not all drainage channels on the postmining drainage map need to be subject to this requirement. The rule has therefore been amended to allow the Department to exempt certain drainage channels. The proposal to change the 120 days of prior notification to only 30 days before topsoiling begins is not realistic, because of the time required for review and approval of these designs and because the designs must be approved before drainage reconstruction begins.

The term "postmining drainage map" has been changed to "postmining topographic map" in order to clarify and relate to the postmining topographic map required in ARM 26.4.313(3)(d).

COMMENT 21: Regarding the proposed ARM 26.4.639(10)(b) and (c), the actual substance of the criteria in 30 CFR 77.216(a) should be placed in these subsections rather than having a mere reference to these criteria. Also, can pipes be used for spillways? If so, they would very likely plug up. Finally, no pond should be built without a spillway.

RESPONSE: The proposed reference to 30 CFR 77.216(a) is a common practice throughout the rules; this is done to make the rules less cumbersome and verbose. A pipe may be used for a spillway. In such a case, the pipe would have to be able to safely pass the design discharge event. This might require special maintenance or design features to minimize clogging of the

spillway. In principle, building a pond without a spillway would increase the risk of problems to some degree; the key factor is whether the increased risk is limited to an acceptable level. The Department believes it is, given the standards as proposed that would be applied to the building of such structures. These standards are equivalent to the OSM rules at 30 CFR §16.46(c)(2) and §17.46(c)(2).

COMMENT 22: Can the public inspect, in Helena, the documents referenced in ARM 26.4.645(6) and 26.4.646(6), or can copies be obtained by mail? Also, does the Department have "minimum standards for an acceptable 'quality assurance program'" and, if so, what are they?

RESPONSE: These documents may be inspected in Helena or copies may be obtained through the mail upon request. The Department published some standards for quality assurance of hydrologic data collection in its draft version of Water Resource Guidelines (1983). This year, work was started among staff hydrologists and supervisors to eventually develop some up-to-date procedures for conducting various phases of hydrologic data gathering, which would include quality assurance procedures.

COMMENT 23: Regarding proposed changes to ARM 26.4.702(4)(b), a commenter expresses some concern about limiting the alternatives for performing spoil manipulation prior to soil laydown. Specifically, different spoil manipulation procedures (i.e., deep tilling, subsoiling, etc.) may be utilized depending on the site-specific situation. The term "scarify" should be added to the original text, but the other spoil manipulation techniques identified in the rule should be retained.

RESPONSE: The term "scarified" utilized in the proposed rule is a generic term which means "to break up or loosen the surface of". This term is all encompassing and synonymous with the specific spoil manipulation techniques identified in the original rule. There are a number of spoil scarification procedures utilized at coal mines in Montana including subsoiling, ripping, and chisel plowing. The proposed rule change will not enhance the overall effectiveness of the rule or limit the options for achieving the objectives of spoil manipulation (i.e., prevention of slippage surfaces and alleviation of compaction). Specific spoil scarification techniques utilized by each mine are identified by the operator in the permit and the efficacy of these techniques are evaluated on a site specific basis during permit review and mine inspections. The language changes are simply proposed for the sake of clarity and conciseness.

COMMENT 24: ARM 26.4.711(6) should be amended by adding a requirement to consult with and obtain the approval of other state agencies in addition to those that cater to recreation and forestry.

RESPONSE: The proposed language is specifically required, and is the minimum necessary, to comply with federal regulations. There are various other requirements in ARM

regarding consultation with other state and federal agencies involved with the establishment of vegetation (ex. ARM 26.4.404(1), (3), (4); etc.). When any mine permit application is received by the Department, a notice of application is submitted to all relevant local, state and federal agencies, thereby providing a formal avenue for consultation with the department regarding any and all revegetation-related issues. At various stages through the application and permitting process, public notice is made to encourage consultation with any interested party regarding mine and reclamation plans, including revegetation issues. The Department believes that this consultation adequately provides for other agencies' input. Adding another agency with signoff authority would unnecessarily complicate the process, especially in view of the fact that much rangeland is both wildlife habitat and grazing land.

COMMENT 25: There is a grammatical mistake in the new proposed section (3) of ARM 26.4.721.

RESPONSE: It has been corrected.

COMMENT 26: The proposed amendment to ARM 26.4.725(1) is unnecessary because the existing rule is consistent with the equivalent federal regulation as stated in the Federal Register at Volume 56, p. 11667 (March 20, 1991).

RESPONSE: The Department agrees. The proposed amendment has not been adopted.

COMMENT 27: Would the change for "live" composition in plant cover in ARM 26.4.726 be appropriate for Section 728 also? I would think it appropriate that before bond release, the plants be capable of regeneration. A nurse cover crop could contribute a great deal of cover in 26.4.726, but not really be capable of regeneration over a longer time frame. I think the live-cover standard is a good one.

RESPONSE: The "live" cover requirement is incorporated in ARM 26.4.728 by reference in section (1) of that rule ("...cover data derived in accordance with ARM 26.4.726 and 26.4.733").

COMMENT 28: ARM 26.4.825(1) should be modified to be consistent with the definition of "cropland" contained in ARM 26.4.301(63)(a).

RESPONSE: The proposed modification is beyond the scope of this rulemaking proceeding.

COMMENT 29: In ARM 26.4.825(4)(a) the term "or cropland" should also be inserted after "~~ex-hayland~~" in the seventh line for consistency.

RESPONSE: The Department agrees and has made the suggested change.

COMMENT 30: The proposed changes in ARM 26.4.825(4)(a) are questioned, unless the Department's intent is to allow for more reclamation to row crops. The definition of special use pasture includes only occasional haying. What is the Department's defi-

nition of "occasional haying...?" Hayland and cropland (for which there is no definition) can be distinguished by the degree of ground cover in each case. Section (4) of this rule deals with land uses having a constant ground cover, whereas those uses that do not have constant ground cover are handled in sections (2) and (3). "The Department has created more problems than it has solved with these proposed amendments."

RESPONSE: The comment misinterprets the intent and the meaning of proposed changes to (4)(a). Subsection (4)(a) only concerns the reclamation of lands to special use pasture, not to cropland. The proposed deletion of the term "hayland" has already been explained in the rule-making notice. The term "cropland" is defined in ARM 26.4.301(63)(a); hay crops are included in the definition. The proposed addition of "cropland" to the designated portions of (4)(a) is for the sole purpose of allowing the additional option to operators of reclaiming land that was in cropland before mining to postmining special use pasture after mining.

COMMENT 31: It would be simpler to develop standards in ARM 26.4.924 for waste disposal in relation to where the waste is to be disposed of, i.e., on the surface or below the surface, rather than on the basis of the kind of mining involved, i.e., strip or underground. Some of the same types of waste could be generated with both kinds of mining. The comments also referenced other comments on the proposed changes to ARM 26.4.505. Finally, in reference to proposed new section (21), what is the meaning of "mined out surface area"?

RESPONSE: The Department's changes to ARM 26.4.505 as adopted should alleviate much of the commentator's concern. In addition, in section (21), the Department will replace the phrase "in the mined out surface area" with "by incorporation into the spoils backfill of excavation areas" for clarification. As adopted, ARM 26.4.505 provides that final waste disposal at strip mines must consist of incorporation of such waste into the backfill of mined areas; temporary disposal is allowed in the form of waste impoundments. For underground mines, ARM 26.4.924 provides that final disposal of underground development waste that cannot be placed in underground workings may be accomplished by incorporation of the waste into the spoils backfill of excavation areas (e.g., the backfill of the face-up areas that are constructed for the mine adits), or by the construction of surface waste disposal structures such as head of hollow fills, valley fills, or in durable rock fills; again, temporary disposal would be allowed in waste impoundments. To conform ARM 26.4.924 to the amendments to ARM 26.4.505, ARM 26.4.924(21) has been amended to delete references to a number of sections within ARM 26.4.924 that would have no practical effect on burial of waste in the backfill of the faceup area.

COMMENT 32: In ARM 26.4.930, is it beneficial to impound coal processing wastes? Would this method be preferable to "dry storage" of wastes? What would the quality of water leaching from the waste be? Would impoundment of such waste be

permanent? If so, after completing construction of such an impoundment and allowing it to dry out, what measures would be taken to suppress combustion? Would the operator have permanent liability for construction of such an impoundment?

RESPONSE: From an operational standpoint, the use of impoundments (i.e., wet handling and storage) as compared to dry handling and storage of coal processing waste would depend upon the site specific circumstances (e.g., availability of water); the quality of the coal and the objective of the coal cleaning process, which may determine the process(es) of choice; and associated design features of the coal processing system (e.g., the need for waste/water slurry to transport waste coal fines from the plant to a waste impoundment). The quality of water leaching from a coal processing waste impoundment would have to be estimated in response to a site-specific proposal, using the hydrologic conditions and properties of the waste associated with the site. The prohibition of permanent impoundments in ARM 26.4.505 is applicable; however, for clarification the Department has added a specific prohibition to this rule.

Requirements regarding materials presenting a fire hazard are currently found in ARM 26.4.308(3), 26.4.311, and 26.4.761(1) and (2)(g), and in applicable rules for state air quality permits. These provisions would apply to any coal processing waste, whether originating from wet or dry storage. The operator would be liable for a waste impoundment for the life of such a structure, i.e., as long as it was under bond and permit; these structures cannot be permanent landscape features (see ARM 26.4.505 and the previous paragraph).

Proposed subsection (3)(a) of this rule references 26.4.505(4) as originally proposed for revision. This was an erroneous cross-reference. The reference should have been to ARM 26.4.505(8). The cross-reference has been corrected to ARM 26.4.505(5), which is the proper reference because of changes made in ARM 26.4.505 as adopted. Also, a reference to operation of the impoundment has been added to meet federal requirements.

COMMENT 33: The amendment to ARM 26.4.1212 implies that uncontested violations will be counted for an indefinite period of time when assessing penalty points for history of violations, whereas those violations that are contested administratively will only be counted for one year in the penalty assessment.

RESPONSE: The amendment provides that a violation is counted for one year after the period for requesting review expires unless a review is requested.

COMMENT 34: In reference to Rule I, any partial bond release should leave sufficient bond to cover the remaining reclamation work.

RESPONSE: The current rules are consistent with this comment. ARM 26.4.1116(5) includes a limitation to the amount of partial bond that may be released.

COMMENT 35: Rule II(2)(a) should refer to a specific subsection of ARM 26.4.404 rather than the whole rule. Why would

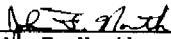
the Department be issuing permits improvidently? How many of such permits are issued?

RESPONSE: The Department would not knowingly improvidently issue a permit and has not done so to its knowledge. Rules II and III are proposed to be as effective as the federal rules and address permits and violations in other states which would be tracked through the federal applicant violator system. The provision to which Rule II is referring is ARM 26.4.404(7). That this is the case is clear from subsections (a) and (b) of Rule II(2). However, Rule II(2)(c) anticipates changes to ARM 26.4.404 that were formally proposed September 8, 1994, on page 2498 of the Montana Administrative Register. If these changes are adopted, ARM 26.4.404(7) will become ARM 26.4.404(8). Because of changing federal requirements and interpretations, the Department must amend its rules fairly frequently. It therefore prefers not to cross-reference to internal sections in order to reduce the number of rules that must be amended to comply with federal mandates and to avoid the potential that cross-references will be missed, resulting in outdated and erroneous cross-references. Of course, the Department will use an internal cross-reference where it is necessary for specificity or clarity.


COMMENT 36: Should the "and" in Rule III(1) be an "or" in reference to suspension and revocation? The number of notices required is ambiguous as to whether it is one or two as the process would be implemented. Further, someone making a good faith effort would face an automatic revocation as described.

RESPONSE: Use of "and" is correct, because the actions noticed are suspension and, if remedial action does not occur, revocation. The 90-day period is required by 30 CFR 773.21. Paragraph (a)(iii) gives the Department the flexibility to not revoke the permit if the permittee is making a good faith effort.

Reviewed by:



John F. North
Chief Legal Counsel



Arthur R. Clinch
Commissioner

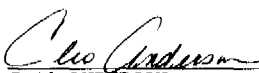
Certified to the Secretary of State October 31, 1994.

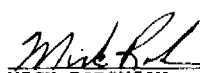
BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF THE AMENDMENT
of ARM 42.12.222 relating to) of ARM 42.12.222 relating to
Revocation Or Suspension of a) Revocation Or Suspension of
Liquor License) a Liquor License

TO: All Interested Persons:

1. On September 8, 1994, the Department published notice of the proposed amendment of ARM 42.12.222 relating to revocation or suspension of a liquor license at page 2505 of the 1994 Montana Administrative Register, issue no. 17.
2. No public comments were received regarding these rules.
3. The Department has amended the rule as proposed.


CLEO ANDERSON
Rule Reviewer


MICK ROBINSON
Director of Revenue

Certified to Secretary of State October 31, 1994.

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

In the matter of the)
amendment of rule 46.12.2002)
pertaining to medicaid)
coverage of abortion)
services in cases of rape or)
incest)
incest)

) NOTICE OF THE AMENDMENT OF
) RULE 46.12.2002 PERTAINING
) TO MEDICAID COVERAGE OF
) ABORTION SERVICES IN CASES
) OF RAPE OR INCEST

TO: All Interested Persons

1. On August 25, 1994, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rule 46.12.2002 pertaining to medicaid coverage of abortion services in cases of rape or incest at page 2427 of the 1994 Montana Administrative Register, issue number 16.

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

46.12.2002 PHYSICIAN SERVICES, REQUIREMENTS Subsections (1) through (1)(e) remain as proposed.

(i) The physician has found, and certified in writing, that on the basis of his/her professional judgement, the life of the mother would be endangered if the fetus were carried to term. The certification must contain the name and address of the patient and must be on or attached to the medicaid claim;
OR

Subsections (1)(e)(ii) and (1)(f) remain as proposed.

(i) the mother RECIPIENT certifies in writing that the pregnancy resulted from an act of rape or incest; and

Subsection (1)(f)(ii) remains as proposed.

(A) the mother RECIPIENT has stated to the physician that she reported to the proper authorities that the pregnancy is the result of an act of THE rape or incest TO A LAW ENFORCEMENT OR PROTECTIVE SERVICES AGENCY HAVING JURISDICTION OVER THE MATTER, OR, IF THE RECIPIENT IS A CHILD ENROLLED IN A SCHOOL, TO A SCHOOL COUNSELOR; or

(B) in the physician's professional opinion, the mother RECIPIENT was and is unable for physical or psychological reasons to report the act of rape or incest.

AUTH: Sec. 53-2-201 and 53-6-113 MCA

IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141 MCA

3. The Department has thoroughly considered all commentary received:

COMMENT: The use of the term "mother" throughout the proposed rule is inappropriate. The term "woman" would be more appropriate.

RESPONSE: The department will omit the word "mother" from the proposed amendments and instead use the term "recipient," which is the term used generally in the Medicaid program rules to refer to the person seeking or receiving medicaid services.

COMMENT: The requirement that the woman certify in writing that the pregnancy resulted from an act of rape or incest is unnecessary, redundant, unduly burdensome, and serves no purpose other than to make it more difficult for the woman to obtain services under the rule. The requirements for physician certification in subsection (f)(ii) of the rule adequately address the department's stated purpose to obtain a certification from the only person in a position to certify that the pregnancy resulted from rape or incest, i.e., the woman. The woman is already required to report the rape or incest and to tell the physician that the pregnancy is the result of rape or incest. The requirement that she fill out another form in order to provide this certification seems inefficient and bureaucratic at best and cruel and insensitive at worst. The department should delete this requirement.

RESPONSE: The department disagrees. Federal law prohibits the use of federal funds under the Medicaid program to pay for abortions except where necessary to save the woman's life or in cases of pregnancy resulting from rape or incest. Whether a woman's life would be endangered by carrying the fetus to term is a medical fact which can be certified by the physician, and federal and state law and regulations appropriately provide for proof of the coverage criterion by means of a physician certification. But whether a pregnancy resulted from an act of rape or incest is not a medical fact that generally can be determined by a physician. The woman is the only person in a position to state whether the pregnancy resulted from an act of rape or incest.

All medicaid recipients are required to provide information and verification, and to sign certifications as part of the eligibility process. But it is unusual in the Medicaid program that the recipient is required to sign a statement related to the physical condition for which a particular medical service is needed. Nearly all medicaid services are provided based upon medical need that can be determined and documented by a physician. It is very unusual that federal law imposes on coverage of a particular service a prerequisite that is not medical in nature and that cannot be determined and documented by a physician. But Congress has imposed such a requirement in the case of medicaid coverage of an abortion where the pregnancy

resulted from an act of rape or incest. The need for a recipient certification arises from the essentially non-medical nature of the coverage requirement established by Congress.

The department will require the recipient to certify that the pregnancy resulted from an act of rape or incest. This will not require the recipient to fill out any additional forms, but rather will require only that the recipient sign a preprinted certification on the same form provided by the department for signature by the physician. The department does not believe that this requirement is burdensome. The recipient can provide the required signature while present in the physician's office. The department believes that the requirement is reasonably necessary in furtherance of the legitimate purpose of providing a degree of assurance that allegations of rape or incest are credible and not advanced solely for the purpose of obtaining public funding for an abortion. The requirement is also reasonably necessary to provide the department with documentation to demonstrate that the service qualifies for federal abortion funding.

The department has an obligation under federal law to safeguard against unnecessary or inappropriate utilization of services. The department may be required to demonstrate to the Health Care Financing Administration (HCFA) that the state is administering the Medicaid program in accordance with federal requirements. HCFA interprets the federal law to permit state Medicaid agencies to "impose reasonable reporting or documentation requirements on recipients or providers, as may be necessary to assure themselves that an abortion was for the purpose of terminating a pregnancy caused by an act of rape or incest." December 28, 1993 letter to State Medicaid Directors from Sally K. Richardson, HCFA's Medicaid Bureau Director. The department believes that the recipient certification requirement is a reasonable documentation requirement that complies with law and is reasonably necessary to fulfill the department's obligation to properly administer the Medicaid program. The department will retain the proposed recipient certification requirement.

COMMENT: The term "proper authorities" used in the proposed rule is not defined. If the department intends to place limits on who is a "proper authority" then the rule should identify these authorities. Without defining the term, the rule is subject to challenge on grounds that it is impermissibly vague. A 13 year old girl should not be required to determine what is a "proper authority." The rule should not act as a trap for the unwary. "Proper authorities" should include law enforcement authorities, social service workers, school officials or other persons in similarly responsible positions. This might also include a nurse practitioner at the time a pregnancy test is performed. Because of the safe and confidential nature of the

clinic setting, clients will often share information that is not otherwise reported.

RESPONSE: The department will revise the language in the final rule to broaden the class of authorities to whom the rape or incest may be reported under the reporting alternative of the rule. The report may be made to a law enforcement or protective services agency having jurisdiction over the matter, or, if the recipient is a child enrolled in a school, to a school counselor. The purpose of the reporting requirement is to provide the department with some assurance that the allegation of rape or incest is credible. The department believes that a report to one of the persons in authority specified in the final rule language better achieves the purpose of the rule, because we believe reporting to these persons provides a greater assurance of credibility than the other persons suggested by the commentors.

However, the department does not intend to establish a restrictive rule that unduly impedes or denies coverage. If the recipient is unable to report to the specified authorities, coverage may still be provided based upon the physician certification of inability to report. This does not preclude the reporting of the rape or incest to other similarly responsible persons in authority who may be able to assist the recipient.

COMMENT: One commentor expressed concern that the reporting requirement would conflict with the woman's right to privacy guaranteed under the Montana Constitution. A recent federal court decision from Pennsylvania ordered that state not to enforce regulations that deny medicaid funding for abortions in rape or incest cases unless the woman has reported the rape or incest to authorities and, if possible, identified the assailant.

RESPONSE: The department believes that the reporting requirement in the proposed rule is consistent with the Montana constitutional right to privacy and with federal medicaid law. The department has reviewed carefully the Pennsylvania court decision entered in Elizabeth Blackwell Health Center For Women, et al. v. Catherine Baker Knoll, et al., No. 94-CV-0169 (E.D.Pa. Sept. 15, 1994). That decision holds that the particular reporting requirements of the Pennsylvania statute violated the federal law regarding medicaid abortion coverage because they imposed limitations on the availability of the coverage beyond those imposed by federal law. The decision does not address the question of whether the state of Pennsylvania's reporting requirement violated the state constitutional right of privacy, and the court noted that the privacy issue was irrelevant to the federal preemption question at issue.

In the December 28, 1993 letter to State Medicaid Directors from Sally K. Richardson, HCFA's Medicaid Bureau Director, HCFA specifically stated that the state medicaid agency is permitted to impose a reasonable reporting requirement on recipients, but could not use such requirements to deny or impede coverage. The letter stated:

To insure that reporting requirements do not prevent or impede coverage for covered abortions, any such reporting requirement must be waived and the procedure considered to be reimbursable if the treating physician certifies that in his or her professional opinion, the patient was unable, for physical or psychological reasons, to comply with the requirement.

The proposed rule includes a provision allowing coverage and reimbursement without meeting the reporting requirement if the treating physician certifies that in his or her professional opinion, the patient was unable, for physical or psychological reasons, to comply with the requirement. The department believes that the rule's reporting requirement complies with the Montana Constitution and federal law.

COMMENT: Nothing in the proposed rule requires that the victim's name or information about the case be kept confidential. The rule should include a confidentiality requirement.

RESPONSE: Providers and medicaid agency staff are already subject to extensive state and federal laws and regulations requiring that the recipient's name and related information be kept confidential, except as necessary to administer the Medicaid program. No additional rule language is necessary. However, the department will include a confidentiality notice on the certification form that the department will supply to providers to implement the rule.

COMMENT: The proposed rule requires a physician certification that the woman "was and is unable for physical or psychological reasons to report the act of rape or incest." How can the physician certify as to the woman's past physical or psychological state?

RESPONSE: The past tense language is the language developed by HCFA on this subject, as set forth in the December 28, 1993 letter to State Medicaid Directors from Sally K. Richardson, HCFA's Medicaid Bureau Director. We believe that the physician can determine the victim's past condition from an examination and interview of the patient.

COMMENT: The department should reject the proposed rule and instead adopt a rule providing coverage for all medically necessary abortions. The proposed rule is far too restrictive to be valid under the Montana statutes that authorize the department to make rules regarding medicaid coverage, or under the Montana Constitution. The commentor presented extensive arguments which are summarized as follows. Section 53-6-101 (2)(e), MCA requires that physician services be covered. Abortions are a physician service and the department has no authority to restrict medically necessary physician services. Further, the proposed rule violates the Montana Constitution's right to privacy, which is more strict than that offered by the federal constitution. The right to privacy is a fundamental right and the state may not condition receipt of governmental benefits on a woman's foregoing the right to choose abortion without a compelling state interest. Yet, this is what the proposed rule does. Courts in other states have held that similar restrictions on funding for abortion violate state constitutional privacy principles. The proposed rule also violates the state constitutional guarantee of equal protection.

RESPONSE: The department disagrees. The department clearly has authority under the Montana medicaid statutes to restrict the scope of covered services as required by federal law. See, e.g., sections 53-2-202(2)(c), 53-6-101(7), 53-6-111(1) and 53-6-113(1). This issue, along with the state constitutional issues raised, are the subject of litigation currently pending in *Jeanette R. v. Ellery*, No. BDV-94-811 (Montana First Judicial District Court, Lewis and Clark County). These issues have also been subject to litigation in other states and the decisions have been split. The department believes that federal law prohibits it from providing medicaid coverage of all medically necessary abortions and the department will not revise the proposed rule to provide such coverage.

COMMENT: The department neglected to amend ARM 46.12.2002(1)(e) (i) by adding a semicolon and the word "or" to the end of the last sentence. This is critical because without that change, the amendments act as a further restriction upon current coverage, rather than as the expansion of coverage apparently intended by the department. Under the rule as proposed it is unclear whether both conditions must be present to obtain coverage, i.e., the woman's life must be in danger and the pregnancy must have resulted from an act of rape or incest.

RESPONSE: The department has made the suggested change to the final rule. Under the final rule, only one of the stated conditions must be present to obtain coverage, i.e., the woman's life must be endangered by carrying the fetus to term or the pregnancy must have resulted from an act of rape or incest.

COMMENT: There is an inconsistency between the proposed requirement that the woman tell the physician that she reported to the proper authorities that the pregnancy is the result of an act of rape or incest and the alternative that the physician certify that the woman was and is incapable of reporting the act of rape or incest. This appears to require two separate reports by the woman. Such a requirement serves no proper purpose and will only deter women from seeking benefits under the rule.


RESPONSE: The department did not intend to create two separate reporting requirements. The final rule language has been revised to require that the recipient state to the physician that she has reported the act of rape or incest, rather than to require that she report that the pregnancy was a result of an act of rape or incest.

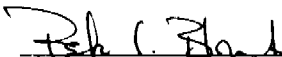
COMMENT: What portion of section 53-6-111, MCA does the department believe the proposed amendments implement? Subsection (2) of that statute has to do with establishing penalties and sanctions for provider fraud. None of the other rules the department has adopted to implement this section seem to relate to eligibility standards that must be met by the recipient. The proposed amendments do not appear to implement this section and the department should not add this statute to the implementation citation.

RESPONSE: The department disagrees with the commentor's analysis. Portions of the proposed amendments implement subsection (1) of section 53-6-111, MCA. That subsection of the code authorizes the department to "administer and supervise" the medicaid program. The implementation citation would not be complete without this reference, which will be retained in the final rule.

COMMENT: The implementation authority cited includes section 53-6-141, MCA, which was repealed in 1989 pursuant to Chapter 711, L. 1989. This section should not be included in the implementation citation for the rule.

RESPONSE: The only sections implemented by the proposed amendments are those sections that are underlined in the notice of public hearing. The legislative code committee requires that such sections be underlined in the public notice to denote the sections implemented by the proposed amendments. Section 53-6-141, MCA appears but is not underlined. The proposed amendments do not implement that repealed section. However, the department is required by the Secretary of State's office to include the reference to 53-6-141, MCA for historical purposes. This reference indicates that some prior version of ARM 46.12.2002 implemented section 53-6-141, MCA prior to its repeal. The reference to section 53-6-141, MCA will be retained.


Rule Reviewer


Director, Social and
Rehabilitation Services

Certified to the Secretary of State October 31, 1994.

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 rules 46.12.5002,)	RULES 46.12.5002,
46.12.5003 and 46.12.5007)	46.12.5003 AND 46.12.5007
pertaining to the passport)	PERTAINING TO THE PASSPORT
to health program)	TO HEALTH PROGRAM

TO: All Interested Persons

1. On September 8, 1994, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rules 46.12.5002, 46.12.5003 and 46.12.5007 pertaining to the passport to health program at page 2507 of the 1994 Montana Administrative Register, issue number 17.

2. The Department has amended rules 46.12.5002, 46.12.5003 and 46.12.5007 as proposed.

3. No written comments or testimony were received.



Rule Reviewer



Director, Social and
Rehabilitation Services

Certified to the Secretary of State, October 31, 1994.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

- | | |
|-------------------------------------|---|
| Known
Subject
Matter | 1. Consult ARM topical index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute
Number and
Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1994. This table includes those rules adopted during the period July 1, 1994 through September 30, 1994 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1994, 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 1994 Montana Administrative Register.

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