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MONTANA ADMINISTRATIVE REGISTER

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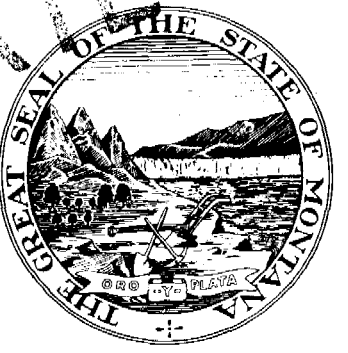

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 1

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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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NOTICE SECTION

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 2.11.101 related to Solicitation and ARM 2.11.102 related to Access Limitations	NOTICE OF PROPOSED REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On February 12, 1996 the Department of Administration proposes to repeal ARM 2.11.101 related to Solicitation and ARM 2.11.102 related to Access Limits.

2. The rules proposed to be repealed are found on page 2-319 of the Administrative Rules of Montana. Auth. 2-17-111 MCA; IMP. 2-17-111 MCA

3. Rules 2.11.101 and 2.11.102 are being repealed because HJR 5 asked agencies to review rules and in doing so, the Department of Administration has determined we have no current statutory authority to promulgate rules controlling access into public buildings or to require permits for solicitation. These functions are or will be controlled by administrative policy.

4. Interested parties may submit their data, views, or arguments concerning the proposed repeal to Susan Campbell, Department of Administration, General Services Division, PO Box 200110, Helena MT 59620-0110 no later than February 8, 1996.

5. If a person who is directly affected by the proposed repeal wishes to express data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments to Susan Campbell, Department of Administration, General Services Division, PO Box 200110 Helena MT 59620-0110; or fax comments to (406) 444-3039; or electronically submit a message on the State Bulletin Board System (BBS) under Department of Administration, General Services Division Conference; or by addressing your comments on the Internet at CM0268%ZIP02@MT.GOV. A written request for hearing must be received no later than February 8, 1996.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed 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 four (4) based on the number of permits issued in the past two years.

BY: _____ _____

Dal Smilie
Rule Reviewer

Lois Menzies
Director

Certified to the Secretary of State January 2, 1996.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter the proposed adoption of new rule I and amendment to ARM 4.12.1431	))))))	NOTICE OF PROPOSED ADOPTION OF NEW RULE PERTAINING TO THE SPREAD OF LATE BLIGHT DISEASE OF POTATOES AND AMENDMENT TO THE CIVIL PENALTIES - MATRIX

NO PUBLIC HEARING CONTEMPLATED

TO: All interested persons:

1. On February 10, 1996, the Montana Department of Agriculture proposes to adopt the above stated new rule and amend ARM 4.12.1431.

2. The proposed new rule will read as follows. The proposed amended rule will read as follows (new material underlined, deleted material interlined)

RULE I. PREVENTING SPREAD OF LATE BLIGHT DISEASE OF POTATOES (SOLANUM TUBEROSUM L.)

(1) Definitions in ~~Section~~ 80-7-105, MCA apply to this rule unless otherwise stated. In addition, the following definitions apply:

(a) "Sale" means to sell, wholesale, offer or expose for sale, exchange, barter, or give away regulated articles as defined in this rule.

(b) "Late blight" means the late blight disease of potato caused by the fungus Phytophora infestans.

(c) "Regulated articles" means certified seed potatoes and seed potatoes as defined by 80-5-402(1) and (4), MCA including seed potatoes for home gardens; potato plants; and tomato plants including all varieties of Lycopersicon lycopersicum and L. pimpinellifolium. Tomato seeds are not regulated articles.

(2) No individual, firm or nursery shall import regulated articles into Montana. No individual, firm or nursery shall sell or plant in any location in Montana or move within Montana any regulated articles that were imported into Montana.

(3) Commercial or table stock potatoes imported into Montana shall not be planted or used as seed potatoes in any location in Montana.

(4) The provisions of ~~Sections~~ (2) and (3) do not apply to any unit of the Montana university system when importing into Montana potato seeds or plants or tomato plants for research, propagation, or education. Such plant materials must be certified free of late blight disease prior to import into Montana or must be placed in a Montana university system quarantine facility.

(5) Volunteer potatoes growing in any location and potato plants growing in cull piles shall be rendered nonviable.

(6) The department may issue a quarantine order to an individual, firm or nursery (4.12.1409, ARM) where regulated

articles are found in Montana in violation of this rule.

(a) The order may prohibit movement and require the removal and destruction of regulated articles.

(b) Firms may be permitted to return unsold tomato plants and potato seeds to out-of-state dealers under conditions approved by the department.

(c) Orders are subject to appeal pursuant to the provisions of the Montana Administrative Procedure Act (Title 2, chapter 4, MCA) and the procedural rules of the department.

(7) Any individual, firm or nursery shall notify the department within 48 hours of discovery of any infestation of late blight, and shall then comply with the instructions of the department for control of the infestation and disposition of infested materials.

(8) Any individual, firm or nursery that purposely, knowingly, or negligently violates or aids in the violation of this rule or a quarantine order shall be in violation and subject to penalties provided by 80-7-135, MCA.

(9) This rule shall be reviewed periodically by the department and comments solicited from impacted industries and the public; and the rule amended or repealed as may be appropriate depending upon developments in managing late blight or the effectiveness of this rule.

AUTH: 80-7-121, MCA IMP: 80-7-121, MCA

Reasons: This rule will help to prevent new introductions and the incidence of outbreaks of late blight disease of potatoes in growing certified seed potatoes. Montana farmers produce about 9,000 acres of certified seed potatoes with a value over 25 million dollars. The rule will also help to prevent late blight in commercial and garden potatoes and tomatoes. Late blight is a serious fungal pest of potatoes and tomatoes with the potential to rapidly destroy individual fields and to spread among fields, growing areas and greenhouses. The current controls of virulent strains of the late blight fungus in commercial potatoes are preventative applications of fungicides at costs ranging from $200 to $500 per acre.

The fungal organisms responsible for causing late blight can be transmitted on diseased potato tubers and tomato plants. Diseased stock that is planted will produce spores that can be moved by wind and water thereby transmitting the disease to healthy plants. Until effective and cost effective methods can be developed for managing late blight, preventing introductions of diseased potatoes and tomatoes will be helpful in reducing incidence of outbreaks.

4.12.1431 CIVIL PENALTIES - MATRIX

(1) Type of Violation	1st Offense	2nd Offense	Subsequent Offenses
(a) Operating without a nursery license or refusal to pay the licensing fee required after being fully advised of its requirement.	$300	$600	$1,000

(b) Failure to properly label nursery stock offered at retail, or falsely representing or misrepresenting the name, age, variety, class, or origin of nursery stock.	$300	$600	$1,000
(c) Misrepresenting information supplied regarding exemption from licensing.	$300	$600	$1,000
(d) Willfully or intentionally distributing plant materials that are infected or infested with a plant pest dangerous to interests in Montana.	$500	$750	$1,000
(e) Distributing plants declared noxious weeds under ~~section~~ 7-22-2101(7)(a)(i), MCA.	$500	$750	$1,000
(f) Purposely, knowingly or negligently violate or aid in violation of a rule, order, or quarantine.	$500	$750	$1,000

AUTH: 80-7-135 MCA IMP: 80-7-135 MCA

Reason: This amendment establishes the basic amount for civil penalties assessed to persons for violating rules, orders, or quarantines. The department is required by 80-7-135(3)(a), MCA to establish by rule a penalty schedule for initial and subsequent offenses. The amendment is therefore necessary because violations of the proposed rule to prevent the spread of late blight or violations of quarantine orders issued under the rule are subject to a civil penalty (80-7-135(1), MCA).

3. Interested persons may submit their written data, views, or arguments concerning these proposed actions to Gary Gingery, Administrator, Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201, FAX (406)444-2944, no later than February 8, 1996.

4. If a party who is directly affected by the proposed actions wishes to express his/her 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/she has to Gary Gingery, Administrator, Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201, FAX (406)444-2944, no later than February 8, 1996.

5. If the department receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed actions; 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 89 persons based on the numbers of certified seed potato growers (67), nurseries (753), and licensed produce dealers (74).

DEPARTMENT OF AGRICULTURE

W. Ralph Peck
Director

Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State January 2, 1996

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

In the matter of the amendment of Rule 6.6.1104 pertaining to the limitation of presumption of reasonableness of credit life and disability rates.	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On February 12, 1996, the State Auditor and Commissioner of Insurance proposes to amend Rule 6.6.1104 pertaining to the limitation of presumption of reasonableness of credit life and disability rates.

2. The proposed rule amendments are as follows (material to be deleted is interlined):

6.6.1104 LIMITATION OF PRESUMPTION OF REASONABLENESS (1) The rates provided by ARM 6.6.1103 are presumed to produce reasonable benefits in relation to premiums only if:

(a)~~(1)~~ The coverage contains no exclusions for pre-existing conditions except for those conditions which manifested themselves to the insurer debtor by requiring medical diagnosis or treatment~~, or would have caused a reasonably prudent person to have sought medical diagnosis or treatment~~ within 6 months prior to the application for insurance and which caused loss within the 6 months following the effective date of coverage. However, a disability commencing after the expiration of the first 6 months following the effective date of coverage and resulting from such conditions shall be covered.

(1) (a) remains the same but is renumbered (1) (a) (i).

(2) - (4) remain the same but are renumbered (b) - (d).

AUTH: 33-21-111, MCA
IMP: 33-21-205, MCA

3. Rule 6.6.1104 is being amended to treat credit life and disability insurance pre-existing condition determinations consistently with disability insurance.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Heather Cafferty, Montana Insurance Department, P.O. Box 4009, Helena, Montana 59604, or send a fax to (406) 444-3497. Any comments must be received no later than February 8, 1996.

5. If a person 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 a written request for a hearing and submit this request along with any written comments he has to Heather Cafferty, Montana Insurance Department, P.O. Box 4009, Helena, Montana 59604 or send a fax to (406) 444-3497. A written request for hearing must be received no later than February 8, 1996.

6. If the agency receives requests for a public hearing on the proposed amendment 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 30 persons based on the 300 persons who have indicated interest in the rules of this agency and who the agency has determined could be directly affected by these rules.

MARK O'KEEFE, State Auditor
and Commissioner of Insurance

By _____
Frank Coté
Deputy Insurance Commissioner

_____
Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State this 21st day of December, 1995.

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

In the matter of the proposed adoption of new rules implementing Medicare Select policies and certificates.	))))	NOTICE OF PUBLIC HEARING

TO: All Interested Persons.

1. On February 1, 1996, at 9:30 a.m., MDT, a public hearing will be held in Room 270 of the Sam W. Mitchell Building, 126 North Sanders Street, Helena, Montana. The hearing will be to consider the adoption of new rules I through XIV implementing Medicare Select policies and certificates.

2. The proposed new rules provide as follows:

RULE I APPLICATION AND SCOPE (1) This rule shall apply to Medicare Select policies and certificates, as defined in rules I through XIV.

(2) No policy or certificate may be advertised as a Medicare Select policy or certificate unless it meets the requirements of rules I through XIV.

AUTH: 33-22-904 and 33-22-905, MCA; IMP 33-22-901 through 33-22-924, MCA

RULE II DEFINITIONS For the purposes of rules I through XIV:

(1) "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare Select issuer or its network providers.

(2) "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select issuer or its network providers.

(3) "Medicare Select Issuer" means an issuer offering, or seeking to offer, a Medicare Select policy or certificate.

(4) "Medicare Select Policy" or "Medicare Select Certificate" mean respectively a Medicare supplement policy or certificate that contains restricted network provisions.

(5) "Network Provider" means a provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits insured under a Medicare Select policy.

(6) "Restricted Network Provision" means any provision which conditions the payment of benefits, in whole or in part, on the use of network providers.

(7) "Service Area" means the geographic area approved by the commissioner within which an issuer is authorized to offer a Medicare Select policy.

AUTH: 33-22-904 and 33-22-905, MCA; IMP: 33-22-901 through 33-22-924, MCA

RULE III AUTHORIZATION OF THE COMMISSIONER (1) The commissioner may authorize an issuer to offer a Medicare Select policy or certificate, pursuant to rules I through XIV and section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990, if the commissioner finds that the issuer has satisfied all of the requirements of rules I through XIV.
AUTH: 33-22-904 and 33-22-905, MCA; IMP: 33-22-901 through 33-22-924, MCA

RULE IV PLAN TO BE APPROVED BY COMMISSIONER BEFORE BEING ISSUED (1) A Medicare Select issuer shall not issue a Medicare Select policy or certificate in this state until its plan of operation has been approved by the commissioner.
AUTH: 33-22-904 and 33-22-905, MCA; IMP: 33-22-901 through 33-22-924, MCA

RULE V PLAN TO BE FILED AND THE REQUIREMENTS (1) A Medicare Select issuer shall file a proposed plan of operation with the commissioner in a format prescribed by the commissioner. The plan of operation shall contain at least the following information:

(a) evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

(i) such services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community;

(ii) the number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:

(A) to deliver adequately all services that are subject to a restricted network provision; or

(B) to make appropriate referrals;

(iii) there are written agreements with network providers describing specific responsibilities;

(iv) emergency care is available 24 hours per day and 7 days per week;

(v) in the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting such providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate. (1)(a)(v) shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate;

(b) a statement or map providing a clear description of the service area;

(c) a description of the grievance procedure to be utilized;

(d) a description of the quality assurance program, including:

(i) the formal organizational structure;

(ii) the written criteria for selection, retention and removal of network providers; and

(iii) the procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action when warranted;

(e) a list and description, by specialty, of the network providers;

(f) copies of the written information proposed to be used by the issuer to comply with (1); and

(g) any other information requested by the commissioner.

AUTH: 33-22-904 and 33-22-905, MCA; IMP: 33-22-901 through 33-22-924, MCA

RULE VI PLAN CHANGES TO BE FILED AND APPROVED (1) A Medicare Select issuer shall file for approval with the commissioner any proposed changes to the plan of operation, except for changes to the list of network providers, prior to implementing such changes.

(2) An updated list of network providers shall be filed with the commissioner at least quarterly.

AUTH: 33-22-904 and 33-22-905, MCA; IMP: 33-22-901 through 33-22-924, MCA

RULE VII MEDICARE SELECT FULL COVERAGE (1) A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers if:

(a) the services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury or a condition; and

(b) it is not reasonable to obtain such services through a network provider.

AUTH: 33-22-904 and 33-22-905, MCA; IMP: 33-22-901 through 33-22-924, MCA

RULE VIII DISCLOSURE REQUIREMENTS (1) A Medicare Select issuer shall make full and fair disclosure in writing of the provisions, restrictions, and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following:

(a) an outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:

(i) other Medicare supplement policies or certificates offered by the issuer; and

(ii) other Medicare Select policies or certificates;

(b) a description (including address, telephone number and hours of operation) of the network providers, including primary care physicians, specialty physicians, hospitals and other providers;

(c) a description of the restricted network provisions, including payments for coinsurance and deductibles, when providers other than network providers are utilized;

(d) a description of coverage for emergency and urgently needed care and other out-of-service area coverage;

(e) a description of limitations on referrals to restricted network providers and to other providers;

(f) a description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer; and

(g) a description of the Medicare Select issuer's quality assurance program and grievance procedure.

RULE IX ACKNOWLEDGMENT OF UNDERSTANDING BY APPLICANT (1) Prior to the sale of a Medicare Select policy or certificate, a Medicare Select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to rule VIII and that the applicant understands the restrictions of the Medicare Select policy or certificate.

AUTH: 33-22-904 and 33-22-905, MCA; IMP: 33-22-901 through 33-22-924, MCA

RULE X GRIEVANCE AND COMPLAINT PROCEDURE (1) A Medicare Select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. Such procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.

(2) The grievance procedure shall be described in the policies and certificates and in the outline of coverage.

(3) At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.

(4) Grievances shall be considered in a timely manner and shall be transmitted to appropriate decision-makers who have authority to fully investigate the issue and take corrective action.

(5) If a grievance is found to be valid, corrective action shall be taken promptly.

(6) All concerned parties shall be notified about the results of a grievance.

(7) The issuer shall report no later than each March 31 to the commissioner regarding its grievance procedure. The report shall be in a format prescribed by the commissioner and shall contain the number of grievances filed in the past year and a summary of the subject, nature and resolution of such grievances.

AUTH: 33-22-904 and 33-22-905, MCA; IMP: 33-22-901 through 33-22-924, MCA

RULE XI AVAILABILITY TO PURCHASE ANY PRODUCT (1) At the time of initial purchase, a Medicare Select issuer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

AUTH: 33-22-904 and 33-22-905, MCA; IMP: 33-22-901 through 33-22-924, MCA

RULE XII INSURED MAY PURCHASE A COMPARABLE OR LESSER BENEFIT POLICY OR CERTIFICATE WITHOUT A RESTRICTED NETWORK PROVISION (1) At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make such policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for 6 months.

(2) For the purpose of this rule, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purpose of (2), a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services or coverage for Part B excess charges.

AUTH: 33-22-904 and 33-22-905, MCA; IMP: 33-22-901 through 33-22-924, MCA

RULE XIII PROVISION FOR CONTINUED COVERAGE (1) Medicare Select policies and certificates shall provide for continuation of coverage in the event the United States department of health and human services determines that Medicare Select policies and certificates issued pursuant to rules I through XIV should be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment.

(2) Each Medicare Select issuer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make such policies and certificates available without requiring evidence of insurability.

(3) For the purpose of this rule, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purpose of (3), a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services or coverage for Part B excess charges.

AUTH: 33-22-904 and 33-22-905, MCA; IMP: 33-22-901 through 33-22-924, MCA

RULE XIV ISSUER SHALL COMPLY WITH REASONABLE REQUESTS FOR DATA (1) A Medicare Select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States department of health and human services, for the purpose of evaluating the Medicare Select Program.

AUTH: 33-22-904 and 33-22-905, MCA
IMP: 33-22-901 through 33-22-924, MCA

3. These rules are being proposed to enhance the choices of the consumer in the marketplace of Medicare supplements under the Medicare Supplement Insurance Minimum Standards Act.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Heather Cafferty, Montana Department of Insurance, P.O. Box 4009, Helena, Montana 59604, and must be received no later

than February 8, 1996 or send a fax to (406) 444-3497.

5. The State Auditor will make reasonable accommodations for persons with disabilities who wish to participate at this public hearing. If you request an accommodation, please contact the State Auditor's Office not later than 5:00 p.m., January 26, 1996, and advise the office of the nature of the accommodation needed. Please contact Heather Cafferty, Montana Department of Insurance, P.O. Box 4009, Helena, Montana 59604, (406) 444-2040 or send a fax to (406) 444-3497.

6. Gary L. Spaeth, Chief Legal Counsel, State Auditor's Office, P.O. Box 4009, Helena, Montana 59604, has been designated to preside over and conduct the hearing.

MARK O'KEEFE
STATE AUDITOR AND
COMMISSIONER OF INSURANCE

By 
G. Russell Harper
Deputy State Auditor


Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State this 29th day of December, 1995.

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

In the matter of the proposed amendment of 6.10.122 pertaining to securities regulation.	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons:

1. On January 31, 1996, at 9:00 a.m., MDT, a public hearing will be held in Room 270 of the State Auditor's Office, 126 North Sanders Street, Helena, Montana 59620, to consider the amendment of rule 6.10.122 pertaining to securities regulation.

2. The proposed rule amendment is as follows (new material is underlined; material to be deleted is interlined):

6.10.122 BROKER-DEALER BOOKS AND RECORDS (1) Except as provided in ~~subsection~~ (5), each broker-dealer registered in this state shall make and keep ~~all~~ the following books and records:

(a) all books and records ~~in conformity with~~ required by regulation 240.17-a3 of the Securities Exchange Act of 1934~~, regulation 240.17a-3. In addition, each broker-dealer registered in this state must make and keep~~;

(b) those books and records required to be made and kept by any self-regulatory organization of which it is a member;

(c) ~~and~~ those books and records required to be made and kept by any federal government agency with which it is registered or licensed~~.~~;

(d) all registration application forms (Form U-4), termination forms (Form U-5), and amendments to Disclosure Reporting Pages (DRP) for each agent, which forms and amendments shall be manually executed, including complete documentation as to any "yes" answer pertaining to disciplinary history or a disclosure issue on Form U-4 or on a DRP; all licenses or other documentation showing registration with state securities jurisdictions, securities exchanges, or self-regulatory organizations; all contracts and other records pertaining to the relationship between the agent and the broker-dealer; a summary of the agent's compensation agreement with the broker-dealer, including commission schedule and details of any commission overrides; copies of all inquiries and customer complaints. Litigation and arbitration files need not be included as long as the files are referenced and readily available.

(e) All registration application forms (Form BD), withdrawal forms (Form BDW), and amendments to DRP, which forms and amendments shall be manually executed, including complete documentation where required on Form BD; all partnership agreements, corporation records, or other

appropriate business records showing the firm's status as a legal entity; all licenses or other documentation showing registration with state securities jurisdictions, securities exchanges, or self-regulatory organizations.

(2) through (5) remain the same.

AUTH: 30-10-107, MCA
IMP: 30-10-201, MCA

3. Pursuant to ARM 6.10.121, broker-dealer securities firms that are members of the National Association of Securities Dealers (NASD) and securities salespersons associated with such firms must register through the Central Registration Depository (CRD), a division of the NASD. Since its inception in 1981, CRD has maintained the original application forms for registrants, and amendments to such forms. Specifically, the application forms are as follows:

Form U-4 -- Uniform Application for Securities Industry Registration or Transfer

Form U-5 -- Uniform Termination Notice for Securities Industry Registration

Form BD -- Uniform Application for Broker-Dealer Registration

Form BDW -- Uniform Request for Withdrawal From Broker-Dealer Registration

The CRD system is in the process of being redesigned. Beginning February 1996, firms will file the above forms and amendments thereto electronically. The CRD will no longer maintain the signed paper application forms. Therefore, it is necessary to amend the above rule to require firms to preserve application forms as well as any amendments to the disclosure reporting pages of such forms, and to require firms to make the forms and amendments available to this department upon request.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Heather Cafferty, Montana Securities Department, P.O. Box 4009, Helena, Montana 59604 or send a fax to (406) 444-3497, and must be received no later than February 8, 1996.

5. The State Auditor's Office will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by no later than 5:00 p.m., on January 24, 1996, to advise us as to the nature of the accommodation needed. Please contact Heather Cafferty,

Montana Securities Department, P.O. Box 4009, Helena, Montana 59604 (406) 444-4020 or send a fax to (406) 444-3497.

6. Heather Cafferty of the Montana Securities Department has been designated to preside over and conduct the hearing.

MARK O'KEEFE
STATE AUDITOR AND
COMMISSIONER OF SECURITIES

By G. Russell Harper
G. Russell Harper
Deputy State Auditor

By Gary L Spaeth
Gary L Spaeth
Rules Reviewer

Certified to the Secretary of State this 29th day of December, 1995.

BEFORE THE STATE LIBRARY COMMISSION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 10.102.5102 and ARM 10.102.3604	NOTICE OF PUBLIC HEARING ON THE AMENDMENT OF ARM 10.102.5102 AND ARM 10.102.3604

TO: All Interested Persons

1. On February 13, 1996, at 1:00 p.m. in Room 212, Montana State Library, 1515 East Sixth Avenue, Helena, Montana, a public hearing will be held to consider the amendment of ARM 10.102.5102 and ARM 10.102.3604.

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

10.102.5102 ALLOCATION OF FUNDING BETWEEN FEDERATIONS AND GRANT PROGRAMS

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

(c) The state library commission does have the responsibility and authority to approve federation plans of service and does have the responsibility and authority to approve or deny funding for the components of the plans of service. A federation may not receive an appropriation from the state library commission until its annual plan of service for federation activities is approved by the commission. The state library commission can disapprove a plan of service only because it was not prepared according to the procedures and forms established by the state library commission, or because it does not address the authorized purposes and/or priorities as established by the state library commission to implement its state long range plan for libraries.

(d) Each federation's annual plan of service shall be based upon direction given by the state library commission from its consideration of the state long range plan for libraries. The annual plan of service is submitted to the state library each January for consideration and action by the state library commission at its February meeting. Changes or appeals related to the plans of service occur during February/March. These changes or appeals are acted upon by the state library commission in April/May of each year.

(e) Each federation shall ensure equal opportunity for representation of its member libraries and shall have approved bylaws which shall address approval procedures for the annual plan of service, proxy voting, quorum requirements and other procedural matters necessary for conducting federation business.

(f) An appeals process shall be available for any federation which is denied funding. This appeals process shall follow the appeals process for denial of a grant as set forth in ARM 10.101.206.

AUTH: 22-1-103, MCA
IMP: 22-1-413, MCA

10.102.3604 ARBITRATION OF DISPUTES WITHIN FEDERATIONS

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

(1)(d) The Commission shall proceed to hear the parties and staff in accordance with the procedures set forth in ARM 10.101.2026, ~~subsections (4) through (8)~~ and render a decision.

AUTH: 22-1-103, MCA
IMP: 22-1-413, MCA

3. The amendment of ARM 10.102.5102 is reasonably necessary to clarify the authority of the state library commission to award or withhold state funding to the library federations and outlines the criteria which will guide funding decisions. The rule also provides a timeline for approval of plans of service and a mechanism for ensuring adequate representation for development of plans of services within the federations. An appeals process has been added.

The 54th Legislature attempted to clarify this issue, but the bill which dealt with it was tabled by the Senate State Administration Committee. The chair of that committee passed on to the State Library Commission the task of resolving the concerns through the administrative rule process.

The amendment of ARM 10.102.3604 is reasonably necessary to correct a citation to another administrative rule which has been repealed.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Richard T. Miller, Jr., State Librarian, Montana State Library, 1515 East Sixth Avenue, Box 201800, Helena, Montana 59620-1800, and must be received no later than February 21, 1996.

5. Peggy Guthrie, State Library Commission Chair, has been designated to preside over and conduct the hearing.

6. Alternative accessible formats of this document will be provided upon request. Persons who need an alternative format of this rule notice, or who require some other reasonable accommodation in order to participate in this process, should contact Mary Jane West, Montana State Library, 1515 East Sixth Avenue, Box 201800, Helena, Montana 59620-1800; telephone: (406) 444-3384; TDD (406) 444-5432.

Richard T. Miller, Jr.
State Librarian and Rule Reviewer

Certified to the Secretary of State January 2, 1996

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of rules 17.54.102, 105, 106, 128, 130, 17.54.201, 17.54.303, 307, 17.54.421, 17.54.601, 609, 610, 612, 17.54.701, 702, 17.54.802, 803, 807, 823-825, and 833 updating federal incorporations by reference)	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULES (Hazardous Waste)

To: All Interested Persons

1. On February 6, 1996 at 9:00 a.m., the department will hold a public hearing in Room 111 of the Metcalf Building, 1520 E. Sixth Ave., Helena, Montana, to consider the amendment of the above-captioned rules.

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

17.54.102 INCORPORATIONS BY REFERENCE (1)-(4) Remain the same.

(5) As of [the effective date of these amendments], all of the incorporations by reference of federal agency rules listed below within the specific state agency rules listed below shall refer to federal agency rules as they have been codified in the July 1, 1994 edition of Title 40 of the Code of Federal Regulations (CFR). References in the state rules to federal rules contained in Titles 49 and 33 are updated to the extent that they have been updated by the federal rules which also incorporate these rules by reference. For the proper edition of these rules in Titles 49 and 33, see the reference in Title 40 of the CFR (1994 edition), provided in parenthesis. A short description of the amendments to incorporated federal rules which have occurred since the last incorporation by reference is contained in the column to the right. This rule supersedes any specific references to editions of the CFR contained in other rules in this chapter.

State Rule	Federal Rule Incorporated	Notation of Most Recent Changes to Federal Rules
17.54. . . . (a)-(b)	40 CFR . . . Remain the same.	

(c)	112	Parts 264 (except subpart H) and 266 (except subpart H)	~~Hazardous waste burned in boilers and industrial furnaces.~~ NC
(d)	126	264.98, 264.99, 264.100, 264.112, 264.113, 264.117(a), 264.118, 264.147	~~Closure plans; financial requirements.~~ NC
(e)	131	270.14 - 270.26	~~Permit application requirements.~~ NC
(f)-(g)		Remain the same.	
(h)	140	Parts 264 (except subpart H) and 266 (except subpart H)	~~Hazardous waste burned in boilers and industrial furnaces.~~ NC
(i)	150	Part 268, (except sections 268.5, 268.6, 268.42(b), and 264.44) as well as Appendices I through IX	~~Land disposal restrictions.~~ NC
(j)	201	Parts 264 and 266, Appendix to Part 262	~~Hazardous waste burned in boilers and industrial furnaces.~~ NC
(k)	309	Part 264, Subpart O; Part 265, Subpart O; Part 266, Subparts C-G; 265.71, 265.72; Part 279	~~Used oil management standards.~~ NC
		49 CFR . . .	
(l)	321	173.300 (40 CFR 261.21)	NC
(m)	323	173.51, 173.53, 173.88 (40 CFR 261.23)	NC
		40 CFR . . .	
(n)	331	261.31	~~Wood preserving listings; administrative stay.~~ NC
(o)	332	261.32	NC
(p)	333	261.33(e) and (f)	~~Correction of~~

			~~listing for "beryllium".~~ NC
(q)	334	Part 265, Appendix V	NC
(r)	351	Part 261, Appendices I, II, III, and X	NC
(s)	352	Part 261, Appendices VII and VIII	~~Correction of listing for "beryllium".~~ NC
(t)	408	Part 262, the Appendix	NC
		49 CFR . . .	
(u)	415	Parts 173, 178, and 179 (40 CFR 262.30)	~~Shipping and packaging of hazardous materials.~~ NC
(v)	416	Part 172, Subpart E (40 CFR 262.31)	~~Labeling requirements for hazardous materials transportation.~~ NC
(w)	417	Part 172, Subpart D (40 CFR 262.32)	~~Marking requirements for hazardous materials transportation.~~ NC
(x)	418	Part 172, Subpart F (40 CFR 262.33)	~~Placarding requirements for hazardous materials transportation.~~ NC
		40 CFR . . .	
(y)	421	Part 265, Subparts C and D, 265.111, 265.114, Part 265, Subpart I, Part 265, Subpart J, (except 265.197(c) and 265.200)	~~Tank systems.~~ NC
(z)-(ab)		Remain the same.	
(ac)	609	Part 265, Subparts B-Q DD, excluding Subpart H and 265.75	~~Facility standards; recordkeeping; closure requirements; surface impoundments; landfills.~~

			Containment buildings.
(ad)	702	Part 264, Subparts ~~B-BB~~ DD, excluding Subpart H and 264.75; Part 264, Appendices I, IV, V, VI, and IX	~~Work analysis; corrective action; landfills; surface impoundments; drip pads.~~ Containment buildings.
(ae)	802	264.197, 264.228, 264.258, 265.197, 265.228, and 265.258	~~Closure requirements for surface impoundments.~~ NC
(af)	803	264.112, 264.117 - 264.120, 265.112, 265.117 - 265.120	~~Closure plans.~~ NC
(ag)	807	264.111 - 264.115, 264.143-(f)(3), 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, 264.601 - 264.603, 265.111-265.115, 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, and 265.404	~~Closure plans; closure requirements.~~ NC
(ah)	808	264.117 - 264.120, 264.145(f)(5), 264.228, 264.258, 264.280, 264.310, 264.603, 265.117 - 265.120, 265.228, 265.258, 265.280, 265.310	~~Closure requirements.~~ NC
(ai)	814	264.143(f) and 264.145(f)	NC
(aj)	823	264.147(f), 264.147(g)	~~Financial requirements.~~ NC
(ak)	833	264.151(a)-(j)	~~Financial requirements.~~ NC
(al)	1118	Part 266, Appendices I through XII	~~BIF technical amendments.~~ NC

NC - Refers to no change in the material which is being incorporated by reference from the time of the last formally noticed incorporation by reference.

(6) Remains the same.

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

17.54.105 SCOPE OF PERMIT REQUIREMENTS (1)-(3) Remain the same.

(4) Specific exclusions. The following persons are among those who are not required to obtain a HWM permit:

(a)-(d) Remain the same.

(e) owners and operators of elementary neutralization units or wastewater treatment units as defined in ARM 17.54.201, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC subcategory defined in 40 CFR 268.42, Table 2), or corrosive (D002) waste, to remove the characteristic before land disposal, the owner or operator must comply with the requirements set out in 40 CFR 264.17(b) (incorporated by reference in ARM 17.54.702);

(f)-(g) Remain the same.

(5)-(10) Remain the same.

AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

17.54.106 PERMITTING REQUIREMENTS: EXISTING AND NEW HWM FACILITIES (1) ~~Owners~~ Except as provided in 40 CFR part 264 subpart S, owners and operators of existing hazardous waste management facilities must comply with the provisions of ARM 17.54.601, et seq. (Interim Status).

(2)-(8) Remain the same.

AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

17.54.128 MINOR MODIFICATIONS OF PERMITS; TEMPORARY AUTHORIZATIONS FOR MODIFICATIONS; AND AUTHORIZATIONS FOR MANAGEMENT OF NEWLY IDENTIFIED WASTES (1) At the request or upon the consent of the permittee, the department may modify a permit to make the corrections or allowances for changes in the permitted activity listed in Table I of this rule, without following the procedures set forth in subchapter 9. Any permit modification not processed under this rule must be made with draft permit and public notice as required in ARM 17.54.126.

TABLE I
LISTING OF MINOR MODIFICATIONS

A.-L. Remain the same.

M. Containment Buildings

1. Replacement of a containment building with a containment building that meets the same design standards and that has equal or lesser capacity.

2. Replacement of a containment building with a containment building that meets the same design standards and that meets the same conditions in the permit.

Note: In the case of modifications not specifically listed in this table, the permittee may request a determination by the department that the modification should be reviewed and approved as a minor modification. If the permittee makes this request, he or she must provide the department with the necessary information to support the requested classification.

(2) Upon request of the permittee, the department may,

without prior public notice and comment, grant the permittee a temporary authorization in accordance with this section. Temporary authorizations must have a term of not more than 180 days.

(a) Remains the same.

(b) The permittee shall send notice of the temporary authorization request to all persons on the current facility mailing list and to appropriate units of state and local governments as specified in ARM 17.54.907(6)(a)(v) and (vi). This notification must be made within 7 days of submission of the temporary authorization request.

(b) Remains the same but is renumbered (c).

~~(c) Upon approval or denial of the temporary authorization request, the department will send a notice of the temporary authorization decision to all persons on its current facility mailing list and to appropriate units of state and local governments as specified in ARM 16.44.905(6)(a)(v) and (vi).~~

(d) Remains the same.

(3) Remains the same.

AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

17.54.130 CONTENTS OF PART A OF THE PERMIT APPLICATION Part A of the RCRA application shall include the following information:

(1)-(12) Remain the same.

(13) a brief description of the nature of the business; and

(14) for hazardous debris, a description of the debris category(ies) and contaminant category(ies) to be treated, stored, or disposed of at the facility.

AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA;

17.54.201 DEFINITIONS In this chapter, the following terms shall have the meanings or interpretations shown below:

(1)-(19) Remain the same.

(20) "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of subpart DD of 40 CFR 264 or 265.

(20) Remains the same but is renumbered (21).

(22) "Corrective action management unit" or CAMU means an area within a facility that is designated by the department for the purpose of implementing corrective action requirements. A CAMU may be used only for the management of remediation wastes pursuant to implementing such corrective action requirements.

(21)-(26) Remain the same but are renumbered (23)-(28).

~~(27)~~(29) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste or hazardous constituents of the waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(28)-(38) Remain the same but are renumbered (30)-(40).

~~(39)~~(41) "Facility" or "hazardous waste management facility" means all contiguous land, and structures, other

appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units. For purposes of implementing corrective action under 40 CFR 264.101 or under an administrative order, the term "facility" includes all contiguous property under the control of the owner or operator.

(40)-(66) Remain the same but are renumbered (42)-(68).

~~(67)~~(69) "Landfill" means a disposal unit or series of disposal units (i.e. landfill cells) where hazardous waste is placed in or on land and which is not a land treatment unit, a surface impoundment, a pile, an injection well, a salt dome formation, a salt bed formation, an underground mine, ~~or~~ a cave, or a corrective action management unit.

(68)-(76) Remain the same but are renumbered (70)-(78).

~~(77)~~(79) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR part 146, containment building, corrective action management unit, or unit eligible for a research, development, and demonstration permit under ARM 17.54.140.

(78)-(89) Remain the same but are renumbered (80)-(91).

~~(90)~~(92) "Pile" means any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

(91)-(100) Remain the same but are renumbered (93)-(102).

(103) "Remediation waste" means all wastes, and all media (including groundwater, surface water, soils and sediments) and debris, that:

(a) contain listed hazardous wastes or themselves exhibit a hazardous waste characteristic, and

(b) are managed for the purpose of implementing corrective action requirements under 40 CFR 264.101 and under an administrative order.

For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in connection with corrective action for releases beyond the facility boundary.

(101)-(106) Remain the same but are renumbered (104)-(109).

(110) "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both. "Sorb" means to either adsorb or absorb, or both.

(107)-(138) Remain the same but are renumbered (111)-(142).

AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

17.54.303 DEFINITION OF HAZARDOUS WASTE (1) A waste, as defined in ARM 17.54.302, is a hazardous waste if:

(a) Remains the same.

(b) it meets any of the following criteria:

(i)-(ii) Remain the same.

(iii) It is a mixture of any waste and a hazardous waste identified in ARM 17.54.330 through 17.54.333 solely because it exhibits one or more of the characteristics of hazardous waste identified in ARM 17.54.320 through 17.54.324, unless the resultant mixture no longer exhibits any characteristic of hazardous waste identified in ARM 17.54.320 through 17.54.324, or unless the waste is excluded from regulation under ARM 17.54.307(2)(d) and the resultant mixture no longer exhibits any characteristic of hazardous waste identified in ARM 17.54.320 through 17.54.324 for which the hazardous waste identified in ARM 17.54.330 through 17.54.333 was listed. (However, nonwastewater mixtures are still subject to the requirements of ARM 17.54.150, even if they no longer exhibit a characteristic at the point of land disposal.)

(iv) Remains the same.

(2)-(3) Remain the same.

(4)(a) Unless and until it meets the criteria of ~~(4)~~(5) below, a hazardous waste will remain a hazardous waste. Except as otherwise provided in ~~(3)~~(4)(b) of this rule, any waste generated from the treatment, storage or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust or leachate, but not including precipitation runoff, is a hazardous waste. (However, materials that are reclaimed from wastes and that are used beneficially are not wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.)

(b) The following wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste:

(i)-(ii) Remain the same.

(iii) nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062 or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in (f) or (g) of the definition for "industrial furnace" in ARM 17.54.201 or as added to that definition pursuant to (m) of that definition), that are disposed in approved solid waste disposal facilities, provided that these residues meet the generic exclusion levels identified in (A) below for all constituents, and exhibit no characteristics of hazardous waste.

(A) The generic exclusion levels for K061 and K062 nonwastewater HTMR residues are:

Constituent	Maximum for any single composite sample - TCLP (mg/l)	
Antimony	~~0.063~~	0.10
Arsenic	~~0.055~~	0.50
Barium	~~6.3~~	7.6
Beryllium	~~0.0063~~	0.010
Cadmium	~~0.032~~	0.050
Chromium (total)	0.33	
Lead	~~0.095~~	0.15
Mercury	0.009	
Nickel	~~0.63~~	1.0
Selenium	0.16	
Silver	0.30	
Thallium	~~0.013~~	0.020
~~Vanadium~~	~~1.26~~	
Zinc	70	

The generic exclusion levels for F006 nonwastewater HTMR residues are:

Constituent	Maximum for any single composite sample - TCLP (mg/l)
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Cyanide (total) (mg/kg)	1.8
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

(B) Testing requirements ~~for generic exclusion levels~~ must be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues must be collected and analyzed quarterly and/or when the process or operation generating the waste changes. A person claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.

(C) ~~For each shipment of K061 HTMR residues sent to an approved solid waste disposal facility that meets the generic exclusion levels for all constituents, and does not exhibit any characteristic, a notification and certification must be sent to the department.~~ A one-time notification and certification must be placed in the facility's files and sent to the department for K061, K062, or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any

characteristics that are sent to approved solid waste disposal facilities. The notification and certification that is placed in the generator's or treater's files must be updated if the process or operation generating the waste changes or if the solid waste disposal facility receiving the waste changes. However, the generator or treater need only notify the department on an annual basis if such changes occur. Such notification and certification should be sent to the department by the end of the calendar year, but no later than December 31. The notification must include the following information: the name and address of the solid waste disposal facility receiving the waste shipment; the EPA hazardous waste number and treatability group at the initial point of generation; and the treatment standards applicable to the waste at the initial point of generation. The certification must be signed by an authorized representative and must state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

(5) Any waste described in ~~(3)~~(4) above is not a hazardous waste if:

(a)-(b) Remain the same.

(6) Notwithstanding (1)-(5) of this rule and provided the debris as defined in 40 CFR part 268 does not exhibit a characteristic identified at ARM 17.54.330 through 17.54.333, the following materials are not subject to regulation under this chapter:

(a) hazardous debris as defined in 40 CFR part 268 that has been tested using one of the required extraction or destruction technologies specified in Table 1 of 40 CFR 268.45 (a person claiming this exclusion in an enforcement action has the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements); or

(b) debris as defined in 40 CFR 268 that the department, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.

AUTH: 75-10-405, MCA; IMP: 75-10-403, 75-10-405, MCA

17.54.307 EXCLUSIONS (1) The following are not subject to regulation under this chapter:

(a)-(k) Remain the same.

(l) EPA hazardous waste numbers K060, K087, K141, K142, K143, K144, K145, K147 and K148, and any wastes from the coke byproducts processes that are hazardous only because they exhibit the toxicity characteristic specified in ARM 17.54.324, when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or ~~are~~ mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or ~~the~~ tar recovery or refining ~~process,~~ processes, or mixed with coal tar;

(m)-(o) Remain the same.

(2) The following are not subject to regulation under this chapter but may be subject to regulation under the provisions of ARM Title 17, chapter 50:

(a)-(i) Remain the same.

(j) used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use; ~~and~~

(k) non-terne plated used oil filters that are not mixed with wastes listed in ARM 17.54.330 through 17.54.333 if these oil filters have been gravity hot-drained using one of the following methods:

(i)-(iii) Remain the same.

(iv) any other equivalent hot-draining method that will remove used oil~~.~~ ; and

(l) used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(3)-(5) Remain the same.

AUTH: 75-10-405, MCA; IMP: 75-10-403, 75-10-405, MCA

17.54.421 REQUIREMENTS FOR ACCUMULATION OF WASTES AND ACCUMULATION IN SATELLITE LOCATIONS (1)-(3) Remain the same.

(4) During the time that small generators and large generators accumulate hazardous wastes on-site, the following requirements apply:

(a) The waste must be placed in ~~either~~ containers, ~~or~~ tanks or containment buildings, or may be collected on drip pads associated with wood treating operations;

(b)-(f) Remain the same.

(g)(i) Remains the same but renumbered (g)

(A) and (B) remain the same but renumbered (i) and (ii)

~~(ii) In addition, such a generator is exempt from all requirements in 40 CFR Part 265, subpart C (incorporated by reference in ARM 16.44.609) and subchapter 8 of this chapter, except for 265.111 and 265.114.~~

(h) For hazardous waste placed in containment buildings, the generator must comply with subpart DD of 40 CFR part 265 (incorporated by reference in ARM 17.54.609) and must place its professional engineer certification that the building complies with the design standards specified in 40 CFR 265.1101 in the facility's operating record prior to operation of the unit. The owner or operator must maintain the following records at the facility:

(i) a written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that they are consistent with the 90 day limit, and documentation that the procedures are complied with; or

(ii) documentation that the unit is emptied at least once every 90 days.

(i) The generator is exempt from all requirements in 40

CFR Part 265, subpart G (incorporated by reference in ARM 17.54.609) and subchapter 8 of this chapter, except for 265.111 and 265.114, provided that the generator complies with all applicable provisions of this rule.

(5) Remains the same.

AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA

17.54.601 PURPOSE; APPLICABILITY (1) Remains the same.

(2) The requirements of this subchapter, and of 40 CFR 264.552 and 264.553, apply to owners and operators of all facilities which treat, store or dispose of hazardous waste referred to in ARM 17.54.150, and the 40 CFR Part 268 standards incorporated by reference in ARM 17.54.150 are considered material conditions or requirements of the interim status standards of this subchapter.

AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

17.54.609 STANDARDS FOR EXISTING FACILITIES WITH TEMPORARY PERMITS (INTERIM STATUS) (1) A person who receives a temporary permit under ARM 17.54.605 must comply with the standards and requirements in 40 CFR Part 265, subparts B through and including ~~BB~~ DD, excluding subparts H and R and 40 CFR 265.75.

(2)-(4) Remain the same.

(5) The department hereby adopts and incorporates herein by reference 40 CFR Part 265, subparts B through and including ~~BB~~ DD, and excluding subparts H and R and 40 CFR 265.75. The correct CFR edition is listed in ARM 17.54.102. The equivalent of subpart H is set forth in subchapter 8 of this chapter. The equivalent of 40 CFR 265.75 is set forth in ARM 17.54.613. Subparts B through ~~Q~~ DD of 40 CFR Part 265 are federal agency rules setting forth general facility standards (B); requirements for preparedness and prevention (C); requirements for contingency plan and emergency procedures (D); manifest system, recordkeeping and reporting requirements (E); groundwater monitoring requirements (F); closure and post-closure requirements (G); requirements for use and management of containers (I), tanks (J), surface impoundments (K), waste piles (L), land treatment units (M), landfills (N), incinerators (O), thermal treatment units (P), chemical, physical and biological treatment units (Q); requirements for drip pads at wood treating operations (W); air emission standards for process vents (AA); ~~and~~ air emission standards for equipment leaks (BB); and requirements for containment buildings (DD). A copy of 40 CFR Part 265, subparts B through and including ~~BB~~ DD, excluding subparts H and R, or any portion thereof, may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

17.54.610 CHANGES DURING TEMPORARY PERMITTING (INTERIM STATUS) (1) Remains the same.

(2) Except as specifically allowed under this section, changes listed under (1) of the rule may not be made to a facility during interim status which amount to reconstruction of

the facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds 50% of the capital cost of a comparable entirely new facility. If all other requirements are met, the following changes may be made even if they amount to reconstruction:

(a)-(e) Remain the same.

(f) changes to treat or store, in tanks, ~~or~~ containers, or containment buildings, hazardous wastes subject to land disposal restrictions imposed by 40 CFR part 268, provided that such changes are made solely for the purposes of complying with 40 CFR part 268.

(g) Remains the same.

AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

17.54.612 EXCLUSIONS (1) The provisions of this subchapter do not apply to:

(a)-(b) Remain the same.

(c) the owner or operator of a facility managing recyclable materials described in ARM 17.54.309(1)(b) and (c), except to the extent ~~that requirements of this subchapter~~ they are referred to in subchapter 11 of this chapter, in 40 CFR part 279 (incorporated by reference in ARM 17.54.309), or in subparts C, F, or G of 40 CFR Part 266 (incorporated by reference in ARM 17.54.309);

(d)-(k) Remain the same.

AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

17.54.701 PURPOSE (1)-(2) Remain the same.

(3) The standards set forth in this subchapter do not apply to:

(a)-(b) Remain the same.

(c) owners or operators of facilities managing recyclable materials described in ARM 17.54.309(1)(b) ~~and~~, (c) and (d), except to the extent ~~that requirements of this subchapter~~ they are referred to in subchapter 11 of this chapter, in 40 CFR part 279 (incorporated by reference in ARM 17.54.309), or in subparts C, F, or G of 40 CFR Part 266 (incorporated by reference in ARM 17.54.309(5)).

AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

17.54.702 STANDARDS AND REQUIREMENTS FOR PERMITTED FACILITIES (1) Except as provided in ARM 17.54.137, any person who owns or operates a HWM facility must comply with the standards in 40 CFR Part 264, subparts B through and including ~~BB~~ DD, excluding subpart H and 40 CFR 264.75.

(2)-(4) Remain the same.

(5) The department hereby adopts and incorporates herein by reference 40 CFR Part 264, subparts B through and including ~~BB~~ DD, excluding subpart H and 40 CFR 264.75. The correct CFR edition is listed in ARM 17.54.102. The equivalent of subpart H is set forth in subchapter 8 of this chapter. The equivalent of 40 CFR 264.75 is set forth in ARM 17.54.705. Subparts B through ~~BB~~ DD, excluding subpart H, are federal agency rules setting forth, respectively, general facility standards (B); requirements for preparedness and prevention (C); requirements

for contingency plan and emergency procedures (D); manifest system, recordkeeping and reporting requirements (E); groundwater monitoring requirements (F); closure and post-closure requirements (G); requirements for use and management of containers (I), tanks (J), surface impoundments (K), waste piles (L), land treatment units (M), landfills (N), and incinerators (O); requirements for drip pads at wood treating operations (W); corrective action for solid waste management units (S); requirements for miscellaneous units (X); air emission standards for process vents (AA); ~~and~~ air emission standards for equipment leaks (BB); and requirements for containment buildings (DD). A copy of 40 CFR Part 264, subparts B through and including ~~BB~~ DD, excluding subpart H, or any portion thereof, may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

(6) Remains the same.

AUTH: 75-10-405, 75-10-406, MCA; IMP: 75-10-405, 75-10-406, MCA

17.54.802 APPLICABILITY OF FINANCIAL REQUIREMENTS

(1)-(2) Remain the same.

(3) Except as provided in (1) above, the requirements of this subchapter, with respect to post-closure care, apply to owners and operators of:

(a) disposal facilities;

(b) piles and surface impoundments from which the owner or operator intends to remove the wastes at closure, to the extent that these post-closure requirements are made applicable to such facilities in 40 CFR 264.228 and 264.258~~.~~;

(c) tank systems that are required under 40 CFR 264.197 or 265.197 to meet the requirements for landfills~~.~~; and

(d) containment buildings that are required under 40 CFR 264.1102 (incorporated by reference in ARM 17.54.702) to meet the requirements for landfills.

(4) Remains the same.

(5) The department hereby adopts and incorporates herein by reference 40 CFR 264.197, 264.228, 264.258, and 265.197, which are federal agency rules setting forth closure and post-closure care standards for tank systems, and permitted surface impoundments and waste piles. The correct CFR edition is listed in ARM 17.54.102. Copies of 40 CFR 264.197, 264.228, 264.258, and 265.197, may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT, 59620-0901.

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

17.54.803 DEFINITIONS (1) Remains the same.

(2) The following terms are used in the specification for the financial tests for closure, post-closure care, and liability coverage as provided in ARM 17.54.814 and 17.54.823. The definitions are intended to assist in the understanding of these rules and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.

(a)-(h) Remain the same.

(i) "Substantial business relationship" means the extent

of a business relationship necessary under the applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the department.

(i) Remains the same but is renumbered (j).

(3)-(4) Remain the same.

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

17.54.807 COST ESTIMATE FOR FACILITY CLOSURE (1) The owner or operator of a hazardous waste management facility permitted under subchapter 1 of this chapter must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in 40 CFR 264.111 through 264.115 and applicable closure requirements in 40 CFR 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, ~~and~~ 264.601 through 264.603, and 264.1102. The owner or operator of a hazardous waste management facility with a temporary permit (interim status) under subchapter 6 of this chapter must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in 40 CFR 265.111 through 265.115 and applicable closure requirements in 40 CFR 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, ~~and~~ 265.404, and 265.1102.

(a)-(d) Remain the same.

(2)-(5) Remain the same.

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

17.54.823 FINANCIAL ~~TEST AND CORPORATE GUARANTEE~~ ASSURANCE FOR LIABILITY COVERAGE (1) Owners or operators may satisfy the requirements of ARM 17.54.824 and/or 17.54.825 by ~~demonstrating to the department that they meet the financial test for liability coverage set forth at 40 CFR 264.147(f) or the test for a corporate guarantee for liability coverage set forth at 40 CFR 264.147(g).~~ any of the following methods:

(a) demonstrating that the owner or operator meets the financial test for liability coverage set forth at 40 CFR 264.147(f);

(b) demonstrating that the owner or operator meets the test for a guarantee for liability coverage set forth at 40 CFR 264.147(g);

(c) obtaining a letter of credit for liability coverage as set forth at 40 CFR 264.147(h);

(d) obtaining a surety bond for liability coverage set forth at 40 CFR 264.147(i); or

(e) obtaining a trust fund for liability coverage as set forth at 40 CFR 264.147(j).

(2) The department hereby adopts and incorporates herein by reference 40 CFR 264.147(f) ~~and 264.147(g)~~ -(j) which are federal agency rules setting forth ~~minimum financial worth and bond rating~~ criteria by which owners and operators of hazardous

waste management facilities may demonstrate adequate financial assurance for liability for sudden and non-sudden occurrences. The correct CFR edition is listed in ARM 17.54.102. Copies of 40 CFR 264.147(f) ~~and 264.147(g)~~ ~~-(j)~~ may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

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

17.54.824 REQUIREMENTS FOR LIABILITY COVERAGE: SUDDEN OCCURRENCES (1) An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. This liability coverage may be demonstrated in 1 of 3 ways, as specified in (2)~~, (3), and (4)~~ ~~-(6)~~ of this rule.

(2) Remains the same.

(3) ~~Owners~~ An owner or operators may meet the requirements of this rule by demonstrating that ~~they~~ the owner or operator meets the financial test for liability coverage or the test for ~~corporate~~ guarantee for liability coverage, both of which are specified in ARM 17.54.823.

~~(4) An owner or operator may demonstrate the required liability coverage through use of the financial test, corporate guarantee, insurance, a combination of the financial test and insurance, or a combination of the corporate guarantee and insurance as these mechanisms are specified in this subchapter. The amounts of coverage must total at least the minimum amounts required by section (1) of this rule.~~

(4) An owner or operator may meet the requirements of this rule by demonstrating that the owner or operator has obtained a letter of credit, a surety bond or a trust fund for liability coverage, all of which are specified in ARM 17.54.823.

(5) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by (1) of this rule. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this section (5), the owner or operator must specify at least one such assurance as "primary" coverage and must specify other assurances as "excess" coverage.

(6) An owner or operator must notify the department in writing within 30 days whenever:

(a) a claim results in a reduction in the amount of financial assurance for liability coverage provided by a

financial instrument authorized in (2)-(5) of this rule;

(b) a certification of valid claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under (2)-(5) of this rule; or

(c) a final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage or disposal facility is issued against the owner or operator or against an instrument that is providing financial assurance for liability coverage under (2)-(5) of this rule.

AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA

17.54.825 REQUIREMENTS FOR LIABILITY COVERAGE: NON-SUDDEN ACCIDENTAL OCCURRENCES (1) An owner or operator of a hazardous waste management facility which includes one or more surface impoundments, landfills, land treatment units or disposal miscellaneous units, or a group of such hazardous waste management facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by non-sudden accidental occurrences arising from operations of its facility or group of facilities. The owner or operator must have and maintain liability coverage for non-sudden accidental occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs. An owner or operator who must meet the requirements of this rule may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least $4 million per occurrence and $8 million annual aggregate. This liability coverage may be demonstrated ~~in one of three ways,~~ as specified in (2)~~, (3), and (4)~~ -(6) of this rule~~:~~.

(2) Remains the same.

(3) ~~Owners~~ An owner or operators may meet the requirements of this rule by demonstrating that ~~they~~ the owner or operator meets the financial test for liability coverage or the test for a ~~corporate~~ guarantee for liability coverage, both of which are specified in ARM 17.54.823.

(4) ~~An owner or operator may demonstrate the required liability coverage through use of the financial test, corporate guarantee, insurance, a combination of the financial test and insurance, or a combination of the corporate guarantee and insurance as these mechanisms are specified in this subchapter. The amount of coverage must total at least the minimum amounts required by (1) of this rule.~~ An owner or operator may meet the requirements of this rule by demonstrating that the owner or operator has obtained a letter of credit, a surety bond or a

trust fund for liability coverage, all of which are specified in ARM 17.54.823.

(5) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by (1) of this rule. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this section (5), the owner or operator must specify at least one such assurance as "primary" coverage and must specify other assurances as "excess" coverage.

(5) Remains the same but is renumbered (6).

(7) An owner or operator must notify the department in writing within 30 days whenever:

(a) a claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in (2)-(5) of this rule;

(b) a certification of valid claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under (2)-(5) of this rule; or

(c) a final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage or disposal facility is issued against the owner or operator or against an instrument that is providing financial assurance for liability coverage under (2)-(5) of this rule.

AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA

17.54.833 WORDING OF THE INSTRUMENTS (1)-(11) Remain the same.

(12) A letter of credit for liability coverage, as specified in ARM 17.54.824 and 17.54.825, must be worded in strict accordance with 40 CFR 264.151(k).

(13) A surety bond, as specified in ARM 17.54.824 and 17.54.825, must be worded in strict accordance with 40 CFR 264.151(l).

(14) A trust agreement, as specified in ARM 17.54.824 and 17.54.825, must be worded in strict accordance with 40 CFR 264.151(m).

(15) A standby trust agreement, as specified in ARM 17.54.824 and 17.54.825, must be worded in strict accordance with 40 CFR 264.151(n).

~~(12)~~(16) The department hereby adopts and incorporates herein by reference 40 CFR 264.151(a) ~~through and including (j)~~ -(n). The correct CFR edition is listed in ARM 17.54.102. 40 CFR 264.151(a) ~~through and including (j)~~ -(n) are federal agency

rules setting forth, respectively, specific wording for trust agreements and certifications of acknowledgment (a), surety bonds guaranteeing payment into closure and/or post-closure trust funds (b), surety bonds guaranteeing performance of closure and/or post-closure (c), closure and/or post-closure letters of credit (d), closure and/or post-closure certificates of insurance (e), a letter from a company's chief financial officer (f) and (g), a ~~corporate~~ guarantee for closure and/or post-closure care (h)(1), a ~~corporate~~ guarantee for liability coverage (h)(2), liability endorsements (i) ~~and~~, certificates of liability insurance (j), letters of credit for liability coverage (k), surety bonds for liability coverage (l), trust agreements for trust agreements for liability coverage (m), and standby trust agreements for liability coverage (n), which are instruments guaranteeing closure and/or post-closure financial assurance and liability coverage for HWM facilities. A copy of 40 CFR 264.151, subsections (a)-~~(j)~~ (n) may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

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

3. The department is proposing these amendments to the rules because they are necessary to bring state rules in line with federal rules governing the management of hazardous waste and recycled used oil, thereby ensuring that the state continues to have primary authority to administer and enforce state laws and rules governing hazardous waste and recycled used oil management in place of comparable federal standards, as provided in 40 CFR Part 271 and Section 3006 of the Resource Conservation and Recovery Act (42 USC 6926).

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to J. Mark Stahly, Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901, no later than February 9, 1996.

5. J. Mark Stahly has been designated to preside over and conduct the hearing.

Mark A. Simonich, Director

Reviewed by:

John F. North, Rule Reviewer

Certified to the Secretary of State January 2, 1996.

BEFORE THE TRANSPORTATION COMMISSION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of Rules 18.6.202, 18.6.203, 18.6.211 through 18.6.214, 18.6.221, 18.6.231, 18.6.241, 18.6.242, 18.6.244, 18.6.245, 18.6.251 and 18.6.262; the adoption of a new rule; and the repeal of Rules 18.6.201, 18.6.261 and 18.6.271 relating to outdoor advertising regulations	)	NOTICE OF PUBLIC HEARING

TO: All Interested Persons.

1. On Friday, February 23, 1996, at 1:30 p.m. a public hearing will be held in the auditorium of the Department of Transportation building, 2701 Prospect Avenue, Helena, Montana, to consider the amendment of rules 18.6.202, 18.6.203, 18.6.211 through 18.6.214, 18.6.221, 18.6.231, 18.6.241, 18.6.242, 18.6.244, 18.6.245, 18.6.251 and 18.6.262 and the repeal of rules 18.6.201, 18.6.261 and 18.6.271.

2. The rules as proposed to be amended provide as follows (new material underlined, deleted matter interlined):

18.6.202 DEFINITIONS (1) "Advertising device" means any outdoor sign, display, device, figure painting, drawing, message, placard, poster, billboard, structure, or any other contrivance designed, intended, or used to advertise or to give information in the nature of advertising and having the capacity of being visible from the main traveled way of any interstate or federal-aid primary highway. Advertising device is synonymous with sign.

(4) remains the same, but is renumbered (2).

(3) "Federal/state agreement" means the agreement entered into January 27, 1972, by and between the United States of America, represented by the secretary of transportation and the state of Montana, through its department of transportation to promote the reasonable, orderly, and effective display of outdoor advertising while remaining consistent with the national policy to protect the public investment in interstate and primary highways, to promote the safety and recreational value of public travel and to preserve the natural beauty. At a minimum the state of Montana shall implement and carry out the provisions of 23 U.S.C. 131, and the national policy in order to remain eligible to receive the full amount of all federal-aid highway funds apportioned under 23 U.S.C. 104.

(4) "Main traveled way" means the interstate and federal-aid primary highway system on which through traffic is carried.

(5) "Noncommercial sign" means a sign that does not

display a commercial message. For the purpose of this rule, only "welcome to" community and "public service" signs such as D.A.R.E. or ABATE are considered noncommercial. The Montana department of transportation shall make the determination of a noncommercial sign designation on a case-by-case basis.

~~(3)~~(6) "Nonconforming sign" means one which was lawfully erected but which does not comply with the provisions of state law or state regulations passed at a later date, or which ~~later~~ fails to comply with ~~the~~ state law or state regulations due to changed conditions. Illegally erected or maintained signs are not nonconforming signs.

~~(1)~~(7) "Off-premise signs" means all signs which are not on-premise signs as defined in ~~subsection (2)~~(8).

~~(2)~~(8) "On-premise sign" means signs erected on property for the sole purpose of advertising its sale or lease or of advertising an activity conducted on the property. To qualify as an on-premise sign, a sign advertising an activity conducted on the property must be located on the land actually used or occupied by the activity. The extent of the property used for the activity includes its buildings, parking area and incorporated landscaped areas, but does not include vacant land, land used for unrelated activities, or land that is separated by other ownerships or roadways. ~~Boundaries which in the judgment of the commission are fabricated solely to circumvent the intent and purpose of this definition shall be disregarded.~~ Incorporated landscaped areas, parking lots, and access roads shall not be considered to qualify off-premise signs.

(9) "Scenic area" is an area that is designated by the legislature of the state of Montana.

(10) "Sign face" means that portion of the sign structure visible from a single direction of travel and available for advertising. It includes border and trim, but excludes the base or apron, supports, and other structural members. The total area of all sign faces may also be referred to as the "sign area."

(11) "Sign structure" means an advertising device including the sign face, base or apron, supports, and other structural members.

AUTH: 75-15-121 MCA IMP: 75-15-111, 75-15-112, 75-15-113 MCA

18.6.203 UNZONED COMMERCIAL OR INDUSTRIAL ACTIVITY

(1) As clarification of the statutory requirements, the following criteria shall be used to determine whether an activity qualifies an area to be considered unzoned commercial or industrial:

~~(1)~~(a) The permanent buildings or improvements comprising a business used to qualify an area must be located within 660 feet of the right-of-way of an interstate or primary highway.

~~(2)~~(b) The permanent buildings or improvements comprising a business must be clearly visible to the traveling public and be easily recognizable as a commercial or industrial activity.

A commercial activity shall be occupied and open to the public during regularly scheduled hours in excess of 20 hours per week. Industrial activities shall be in operation at least six months a year and provide bonafide products or services. Commercial and industrial activities shall have been in business at least six months prior to being considered as qualifying the area as an unzoned commercial or industrial area. Signs, displays or other devices identifying the business may be considered in the determination of visibility. A business located on what is ~~otherwise~~ primarily used as residential property will not qualify an area as an unzoned commercial or industrial area ~~if only a portion of the building so used is visible~~. Seasonal (but not temporary or transient) activities may be considered as a qualifying activity at the discretion of the department.

(c) Incorporated landscaped areas, parking lots and access roads shall not be considered to qualify off-premise signs.

(d) A maximum of two signs shall be permitted from a qualifying activity, and they shall be located on the same side of the highway as the qualifying activity.

(3) and (4) will remain the same but be redesignated as (e) and (f) respectively.

AUTH: 75-15-121 MCA IMP: 75-15-111 and 75-15-113 MCA

18.6.211 PERMITS ~~(1) Applications for permits may be obtained at any of the department of transportation district offices located in Missoula, Butte, Great Falls, Glendive and Billings.~~

~~(2)~~(1) A permit must be obtained for each sign and the application for the permit must be accompanied by a nonrefundable initial application fee ~~as follows:~~. The application fee is based on the maximum width times the maximum length of the sign face. If the sign has multiple faces, the initial application fee will be determined by the square footage of the largest single sign face.

32 sf or less.....$20
33 sf to 64 sf.....$25
65 sf to 128 sf.....$30
129 sf to 256 sf.....$35
257 sf to 512 sf.....$40
513 sf to 672 sf.....$45

~~(3)~~(2) ~~Permits shall be issued for three (3) years, assigned a permit number and renewed every three (3) years thereafter upon payment of three dollars ($3.00) without the filing of a new application.~~ The initial permit fee shall be 24/36 of the three-year renewal fee plus 1/36 of said renewal fee for each full month remaining in the calendar year following application approval.

~~(4)~~(3) Signs shall be assigned a permit number and given a permanent identification plate that must be attached to the structure and may be renewed every three years thereafter upon payment of a renewal fee as follows:

(a) $15 for signs with a face(s) of 50 square feet or less;

(b) 30 cents per square foot for signs that have face(s) exceeding 51 square feet. If the sign structure has multiple sign faces, the renewal fee is based on the total square footage of the sign area.

(4) and (5) will remain the same.

AUTH: 75-15-121 MCA IMP: 75-15-122 MCA

18.6.212 PERMIT APPLICATIONS - NEW SIGN SITES (1) Applications for permits ~~for the erection of new signs must be accompanied by a photograph, sketch, or scale drawing, showing as~~ must contain a minimum of the following:

~~(a) The tract of land on which the sign will be erected. The proposed site must be tied to some permanent object and show county, highway route and reasonably accurate highway milepost location.~~

~~(b) The distance to and approximate location of other outdoor advertising signs or devices within 1,200 feet of the proposed site.~~

~~(c) If the area is zoned, the current zoning of the land in question and the name of the zoning authority.~~

~~(d) If the area is unzoned, give the name and description of the activity or activities which qualify the area as an unzoned commercial or industrial area and show the relationship of the proposed sign site to the commercial or industrial activity. Unless the sign is on or immediately abutting a commercial or industrial activity or a building or the area actually occupied by the activity or a building or enclosure which houses said activity should be included.~~

(a) name, address, and signature of sign owner and land owner;

(b) location of proposed sign;

(c) acknowledgement of zoning, if any, by local authority;

(d) signature of appropriate zoning authority;

(e) description of structure;

(f) landowner consent.

(2) Applications for permits must be accompanied by the following:

(a) sketch of the area;

(b) non-refundable application fee.

~~(2)~~(3) Applicant shall place a ~~A~~ stake or some other identifying object ~~should be placed~~ at the proposed sign location to assist ~~the~~ department ~~of highways~~ personnel in finding the proposed sign site.

AUTH: 75-15-121 MCA IMP: 75-15-122 MCA

18.6.213 PERMIT ATTACHMENT (1) through (4) will remain the same.

(5) If the original permit plate has been lost or destroyed, a substitute permit plate may be obtained from the department upon ~~presentation of a satisfactory explanation and~~ payment of a ~~three dollar ($3.00)~~ $10.00 fee.

AUTH: 75-15-121 MCA IMP: 75-15-122 MCA

18.6.214 RENEWALS ~~(1) Although the department plans, as a courtesy, to remind sign owners to apply for renewal of permits, failure to issue such notice will not serve to excuse the sign owner from his duty to make proper application for renewal of a permit. Such application, including the required fee and any other information or evidence which may be required must be received by the department at the applicable district office in Billings, Butte, Great Falls, Glendive or Missoula prior to 5:00 p.m. on the first normal business day after the day on which the permit expired.~~ Failure to submit the mandatory sign permit renewal fee within 30 days after expiration of the permit may result in cancellation.
AUTH: 75-15-121 MCA IMP: 75-15-122 MCA

18.6.221 NEW SIGN ERECTION ~~(1) Where the erection of a new sign is not commenced within thirty days after the date of issuance of a permit for said sign, the applicant shall flag or stake the site of the proposed sign to assist the department in verifying the location and to prevent others from applying for a site in the immediate area. The permit may be cancelled if the site has not been flagged as required.~~

(1) The sign owner within 6 months of the date of issuance of the permit will:

(a) erect the sign structure;

(b) attach the permit plate to the sign structure;

(c) attach advertising materials or copy to the sign face;

(d) provide written verification of the sign erection.

~~(2) A permit issued for a new sign will become invalid four months after the date it is issued if the sign has not been erected and the permit has not been affixed to the sign.~~

(3) will remain the same but be renumbered as (2).
AUTH: 75-15-121 MCA IMP: 75-15-122 MCA

18.6.231 SIGN SPACING (1) through (4) will remain the same.

(5) ~~Double faced,~~ Multi-faced, back-to-back, and v-type signs shall be considered as a single sign or structure.

(a) ~~Double faced~~ Multi-faced signs may be positioned side by side on a single structure or stacked vertically on a single structure, and are to be considered as one sign for spacing and permitting purposes.

(5) (b) will remain the same.

(c) ~~V-type signs are two signs in the shape of the letter V or a triangle when viewed from above, with their faces oriented in different directions and located no more than 15 feet apart at their closest point.~~ V-type sign means two signs erected independently of each other with multiple display surfaces having single or multiple messages visible to traffic from opposite directions, with an interior angle between the two signs of not more than 120 degrees and the signs separated by not more than 10 feet at the nearest point.
AUTH: 75-15-121 MCA IMP: 75-15-113 MCA

18.6.241 CHURCH AND SERVICE CLUB SIGNS (1)(a) through (d) will remain the same.

(e) The normal prescribed permit application fee ~~and all other criteria~~ shall apply to church and service club signs. Public forests, public playgrounds and designated scenic areas shall be considered to be a conforming area with respect to the erection of these signs.

(f) will remain the same.

AUTH: 75-15-121 MCA IMP: 75-15-111 MCA

18.6.242 RANCH AND RURAL DIRECTIONAL SIGNS (1) will remain the same.

(2) In cases where ~~ranches~~ operations do not abut the highway, ~~and~~ but have access via a ~~private~~ non-public access road across other ownerships, ~~individual ranch~~ directional signs may be located along this roadway leading to the ~~ranch~~ operation, may bear the ~~official~~ names of the ~~ranch~~ operation or owner, and distance to headquarters, but shall include no advertising. ~~These signs are considered to be on-premise directional signs.~~

(3) Ranch and rural directional signs may only be erected along the federal-aid primary highway system.

(4) The signs shall:

(a) not be erected or maintained within the highway right-of-way;

(b) not be erected or maintained if they exceed 100 square feet in area, including border and trim, but excluding base or apron, supports and other structural members;

(c) not exceed 12 feet in length.

(5) The maximum height of the sign structure, including the sign face, is 30 feet measured at a right angle from the surface of the roadway at the centerline of the primary highway.

(6) A permit must be obtained for each sign accompanied by a nonrefundable application fee as set forth in 18.6.211(1). The renewal fee for the ranch and rural directional signs required by 18.6.211(2) is waived.

AUTH: 75-15-121 MCA IMP: 75-15-111 MCA

18.6.244 CULTURAL SIGNS (1) remains the same.

(a) ~~General~~ ~~—~~The following signs are prohibited:

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

(b) ~~Size.~~

~~(i)~~ No sign shall exceed the following size limits:

~~(A)~~(i) Mmaximum area - 150 square feet.

~~(B)~~(ii) Mmaximum height - 20 feet.

~~(C)~~(iii) Mmaximum length - 20 feet.

(b)(ii) will remain the same but be renumbered (iv).

(c) ~~Lighting~~ ~~—~~Signs may be illuminated, subject to the following:

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

(d) The following ~~S~~spacing requirements must be met:

(i) ~~E~~each location of a cultural sign must be approved by the Montana department of ~~highways~~ transportation.

(ii) through (vii) will remain the same.

(e) ~~Message content~~ The message on cultural signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers, or exit numbers. Descriptive words or phrases and pictorial or photographic representations of the activity or its environs are prohibited.

(f) ~~Qualifying criteria~~ Privately owned activities or attractions eligible for cultural signing are limited to nonprofit historical and arts organizations. To be eligible, privately owned attractions or activities must be nationally or regionally known and of outstanding interest to the traveling public.

(i) The Montana department of ~~highways~~ transportation will make a determination of eligibility for each attraction or activity. In making this determination, the department will, when it is deemed necessary, avail itself of the experience and knowledge of selected groups in the specific type of attraction or activity being considered. These groups shall include, but not be limited to, commissions, boards, other agencies and/or other state departments.

(ii) will remain the same.

(g) A permit must be obtained for each sign accompanied by a nonrefundable application fee as set forth in 18.6.211(1). The renewal fee for cultural signs required by 18.6.211(2) is waived.

AUTH: 75-15-121 MCA IMP: 75-15-111 MCA

18.6.245 NONCOMMERCIAL SIGNS (1) ~~Signs with noncommercial messages are subject to the same criteria as commercial advertising.~~ If a noncommercial sign is located on property of the owner of the sign, it shall be considered to be an on-premise sign and not subject to the provisions of this rule. ~~A person or organization intending to erect a sign with a noncommercial message on property owned by someone else must first obtain a permit for such sign, and the sign must comply with all requirements for off-premise signs under the Outdoor Advertising Act and this subchapter.~~

(2) "Welcome to" community signs shall:

(a) not be erected or maintained that exceed 100 square feet in area, including border and trim, but excluding base or apron, supports and other structural members;

(b) not exceed 12 feet in length;

(c) not exceed 30 feet in height when measured at a right angle from the surface of the roadway at the centerline of the interstate or primary highway;

(d) not exceed more than two signs for each community and may not be located more than one mile from the outer edge of the community.

(3) "Welcome to" community signs may be placed outside of zoned and unzoned commercial or industrial areas, except they may not be placed in public forest, public playgrounds, and designated scenic areas.

(4) "Public service" signs shall:

(a) not be erected or maintained that exceed 32 square feet in area, including border and trim, but excluding base or apron, supports and other structural members;

(b) not exceed 10 feet in length;

(c) not exceed 15 feet in height when measured at a right angle from the surface of the roadway at the centerline of the interstate or primary highway;

(d) not be placed outside of zoned or unzoned commercial or industrial areas.

(5) A permit must be obtained for each sign accompanied by a nonrefundable application fee as set forth in 18.6.211(1). The renewal fee for noncommercial signs required by 18.6.211(2) is waived.

AUTH: 75-15-121 MCA IMP: 75-15-111 MCA

18.6.251 REPAIR OF SIGNS (1) Nonconforming signs and signs in conforming areas which do not meet required size, lighting and spacing criteria, as classified by the department prior to April 21, 1995, may be repaired but only in conformity with the following limitations:

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

(ii) The work ~~is~~ should be accomplished ~~with reasonable promptness~~ within six months or the permit may be canceled.

~~(c) Signs which cannot be re-erected as outlined above are deemed to have been destroyed and their status as a lawful outdoor advertising device ceased at the time of their destruction. Permits for such signs will be cancelled.~~

~~(d) Non-conforming signs, which have been stolen and not recovered, may not be replaced by a new sign.~~

~~(e)~~(c) In no case may the repair, maintenance, or re-erection of nonconforming signs (or signs in conforming areas which do not meet required size, lighting and spacing criteria) result in an increase in the area used to display advertising copy or an increase of height, width, or areas over the height, width or area of the sign when first permitted~~;~~. ~~also, i~~In no case may the repair, maintenance or re-erection of a sign result in a substantial upgrading of the type or value of the sign. ~~For example, a change from wood to steel structure or a change from unilluminated to illuminated would constitute a substantial upgrading.~~ Unlighted signs may not be lighted.

(d) The department shall notify the sign owner of a violation of (c). The department may allow a permittee who has increased the dimensions or has lighted a previously unlighted nonconforming sign a reasonable time to restore the sign as originally permitted. If the dimensions are increased or the sign is lighted a second time, the permit will be immediately canceled by the department.

~~(f) The department shall cancel the permit for any sign which has been maintained in violation of the above limitations and such sign shall be subject to removal as an illegal sign. The department may allow a permittee who has increased the dimensions of a sign in violation of subsection (e) to restore the sign to its original dimensions and then obtain a new permit for the restored sign. If the dimensions of the sign are~~

~~increased a second time, the permit will be immediately canceled by the department.~~

(2) Nonconforming signs classified by the department after April 21, 1995:

(a) may be maintained each year if the value of the materials used in the maintenance does not exceed 75 percent of the value of the materials required to replace the sign new; and

(b) may be replaced, if damaged, at up to and including 100 percent of its replacement cost.

~~(2)~~(3) ~~Conforming Signs.~~ The limitations set forth in (1) and (2) above are not intended to apply to conforming signs; however, repair or reconstruction of a sign which results in a change in the height, width or area of more than ten percent from that shown on the last approved permit application, or which changes the number or position of the facings, ~~is deemed to constitute the erection of a new sign for which a new permit will be required~~ will require revision of the existing permit and will be charged the appropriate additional fees. Failure to obtain a revised permit prior to performing the upgrade may result in cancellation of the permit. AUTH: 75-15-121 MCA IMP: 75-15-111 and 75-15-113 MCA

18.6.262 ~~BLANK SIGNS~~ SIGN STRUCTURES THAT ARE BLANK, ABANDONED OR IN DISREPAIR (1) Sign structures that have no face or have faces with less than 25 percent advertising copy shall be considered blank. Copy advertising the space for rent or lease shall not be considered advertising.

(2) Sign structures are considered abandoned if the sign structure:

(a) has not been erected.

(b) has been removed, and

(c) the sign owner fails to pay the appropriate sign fees.

(3) The department may determine a sign structure is in disrepair if it is unsafe, unreadable or not visible to the travelling public.

~~(1)~~(4) When a sign ~~face~~ structure has been blank, abandoned, or ~~painted out~~ in disrepair for a period of six continuous months, the permit may be canceled. Any future advertising affixed to the structure must have a new permit, be conforming, and be approved, as would any new sign.
AUTH: 75-15-121 MCA IMP: 75-15-111 and 75-15-113 MCA

3. The Department proposes to adopt the following new rule:

RULE I POLITICAL SIGNS (1) Signs promoting political candidates or issues shall:

(a) not be erected or maintained within the highway right-of-way.

(b) not be erected or maintained prior to 90 days before the applicable election.

(c) be removed within 30 days following the applicable election.

(2) Political signs are not subject to the permit fees set forth in 18.6.211.
AUTH: 75-15-121 MCA IMP: 75-15-111 MCA

4. The rules which the Department proposes to repeal are as follows:

18.6.201 REGULATIONS - SUPPLEMENTARY, 18.6.261 POLES and 18.6.271 OUTDOOR ADVERTISING REGULATIONS TO APPLY TO RECENTLY DESIGNATED PRIMARY ROUTES found at pages 18-139 and 18-147 through 18-148 of the Administrative Rules of Montana.
AUTH: 75-15-121, MCA; IMP: 75-15-121, MCA

5. The proposed amendments to the existing rules and the new rule are necessary because the 1995 Legislature enacted Chapter 510 requiring the Department of Transportation to make changes to the outdoor advertising program. Further, the rules that the Department has operated under for outdoor advertising were enacted in 1975 and were one of the first areas of rulemaking that the Department undertook. As a result, those rules were not always well written, and in some cases simply did not accomplish what they were intended to do. There were only a few minor amendments in 1986. Chapter 510 requires a new definition for "unzoned or commercial area." Since the effective date of the Act, April 21, 1995, the law now only allows two signs on one side of the highway in any unzoned or commercial area. Further, the new legislation directed the Department to establish by rule the permit system in rules 18.6.211 and 18.6.212. Also, the new legislation requires an amendment to rule 18.6.251 dealing with the repair of signs because now another grandfathered classification of signs in unzoned commercial or industrial areas has been created.

The amendments to the other 12 existing rules are required because of concerns that the Department has had in interpreting and enforcing the outdoor advertising program. These rules need to be updated because of the vague manner in which they presently exist. The Department has experienced problems of interpretation in several contested cases concerning the 12 existing rules. A committee of Department employees who are involved in outdoor advertising control was appointed to review and make suggested amendments to these rules.

New rule I for political signs is an attempt to give direction to the public during election campaigns as to what type of signs are permissible. While technically they are off-premise outdoor advertising and, therefore, controllable, there are several court decisions by the United States Supreme Court and the State of California that indicate that political signs are free speech and may not be regulated any more restrictively than commercial messages. In order to come up with a workable program, this rule has been drafted.

The Department also intends to repeal rules 18.6.201, 18.6.261 and 18.6.271 as no longer being required as they are merely restatements of what is in the existing Montana Code Annotated and are not necessary.

6. Interested persons may present their data, views or arguments concerning the proposed rules, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Richard Munger, Outdoor Advertising Coordinator, Department of Transportation, Public Affairs, P.O. Box 201001, Helena, Montana 59620-1001, and must be received no later than February 23, 1996.

7. Kim Kradolfer, Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

MONTANA TRANSPORTATION COMMISSION

By: _____
THORM FORSETH, Chairman

_____
Lyle Manley, Rule Reviewer

Certified to the Secretary of State January 2, 1996.

BEFORE THE OFFICE OF THE WORKERS' COMPENSATION JUDGE
OF THE STATE OF MONTANA

In the matter of the amendment, and adoption of procedural rules.	)))	NOTICE OF PROPOSED AMENDMENT OF RULES ARM 24.5.316, 24.5.318, 24.5.324, 24.5.336, 24.5.343, 24.5.348, 24.5.350 and PROPOSED ADOPTION OF NEW RULES I AND II. NO PUBLIC HEARING IS CONTEMPLATED.

TO: All Interested Persons.

1. On February 10, 1996, the Office of the Workers' Compensation Judge proposes to amend and adopt new procedural rules of the Court.

2. The proposed rules to be amended provide as follows: (deleted matter interlined, new matter underlined)

24.5.316 MOTIONS (1) Unless a different time is specified in these rules, the time for filing any motion to amend a pleading, to dismiss, to quash, for summary ~~ruling~~ judgment, to compel, for a protective order, in limine, or for other relief shall be fixed by the court in a scheduling or other order.

(2) Remains the same.

(3) Every motion shall be in writing and accompanied by a supporting brief. The brief may be accompanied by appropriate supporting documents and affidavits. An adverse party shall file an answer brief, which ~~may also~~ shall be accompanied by appropriate documents and affidavits, within 10 days. Within 5 days thereafter the moving party may file a reply brief. The filing deadlines set in this rule may be changed by order of the court. In addition to the requirements set forth in this rule, a party filing a motion for summary judgment under [New Rule II] as well as a party opposing that motion, shall comply with the requirements of that rule.

(4) through (8) remain the same.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

RATIONALE: The changes bring this rule into line with Proposed New Rule II regarding summary judgment motions.

24.5.318 PRETRIAL CONFERENCE AND ORDER (1) through (6) remain the same.

(7) All exhibits which will be offered at trial shall be ~~numbered consecutively using numbers and shall be~~ provided to

the court at the time of the pretrial conference. The exhibits shall be bound or in a three-ring notebook. The exhibits shall be tabbed and numbered consecutively. All pages within an exhibit shall be numbered beginning with 1.

(8) Remains the same.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

RATIONALE: To further clarify the court's requirements for the presentation of exhibits. This will make reference to exhibits quicker and easier.

24.5.324 REQUEST FOR PRODUCTION (1) A party may serve upon an adverse party with the petition or at any time after the service of a petition a request for production. Where a party wishes to serve a request for production with the petition, the party shall furnish sufficient copies to the court for service with the petition. The request may be:

(a) and (b) remain the same.

(2) through (7) remain the same.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

RATIONALE: To defray the cost of copying documents when a party requests that the court make service.

24.5.336 FINDINGS OF FACT AND CONCLUSIONS OF LAW AND BRIEFS (1)through (3) remain the same.

(4) Briefs and findings of fact and conclusions of law may not be filed after the due date except by ~~stipulation of the parties or~~ leave of court.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

RATIONALE: This will enable the court to control the submission of a case, thus managing its time most efficiently.

24.5.343 ATTORNEY FEES (1) In those cases where the claimant is awarded attorney fees pursuant to ~~section~~ 39-71-611 or 39-71-612, MCA, the court will indicate in its findings of fact and conclusions of law the basis for the award of reasonable ~~costs and~~ attorney fees, but the court will not determine the amount of the award until after the appeal period for its final decision has passed or after affirmation of its final decision on appeal, unless pursuant to ARM 24.5.348(2), the final decision is not certified as final.

(2) The court will determine and award reasonable ~~costs and~~ attorney fees in the following manner.

(a) Within 20 days following the expiration of the appeal period or ~~affirmation~~ remittitur on appeal of the court's final decision, or within 20 days after filing of the court's decision which pursuant to ARM 24.5.348(2) holds that the decision is not certified as final, claimant's attorney shall file with the

court a claim for ~~reasonable costs and~~ attorney fees which shall contain the following:

(i) a verified copy of the attorney fee agreement with the claimant,

~~(ii) a listing of the costs claimed;~~

(iii) and (iv) remain the same, but are renumbered (ii) and (iii).

(b) Within 20 days following the service of a claim for ~~costs and~~ attorney fees, any party to the dispute may file an objection to the reasonableness of the ~~claimed costs and~~ fees, specifically identifying the objectionable portions of the claim and stating the reasons for the objection. General allegations to the effect that the award is unreasonable shall not be sufficient.

(c) If an objection is made to the reasonableness of the ~~costs and~~ attorney fee claim, any party may request an evidentiary hearing, stating specifically the reasons a hearing is needed. The request for hearing must be made at the same time an objection is filed if by the objecting party, or within 10 days of the filing of the objection if requested by claimant's attorney.

(d) The court will determine if an evidentiary hearing is required. If a hearing is deemed necessary, it will be scheduled at the court's earliest convenience and the court will issue its decision following the hearing. Evidentiary hearings will generally be set in Helena unless good cause to the contrary can be demonstrated by a party. If the court determines that no hearing is necessary, the court will determine ~~costs and~~ attorney fees based on the claim and objections. No additional pleadings will be allowed unless requested by the court.

(e) The court's determination of reasonable ~~costs and~~ attorney fees is a final decision for the purposes of appeal.
AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

RATIONALE: With the adoption of a RULE I, TAXATION OF COSTS it is necessary to amend and clarify this rule by deleting reference to costs. This will prevent confusion regarding deadlines and procedure. We changed the word affirmation to remittitur for clarification.

24.5.348 CERTIFICATION OF DECISIONS, APPEALS TO SUPREME COURT (1) Appeals from the workers' compensation court shall be as in the case of an appeal from a district court as provided in Rule 72, Mont.R.Civ.P.~~, except that it shall not be necessary for the clerk of court to issue a notice of entry of judgment.~~

(2) The court's final certification for the purposes of appeal shall be considered as a notice of entry of judgment.

(2) through (3) remain the same, but are renumbered (3) and (4).

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

RATIONALE: This will clarify the court's practice of not issuing a separate notice of entry of judgment, instead relying on the certification for the purposes of appeal. The certification appears in the findings of fact and conclusions of law and judgment. The amendment will eliminate confusion as to whether parties are required to serve their own notice of entry of judgment; they are not.

24.5.350 APPEALS TO WORKERS' COMPENSATION COURT UNDER TITLE 39, CHAPTERS 71 AND 72 (1) through (3) remain the same.

(4) Any party to an appeal may request oral argument on the matters raised in the appeal. A request for oral argument must be made by the time specified for the last brief. Failure to timely request oral argument is deemed to be a waiver of the right to an oral argument.

~~(4)~~ (5) ~~Because of the overriding concern in a workers' compensation case to render a prompt decision, especially in matters concerning the payment of a worker's biweekly compensation benefits, and because of the time delays inherent in remanding a case to the department to hear additional evidence, the provisions of section 2-4-703, MCA, are not appropriate in workers' compensation court proceedings within the meaning of section 39-71-2903, MCA. In lieu thereof, if a motion is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material, and that there were good reasons for failure to present it in the proceedings before the department, the court may order that the additional evidence be presented to the court.~~ A motion for leave to present additional evidence must be filed no later than the time set for the last brief or, if oral argument is timely requested, then no later than the day before the argument. If the motion is granted, the court will remand the matter to the department of labor and industry for further hearing.

(5) and (6) remain the same, but will be renumbered (6) and (7).

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 2-4-703 and 39-71-2901 MCA

RATIONALE: The proposed amendments are reasonably necessary to provide a party with a right to oral argument in cases where the court sits in its appellate role. The court has concluded from recent matters arising before it that the lack of such a rule hinders the proper administration of justice. The proposed amendments also provide that if additional evidence is to be offered, the matter will be remanded to the Department of Labor

and Industry for an evidentiary hearing. The proposed amendment makes the court's rule consistent with the provisions of section 2-4-703, MCA.

3. The proposed new rules follow:

RULE I - TAXATION OF COSTS (1) Unless otherwise ordered by the court, within 10 days after the entry of a judgment allowing costs, a prevailing claimant shall serve on the parties against whom costs are to be allowed an application for taxation of costs. The application must be filed with the court.

(2) The application for taxation of costs must be signed by the attorney for the claimant, or the claimant personally, if appearing pro sé. The signature on the application is a certification by the person signing the application of the accuracy of the costs claimed and that the costs incurred were reasonable and necessary to the case.

(3) The court will allow reasonable costs. The reasonableness of a given item of cost claimed is judged in light of the facts and circumstances of the case, and the issues upon which the claimant prevailed.

(4) The following are examples of costs that are generally found to be reasonable:

(a) deposition costs (reporter's fee and transcription cost), if the deposition is filed with the court;

(b) witness fees and mileage, as allowed by statute, for non-party fact witnesses;

(c) expert witness fees, including reasonable preparation time, for testimony either at deposition or at trial, but not at both;

(d) travel and lodging expenses of counsel for attending depositions;

(e) fees and expenses necessary for perpetuation or presentation of evidence offered at trial, such as recording, videotaping or photographing exhibits;

(f) documented photocopy expenses;

(g) documented long-distance telephone expenses; and

(h) documented postage expenses.

(5) The following are examples of costs that are generally found not to be reasonable:

(a) trial transcripts ordered by the parties prior to any appeal;

(b) secretarial time; and

(c) items of ordinary office overhead not typically billed to clients.

(6) Items of cost not specifically listed in this rule may be awarded by the court, in accordance with the principles in (3).

(7) An insurer may make specific objection to any item of costs claimed within 10 days of the service of the application.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

RATIONALE: The Supreme Court in *Kloepfer v. Bechtel Construction Co.*, 52 St. Rep. 633 (1995) expressly overruled its prior decision in *Baeta v. Don Tripp Trucking*, 254 Mont. 487 (1992) which held that workers' compensation cases were governed by section 25-10-201, MCA. The court held that costs payable in a workers' compensation case are not necessarily comparable to the standard applied in district court cases and that reasonable costs are those which the workers' compensation court has historically awarded. The rules committee of the court, which consists of members of both the claimants' and defense bar, met in September 1995 and discussed adoption of a rule governing costs. There was a consensus that costs which were ordinarily billed to a client should be recoverable. Discussed at the rules meeting were all of the items included in this rule except postage. We have added documented postage as a recoverable cost as it also is typically billed to the client. This rule should provide the parties with specific information regarding what costs a claimant can recover if successful before the court. This will decrease the number of disputes before the court.

RULE II - SUMMARY JUDGMENT (1)(a) A party may, at any time after the filing of a petition for hearing, move for a summary judgment in the party's favor upon all or any part of a claim or defense. The time for filing shall be fixed by the court as provided by ARM 24.5.316(1).

(b) Because cases in the workers' compensation court are heard on an expedited basis, a motion for summary judgment may delay trial without any corresponding economies. The time and effort involved in preparing briefs and resolving the motion may be as great or greater than that expended in resolving the disputed issues by trial. For these reasons, summary judgment motions typically will be disfavored. The court may decline to consider individual summary judgment motions where it concludes that the issues may be resolved as expeditiously by trial as by motion.

(c) If upon the filing of a motion for summary judgment, the party against whom the motion is directed believes that summary judgment is inappropriate for the reasons set forth in (1)(b) above, that party shall immediately notify the court and arrange for a telephone conference between the court and counsel. The court will determine after the conference whether further briefing and proceedings are appropriate.

(2) Subject to the other provisions of this rule, summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and responses to requests for production, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

(3) Any party filing a motion under this rule shall include in its brief a statement of uncontroverted facts, which shall set forth in full the specific facts on which the party relies in support of the motion. The specific facts shall be set forth in serial fashion and not in narrative form. As to each fact, the statement shall refer to a specific pleading, affidavit, or other document where the fact may be found. Any party opposing a motion filed under this rule shall include in their opposition a brief statement of genuine issues, setting forth the specific facts which the opposing party asserts establish a genuine issue of material fact precluding summary judgment in favor of the moving party.

(4) If the movant and the party opposing the motion agree that there is no genuine issue of any material fact, they shall jointly file a stipulation with the court setting forth a statement of stipulated facts. This stipulation shall be prepared and filed in lieu of the statements required by (3) of this rule.

(5) If either party desires a hearing on the motion, a request must be made in writing no later than the time specified for the filing of the last brief. The court will thereupon set a time and place for hearing. If no request for hearing is made, any right to hearing afforded by these rules will be deemed waived. The court may order a hearing on its own motion.

(6) If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court, by examining the pleadings and the evidence before it, and in its discretion, by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(7) Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to discovery, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse

party does not so respond, summary judgment, if appropriate, may be entered against the adverse party.

(8) Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(9) Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

RATIONALE: The court has indicated in the past that it will generally follow the provisions of Rule 56, Montana Rules of Civil Procedure, with respect to a motion for summary judgment. Recent decisions by the court on the subject of summary judgment suggest that the time has come for a specific rule so that parties are aware in advance of its general intentions as to how such motions will be treated.

Sections (1)(a), (2), (6), (7), (8) and (9) are adapted from the provisions of Rule 56, Montana Rules of Civil Procedure. Sections (3) and (4) are adapted from the Montana United States District Court Local Rule 220-4, for the purpose of simplifying the court's task when considering a motion.

Section (1)(b) states the court's general belief that summary judgment may not be appropriate in certain instances, regardless of whether any party to the case might be otherwise entitled to the requested relief. The language is taken from *ANR Freight Systems, Inc. v. Garrett Freight Lines,* ORDER DENYING SUMMARY JUDGMENT (January 28, 1995). Section (1)(c) provides for speedy consideration of whether a summary judgment motion will even be considered.

Section (5) gives the parties the opportunity to request a hearing, and provides for waiver of that opportunity.

4. It is reasonably necessary to amend and adopt the rules proposed in order for the Workers' Compensation Court to properly and timely decide and hear cases. In addition, the rules committee of the Court has reviewed and agreed to the rule changes.

5. Interested parties may submit their data, views or arguments concerning these changes in writing to Workers' Compensation Court, 1625 Eleventh Avenue, P.O. Box 537, Helena, MT 59624-0537 on or before February 8, 1996.

6. If a person who is directly affected by the proposed adoption wishes to express data, views and arguments orally or in writing at a public hearing, she/he must make written request for a hearing and submit this request along with any written comments she/he has to the Workers' Compensation Court, 1625 Eleventh Avenue, P.O. Box 537, Helena, MT 59624-0537, no later than February 8, 1996.

7. If the agency receives requests for a public hearing on the proposed rules from 25 persons or 10%, which ever is less, of the persons who are directly affected by the proposed rules, from the Administrative Code Committee of the legislature, or from a governmental subdivision or agency, or from another association not having less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than twenty-five.

MIKE McCARTER
JUDGE

CLARICE V. BECK
Hearing Examiner - Rule Reviewer

CERTIFIED TO THE SECRETARY OF STATE: January 2, 1996
DATE

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the repeal of Rule 36.11.102 pertaining to Christmas tree cutting, Rules 36.11.201 through 36.11.204, and 36.11.211, pertaining to control of timber slash and debris	)))))	NOTICE OF PROPOSED REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On February 12, 1996, the Department of Natural Resources and Conservation proposes to repeal Rule 36.11.102 pertaining to Christmas tree cutting, Rules 36.11.201 through 36.11.204, and Rule 36.11.211 pertaining to control of timber slash and debris.

2. The rules proposed to be repealed are on pages 36-1412, 36-1425 through 36-1427 of the Administrative Rules of Montana.

AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

3. The proposed repealed rules are not necessary for the functioning of the reorganized Department of Natural Resources and Conservation and are being deleted pursuant to HJR-5 (1995).

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Don MacIntyre, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, Montana 59620-1601. Any comments must be received no later than February 8, 1996.

5. If a person who is directly affected by the proposed repeal wishes to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Don MacIntyre, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT 59620-1601. The comments must be received on or before February 8, 1996.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly

affected has been determined to be greater than 25 based on the number of users of state forest lands.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

ARTHUR R. CLINCH, DIRECTOR

DONALD D. MacINTYRE, REVIEWER

Certified to the Secretary of State January 2, 1996.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT to ARM 42.15.401 and ADOPTION of RULE I, II, III and IV relating to Medical Savings Account	)NOTICE OF THE PROPOSED AMENDMENT)of ARM 42.15.401 and ADOPTION)of RULE I, II, III, IV))NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On February 23, 1996, the Department of Revenue proposes to amend ARM 42.15.401 and adopt rules I, II, III and IV relating to medical savings account.

2. The amendment to ARM 42.15.401 is as follows:

42.15.401 DEFINITIONS (1) "Account administrator" means any person, partnership, limited liability company, limited liability partnership or corporation that acts as a third party fiduciary to administer a medical savings account.

~~(1)~~ (2) ~~The word~~ "aAncestor" shall mean a lineal ancestor and a collateral ancestor if related by blood.

~~(2)~~ (3) ~~The term~~ "eChild" means a son, stepson, daughter, stepdaughter, or legally adopted son or daughter of the taxpayer.

(4) "Department" means the Department of Revenue.

~~(3)~~ (5) ~~The term~~ "dDependent" means any individual listed in 15-30-113, MCA, as amended, over one-half of whose support for the calendar year in which the taxable year of the taxpayer begins was received from the taxpayer. In determining whether or not an individual received for a given calendar year over one-half of his support from the taxpayer, there shall be taken into account the amount of support received from the taxpayer as compared to the entire amount of support the individual received from all sources, including support which the individual himself supplied. The term "support" includes food, shelter, clothing, medical and dental care, education, and the like. Generally, the amount of an item of support will be the amount of expense incurred by the one furnishing such item. However, if the item of support furnished is in the form of property or lodging, it will be necessary to measure the amount of such item in terms of its fair market value.

~~(4)~~ (6) ~~The word~~ "dDescendant" shall mean a lineal descendant and a collateral descendant related by blood.

~~(5)~~ (7) ~~The term~~ "eEducational institution" means a school maintaining a regular faculty and established curriculum and having an organized body of students in attendance. It includes primary and secondary schools, colleges, universities, normal schools, technical schools, mechanical schools, and similar institutions. It does not include noneducational institutions,

on-the-job training, correspondence schools, night schools, etc.

~~(6)~~ (8) ~~The word~~ "~~h~~Household" shall mean a family living together.

(9) "Last business day" means the last business day of the calendar year.

~~(7)~~ (10) ~~The term~~ "~~s~~Student" means an individual who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins is a full-time student at an educational institution or is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. A full-time student is one who is enrolled for some part of 5 calendar months for the number of hours or courses which is considered to be full-time attendance. The 5 calendar months need not be consecutive. School attendance exclusively at night does not constitute full-time attendance.

AUTH: Sec. 15-30-305 MCA; IMP, Sec. 15-30-112 and 15-61-201 MCA.

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

RULE I MEDICAL SAVINGS ACCOUNT ADMINISTRATOR REGISTRATION (1) Every account administrator is required to register on a form provided by the department.

(2) Every person, partnership, limited liability company, limited liability partnership and corporation that acts as a third party fiduciary to administer a medical savings account from which the payment of eligible medical claims are made is required to register on a form provided by the department.

(3) The registration form must contain:

(a) the name, address, identification number of the entity and the names of the owners or officers for a business; or

(b) the name, address, and social security number for a sole proprietorship or partnership.

(4) The account administrator number will be:

(a) the federal employer identification number for a business; and

(b) the social security number of the owner for a sole proprietor or partnership.

(5) Nonregistration does not relieve an account administrator from being responsible for reporting, withholding, and the remitting of penalties.

(6) Nothing in these rules should be construed as to exempt an account administrator from the applicable requirements of Title 33, MCA.

AUTH: Sec. 15-30-305 MCA; IMP: 15-61-201 MCA.

RULE II MEDICAL SAVINGS ACCOUNT ADMINISTRATOR REPORTING AND PAYMENTS (1) Every account administrator is required to annually submit the following information regarding each medical savings account: the name of the account holder, the address of

the account holder, the taxpayer identification number of the account holder, deposits made during the tax year by the account holder, amount of withdrawals made during the tax year by the account holder, dates of any withdrawals, interest earned on the proceeds of the medical savings account and the amount of penalties withheld and remitted.

(2) Both the contributions and any interest earned on the account of a medical savings account are to be segregated by the account administrator from all other accounts.

(3) Any year end reporting of interest earned to the taxing authorities and to the account holder of interest earned must be done so that any interest earned on that account can be separately identified.

(4) On or before January 31, an account administrator must file the information required under subsection (1) on forms provided by or authorized by the department.

(5) Account administrators who withhold penalties on monies used for items other than eligible medical expenses or long term care expenses must submit the penalties to the department.

(a) Account administrators must remit the penalties monthly when the total amount of penalties exceed $500.

(b) Account administrators whose total penalties withheld during the calender year are less than $500 must remit the penalties annually to the department.

(6) Failure to remit any withheld penalties within the time provided is considered to be an illegal conversion of trust money. Penalties provided in 15-30-321, MCA, apply to any violation of the requirement to collect, truthfully account for, and pay amounts required to be withheld from ineligible withdrawals of the account holder.

AUTH: Sec. 15-30-305 MCA; IMP: 15-61-204 MCA.

RULE III MEDICAL SAVINGS ACCOUNT - WITHDRAWALS (1) The funds held in a medical savings account may be withdrawn by the account holder at any time for eligible medical expenses. Withdrawals for the purpose of paying eligible medical expenses shall not be subject to the 10% penalty.

(2) Requests made by account holders for withdrawals to pay for eligible medical expenses must be supported by copies of eligible medical expenses that were either paid or charged by the account holder. An eligible medical expense means any medical expense that is deductible for purposes of section 213(d) of the Internal Revenue Code.

(3) The burden of proving that a withdrawal from a medical savings account was made for an eligible medical expense is upon the account holder and not upon the account administrator.

(4) There shall be a penalty for withdrawal of funds by the account holder for purposes other than the payment of eligible medical expenses. The penalty shall be ten percent (10%) of the amount of the withdrawal from the account and, in addition, the amount withdrawn shall be taxed as ordinary

income.

(5) The direct transfer of funds from a medical savings account to a medical savings account with a different account administrator shall not be considered a withdrawal for purposes of this rule.

(6) Withdrawals made on the last business day are not subject to the ten percent (10%) penalty but shall be taxed as ordinary income.

(7) Except as provided in (8) all payments made from a medical account must be made payable to the account holder or to their estate.

(8) If an agreement exists between the account holder, account administrator and the payee, withdrawals for eligible medical expenses can be done electronically.

AUTH: Sec. 15-30-305 MCA; IMP: 15-61-203 MCA.

RULE IV INDIVIDUAL LIABILITY (1) If a corporate account administrator, limited liability company or a limited partnership fails to withhold or fails to remit any penalties withheld to the department as required, the officers and owners are individually responsible for the penalties.

(2) In the case of a bankruptcy by an account administrator, the liability for the penalties remain unaffected and the individual or owners remain liable for the amount of penalties withheld but unpaid.

AUTH: Sec. 15-30-305 MCA; IMP: 15-61-203 MCA.

4. The amendments to ARM 42.15.401 are housekeeping. The new rules are necessary because House Bill 560 of the 1995 Legislature enacted a medical savings deduction in arriving at a taxpayer's Montana adjusted gross income. In order to be eligible for this deduction a person is required to deposit monies with a third party, an account administrator. These proposed rules outline the administrative framework for implementing medical care savings accounts.

Rule I provides the registration requirements of an account administrator while Rule II provides the reporting, paying and penalty requirements of the account administrator. The rules provide protection for the taxpayer's money by making sure that before a person is approved as an account administrator, they are required to register with the department. The rules also provide recourse against them if they do not remit monies to the department when required.

Rule III states withdrawals of funds from the account by taxpayers are subject to a 10% penalty if they are for anything other than eligible medical expenses. An exception to this is that a person can withdraw funds from an account on the last business day of the month. The rule is necessary to show that the withdrawal is for eligible medical expenses.

Rule IV addresses the problem of individual liability for the penalties and withholding of an account administrator who is a corporation, limited liability company or limited partnership.

The rule provides responsibility to a specific person in the company for liable of any monies owed to the State.

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

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

no later than February 9, 1996.

6. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than February 9, 1996.

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

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State January 2, 1996

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL of ARM 42.11.103, 42.11.302, 42.11.303, 42.11.304, 42.11.408, and 42.11.427 relating to Liquor Privatization Rules) NOTICE OF PROPOSED REPEAL) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On February 23, 1996, the Department of Revenue proposes to repeal ARM 42.11.103, 42.11.302, 42.11.303, 42.11.304, 42.11.408 and 42.11.427 relating to privatization rules.

2. The department proposes to repeal the following rules:

42.11.103 REPLACEMENT OF DEFECTIVE LIQUORS found on page 42-1105 of the Administrative Rules of Montana.
AUTH: Sec. 16-1-303 MCA; IMP: Sec. 16-3-103 MCA.

42.11.302 CONVERSION TO AGENCY STORE found on page 42-1153 of the Administrative Rules of Montana.
AUTH: Sec. 16-1-303 MCA; IMP: Sec. 16-2-101 MCA.

42.11.303 SELECTION OF AGENT found on page 42-1154 of the Administrative Rules of Montana.
AUTH: Sec. 16-1-303 MCA; IMP: Sec. 16-2-101 MCA.

42.11.304 CLOSURE OF A STATE LIQUOR STORE found on page 42-1155 of the Administrative Rules of Montana.
AUTH: Sec. 16-1-303 MCA; IMP: Sec. 16-2-101 MCA.

42.11.408 PRODUCT APPROVAL PROCEDURES found on page 42-1170 of the Administrative Rules of Montana.
AUTH: Sec. 16-1-303 MCA; IMP: Secs. 16-1-103, 16-1-104 and 16-1-302 MCA.

42.11.427 BAILMENT TRANSITION RULE found on page 42-1175 of the Administrative Rules of Montana.
AUTH: Sec. 16-1-303, MCA; IMP: Secs. 16-1-103, 16-1-104 and 16-1-302, MCA.

3. The department is proposing to repeal ARM 42.11.103, 42.11.302, 42.11.303, 42.11.304, and 42.11.408 because the privatization of state liquor stores which requires liquor agents to own the inventory they sell supersedes these rules. This law was enacted through House Bill 574 of the 1995

Legislature. The department is proposing to repeal ARM 42.11.427 because when bailment warehousing was implemented in 1990 a transition from the former warehousing requirements to the new was needed. The transition period is long past and the transition rule is no longer necessary.

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

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

no later than February 9, 1996.

5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than February 9, 1996.

6. If the agency receives requests for a public hearing on the proposed action 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 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 greater than 25.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State December 28, 1995

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL of ARM 42.23.111, 42.23.203, 42.23.416, 42.23.417, 42.23.602, 42.23.604, 42.24.101, 42.24.107, 42.24.108, 42.24.122, 42.24.201 relating to General and Special Provisions for Corporation License Tax) NOTICE OF THE PROPOSED REPEAL) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On February 23, 1996, the Department of Revenue proposes to repeal ARM 42.23.111, 42.23.203, 42.23.416, 42.23.417, 42.23.602, 42.23.604, 42.24.101, 42.24.107, 42.24.108, 42.24.122, and 42.24.201 relating to general and special provisions for corporation license tax.

2. The Department proposes to repeal the following rules:

42.23.111 FEDERAL OBLIGATION INTEREST found at page 42-2308 of the Administrative Rules of Montana.
AUTH: Sec. 15-31-501 MCA; IMP, Secs. 15-31-113, 15-31-114, and 15-31-116 MCA.

42.23.203 CHANGE OF ACCOUNTING PERIOD found at page 42-2313 of the Administrative Rules of Montana.
AUTH: Sec. 15-31-501 MCA; IMP: Sec. 15-31-112 MCA.

42.23.416 ADJUSTMENT OF ALLOWABLE DEDUCTIONS found at page 42-2337 of the Administrative Rules of Montana.
AUTH: Sec. 15-31-501 MCA; IMP: Sec. 15-31-116 MCA.

42.23.417 COMPUTATION OF ADJUSTMENT found at page 42-2337 of the Administrative Rules of Montana.
AUTH: Sec. 15-31-501 MCA; IMP: Sec. 15-31-116 MCA.

42.23.602 OVERDUE TAXES found at page 42-2371 of the Administrative Rules of Montana.
AUTH: Sec. 15-31-501 MCA; IMP: Sec. 15-31-501 MCA.

42.23.604 INTEREST ON DEFICIENCIES found at page 42-2371 of the Administrative Rules of Montana.
AUTH: Sec. 15-31-501 MCA; IMP: Secs. 15-1-222 and 15-31-503 MCA.

42.24.101 QUALIFICATION TO BE A SMALL BUSINESS found at page 42-2405 of the Administrative Rules of Montana.
AUTH: Sec. 15-31-501 MCA; IMP: Sec. 15-31-201 and 15-31-202 MCA.

42.24.107 REVOCATION OF ELECTION found at page 42-2406 of the Administrative Rules of Montana.
AUTH: Sec. 15-31-501 MCA; IMP: Sec. 15-31-202 MCA.

42.24.108 TERMINATION OF ELIGIBILITY found at page 42-2406 of the Administrative Rules of Montana.
AUTH: Sec. 15-31-501 MCA; IMP: Sec. 15-31-202 MCA.

42.24.122 PAYMENT OF FEE BY CORPORATION found at page 42-2407 of the Administrative Rules of Montana.
AUTH: Sec. 15-31-501 MCA; IMP: Sec. 15-31-202 MCA.

42.24.201 TREATMENT OF INTEREST AND DIVIDENDS found at page 42-2421 of the Administrative Rules of Montana.
AUTH: Sec. 15-31-501 MCA; IMP: Sec. 15-31-114.

3. The department is conducting the biennial review of all department rules in accordance with 2-4-314, MCA, and has determined that the rules which are proposed to be repealed are outdated or simply restate the code and therefore should be deleted.

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

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

no later than February 9, 1996.

5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than February 9, 1996.

6. If the agency receives requests for a public hearing on the proposed action 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 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 greater than 25.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State December 28, 1995

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.36.101, 42.36.102, 42.36.103, 42.36.201, 42.36.202, 42.36.211, 42.36.212, 42.36.404, 42.36.405, 42.36.406, 42.36.407, 42.36.408, 42.36.501, and 42.36.502 and REPEAL of ARM 42.36.213, 42.36.214, 42.36.215, 42.36.216, 42.36.217, and 42.36.218 relating to Inheritance Taxes	NOTICE OF PUBLIC HEARING on PROPOSED AMENDMENTS and REPEAL of Inheritance Rules

TO: All Interested Persons:

1. On February 6, 1996, at 1:30 p.m., a public hearing will be held in the Fourth Floor Conference Room, Mitchell Building, at Helena, Montana, to consider the amendments to ARM 42.36.101, 42.36.102, 42.36.103, 42.36.201, 42.36.202, 42.36.211, 42.36.212, 42.36.404, 42.36.405, 42.36.406, 42.36.407, 42.36.408, 42.36.501, and 42.36.502, and repeal of ARM 42.36.213, 42.36.214, 42.36.215, 42.36.216, 42.36.217, and 42.36.218 relating to inheritance taxes.

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

42.36.101 TAXABLE VALUE (1) The primary rates of tax provided by ARM 42.36.102 apply to an amount up to the first $25,000 of taxable estate property passing by any transfer contemplated by this chapter or ARM Title 42, chapter 35, to any person, institution, association, corporation, or body politic. The taxable value of estate property so passing is determined by taking the excess of the clear market value of such property over the exemptions provided by 72-16-312~~(1)~~, 72-16-313, 72-16-316, and 72-16-318, MCA, up to $25,000.

AUTH: Sec. 15-1-201 and 72-16-201 MCA; IMP: 72-16-321 MCA.

42.36.102 PRIMARY RATES ~~(1)~~ The primary rates of tax on any amount up to $25,000 of property passing shall be taxed as follows:

~~(1) The following persons will be taxed at a rate of 2% of the taxable value of the property to which they have become beneficially entitled by virtue of the decedent's death:~~

~~(a) the husband, wife, lineal issue, or lineal ancestor of the decedent;~~

~~(b) any child adopted as such in conformity with the law;~~

~~(c) any child to whom the decedent for not less than 10 years prior to the transfer of property stood in the mutually acknowledged relation of parent, provided that such relationship~~

~~began at or before such child's 15th birthday and was continuous for 10 years; or~~

~~(d) any lineal issue of such adopted or mutually acknowledged child.~~

~~(2)~~ (a) The following persons will be taxed at a rate of 4% of the taxable value of the property to which they have become beneficially entitled by virtue of the decedent's death:

~~(a)~~(i) the brother or sister or the descendent of such brother or sister;

~~(b)~~(ii) the wife of a son of the decedent; or

~~(c)~~(iii) the husband of a daughter of the decedent.

~~(3)~~(b) The following persons will be taxed at a rate of 6% of the taxable value of the property to which they have become beneficially entitled by virtue of the decedent's death: an aunt, uncle, or first cousin of the decedent.

~~(4)~~(c) All other persons, corporations, associations, and body politics will be taxed at a rate of 8% of the taxable value of the property to which they have become beneficially entitled by virtue of the decedent's death.

AUTH: Sec. 15-1-201 and 72-16-201 MCA; IMP: Sec. 72-16-321 MCA.

42.36.103 TERMINOLOGY (1) For the purpose of ARM 42.36.102~~(2)~~, the phrase "wife of a son" and "husband of a daughter" shall include only those persons actually within the legal marriage relationship at the time the taxable transfer is made. However, the wife of a deceased son or the husband of a deceased daughter shall, for the purposes of ARM 42.36.102~~(2)~~ be deemed to be within the legal marriage relationship until remarried.

AUTH: Sec. 15-1-201 and 72-16-201 MCA; IMP: Sec. 72-16-321 MCA.

42.36.201 GENERAL EXEMPTIONS (1) The provisions of 72-16-311, 72-16-312~~(1)~~, 72-16-313, 72-16-316, and 72-16-318, MCA, allow certain exemptions to be granted to each person, institution, association, corporation, and body politic becoming beneficially entitled to property by virtue of the death of the decedent.

(2) Where the decedent dies before July 1, 1977, the exemption granted is to be applied in the computation of inheritance tax to the first $25,000 tax bracket. Where the decedent dies on or after July 1, 1977, the exemption granted is to be subtracted from the total value of property or beneficial interests transferred, with the tax then being imposed upon the remaining value.

AUTH: Sec. 15-1-201 and 72-16-201 MCA; IMP: Sec. 72-16-311 through 72-16-313, 72-16-316, and 72-16-318 MCA.

42.36.202 TOTALLY EXEMPT TRANSFERS (1) All property transferred to the following entities is totally exempt from the inheritance tax:

~~(1)~~(a) transfers to the state or any of its institutions;

~~(2)~~(b) transfers to municipal corporations within this state when the property so transferred is to be used for strictly county, city, town, or municipal purposes; and

~~(3)~~(c) transfers to any society, institution, or association, in trust or otherwise, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is attempting to influence legislation, if any of the following conditions exist:

~~(a)~~(i) the entity is organized solely for religious, charitable, scientific, literary, or educational purposes under the laws of this state or of the United States;

~~(b)~~(ii) the property transferred is limited to use within this state; or

~~(c)~~(iii) if the entity is organized under the laws of another state of the United States or of a foreign state or country, at the date of the decedent's death, any one of the following conditions existed:

~~(i)~~(A) the other state, foreign state, or foreign country did not impose a death tax with respect to property transferred to a similar entity organized or existing under the laws of this state;

~~(ii)~~(B) reciprocity was established by law or otherwise between such other state, foreign state, or foreign country and this state providing that the respective states would not tax such transfers; or

~~(iii)~~(C) the entity owns or operates a hospital for crippled children within the United States, to which the children of Montana may be admitted without discrimination, and the property so transferred is limited to use at such hospital.

AUTH: Sec. 15-1-201 and 72-16-201 MCA; IMP: Sec. 72-16-312 MCA.

42.36.211 APPLICATION OF EXEMPTIONS (1) and (2) remain the same.

(3) For decedents dying after December ~~30~~ 31, 1990, to be afforded the exemption, the mutually acknowledged child or stepchild must have stood in such relationship prior to the child's 18th birthday.

AUTH: Sec. 15-1-201 and 72-16-201 MCA; IMP: Sec. 72-16-313 MCA.

42.36.212 EXEMPTION AMOUNTS ~~PRIOR TO JULY 1, 1965~~

(1) Where the decedent died before July 1, 1965, the following amounts of property transferred are exempt:

~~(1)~~ (a) the first $17,500 transferred to decedent's widow;

~~(2)~~ (b) the first $5,000 transferred to decedent's husband;

~~(3)~~ (c) the first $2,000 transferred to lineal ancestor or descendant or to adopted child or lineal issue of adopted child;

~~(4)~~ (d) the first $500 transferred to brother or sister, son's wife, or daughter's husband.

(2) Where the decedent died on or after July 1, 1965, but before July 1, 1969, the following amounts of property transferred are exempt:

(a) the first $20,000 transferred to decedent's widow;

(b) the first $10,000 transferred to decedent's husband;

(c) the first $2,000 transferred to lineal ancestor or descendant or to adopted child or lineal issue of adopted child;

(d) the first $500 transferred to brother or sister, son's wife, or daughter's husband.

(3) Where the decedent died on or after July 1, 1969, but before July 1, 1974, the following amounts of property transferred are exempt:

(a) the first $20,000 transferred to the surviving spouse;

(b) the first $5,000 transferred to minor children of decedent;

(c) the first $2,000 transferred to lineal ancestor or descendant or to adopted child or lineal issue of adopted child;

(d) the first $500 transferred to brother or sister, son's wife, or daughter's husband.

(4) Where the decedent died on or after July 1, 1974, but before July 1, 1977, the following amounts of property transferred are exempt:

(a) the first $25,000 transferred to the surviving spouse;

(b) the first $5,000 transferred to minor children of decedent;

(c) the first $2,000 transferred to lineal ancestor or descendants, or to adopted child or lineal issue of adopted child;

(d) the first $500 transferred to brother, sister, or descendant thereof;

(e) the first $500 transferred to son's wife or daughter's husband.

(5) Where the decedent died on or after July 1, 1977, and prior to January 1, 1979, the clear value of one-half of the property distributed or passing to the decedent's surviving spouse is exempt. The following amounts of property are also exempt:

(a) the first $40,000 transferred to the surviving spouse;

(b) the first $15,000 transferred to minor lineal

descendants;

(c) the first $7,000 transferred to adult lineal descendants and ancestors;

(d) the first $1,000 transferred to brothers, sisters, or descendants thereof;

(e) the first $1,000 transferred to son's wife or daughter's husband.

(6) Where the decedent died on or after January 1, 1979, the clear value of all property distributed or passing to the decedent's surviving spouse is exempt. The following amounts of property are also exempt:

(a) the first $15,000 transferred to minor lineal descendants;

(b) the first $7,000 transferred to adult lineal descendants and ancestors;

(c) the first $1,000 transferred to brothers, sisters, or descendants thereof;

(d) the first $1,000 transferred to son's wife or daughter's husband.

(7) Where the decedent died on or after January 1, 1981, the clear value of all property distributed or passing to the decedent's surviving spouse or lineal descendant's is exempt. The following amounts of property are also exempt:

(a) the first $7,000 transferred to ancestors;

(b) the first $1,000 transferred to brothers, sisters, or descendants thereof; and

(c) the first $1,000 transferred to a son's wife or a daughter's husband.

AUTH: Sec. 15-1-201 and 72-16-201 MCA; IMP, Sec. 72-16-313 MCA.

42.36.404 DESCRIPTION OF NONSPECIFIED PROPERTY (1) In describing property, other than of the types provided for in ARM 42.36.405 through 42.36.408, the following should be provided:

~~(1)~~(a) the number of quantity of the asset or assets;

~~(2)~~(b) a description which makes the asset readily identifiable for appraisal purposes; and

~~(3)~~(c) if appropriate, the manufacture date, including the year make or model, and/or capacity.

AUTH: Sec. 15-1-201 and 72-16-201 MCA; IMP, Sec. 72-16-201, 72-16-207, and 72-3-607 MCA

42.36.405 DESCRIPTION OF REAL ESTATE (1) In describing real property or any interest therein, the following should be set forth:

~~(1)~~(a) the legal description of the property;

~~(2)~~(b) if the property is located in a city, the name of the city, and if not, the county in which the property is

located; and

~~(3)~~(c) if ownership in the property is less than full ownership, the decedent's fractional interest in the property.

AUTH: Sec. 15-1-201 and 72-16-201 MCA; IMP, Sec. 72-16-201, 72-16-207, and 72-3-607 MCA

42.36.406 DESCRIPTION OF STOCKS AND BONDS (1) A description of stocks and bonds should include a statement of the following:

~~(1)~~(a) the number of shares or bonds;

~~(2)~~(b) the particular class or series or principal amount;

~~(3)~~(c) the name of the corporation or obligor;

~~(4)~~(d) whether par or no-par, common or preferred, and, if preferred, the issue;

~~(5)~~(e) certificate or issue numbers; and

~~(6)~~(f) any additional information which is needed to further identify the securities.

AUTH: Sec. 15-1-201 and 72-16-201 MCA; IMP: Sec. 72-16-201, 72-16-207, and 72-3-607 MCA.

42.36.407 DESCRIPTION OF PROMISSORY NOTES (1) A description of notes should include the following:

~~(1)~~(a) the name of the maker;

~~(2)~~(b) the date of the note;

~~(3)~~(c) the date of maturity;

~~(4)~~(d) the original principal amount and the unpaid principal amount at date of death; and

~~(5)~~(e) the rate of interest and the accrued amount of interest at date of death.

AUTH: Sec. 15-1-201 and 72-16-201 MCA; IMP: Sec. 72-16-201, 72-16-207, and 72-3-607 MCA.

42.36.408 DESCRIPTION OF CONTRACTS (1) A description of contracts should include the following:

~~(1)~~(a) the name of all parties;

~~(2)~~(b) the date of the contract;

~~(3)~~(c) the type of contract and a brief description of the purpose or reason for the contract;

~~(4)~~(d) the original principal amount and the principal amount at date of death; and

~~(5)~~(e) the rate of interest and the accrued amount of interest at date of death.

AUTH: Sec. 15-1-201 and 72-16-201 MCA; IMP: Sec. 72-16-201, 72-16-207, and 72-3-607 MCA.

42.36.501 SUBMISSION OF DOCUMENTS (1) To enable the department ~~of revenue~~ to determine the amount of inheritance tax

due, if any, the following forms and documents are required:

(a) INH-3 -- Application for Determination of Inheritance Tax;

(b) a copy of the Federal Estate Tax Return, form 706, if applicable;

(c) copies of any trust agreements; and

(d) copies of inventories and appraisals of property located outside the state of Montana, if applicable.

(2) The surviving joint tenant who is the surviving spouse of a decedent whose aggregate value of the interest in the joint property is less than the federal estate tax filing requirement is not required to file with the department to determine the amount of inheritance tax due.

~~(2)~~ (3) Form INH-3 is designed to comply with 72-16-502~~(2)(b)~~ and 72-16-503~~(1)~~, MCA, and is used only when the decedent owned no property requiring probate. The INH-3 must be submitted in duplicate. After certification by the department, one copy will be returned to the applicant to be recorded with the county clerk and recorder if real estate is being reported. If real property is located in more than one county, additional copies may be submitted to the department with a request that they be certified and returned to the applicant.

AUTH: Sec. 15-1-201 and 72-16-201 MCA; IMP: Sec. 72-16-502 and 72-16-503 MCA.

42.36.502 INFORMATION REQUESTS BY DEPARTMENT (1) The following reports or documents may be requested by the department of revenue:

~~(1)~~ (a) any appraisal of part or all property listed;

~~(2)~~ (b) any information which is necessary to clarify description, ownership, or valuation of property shown on the reports or documents; or

~~(3)~~ (c) any information which will justify or clarify deductions claimed on the reports or documents.

AUTH: Sec. 15-1-201 and 72-16-201 MCA; IMP: Sec. 72-16-201, 72-16-207, and 72-16-401 MCA.

3. The rules proposed to be repealed are as follows:

42.36.213 EXEMPTION AMOUNTS ON OR AFTER JULY 1, 1965, AND PRIOR TO JULY 1, 1969 found at page 42-3615 of the Administrative Rules of Montana.

AUTH: Sec. 15-1-201 and 72-16-201 MCA; IMP: Sec. 72-16-313 MCA.

42.36.214 EXEMPTION AMOUNTS ON OR AFTER JULY 1, 1969, AND PRIOR TO JULY 1, 1974 found at page 42-3616 of the Administrative Rules of Montana.

AUTH: Sec. 15-1-201 and 72-16-201 MCA; IMP: Sec. 72-16-313 MCA.

42.36.215 EXEMPTION AMOUNTS ON JULY 1, 1974, AND PRIOR TO JULY 1, 1977 found at page 42-3616 of the Administrative Rules of Montana.

AUTH: Sec. 15-1-201 and 72-16-201 MCA; IMP: Sec. 72-16-313 MCA.

42.36.216 EXEMPTION AMOUNTS ON OR AFTER JULY 1, 1977, AND PRIOR TO JANUARY 1, 1979 found at page 42-3616 of the Montana Administrative Rules.

AUTH: Sec. 15-1-201 and 72-16-201 MCA; IMP: Sec. 72-16-313 MCA.

42.36.217 EXEMPTION AMOUNTS ON OR AFTER JANUARY 1, 1979 found at page 42-3617 of the Montana Administrative Rules.

AUTH: Sec. 15-1-201 and 72-16-201 MCA; IMP: Sec. 72-16-313 MCA.

42.36.218 EXEMPTION AMOUNTS ON OR AFTER JANUARY 1, 1981 found at page 42-3617 of the Administrative Rules of Montana.

AUTH: Sec. 15-1-201 MCA; IMP: Sec. 72-16-313 and 72-16-321 MCA.

4. The amendments to ARM 42.36.501 are necessary because Senate Bill 272 eliminated the filing and recording requirement of the INH-3 when property is held in joint tenancy. The amendments and repeals to the other rules are housekeeping in compliance with 2-4-314, MCA, which requires each agency to conduct a biennial review of its rules.

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

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

no later than February 16, 1996.

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

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State January 2, 1996

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.15.101, 42.15.301, 42.15.303, 42.15.305, 42.15.309, 42.15.311, 42.15.312, 42.15.313, 42.15.314, 42.15.315, 42.15.322, and 42.15.324 and ADOPTION of RULES I through VI relating to the Biennial Review of Chapter 15 and Composite Returns	NOTICE OF PUBLIC HEARING on the PROPOSED AMENDMENTS and ADOPTION OF NEW RULES relating to Chapter 15 and Composite Returns

TO: All Interested Persons:

1. On February 6, 1996, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room, Mitchell Building, at Helena, Montana, to consider the amendments of ARM 42.15.101, 42.15.301, 42.15.303, 42.15.305, 42.15.309, 42.15.311, 42.15.312, 42.15.313, 42.15.314, 42.15.315, 42.15.322, and 42.15.324, and adoption of Rules I through VI relating to composite returns.

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

42.15.101 ~~DOMICILE DEFINED~~ DEFINITIONS (1) For purposes of this chapter the following definitions apply:

(a) "Domiciled" means ~~A~~ a person who is ~~domiciled in the~~ a resident of the state of Montana ~~if~~, applying 1-1-215, MCA~~, Montana is the individual's residence~~.

(b) The term "nonresident" means any individual, estate, trust, partnership, or other organization, excluding corporations, not a resident of Montana.

AUTH: Secs. 1-1-215 and 15-30-305 MCA; IMP, Sec. 15-30-101 and 15-30-105, MCA

42.15.301 WHO MUST FILE RETURNS (1) Every single person and every married person not filing a joint return with ~~his or her~~ a spouse must file a return if ~~his or her~~ the person's gross income for the taxable year is more than ~~$1000~~ $1,500, adjusted as provided in ~~subsection~~ (3), plus the value of the exemptions ~~he or she~~ the person is entitled to for age 65 and for blindness. Married persons not electing to file separate returns must file a return if the combined gross income of the spouses for the taxable year exceeds ~~$2,000~~ $3,000, adjusted as provided in ~~subsection~~ (3), plus the value of the exemptions they are entitled to for age 65 or blindness.

(2) and (3) remain the same.

AUTH: Sec. 15-30-305 MCA; IMP, Sec. 15-30-142 and 15-30-143 MCA

42.15.303 RETURNS FOR THOSE UNABLE TO MAKE OWN RETURN (1) Any taxpayer who for any reason is unable to make ~~his own~~ a return may have ~~his~~ the return made by a designated agent. In the case of a minor, the return may be made by the minor ~~himself~~ or by ~~his~~ a guardian or other person charged with the minor's care or property. In the case of a taxpayer who is mentally or physically incapable of making ~~his~~ a ~~own~~ return, the return for such person shall be made by the guardian or other person charged with the care of the taxpayer's person or property.

(2) A return must be filed for a decedent covering the period from the beginning of the taxable year to the date of death. If the deceased taxpayer was married, a joint return ~~maybe~~ may be filed to include the income of the decedent for the period ~~he or she~~ the decedent was alive and the income of the surviving spouse for the entire taxable year. The executor or administrator of the decedent is responsible for making the decedent's return.

AUTH: Sec. 15-30-305 MCA; IMP, Sec. 15-30-142 MCA

42.15.305 TRUST AND ESTATE RETURNS (1) If an estate or trust has gross income for its taxable year in excess of ~~the~~ its allowable exemption ~~credit~~ amount for that taxable year, the fiduciary of the estate or trust shall make and file a return. However, estates or trusts held exclusively for charitable, educational, or religious purposes are not subject to tax and a return is not required thereof.

(2) and (3) remain the same.

AUTH: Sec. 15-30-305 MCA; IMP, Sec. 15-30-135 MCA

42.15.309 MONTANA MODIFIED ADJUSTED GROSS INCOME (1) through (3) remain the same.

(4) Montana modified adjusted gross income does not include the following:

(a) Montana state refunds;

(b) exempt Montana retirement income;

~~(c) part-year resident income not earned in Montana;~~

~~(d)~~ (c) any tier one railroad retirement benefits;

~~(e)~~ (d) the Montana capital gain exclusion; and

~~(f)~~ (e) any other income not taxable under 15-30-111~~(2)~~, MCA, except for interest received from U.S. and Montana obligations.

~~(5) Part-year resident's social security benefits will be taxable only for the time they are Montana residents.~~

~~(6) The part-year resident's base amount must be prorated according to the percentage of Montana income to the federal income before addition of any taxable social security benefits.~~

~~(7)~~ (5) A married person filing separately on the same form must claim ~~$16,000,~~ one-half of the base amount ~~as~~ allowed a married individual ~~by~~ under section 86 of the internal revenue code.

~~(8) Nonresident's social security benefits are not taxable.~~

AUTH: Sec. 15-30-305 MCA; IMP, Sec. 15-30-111 MCA

42.15.311 INFORMATION RETURN (1) Information returns ~~are to be made on a copy of the appropriate federal information return (form 1099 series, etc.). Upon approval from the department, computer generated tapes and diskettes may be substituted for the forms~~ may be filed on paper documents, electronically, or on magnetic media. They are due on or before the 15th day of April following the close of the calendar year with respect to which the payments made are being reported. The returns are to be filed with the Montana Department of Revenue, Income and Miscellaneous Tax Division, Compliance Section, P.O. Box 202701, Helena, Montana 59620-2701.

(2) ~~Information returns are due on or before the 15th day of April following the close of the calendar year with respect to which payments made are being reported. The returns are to be filed with the department of Revenue, Mitchell Building, Helena, Montana 59620~~ Paper documents are to be prepared on the appropriate federal information return and a copy filed with the department. Returns filed on paper forms are to be accompanied by a copy of federal form 1096 summarizing the information being reported to the department. ~~Information returns filed via magnetic media are to be accompanied by a copy of federal form 4804/4802 summarizing the information submitted to the department.~~

(3) Information returns filed electronically or on magnetic media are to conform to the specifications outlined in federal publication 1220 for the applicable year. A copy of federal form 4804/4802 must be used to transmit the magnetic files.

~~(3)~~ (4) Distributions to recipients with a Montana address from pension, profit sharing, stock bonus, or annuity plans, deferred compensation plans, an IRA or commercial annuity program must be reported to the department on ~~a federal form 1099~~ paper document or magnetic media.

(5) Only information returns reporting payments that are taxable under Title 15, chapter 30, MCA, are to be reported to the department on paper document, electronic or magnetic media.

AUTH: Sec. 15-30-305 MCA; IMP, Sec. 15-30-301 MCA

42.15.312 REPRODUCTION OF RETURN FORMS (1) Subject to the following conditions, the department will accept reproduction of the official return forms:

~~(1)~~ (a) Reproductions must be facsimiles of the official form.

~~(2)~~ (b) They must duplicate the color of paper and the color of ink or be on white paper with black ink.

~~(3)~~ (c) They must be clearly legible.

~~(4)~~ (d) They must be on paper the quality and weight of the official form.

~~(5)~~ (e) They must be made on paper which may readily and

permanently be written upon and stamped with ink.

~~(6)~~ (f) They must be of the same size as the official form.

(g) Only electronically transmitted returns using department approved software will be accepted.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-144 MCA.

42.15.313 FEDERAL RETURNS (1) The law requires every taxpayer to furnish the department, upon its request, with a true copy of ~~his~~ the taxpayer's federal income tax return filed for a specified taxable year.

(2) Failure by the taxpayer to furnish copies of requested federal returns within a reasonable time will make ~~him~~ the taxpayer liable for the penalties provided for under 15-30-321~~(3)~~, MCA.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-304 MCA.

42.15.314 CHANGES IN FEDERAL RETURNS OR TAXES (1) If a taxpayer fails to file within 90 days, a required report of changes or corrections in ~~his~~ the taxpayer's federal taxable income or an amended Montana return reflecting changes in federal taxable income as reported on an amended federal return, the period within which a deficiency in tax may be assessed is extended.

(2) In addition, the taxpayer will be liable for the penalties provided for under 15-30-321 ~~(2) & (3)~~, MCA.

AUTH: Sec. 15-30-305 MCA; IMP, Sec. 15-30-304 MCA.

42.15.315 ORIGINAL RETURN DEFINED (1) through (7) remains the same.

(8) An extension of time to file does not extend the time to pay. When a return is filed before the extension date and payment is not made, the return is subject to late pay penalties.

(9) remains the same.

AUTH: Sec. 15-30-305 MCA; IMP, Secs. 15-30-321 and 15-30-149 MCA

42.15.322 SEPARATE RETURNS FOR MARRIED TAXPAYERS (1) If husband and wife file separate returns, each must report ~~his or her~~ their own adjusted gross income. Under no circumstances may income be arbitrarily assigned from one spouse to the other.

(2)(a) Income from salaries, wages, bonuses, and commissions and other income derived from personal services rendered either as an employee or as an independent contractor must be reported by the spouse who earned it.

(b) Income such as rents, royalties, dividends, and interest must be reported by the spouse who owns the property from which the income is derived. If such income is derived from property which is jointly owned by the spouses, ~~it must be allocated between them according to their legal interest in the property and their legal rights to the income derived therefrom~~

the income must be split equally unless the taxpayers show a different proportional ownership.

(c) The net income from any business conducted as a proprietorship must be reported in full by the spouse who is the individual proprietor. However, in the event the proprietor's spouse regularly and systematically renders substantive personal services in the operation of the business and with respect to which services he or she is not paid a salary or wages, the proprietor and the spouse may, at their option, agree that the spouse earned an amount equivalent to reasonable compensation for the services rendered, and such amount shall be deemed income taxable to that spouse as compensation for services rendered and such amount shall reduce the proprietorship income taxable to the spouse who is the actual proprietor. Income deemed earned by the spouse for services rendered cannot be justified solely by a legal property-holding arrangement, but must be justified by showing a substantial contribution of personal services. The allocated amount cannot exceed the gross income derived from a sole proprietorship.

(3)and (4) remain the same.

AUTH: Sec. 15-30-305 MCA; IMP, Sec. 15-30-142 MCA

42.15.324 HANDLING OF ELDERLY HOMEOWNER CREDIT RETURNS (1) Filing date for elderly credit returns:

~~(1)~~ (a) Returns claiming the elderly homeowner credit, when filed apart from the income tax return, must be submitted on or before April 15 of the year following the year for which credit is sought. When such a claim is filed late, a letter which states the reason for being late must be attached. If there is good reason for the late filing, the return will be accepted by the department. Claims filed more than 5 years late will not be accepted.

~~(2)~~ (b) Returns claiming the elderly homeowner credit, when filed with or when amending an income tax return, are considered a part of the income tax return and are subject to the same statute of limitations that applies to income tax returns.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-174 MCA.

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

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

(a) The term "entity" shall mean any such business organization as defined in (b).

(b) The term "multi-jurisdictional entity" means any business organization which is classified as a partnership, S corporation, limited liability partnership or a limited liability company for tax purposes by Montana and has nonresident partners or shareholders.

(c) An "eligible nonresident partner or shareholder" means

an individual who does not reside in Montana and whose only Montana source income is derived from the entity.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-105 MCA.

RULE II COMPOSITE RETURN (1) A multi-jurisdictional entity, may elect to file a composite tax return and remit a composite tax payment on behalf of all eligible non-resident partners, shareholders, and members of a limited liability company. The tax is based on the aggregate amount of each eligible partner's, shareholder's and member's distributive share of the entities taxable income attributable to Montana for a taxable year.

(2) The composite tax payment shall be remitted by the entity to Montana for the eligible nonresident partners or shareholders covering the aggregate tax on the total of the net distributive income from the entity of those individuals included in the composite return.

(3) A nonresident partner's or shareholder's distributive share of the entity's taxable income is the aggregate of such partner's or shareholder's share of each item of the entity's income, gain, deduction, loss and credit.

(4) The entity, when filing a composite return, is acting on behalf of the individual partners or shareholders.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-105 MCA.

RULE III ELIGIBILITY (1) Any eligible entity required to file a return under Montana's income tax law may elect to file a composite income tax return for 10 or more eligible nonresident partners or shareholders who derive Montana income from such a source. Eligible nonresident partners, members, or shareholders included in a composite return shall not file separate income tax returns.

(2) The entity must obtain prior written permission from the department to file a composite tax return. Such a request must be made on an annual basis.

(3) The entity shall maintain a file of powers of attorney executed by each partner, member, or shareholder, included in the composite return, authorizing the entity to file the composite return and act on each partner's, member's, or shareholder's behalf.

(4) Income from the entity must be the only source of Montana income for each eligible nonresident partner, member, or shareholder shown on the return. The only exception to this requirement is income which may be reported from another entity also reporting pursuant to this rule.

(5) A nonresident partner, member, or shareholder who derives income from Montana in addition to that realized from the entity is ineligible for inclusion in a composite return.

The individual shall file a Montana individual income tax return for any year such other income is earned.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-105 MCA.

RULE IV FILING REQUIREMENT (1) The due date for filing a composite tax return is the same due date as the Montana individual income tax return.

(2) The name of each eligible nonresident partner, member, or shareholder shall be stated on a supporting schedule included with the return, along with each eligible partner's, member's, or shareholder's address, social security or employer identification number, respective interest in the entity, distributive share of the entity's taxable income attributable to Montana and such other information as the department may require.

(3) The minimum filing threshold for each eligible nonresident partner or shareholder of a composite return is the same as the filing requirement for a single nonresident individual.

(4) A composite return will be filed on forms prescribed by the department.

(5) An entity intending to file a composite return may request an extension of time to file under the same laws that are applicable to an individual.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-105 MCA.

RULE V COMPUTATION OF TAX (1) The entity's Montana income shall be computed taking into account all items of income, gain, deductions and losses or other expenses of the entity which are deductible only by the entity and which are attributable to Montana.

(2) An eligible nonresident partner's, member's, or shareholder's share of taxable income is the aggregate of each item of the entity's income, gain, deduction, loss and credits directly attributable to entity's activity in Montana.

(3) The Montana taxable income for each eligible nonresident partner, member, or shareholder is found by deducting the allowable standard deduction for a single individual and one exemption allowance from the eligible nonresident's total federal income from the entity.

(4) The tax for each eligible nonresident partner, member, or shareholder is found by calculating the tax on the Montana taxable income using the rates specified in 15-30-103, MCA. The tax due and payable is then determined by taking the ratio of each nonresident partner's, member's, or shareholder's income earned in Montana from the entity to the partner's, member's, or shareholder's total federal income from the entity times the total tax on the partner's or shareholder's Montana taxable

income.

(5) The entity may be required to make quarterly estimated tax payments as prescribed by 15-30-241, MCA.

(6) The entity is subject to the old fund liability tax. The old fund liability tax is equal to 0.2% of the Montana income of each eligible nonresident partner, member, or shareholder. The income subject to the old fund liability tax is the nonresident partner's or shareholder's share of the entity's ordinary income derived from Montana sources. However, income from a publicly traded limited liability partnership is not subject to the old fund liability tax.

(7) The old fund liability tax is subject to the estimated tax provisions and must be included with the four installments when filing estimated taxes.

(8) The total tax due of the composite return consists of the total of all the eligible nonresident partners' or shareholders' Montana income tax and old fund liability tax.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-105 MCA.

RULE VI RESPONSIBILITY OF ENTITY (1) Any assessments of additional tax, penalties and interest shall be the responsibility of the entity filing the return. Any additional assessment will be based on the total liability of the composite return.

(2) The entity or its representative shall represent the eligible nonresident partners or shareholders in any appeals, claims for refunds, hearings, or court proceedings in any matter relating to the filing of the composite return.

(3) Failure to comply with the terms and conditions to file a composite return shall be grounds for cancellation of the privilege to file a composite return for that period. Should that occur, normal filing procedures will be required of each nonresident partner or shareholder.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-105 MCA.

3. Amendments to ARM 42.15.101, 42.15.301, 42.15.303, 42.15.305, 42.15.309, 42.15.311, 42.15.312, 42.15.313, 42.15.314, 42.15.315, 42.15.316, 42.15.422, and 42.15.324 are housekeeping in compliance with 2-4-314, MCA which requires agencies to complete a biennial review of the rules.

Rules I through VI are proposed to define what a composite return is, who is eligible to file, the filing requirement, and how to compute the tax of a composite return. Montana income tax laws require compliance by those nonresidents whose only income is from those entities doing business in Montana. The rules provide for consistent taxation of these entities.

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

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

no later than February 16, 1996.

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 January 2, 1996

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.19.401, 42.19.402, 42.19.1240 and REPEAL of ARM 42.19.201 and 42.19.202 relating to the Low Income Property Rules and Income and Property Tax Relief Rules	NOTICE OF THE PROPOSED AMENDMENTS AND REPEALS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On February 23, 1996, the Department of Revenue proposes to amend ARM 42.19.401, 42.19.402 and 42.19.1240 and repeal ARM 42.19.201 and 42.19.202 relating to the low income property rules, and income and property tax relief rules.

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

42.19.401 ~~LOW INCOME PROPERTY TAX REDUCTION~~ PROPERTY TAX ASSISTANCE PROGRAM (1) The property owner of record or his agent must make application through the ~~Property Assessment Division,~~ Department of Revenue, Property Assessment Division, Mitchell Building, Helena, Montana 59620, in order to receive the benefit provided for in 15-6-134 ~~and 15-6-142~~, MCA. An application must be made on a form available from the local county appraisal/assessment office before March ~~1~~ 15 of the year for which the benefit is sought. Applications postmarked after March ~~1~~ 15 will not be considered for that tax year unless the ~~agent of the~~ department ~~or office manager~~ determines the applicant was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness. These impediments must be demonstrated to have existed at significant levels from January 1 of the current year to the time of application. Telephone extensions and written extensions will be granted through July 1 of the current year for the above listed reasons. Willful misrepresentation of facts pertaining to income or the impediments that prevent timely application filing will result in the automatic rejection of the application.

(2) The department ~~or its agent~~ will review the application and any supporting documents. The department may review income tax records to determine accuracy of information. The department ~~or its agent~~ will approve or deny the application. The applicant will be advised in writing of the decision. An annual statement of eligibility is required unless a review of income tax records or other records related to the applicant's income demonstrates that an individual had no significant change in income level and successfully qualified during the preceding 12 months prior to January 1 of the current tax year. In that situation the annual statement of eligibility required may be waived by the department ~~or its agent~~.

(3) Any reduction in taxable value will apply to the first ~~$80,000~~ $100,000 or less of the market value of any mobile home or improvement on real property and appurtenant land not exceeding five acres.

(4) through (6) remain the same.

AUTH: Sec. 15-1-201 MCA; IMP: Secs. 15-6-134 and 15-6-151 MCA.

42.19.402 ~~INFLATION ADJUSTMENT FOR LOW INCOME PROPERTY TAX RELIEF~~ PROPERTY TAX ASSISTANCE PROGRAM (1) through (2)(a) remain the same.

(b) The formula for the calculation of the inflation factor is as follows:

$$IF_t = \frac{PCE_{(t-1)}}{PCE_{t\ o}}$$

where:

IF_t equals the inflation factor for property tax year t,

$PCE_{(t-1)}$ is the implicit price deflator for personal consumption expenditures for the second quarter of the year prior to the tax year in question,

$PCE_{t\ o}$ is the implicit price deflator for personal consumption expenditures for the second quarter of ~~1986~~ 1995.

(c) Updating the income schedules for inflation: The inflation factor, calculated per the previous section, is used to annually adjust the base year income schedules for the effects of inflation.

Each income figure in the base year table is multiplied by the inflation factor calculated for the tax year in question in order to update the table. The product is then rounded to the nearest whole dollar amount.

The base year income schedule is below.

---------- Base Income Schedules ----------

Single Person		Married Couple		Percentage Multiplier
~~$0~~	~~$1,000~~	~~$0~~	~~$1,200~~	~~0%~~
~~1,001~~	~~2,000~~	~~1,201~~	~~2,400~~	~~10%~~
~~2,001~~	~~3,000~~	~~2,401~~	~~3,600~~	~~20%~~
~~3,001~~	~~4,000~~	~~3,601~~	~~4,800~~	~~30%~~
~~4,001~~	~~5,000~~	~~4,801~~	~~6,000~~	~~40%~~
~~5,001~~	~~6,000~~	~~6,001~~	~~7,200~~	~~50%~~
~~6,001~~	~~7,000~~	~~7,201~~	~~8,400~~	~~60%~~
~~7,001~~	~~8,000~~	~~8,401~~	~~9,600~~	~~70%~~

~~8,001 - 9,000 9,601 - 10,800 80%~~
~~9,001 - 10,000 10,801 - 12,000 90%~~

$0	-	$6,000	$0	-	$8,000	20%
6,001	-	9,200	8,001	-	14,000	50%
9,201	-	15,000	14,001	-	20,000	70%

AUTH: Sec. 15-1-201 MCA; IMP: 15-6-134 and 15-6-151 MCA.

42.19.1240 TAXABLE RATE REDUCTION FOR VALUE ADDED PROPERTY (1) through (3) remain the same.

(4) The following formula shall be used for the determination of the reduced taxable value rate:

$$(1-n/e) \times r = R$$

where:

n= number of qualifying new employees
e= number of existing employees
r= current machinery & equipment taxable rate
R= adjusted machinery & equipment taxable rate

~~Example: In 1992 a small sawmill operation increases from 10 full time employees to 14 as a result of a value added expansion. The taxable rate will drop from 9 percent to 5.4 percent.~~

~~n = 4~~
~~e = 10~~
~~r = .09~~

~~(1 - 4/10) x .09 = new taxable rate~~
~~.6 x .09 = .054 or 5.4 % tax rate~~

AUTH: Sec. 15-24-2405 MCA; IMP: Secs. 15-24-2401 through 15-24-2404 MCA.

3. The Department proposes to repeal the following rules:

42.19.201 DETERMINATION OF PRINCIPAL RESIDENCE found at page 42-1911 of the Administrative Rules of Montana.

AUTH: Sec. 15-1-201 MCA; IMP: Chapter 698, Laws of 1979.

42.19.202 APPLICATION DEADLINE found at page 42-1911 of the Administrative Rules of Montana.

AUTH: Sec. 15-1-201 MCA; IMP: Chapter 698, Laws of 1979.

4. The department is proposing to amend ARM 42.19.401 and 42.19.402 to comply with statutory changes enacted with the passage of HB497 during the 1995 legislative session. The rules change the terminology from "low income property tax reduction" to "property tax assistance program" and change the income limitation schedule in compliance with the amendments to Section 15-6-134, MCA.

The department is proposing to repeal ARM 42.19.201 and 42.19.202 because these rules are no longer effective as they

pertained to a property tax relief program that was effective for 1979 and 1980.

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

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

no later than February 9, 1996.

6. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than February 9, 1996.

7. If the agency receives requests for a public hearing on the proposed action 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 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 greater than 25.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State January 2, 1996

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.35.101, 42.35.104, 42.35.312, 42.35.323, 42.35.333, 42.35.512, 42.35.513, 42.35.514, 42.35.515, 42.35.516, 42.35.517, 42.35.518, 42.35.519 and REPEAL of ARM 42.35.313, 42.35.314, 42.35.315 relating to Inheritance Tax Rules	)	NOTICE OF PROPOSED AMENDMENT AND REPEAL OF INHERITANCE TAX RULES NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On February 23, 1996, the Department of Revenue proposes to amend ARM 42.35.101, 42.35.104, 42.35.312, 42.35.323, 42.35.333, 42.35.512 through 42.35.519 and repeal ARM 42.35.313 through 42.35.315 relating to Inheritance Tax Rules.

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

42.35.101 DEFINITIONS (1) through (5) remain the same.

(6) "Expense of funeral", as used in ARM 42.35.312, shall include only those reasonable funeral expenses actually paid by the estate. The deduction for funeral expenses paid shall not include or must be reduced by the amount of any lump sum death payments received by the estate that are used by the estate to pay funeral expenses.

(7) "Expense of last illness", as used in ARM 42.35.312, shall include only those reasonable expenses of last illness due and owing by the decedent at the date of the decedent's death. The deduction for medical expenses paid shall not include or must be reduced by the amount of any death benefit or insurance received by the estate that is used by the estate to pay medical expenses.

(8) "All Montana state, county, municipal, and federal taxes", as used in ARM 42.35.312, shall include only those taxes owing by decedent at the date of his death. Under no circumstances shall taxes incurred subsequent to the date of death be allowed as a deduction.

AUTH: Secs. 15-1-201 and 72-16-201 MCA; IMP: Title 72, chapter 16, and Sec. 72-16-308 MCA.

42.35.104 TRANSFER OF ASSETS -- WAIVER (1)(a) Waivers or consents to transfer are generally necessary for transfers of stocks or bonds in a domestic or foreign corporation from the name of a resident decedent or from the name of the trustee of a revocable or an irrevocable trust created by the decedent.

Waivers or consents to transfer are not necessary for transfers of stocks or bonds in a domestic or foreign corporation from the name of a resident decedent to the surviving joint tenant who is the surviving spouse of the decedent whose aggregate value of the interest in joint property is less than the federal estate tax filing requirement.

(b) Waivers or consents are not required for the transfer of securities in a Montana corporation by a nonresident decedent if such securities are exempt from the Montana inheritance tax on the basis of reciprocity.

~~(b)~~ (c) If a decedent was a resident of a foreign country or was not domiciled in a district or state of the United States, a waiver is generally necessary on stock owned by the decedent in any Montana corporation.

(2) and (3) remain the same.

AUTH: Secs. 15-1-201 and 72-16-201 MCA; IMP: Secs. 72-16-304, 72-16-313, 72-16-433, and Title 72, chapter 16, part 7 MCA.

42.35.312 DETERMINATION OF CLEAR MARKET VALUE (1) In determining clear market value of the property transferred, the following deductions, and no others, shall be allowed:

~~(1)~~ (a) debts of the decedent owing as of the date of death;

~~(2)~~ (b) expenses of funeral and last illness;

~~(3)~~ (c) all Montana state, county, municipal, and federal taxes including all penalties and interest thereon, owing by the decedent at the date of death; and

~~(4)~~ (d) the ordinary expenses of administration, including the commissions and fees of executors and administrators and their attorneys actually allowed and paid, including attorneys fees, filing fees, necessary expenses and closing costs incident to proceedings to terminate joint tenancies, termination of life estates and transfers in contemplation of death, and any and all other proceedings instituted for the determination of inheritance tax due or paid.

AUTH: Secs. 15-1-201 and 72-16-201 MCA; IMP: Sec. 72-16-308 MCA.

42.35.323 VALUATION OF GROWING CROPS (1) Among other factors to be considered in the valuation of growing crops are:

~~(1)~~ (a) the probable market value of the crop when harvested;

~~(2)~~ (b) the probable cost of producing and marketing the crops;

~~(3)~~ (c) the price, if any, paid at or about the date of the decedent's death for futures in the same kind of crop.

AUTH: Secs. 15-1-201 and 72-16-201 MCA; IMP: Sec. 72-16-308 MCA.

42.35.333 USE OF BID AND ASK PRICES (1) If the provisions of ARM 42.35.332 are inapplicable because actual sales are not available during the reasonable period beginning

before and ending after the date of death, the market value may be determined by taking the mean between the bona fide bid and asked price on the date of death, or, if none:

~~(1)~~(a) by taking the mean between the bona fide bid and asked prices on the nearest date before and the nearest date after the date of death if such nearest dates are within a reasonable period of the date of death;

~~(2)~~(b) by prorating the difference between such mean prices to the date of death considering only the respective numbers of trading days between such nearest dates and the date of death in such proration; and

~~(3)~~(c) by finally adding or subtracting, as the case may be, the prorated difference to or from the mean price of the nearest date before the date of death.

AUTH: Secs. 15-1-201 and 72-16-201 MCA; IMP: Sec. 72-16-308 MCA.

42.35.512 GROSS CASH RENTAL (1) Gross cash rental is the total amount of cash received for the use of actual tracts of comparable farm real property in the same locality as the property being specially valued during the period of one calendar year. This amount is not diminished by the amount of any expenses or liabilities associated with the farm operation or the lease. See 42.35.519 for a definition of comparable property and rules for property on which buildings or other improvements are located and farms including multiple property types. Only rentals from tracts of comparable farm property which are rented solely for an amount of cash which is not contingent upon production are acceptable for use in valuing real property under 72-16-335, MCA. The rentals considered must result from an arm's length transaction as defined in this section. Additionally, rentals received under leases which provide for payment solely in cash are not acceptable as accurate measures of cash rental value if involvement by the lessor (or a member of the lessor's family who is other than a lessee) in the management or operation of the farm loan extent which amounts to material participation under the provisions of 72-16-331, MCA, is contemplated or actually occurs. In general therefore rentals for any property which qualifies for special use valuation cannot be used to compute gross cash rentals under this section because the total amount received by the lessor does not reflect the true cash rental value of the real property.

AUTH: Secs. 15-1-201 and 72-16-337 MCA; IMP: Sec. 72-16-336 MCA.

42.35.513 DOCUMENTATION REQUIRED OF PERSONAL REPRESENTATIVE (1) The personal representative must identify to the department of revenue actual comparable property for all specially valued property and cash rentals from that property if the decedent's real property is valued under 72-16-333, MCA. If the personal representative does not identify such property and cash rentals, all specially valued real property must be valued

under rules of 72-16-336, MCA, if special use valuation has been elected.

AUTH: Secs. 15-1-201 and 72-16-337 MCA; IMP: Secs. 72-16-331 and 72-16-337 MCA.

42.35.514 CASH RENTALS - ARM'S LENGTH TRANSACTION REQUIRED (1) Only those cash rentals which result from a lease entered into in an arm's length transaction are acceptable under 72-16-333, MCA. For these purposes, lands leased from the federal government, the state, or any local government, which are leased for less than the amount that would be demanded by a private individual leasing for profit are not leased in an arm's length transaction. Additionally, leases between family members which do not provide a return on the property commensurate with that received under leases between unrelated parties in the locality are not acceptable under this section.

AUTH: Secs. 15-1-201 and 72-16-337 MCA; IMP: Sec. 72-16-336(2) MCA.

42.35.515 RENT COMPARABLES (1) Rents which are paid wholly or partly in kind (e.g., crop shares) may not be used to determine the value of real property under 72-16-333, MCA. Likewise, appraisals or other statements regarding rental value as well as areawide averages of rentals (i.e., those compiled by the United States department of agriculture) may not be used under 72-16-333 because they are not true measures of the actual cash rental value of comparable property in the same locality as the specially valued property.

AUTH: Secs. 15-1-201 and 72-16-337 MCA; IMP: Sec. 72-16-336(2) MCA.

42.35.516 COMPARABLE REAL PROPERTY (1) Comparable real property rented solely for cash must be identified for each of 5 calendar years preceding the year of the decedent's death if 72-16-335, MCA, is used to value the decedent's real property. Rentals from the same tract of comparable property need not be used for each of these 5 years however provided an actual tract of property meeting the requirements of this section is identified for each year.

AUTH: Secs. 15-1-201 and 72-16-337 MCA; IMP: Sec. 72-16-335 MCA.

42.35.517 ADJUSTMENT-RENT (1) No adjustment to the rents actually received by the lessor is made for the use of any farm equipment or other personal property, the use of which is included under a lease for comparable real property unless the lease specifies the amount of the total rental attributable to the personal property and that amount is reasonable under the circumstances.

AUTH: Secs. 15-1-201 and 72-16-337 MCA; IMP: Sec. 72-16-336(2) MCA.

42.35.518 TAX DEDUCTION (1) For purposes of the farm valuation formula under 72-16-335, MCA, state and local taxes are taxes which are assessed by the state or by local governmental entities and which are allowable deductions under section 164, I.R.C. However, only those taxes on the comparable real property from which cash rentals are determined may be used in the formula valuation.

AUTH: Secs. 15-1-201 and 72-16-337 MCA; IMP: Sec. 72-16-335 MCA.

42.35.519 COMPARABLE REAL PROPERTY DEFINED (1) Comparable real property must be situated in the same locality as the specially valued property. This requirement is not to be viewed in terms of mileage or political divisions alone, but rather is to be judged according to generally accepted real property valuation rules. The determination of properties which are comparable is a factual one and must be based on numerous factors, no one of which is determinative. It will therefore frequently be necessary to value farm property in segments where there are different uses or land characteristics included in the specially valued farm. For example, if 72-16-335, MCA, is used, rented property on which comparable buildings or improvements are located must be identified for specially valued property on which buildings or other real property improvements are located. In cases involving multiple areas or land characteristics, actual comparable property for each segment must be used and the rentals and taxes from all such properties combined (using generally accepted real property valuation rules) for use in the valuation formula given in this section. However, any premium or discount resulting from the presence of multiple use or other characteristics in one farm is also to be reflected. All factors generally considered in real estate valuation are to be considered in determining comparability under 72-16-333, MCA. While not intended as an exclusive list, the following factors are among those to be considered in determining comparability:

(a) through (j) remain the same.

AUTH: Secs. 15-1-201 and 72-16-337 MCA; IMP: 72-16-335 MCA.

3. The Department proposes to repeal the following rules:

42.35.313 FUNERAL EXPENSES found at page 42-3545 of the Administrative Rules of Montana.

AUTH: Secs. 15-1-201 and 72-16-201 MCA; IMP: Sec. 72-16-308 MCA.

42.35.314 EXPENSES OF LAST ILLNESS found at page 42-3545 of the Administrative Rules of Montana.

AUTH: Secs. 15-1-201 and 72-16-201 MCA; IMP: Sec. 72-16-308 MCA.

42.35.315 TAXES OWING AT DEATH found at page 42-3546 of the Administrative Rules of Montana.

AUTH: Secs. 15-1-201 and 72-16-201 MCA; IMP: Sec. 72-16-308 MCA.

4. ARM 42.35.104 is being amended to reflect changes made by Senate Bill 272 which eliminated the filing and recording requirement when property was held in joint tenancy. When a spouse died and property was held in joint property, the other spouse was required to file a department form with the county even though there was no inheritance tax owing. The authors felt that this paperwork was not needed. The amendments and repeals to the other rules are housekeeping in compliance with 2-4-314, MCA, which requires each agency to conduct a biennial review of its rules.

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

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

no later than February 9, 1996.

6. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than February 9, 1996.

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

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State January 2, 1996

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.17.101, 42.17.103, 42.17.112, 42.17.113, 42.17.114, 42.17.118, 42.17.121, 42.17.145, 42.17.147, 42.17.148, 42.17.149, 42.17.401, and 42.17.403 and REPEAL of ARM 42.17.102, 42.17.104, 42.17.115, 42.17.116, 42.17.117, 42.17.146 and 42.17.201 and ADOPTION of NEW RULES I through IV relating to Withholding and Old Fund Liability Taxes	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENTS, REPEAL AND ADOPTION OF NEW RULES relating to Withholding and Old Fund Liability Taxes

TO: All Interested Persons:

1. On February 7, 1996, at 1:30 p.m., a public hearing will be held in the Fourth Floor Conference Room, Mitchell Building, Helena, Montana, to consider the amendment of ARM 42.17.101, 42.17.103, 42.17.112, 42.17.113, 42.17.114, 42.17.118, 42.17.121, 42.17.145, 42.17.147, 42.17.148, 42.17.149, 42.17.401, 42.17.403 and repeal of ARM 42.17.102, 42.17.104, 42.17.115, 42.17.116, 42.17.117, 42.17.146, and 42.17.201 and the adoption of rules I through IV relating to withholding and old fund liability taxes.

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

42.17.101 ~~EMPLOYEE DEFINED~~ DEFINITIONS (1) The term "employee" means:

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

(b) All classes or grades of employees are included within the relationship of employer and employee. Thus, superintendents, managers, other supervisory personnel, and corporate officers are employees.

(2) The term "employer" means any person or organization for whom an individual performs any service as an employee. However, if the person or organization for whom an individual

performs services does not have control of the wage payments, the term employer means the person or organization having control of the payment of such wages. State income tax and old fund liability tax withheld, or that should have been withheld, and old fund liability tax due will be collected from the person or organization having control of the payment of such wages.

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

(3) The term "fees" is referring to authorized fees paid to notaries public, clerks of court, sheriffs, etc., for services rendered in performance of their official duties.

(4) The term "reporting forms" means the QR quarterly reconciliation for accelerated filers, the YR yearly payment reconciliation for monthly filers, the AR annual reconciliation for annual filers, the MW3 transmittal document and the W2 wage statements for all filer types.

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

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

AUTH: Sec. 15-30-305 MCA; IMP: Secs. 15-30-105, 15-30-201 and 39-71-2501 MCA.

42.17.103 WAGES, TIPS AND OTHER PAYMENTS ~~(1) The term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for an employer, including the fair value of all remuneration paid in any medium or form other than money. Thus, salaries, wages, bonuses, fees, commissions, and other payments are wages subject to withholding if paid as compensation for services rendered by an employee for his employer. Wages do not lose their identity even though payment may be deferred.~~

~~(2) The name by which compensation is designated is immaterial.~~

(3) remains the same but is renumbered (2).

~~(4)~~ (1) Tip income received by an employee for services rendered within the premises of a licensed food, beverage, or lodging establishment is exempt from Montana withholding after December 31, 1982. However, the exemption is subject to change

on the date the president approves legislation passed by Congress that removes the tip requirements of section 6053(c)(3) of the Internal Revenue Code of 1954. Service charges, sometimes called gratuities, are collected by the establishment through mandatory charges added to a customer's bill. Service charges are exempt from Montana withholding after December 31, 1994. Tips received from other services, e.g., hairdressing, driving taxis, delivering goods, etc., remain subject to withholding.

(5) remains the same but is renumbered (3).

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

42.17.112 EMPLOYER REGISTRATION (1) Every employer required to withhold state individual income tax or withhold and/or pay the old fund liability tax must file an application for an account number on ~~form ER-1~~ the Combined Unemployment Insurance/Revenue Employer Registration Form UI/R-1. A new employer who has acquired the business of another employer must not use his predecessor's account number. Application for an account number is to be made to the Department of ~~Revenue,~~ Labor and Industry, P.O. Box 1728, Helena, Montana ~~59620~~ 59624.

(2) and (3) remain the same.

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

42.17.113 ~~QUARTERLY~~ REPORTS AND PAYMENTS (1) Every employer is required to make~~, for each calendar quarter,~~ a report to the ~~D~~department of ~~R~~revenue, ~~Helena, Montana,~~ in accordance with the schedule determined by the previous lookback period, summarizing the state income tax withheld from employee's wages ~~during the quarter~~ in the reporting period. In addition, ~~the employer and employee portions of~~ the old fund liability tax must be summarized on this report. ~~The reports will cover the weekly or quarterly periods ending March 31, June 30, September 30, and December 31 and must be postmarked no later than the last day of the month following the close of the quarter. The form to be used in making the quarterly report is MW-5 for quarterly remitters or MWA for weekly remitters described in (2)(b).~~ The reporting forms are: QR (quarterly reconciliation for accelerated filers), the YR (yearly payment reconciliation for monthly filers), and AR (annual reconciliation for annual filers), MW3 (transmittal document) and W2 (wage statements for all filer types).

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

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

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

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

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

~~(f)~~ (a) The old fund liability tax is imposed on employers and employees at the statutory rate.

~~(g)~~ (b) No extension of time for remittance of the required tax amounts or tax reports can be granted by the department.

~~(3)~~ (2) ~~A registered employer must submit a report for each reporting period unless state income tax withholdings are not expected to exceed $10 for any period during the year. Such employer shall, on or before February 28 of the year succeeding that in which such wages were paid, file an annual return as provided for in 15-30-204, MCA. If an employer is not liable for state income tax withholding, the $10 minimum then applies to the old fund liability tax.~~ Reports must be submitted for each reporting period. If no tax was withheld on wages paid or no wages were paid for a reporting period, the report must still be submitted.

(3) Every employer is required to make payments to the department of revenue in accordance with the schedule determined by the previous lookback period for the previous pay day, month, or year. The department will provide payment coupons to accompany payments. Coupon forms used are: P26 for accelerated payments, P12 for monthly payments, and P1 for annual payments.

(4) and (5) remain the same.

(6) The department may require immediate ~~return~~ payment of any tax it has reason to belive is in jeopardy, as provided by 15-30-312, MCA.

(7) The following chart is an overview of employer

reporting and payment requirements.

Employer	Thresholds*	Report Name/ Date Due	Payments Due/ Form Name
Accelerated	$12,000 >	QR/Quarterly April 30, July 31, October 31, Jan 31 MW3 & W2's/ Feb 28	Federal Schedule/ Form P26
Monthly	$1,200-11,999	YR, MW3 & W2's/Feb 28	Monthly - 15th of month following/ P12
Annual	<$1,200	AR, MW3 & W2's/Feb 28	Feb 28/P1

* Threshold determined by amount of tax withheld during the 12 month "lookback period", i.e., July 1 - June 30 of the preceding fiscal year.

(8) If an accelerated employer's payment requirement for state purposes conflicts with the federal tax deposit requirements, the employer may elect to remit according to the federal schedule.

AUTH: Sec. 15-30-305 MCA; IMP: Secs. 15-30-204, 15-30-210, 15-30-211 and 39-71-2503 MCA.

42.17.114 ANNUAL RECONCILIATION AND WAGE STATEMENTS

(1) On or before February 28 of each year, ~~the~~ every employer must file with the ~~D~~department of ~~R~~revenue~~, Helena, Montana 59620, an annual reconciliation on~~ a transmittal document ~~F~~form ~~MW-10~~ MW3. ~~This form shows the total state income tax and old fund liability tax withheld from employees during the preceding year and must agree with the totals shown on the quarterly reports.~~ Form ~~MW-10~~ MW3 must be accompanied by the original copies of each employee's earnings statements, on federal form W-2.

(a) Employee's earning statements, federal form W-2, must be prepared for each employee, regardless of whether or not withholding and/or old fund liability taxes were actually withheld from the employee's wages. The state wages and state income tax withheld must be shown in the area provided. The old fund liability tax wages and the tax withheld must be shown in

either the employer's use box and designated as "OFLT" or in the local tax area and designated as "OFLT".

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

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

(2) through (4) remains the same.

AUTH: Sec. 15-30-305 MCA; IMP: Secs. 15-30-206, 15-30-207 and 39-71-2503 MCA.

42.17.118 FORMS TO FILE AFTER TERMINATION OF WAGE PAYMENTS (1) The following statements must be filed with the ~~D~~department of ~~R~~revenue~~, Helena, Montana 59620,~~ within 30 days after the termination of wage payments:

(a) Form ~~MW-5~~ OR, the quarterly report, (for accelerated payors) for the final quarter in which wage payments were made ~~(the completed form must contain a cancellation date)~~ or the yearly report, form YR (for monthly filers) or form AR (for annual filers), the payment coupon for the final period you paid wages (P26, P12, or P1) and the appropriate cancellation coupon;

(b) Form ~~MW-10~~ MW3, the ~~annual reconciliation of state income tax and old fund liability tax withheld during the year to the date of termination of wage payments~~ transmittal document; and

(c) remains the same.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-204, 15-30-205, 15-30-206, 15-30-207, 15-30-209 and 39-71-2503 MCA.

42.17.121 INDIVIDUAL LIABILITY (1) If a corporate employer fails to withhold or fails to remit amounts withheld ~~and/~~or ~~payroll~~ old fund liability tax monies to the department as required under 15-30-203, MCA, the individual responsible for withholding will be held individually liable for the taxes, penalties and interest.

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

(i) through (iii) remain the same.

(b) remains the same.

(2) remains the same.

(3) In the case of a limited liability company, the operation of the entity determines the individual(s) responsible for payment of taxes, penalties and interest. If the limited liability company has the centralized management characteristic of a corporation, subsections (1) and (2) apply. If the limited liability company has the decentralized management characteristic of a partnership, the partners are jointly and

severally liable for the tax, penalty and interest.

(4) The partners of a limited liability partnership are responsible in the same manner as a partnership. The partners are jointly and severally liable for the tax, penalty and interest.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-203, 35-10-307, 39-71-2501 and 39-71-2503 MCA.

42.17.145 OLD FUND LIABILITY TAX (1) through (3) remain the same.

(4) For the purpose of the old fund liability tax the definitions found in ARM 42.17.101 apply.

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

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

(a) and (b) remain the same.

(c) ~~the~~ compensation paid to workers ~~in the rail industry subject to the jurisdiction of the federal railroad administration, United States department of transportation~~ covered by federal workers' compensation legislation;

(d) and (e) remain the same.

(2) Employer portion only exceptions:

~~(a) wages paid by the federal government;~~

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

(b) wages paid to corporate officers who are stockholders of record of a closely held C corporation that meets the stock ownership requirements of section 542(a)(2) of the Internal Revenue Code; and

(c) remains the same.

AUTH: Secs. 15-30-305 and 39-71-2503 MCA; IMP: Secs. 15-30-304 and 39-71-2501 MCA.

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

AUTH: Secs. 15-30-305 and 39-71-2503 MCA; IMP: Sec. 15-30-203, 15-30-209 and 39-71-2503 MCA.

42.17.149 INDIVIDUAL LIABILITY - OLD FUND LIABILITY TAX (1) and (2) remain the same.

(3) In the case of a limited liability company, the

operation of the entity determines the individual(s) responsible for payment of taxes, penalties and interest. If the limited liability company has the centralized management characteristic of a corporation, subsections (1) and (2) apply. If the limited liability company has the decentralized management characteristic of a partnership, the partners are jointly and severally liable for the tax, penalty and interest.

(4) The partners of a limited liability partnership are responsible in the same manner as a partnership. The partners are jointly and severally liable for the tax, penalty and interest.

AUTH: Secs. 15-30-305 and 39-71-2503 MCA; IMP: Secs. 15-30-209, 35-10-307 and 39-71-2503 MCA.

42.17.401 OLD FUND LIABILITY TAX RATE (1) through (8) remain the same.

(9) For taxable years beginning after December 31, 1994, the $25 minimum old fund liability tax has been eliminated. Therefore, all earnings will be taxed at .2% with no minimum.

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

42.17.403 OLD FUND LIABILITY TAX INCOME (1) through (6) remain the same.

(7) Rent and royalty income not included in net business income of a sole proprietorship is not subject to the old fund liability tax ~~and the $25 minimum~~.

(8) Director's fees and like income is subject to the old fund liability tax ~~and the $25 minimum~~.

(9) For tax years beginning after December 31, 1994, earnings from a publicly traded limited partnership are not subject to the old fund tax liability tax.

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

3. The rules proposed to be repealed are:

42.17.102 EMPLOYER DEFINED found at page 42-1705 of the Administrative Rules of Montana.

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

42.17.104 FEES found at page 42-1707 of the Administrative Rules of Montana.

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

42.17.115 ADJUSTMENT OF ERRORS found at page 42-1712 of the Administrative Rules of Montana.

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

42.17.116 EMPLOYEE'S WITHHOLDING STATEMENT found at page

42-1712 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, MCA; IMP: Sec. 15-30-206, 39-71-2503, MCA.

42.17.117 INTEREST found at page 42-1713 of the Administrative Rules of Montana.

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

42.17.146 DEFINITIONS found at page 42-1725 of the Administrative Rules of Montana.

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

42.17.201 NONRESIDENT DEFINED found at page 42-1731 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-105 and 15-30-228, MCA.

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

RULE I FILING DATE (1) In lieu of other evidence, a postmark issued by the United States Postal Service is considered the date of filing. To be timely, paper filings must be postmarked on or before the due date.

AUTH: Sec. 15-30-305 MCA; IMP: Secs. 15-30-204, 15-30-207 and 39-71-2503 MCA.

RULE II PERSONAL IDENTIFICATION NUMBER (1) A personal identification number (pin) or password possesses the same authority on an electronic return as the signature does on a paper return.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-211 MCA.

RULE III ELECTRONIC PAYMENT/FILING DATE (1) Electronic funds transfers utilizing a credit method for payment of taxes must culminate (i.e. be deposited in the state's account) on or before the due date to be considered timely. The taxpayer is solely responsible for ensuring the transfer will be completed by the due date.

(2) A taxpayer utilizing a debit method for payment of taxes must successfully transmit the filing and payment information to the Department of Revenue by 3:00 p.m. mountain standard time on or before the due date.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-210 MCA.

RULE IV BACKUP SITUATION (1) In an emergency situation, Fed Wire Transfers or paper bank drafts (checks) may be utilized by taxpayers who have elected to file electronically. The use must meet with prior approval of the department. Nothing in this rule shall preempt 15-2-802, MCA, which requires electronic payment whenever the amount due is $500,000 or greater.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-210 MCA.

5. The proposed rules I through IV do not replace or modify any section currently found in the Administrative Rules of Montana.

6. The department is proposing these actions because the 1995 legislature enacted legislation which either conflicts with the present rules or requires rulemaking to clarify the new laws. Several laws affect these particular rules:

Service charges were exempted from the definition of wages subject to withholding. Rules need to define "service charges."

Wages paid by the railroads and to federal employees were exempted from the old fund liability tax. Wages paid to national guard and reservists are now subject to income tax withholding. Wages paid to shareholders of closely-held corporations were exempted from the employer portion of the old fund liability tax. The present rules addressing these areas conflict with the new laws.

Several employer-related responsibilities were combined with the Department of Labor and Industry which necessitate rule changes related to registration and independent contractor determinations and appeals.

Limited liability partnerships were recognized in Montana. Rules are needed to clarify individual liability related to this type of entity as well as to limited liability companies which were recognized in the prior legislative session.

To simplify and reduce employer tax reporting requirements, the filing and remittance schedules for most of Montana employers were changed effective January 1, 1996. Amendments are needed because the present rules are in conflict with the statute.

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

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

no later than February 16, 1996.

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

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State January 2, 1996

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of RULE I, AMENDMENT of ARM 42.20.134, 42.20.135, 42.20.139, 42.20.146, 42.20.147, 42.20.150, 42.20.201, 42.20.202, 42.20.204 and 205, & REPEAL of ARM 42.20.113, 42.20.114, 42.20.115, 42.20.116, 42.20.133, 42.20.158 relating to Real Property	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION, AMENDMENTS, and REPEALS

TO: All Interested Persons:

1. On February 7, 1996, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the adoption of new rule I, amendment of ARM 42.20.134, 42.20.135, 42.20.139, 42.20.146, 42.20.147, 42.20.150, 42.20.201, 42.20.202, 42.20.204, 42.20,205 & repeal of 42.20.113, 42.20.114, 42.20.115, 42.20.116, 42.20.133, 42.20.158 relating to real property.

2. The proposed rule I, does not replace or modify any section currently found in the Administrative Rules of Montana. The rule as proposed to be adopted provides as follows:

RULE I VALUATION OF ONE ACRE BENEATH AGRICULTURAL IMPROVEMENTS AND IMPROVEMENTS ON AGRICULTURAL LAND (1) An agricultural valuation will be made for each one acre area beneath each residence which is located on agricultural land as defined in ARM 42.20.147, 42.20.150, and 42.20.153.

(a) Occupancy of the residential improvement, for purposes of applying this rule, shall be irrelevant. The existence of ancillary structures and outbuildings shall be similarly irrelevant, for purposes of applying this rule.

(b) A single one acre agricultural value determination will be made when multiple residences are located on the same one acre area.

(2) Each one acre area beneath a residential improvement on agricultural land as defined in (1) above, shall be appraised according to the productive capacity value consistent with the class with the highest productive value and production capacity of agricultural land.

(a) No specific site improvement values for water systems and septic systems will be added to the one acre land values determined according to (2) above.

(3) To avoid double taxation, the productive capacity value for the one acre beneath agricultural improvements which are valued at the class with the highest productive value and production capacity of agricultural land must be subtracted from the productive capacity value for the entire property ownership.

AUTH: 15-1-201 MCA; IMP: 15-6-134, 15-7-103, and 15-7-206 MCA

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

42.20.134 VALUATION OF ONE ACRE BENEATH IMPROVEMENTS ON NONQUALIFIED AGRICULTURAL ~~IMPROVEMENTS~~ LAND AND IMPROVEMENTS ON FOREST LAND (1) A market value determination will be made for each one acre area beneath each residence which is located on nonqualified agricultural land as defined in ARM 42.20.152 and for each one acre area beneath each residence that is located on forest land as defined in ARM 42.20.160 and ARM 42.20.161.

(a) and (b) remain the same.

(2) Each one acre area beneath a residential improvement on nonqualified agricultural or forest land as defined in ~~paragraph~~ (1) above, shall be appraised according to market value consistent with that of comparable land.

(a) If the one acre of land is located on ~~an~~ nonqualified agricultural or ~~timber~~ forest land operation that is many miles from a suburban area, the market value assigned to the one acre area will be consistent with the market value of comparable land. In no case will the market value be lower than the lowest market value assigned to improved tracts within the county.

(b) If the one acre of land is located on ~~an~~ nonqualified agricultural or ~~timber~~ forest land operation that is near a suburban area, the market value assigned to the one acre area will be consistent with the market value of surrounding suburban land.

(c) Remains the same.

AUTH: Sec. 15-1-201 MCA; IMP: Secs. 15-6-134, 15-7-103, 15-7-201, 15-7-202, and 15-8-111 MCA

42.20.135 PROCEDURE FOR REMOVING ONE ACRE BENEATH ~~AGRICULTURAL~~ IMPROVEMENTS ON NONQUALIFIED AGRICULTURAL LAND AND IMPROVEMENTS ON FOREST LAND FROM PROPERTY LAND CLASSIFICATION (1) All ~~agricultural land and~~ forest land acreage will be classified and valued based upon its productive capacity.

(2) All one acre tracts beneath residential improvements on nonqualified agricultural and forest land valued pursuant to ARM 42.20.13~~3~~4 through 42.20.136, will be valued based upon their market values.

(3) To avoid double taxation, the productive capacity value for the one acre beneath ~~agricultural improvements and~~ improvements on nonqualified agricultural land and improvements on forest land which are valued at market value must be subtracted from the productive capacity value for the entire property ownership.

(4) The department of revenue will attempt to determine the current land classification of land beneath ~~all agricultural improvements and~~ all improvements on nonqualified agricultural land or forest land. Should the department of revenue be unable to make accurate determinations on current land classification of the one acre area beneath ~~agricultural improvements and~~ improvements on nonqualified agricultural land or forest land,

the following estimation procedures are adopted.

(a) For nonqualified agricultural land:

(i) ~~S~~subtract one acre of ~~the highest per acre productive value of grazing classification~~ the productive value of grade 3 grazing land from the property ownership.

~~(ii) If the property ownership contains no land in the grazing classification, subtract one acre of the highest per acre productive value of the nonirrigated farmland classification from the property classification.~~

~~(iii) If the property ownership contains no land in the nonirrigated farmland classification, subtract one acre of the highest per acre productive value of the irrigated land classification from the property classification.~~

(b) remains the same.

(5) remains the same.

AUTH: Sec. 15-1-201 MCA; IMP: Secs. 15-6-133, 15-6-134, 15-6-143, 15-7-103, 15-7-201, 15-7-202, and 15-8-111 MCA

42.20.139 APPLICATION FOR AGRICULTURAL CLASSIFICATION OF LAND (1) The property owner of record or his agent must make application to the property assessment division, department of revenue, in order to secure agricultural classification of his land. In order to be considered for the current tax year, an application must be filed on a form available from the county appraisal office before March 1 or ~~15~~ 30 days after receiving a notice of classification change from the department of revenue, whichever is later. The form must be filed with the county appraisal office.

(2) through (4) remain the same.

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

42.20.146 TILLABLE, IRRIGATED LAND (1) through (2)(c) remains the same.

(3) Water costs are the combination of allowable labor costs, ~~and~~ on-farm energy costs and a $5.50 base water cost which is applicable to every acre of irrigated land. Total allowable water costs may not exceed $35 for each acre of irrigated land.

(4) remains the same.

(5) For tax years 1994 through 1996, ~~A~~allowable energy costs, expressed as cost per acre, are the actual costs incurred in 1992 for energy to provide water from a definitive source to identifiable fields by use of commonly accepted irrigation system practices. For tax years 1997 and thereafter, allowable energy costs, expressed as cost per acre, are the actual costs incurred in the energy cost base year, which is the calendar year immediately preceding the year published by the department in administrative rule 42.18.124, for energy to provide water from a definitive source to identifiable fields by use of commonly accepted irrigation system practices.

(6) remains the same.

(7) For tax years 1994 through 1996, ~~I~~if no energy costs

were incurred in 1992, the owner of irrigated land shall provide the department with energy costs from the most recent calendar year available. The department shall adjust the most recent calendar year's energy cost to reflect costs in 1992. The respective consumer price indices for energy purchases will be the basis for those adjustments. For tax years 1997 and thereafter, if no energy costs were incurred in the energy cost base year, the owner of irrigated land shall provide the department with energy costs from the most recent calendar year available. The department shall adjust the most recent calendar year's energy cost to reflect costs in the energy cost base year. The respective consumer price indices for energy purchases will be the basis for those adjustments.

(8) ~~In determining the irrigated land values for the 1994 tax year, the department will contact each irrigated land taxpayer to provide information and forms that will allow for the submission of water cost and irrigation system information.~~ By July 1 of the year following the energy cost base year, ~~A~~all irrigated land taxpayers must provide all required labor cost and energy cost information incurred in that energy cost base year to the department on the prescribed forms. Failure to provide the required information will result in no water cost deduction to the irrigated land value calculated by the department for property tax purposes.

(9) To make changes in the irrigated land values for tax years after the year published by the department in ARM 42.18.124, ~~1994~~ irrigated land taxpayers must provide to the department updated information by March 1 of the current tax year. That information will be limited to land use change information, irrigation system changes and energy cost data. Failure to provide the updated information by the deadline will result in no change being made in the irrigated land values previously calculated by the department.

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

Class 1, Maximum Rotation

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

Tons Alfalfa Per Acre	Grade	ASSESSED VALUE PER ACRE Under $5.00	$5.00 9.99	$10.00 14.99	$15.00 19.99	$20.00 24.99	$25.00 29.99	$30.00 34.99
4.5+	1A	830.00	616.48	577.54	558.01	538.48	518.95	499.42
4.0-4.4	1B	719.95	533.71	497.62	478.09	458.56	439.03	419.50
3.5-3.9	2	608.08	450.06	416.65	397.12	377.59	358.06	338.53
3.0-3.4	3	501.41	369.79	338.60	319.07	299.53	280.00	260.47
2.5-2.9	4	393.86	288.93	261.24	241.71	222.18	202.65	183.12
2.0-2.4	5	278.73	202.95	177.88	158.35	138.82	119.29	108.68
1.5-1.9	6	187.74	133.23	110.20	90.67	71.14	68.11	68.11
1.0-1.4	7	115.57	75.93	54.53	39.55	39.55	39.55	39.55
Less than 1.0	8	41.48	19.09	19.09	19.09	19.09	19.09	19.09

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

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

Tons Alfalfa Per Acre	Grade	ASSESSED VALUE PER ACRE Under $5.00	$5.00 9.99	$10.00 14.99	$15.00 19.99	$20.00 24.99	$25.00 29.99	$30.00 34.99
4.5+	1A	880.28	711.70	659.69	620.63	581.57	542.51	503.44
4.0-4.4	1B	770.57	620.37	570.27	531.21	492.14	453.08	414.02
3.5-3.9	2	659.85	528.45	480.15	441.08	402.02	362.96	330.44
3.0-3.4	3	552.59	436.79	391.96	352.90	313.84	281.27	281.27
2.5-2.9	4	444.74	348.75	304.24	265.18	232.58	232.58	232.58
2.0-2.4	5	331.84	255.28	212.52	173.46	172.29	172.29	172.29
1.5-1.9	6	235.04	172.65	131.26	130.05	130.05	130.05	130.05
1.0-1.4	7	150.78	98.30	88.21	88.21	88.21	88.21	88.21
Less than 1.0	8	63.57	59.38	59.38	59.38	59.38	59.38	59.38

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

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

Tons Alfalfa Per Acre	Grade	ASSESSED VALUE PER ACRE Under $5.00	$5.00 9.99	$10.00 14.99	$15.00 19.99	$20.00 24.99	$25.00 29.99	$30.00 34.99
4.5+	1A	930.27	806.91	741.85	683.26	624.66	566.07	507.47

4.0-4.4	1B	821.19	707.03	642.91	584.32	525.73	467.14	408.54
3.5-3.9	2	711.62	606.85	543.64	485.04	426.45	367.85	319.07
3.0-3.4	3	603.76	507.80	445.33	386.73	328.14	279.29	279.29
2.5-2.9	4	495.62	408.56	347.25	288.66	239.75	239.75	239.75
2.0-2.4	5	384.95	307.61	247.17	188.58	186.81	186.81	186.81
1.5-1.9	6	282.33	212.08	152.32	150.50	150.50	150.50	150.50
1.0-1.4	7	185.98	120.68	106.79	106.79	106.79	106.79	106.79
Less than 1.0	8	79.27	77.17	77.17	77.17	77.17	77.17	77.17

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

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

Tons		ASSESSED VALUE PER ACRE						
Alfalfa		Under	$5.00	$10.00	$15.00	$20.00	$25.00	$30.00
Per Acre	Grade	$5.00	9.99	14.99	19.99	24.99	29.99	34.99
4.5+	1A	980.25	902.13	824.00	745.88	667.75	589.63	511.50
4.0-4.4	1B	871.81	793.69	715.56	637.44	559.31	481.19	403.06
3.5-3.9	2	763.38	685.25	607.13	529.00	450.88	372.75	307.71
3.0-3.4	3	654.94	576.81	498.69	420.56	342.44	277.31	277.31
2.5-2.9	4	546.50	468.38	390.25	312.13	246.92	246.92	246.92
2.0-2.4	5	438.06	359.94	281.81	203.69	201.34	201.34	201.34

1.5-1.9	6	329.63	251.50	173.38	170.95	170.95	170.95	170.95
1.0-1.4	7	221.19	143.06	125.36	125.36	125.36	125.36	125.36
Less than 1.0	8	94.97	94.97	94.97	94.97	94.97	94.97	94.97

Class 2, Medium Rotation

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

Tons Alfalfa		ASSESSED VALUE PER ACRE						
Per Acre	Grade	Under $5.00	$5.00 9.99	$10.00 14.99	$15.00 19.99	$20.00 24.99	$25.00 29.99	$30.00 34.99
4.5+	1A	729.20	517.40	480.35	462.77	445.19	427.61	410.04
4.0-4.4	1B	623.54	442.75	408.85	391.27	373.70	356.12	338.54
3.5-3.9	2	523.54	371.60	340.62	323.04	305.46	287.88	270.31
3.0-3.4	3	429.25	304.01	275.65	258.07	240.49	222.92	205.34
2.5-2.9	4	340.56	239.86	214.00	196.43	178.85	161.27	143.69
2.0-2.4	5	257.46	179.20	155.56	137.99	120.41	102.83	93.41
1.5-1.9	6	179.50	126.94	105.87	88.29	70.71	68.11	68.11
1.0-1.4	7	110.10	72.41	52.91	39.55	39.55	39.55	39.55
Less than 1.0	8	39.74	19.09	19.09	19.09	19.09	19.09	19.09

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

~~Tons Alfalfa~~		~~ASSESSED VALUE PER ACRE~~						
~~Per Acre~~	~~Grade~~	~~Under $5.00~~	~~$5.00 9.99~~	~~$10.00 14.99~~	~~$15.00 19.99~~	~~$20.00 24.99~~	~~$25.00 29.99~~	~~$30.00 34.99~~
~~4.5+~~	~~1A~~	~~780.21~~	~~615.57~~	~~567.43~~	~~532.28~~	~~497.12~~	~~461.96~~	~~426.81~~
~~4.0-4.4~~	~~1B~~	~~677.24~~	~~533.27~~	~~487.24~~	~~452.08~~	~~416.92~~	~~381.77~~	~~346.61~~
~~3.5-3.9~~	~~2~~	~~578.04~~	~~453.31~~	~~409.22~~	~~374.06~~	~~338.90~~	~~303.75~~	~~268.59~~
~~3.0-3.4~~	~~3~~	~~482.65~~	~~375.72~~	~~333.37~~	~~298.22~~	~~263.06~~	~~227.90~~	~~192.75~~
~~2.5-2.9~~	~~4~~	~~390.99~~	~~300.42~~	~~259.74~~	~~224.59~~	~~189.43~~	~~154.28~~	~~119.12~~
~~2.0-2.4~~	~~5~~	~~303.06~~	~~227.45~~	~~188.25~~	~~153.10~~	~~117.94~~	~~82.78~~	~~63.94~~
~~1.5-1.9~~	~~6~~	~~218.55~~	~~160.08~~	~~122.59~~	~~87.44~~	~~52.28~~	~~47.07~~	~~47.07~~

~~1.0-1.4~~	~~7~~	~~139.75~~	~~91.19~~	~~54.75~~	~~28.03~~	~~28.03~~	~~28.03~~	~~28.03~~
~~Less than 1.0~~	~~8~~	~~47.31~~	~~14.39~~	~~14.39~~	~~14.39~~	~~14.39~~	~~14.39~~	~~14.39~~

Tons		ASSESSED VALUE PER ACRE						
Alfalfa Per Acre	Grade	Under $5.00	$5.00 9.99	$10.00 14.99	$15.00 19.99	$20.00 24.99	$25.00 29.99	$30.00 34.99
4.5+	1A	780.21	615.57	567.43	532.28	497.12	461.96	426.81
4.0-4.4	1B	677.24	533.27	487.24	452.08	416.92	381.77	346.61
3.5-3.9	2	578.04	453.31	409.22	374.06	338.91	303.75	289.87
3.0-3.4	3	482.65	375.72	333.37	298.22	263.06	247.62	247.62
2.5-2.9	4	390.99	300.42	259.75	224.59	207.59	207.59	207.59
2.0-2.4	5	303.06	227.45	188.25	162.11	162.11	162.11	162.11
1.5-1.9	6	218.55	160.08	130.05	130.05	130.05	130.05	130.05
1.0-1.4	7	139.76	91.19	88.21	88.21	88.21	88.21	88.21
Less than 1.0	8	63.57	59.38	59.38	59.38	59.38	59.38	59.38

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

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

Tons Alfalfa Per Acre	Grade	ASSESSED VALUE PER ACRE Under $5.00	$5.00 9.99	$10.00 14.99	$15.00 19.99	$20.00 24.99	$25.00 29.99	$30.00 34.99
4.5+	1A	831.22	713.74	654.52	601.78	549.05	496.31	443.58
4.0-4.4	1B	730.93	623.80	565.62	512.88	460.15	407.42	354.69
3.5-3.9	2	632.54	535.02	477.81	425.08	372.35	319.62	298.79
3.0-3.4	3	536.04	447.42	391.10	338.36	285.62	262.46	262.46
2.5-2.9	4	441.42	360.98	305.49	252.75	227.26	227.26	227.26
2.0-2.4	5	348.66	275.69	220.94	181.72	181.72	181.72	181.72
1.5-1.9	6	257.61	193.21	150.50	150.50	150.50	150.50	150.50
1.0-1.4	7	169.41	109.98	106.79	106.79	106.79	106.79	106.79
Less than 1.0	8	79.27	77.17	77.17	77.17	77.17	77.17	77.17

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

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

Tons Alfalfa Per Acre	Grade	ASSESSED VALUE PER ACRE Under $5.00	$5.00 9.99	$10.00 14.99	$15.00 19.99	$20.00 24.99	$25.00 29.99	$30.00 34.99
4.5+	1A	882.23	811.91	741.60	671.29	600.98	530.66	460.35
4.0-4.4	1B	784.63	714.32	644.01	573.69	503.38	433.07	362.76

3.5-3.9	2	687.04	616.73	546.41	476.10	405.79	335.48	307.71
3.0-3.4	3	589.44	519.13	448.82	378.51	308.19	277.31	277.31
2.5-2.9	4	491.85	421.54	351.23	280.91	246.92	246.92	246.92
2.0-2.4	5	394.26	323.94	253.63	201.34	201.34	201.34	201.34
1.5-1.9	6	296.66	226.35	170.95	170.95	170.95	170.95	170.95
1.0-1.4	7	199.07	128.76	125.36	125.36	125.36	125.36	125.36
Less than 1.0	8	94.97	94.97	94.97	94.97	94.97	94.97	94.97

Class 3, Minimum Rotation

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

Tons Alfalfa Per Acre	Grade	ASSESSED VALUE PER ACRE Under $5.00	$5.00 9.99	$10.00 14.99	$15.00 19.99	$20.00 24.99	$25.00 29.99	$30.00 34.99
4.5+	1A	640.57	430.72	395.63	380.00	364.38	348.75	333.13
4.0-4.4	1B	554.88	372.95	340.72	325.09	309.47	293.84	278.22
3.5-3.9	2	472.22	316.99	287.38	271.75	256.13	240.50	224.88
3.0-3.4	3	392.71	262.72	235.67	220.05	204.42	188.80	173.17
2.5-2.9	4	316.23	210.26	185.48	169.85	154.23	138.60	122.98
2.0-2.4	5	242.78	159.36	136.92	121.29	105.67	90.04	81.81
1.5-1.9	6	171.26	120.66	101.53	85.91	70.28	68.11	68.11
1.0-1.4	7	104.51	68.89	51.28	39.55	39.55	39.55	39.55
Less than 1.0	8	39.64	19.09	19.09	19.09	19.09	19.09	19.09

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

~~Tons Alfalfa Per Acre~~	~~Grade~~	~~ASSESSED VALUE PER ACRE Under $5.00~~	~~$5.00 9.99~~	~~$10.00 14.99~~	~~$15.00 19.99~~	~~$20.00 24.99~~	~~$25.00 29.99~~	~~$30.00 34.99~~
~~4.5+~~	~~1A~~	~~688.45~~	~~527.72~~	~~483.49~~	~~452.24~~	~~420.99~~	~~389.74~~	~~358.49~~
~~4.0-4.4~~	~~1B~~	~~602.40~~	~~460.29~~	~~417.96~~	~~386.71~~	~~355.46~~	~~324.21~~	~~292.96~~
~~3.5-3.9~~	~~2~~	~~518.38~~	~~394.06~~	~~353.48~~	~~322.23~~	~~290.98~~	~~259.73~~	~~228.48~~

~~3.0-3.4~~	~~3~~	~~436.46~~	~~328.96~~	~~290.10~~	~~258.85~~	~~227.60~~	~~196.35~~	~~165.10~~
~~2.5-2.9~~	~~4~~	~~356.55~~	~~265.07~~	~~227.72~~	~~196.47~~	~~165.22~~	~~133.97~~	~~102.72~~
~~2.0-2.4~~	~~5~~	~~278.67~~	~~202.23~~	~~166.43~~	~~135.18~~	~~103.93~~	~~72.68~~	~~56.20~~
~~1.5-1.9~~	~~6~~	~~202.07~~	~~147.50~~	~~113.92~~	~~82.67~~	~~51.42~~	~~47.07~~	~~47.07~~
~~1.0-1.4~~	~~7~~	~~128.66~~	~~84.08~~	~~51.51~~	~~28.03~~	~~28.03~~	~~28.03~~	~~28.03~~
~~Less than 1.0~~	~~8~~	~~44.93~~	~~14.39~~	~~14.39~~	~~14.39~~	~~14.39~~	~~14.39~~	~~14.39~~

Tons Alfalfa Per Acre	Grade	ASSESSED VALUE PER ACRE Under $5.00	$5.00 9.99	$10.00 14.99	$15.00 19.99	$20.00 24.99	$25.00 29.99	$30.00 34.99
4.5+	1A	688.45	527.72	483.49	452.24	420.99	389.74	358.49
4.0-4.4	1B	602.40	460.29	417.96	386.71	355.46	324.21	292.96
3.5-3.9	2	518.38	394.06	353.48	322.23	290.98	264.49	264.49
3.0-3.4	3	436.46	328.96	290.10	258.85	229.28	229.28	229.28
2.5-2.9	4	356.55	265.07	227.72	196.47	195.08	195.08	195.08
2.0-2.4	5	278.67	202.23	166.43	154.37	154.37	154.37	154.37
1.5-1.9	6	202.07	147.50	130.05	130.05	130.05	130.05	130.05
1.0-1.4	7	128.66	89.53	88.21	88.21	88.21	88.21	88.21
Less than 1.0	8	64.66	59.38	59.38	59.38	59.38	59.38	59.38

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

~~Tons Alfalfa Per Acre~~	~~Grade~~	~~ASSESSED VALUE PER ACRE Under $5.00~~	~~$5.00 9.99~~	~~$10.00 14.99~~	~~$15.00 19.99~~	~~$20.00 24.99~~	~~$25.00 29.99~~	~~$30.00 34.99~~
~~4.5+~~	~~1A~~	~~736.32~~	~~624.71~~	~~571.34~~	~~524.47~~	~~477.59~~	~~430.72~~	~~383.84~~
~~4.0-4.4~~	~~1B~~	~~649.93~~	~~547.62~~	~~495.21~~	~~448.33~~	~~401.46~~	~~354.58~~	~~307.71~~
~~3.5-3.9~~	~~2~~	~~564.54~~	~~471.13~~	~~419.59~~	~~372.72~~	~~325.84~~	~~278.97~~	~~232.09~~
~~3.0-3.4~~	~~3~~	~~480.20~~	~~395.21~~	~~344.52~~	~~297.65~~	~~250.77~~	~~203.90~~	~~157.02~~
~~2.5-2.9~~	~~4~~	~~396.88~~	~~319.89~~	~~269.96~~	~~223.08~~	~~176.21~~	~~129.33~~	~~82.46~~
~~2.0-2.4~~	~~5~~	~~314.56~~	~~245.09~~	~~195.94~~	~~149.06~~	~~102.19~~	~~55.31~~	~~30.60~~
~~1.5-1.9~~	~~6~~	~~232.89~~	~~174.35~~	~~126.31~~	~~79.44~~	~~32.56~~	~~26.04~~	~~26.04~~

~~1.0-1.4~~	~~7~~	~~152.80~~	~~99.26~~	~~51.73~~	~~16.52~~	~~16.52~~	~~16.52~~	~~16.52~~
~~Less than 1.0~~	~~8~~	~~50.21~~	~~9.70~~	~~9.70~~	~~9.70~~	~~9.70~~	~~9.70~~	~~9.70~~

Tons		ASSESSED VALUE PER ACRE						
Alfalfa Per Acre	Grade	Under $5.00	$5.00 9.99	$10.00 14.99	$15.00 19.99	$20.00 24.99	$25.00 29.99	$30.00 34.99
4.5+	1A	736.32	624.71	571.34	524.47	477.59	430.72	383.84
4.0-4.4	1B	649.93	547.62	495.21	448.33	401.46	354.58	307.71
3.5-3.9	2	564.54	471.13	419.59	372.72	325.84	286.10	286.10
3.0-3.4	3	480.20	395.21	344.52	297.65	253.29	253.29	253.29
2.5-2.9	4	396.88	319.89	269.96	223.08	221.00	221.00	221.00
2.0-2.4	5	314.56	245.09	195.94	177.86	177.86	177.86	177.86
1.5-1.9	6	232.89	174.35	150.50	150.50	150.50	150.50	150.50
1.0-1.4	7	152.80	107.45	106.79	106.79	106.79	106.79	106.79
Less than 1.0	8	79.82	77.17	77.17	77.17	77.17	77.17	77.17

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

~~Tons~~		~~ASSESSED VALUE PER ACRE~~						
~~Alfalfa Per Acre~~	~~Grade~~	~~Under $5.00~~	~~$5.00 9.99~~	~~$10.00 14.99~~	~~$15.00 19.99~~	~~$20.00 24.99~~	~~$25.00 29.99~~	~~$30.00 34.99~~
~~4.5+~~	~~1A~~	~~784.20~~	~~721.70~~	~~659.20~~	~~596.70~~	~~534.20~~	~~471.70~~	~~409.20~~
~~4.0-4.4~~	~~1B~~	~~697.45~~	~~634.95~~	~~572.45~~	~~509.95~~	~~447.45~~	~~384.95~~	~~322.45~~
~~3.5-3.9~~	~~2~~	~~610.70~~	~~548.20~~	~~485.70~~	~~423.20~~	~~360.70~~	~~298.20~~	~~235.70~~
~~3.0-3.4~~	~~3~~	~~523.95~~	~~461.45~~	~~398.95~~	~~336.45~~	~~273.95~~	~~211.45~~	~~148.95~~
~~2.5-2.9~~	~~4~~	~~437.20~~	~~374.70~~	~~312.20~~	~~249.70~~	~~187.20~~	~~124.70~~	~~62.20~~
~~2.0-2.4~~	~~5~~	~~350.45~~	~~287.95~~	~~225.45~~	~~162.95~~	~~100.45~~	~~37.95~~	~~5.00~~
~~1.5-1.9~~	~~6~~	~~263.70~~	~~201.20~~	~~138.70~~	~~76.20~~	~~13.70~~	~~5.00~~	~~5.00~~
~~1.0-1.4~~	~~7~~	~~176.95~~	~~114.45~~	~~51.95~~	~~5.00~~	~~5.00~~	~~5.00~~	~~5.00~~
~~Less than 1.0~~	~~8~~	~~55.50~~	~~5.00~~	~~5.00~~	~~5.00~~	~~5.00~~	~~5.00~~	~~5.00~~

Tons		ASSESSED VALUE PER ACRE						
Alfalfa Per Acre	Grade	Under $5.00	$5.00 9.99	$10.00 14.99	$15.00 19.99	$20.00 24.99	$25.00 29.99	$30.00 34.99
4.5+	1A	784.20	721.70	659.20	596.70	534.20	471.70	409.20
4.0-4.4	1B	697.45	634.95	572.45	509.95	447.45	384.95	322.45
3.5-3.9	2	610.70	548.20	485.70	423.20	360.70	307.71	307.71
3.0-3.4	3	523.95	461.45	398.95	336.45	277.31	277.31	277.31
2.5-2.9	4	437.20	374.70	312.20	249.70	246.92	246.92	246.92
2.0-2.4	5	350.45	287.95	225.45	201.34	201.34	201.34	201.34
1.5-1.9	6	263.70	201.20	170.95	170.95	170.95	170.95	170.95
1.0-1.4	7	176.95	125.36	125.36	125.36	125.36	125.36	125.36
Less than 1.0	8	94.97	94.97	94.97	94.97	94.97	94.97	94.97

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

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

(a) through (c) remains the same.

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

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

42.20.150 CRITERIA FOR AGRICULTURAL LAND VALUATION FOR LAND TOTALLING 20 TO 160 ACRES IN SIZE (1) An applicant for agricultural land classification must prove that the parcel(s) indicated in the application actually produced the livestock, poultry, field crops, fruit, or other animal and vegetable matter raised for food or fiber or sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes. ~~Parcels upon which sod, ornamental, nursery, or horticultural crops are raised, grown, or produced must consist of at least 10 acres to be eligible for classification as agricultural land.~~ Proof of production may be evidenced by:

(a) through (b) remains the same.

(2) through (8) remains the same.

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

42.20.201 INTENT (1) The Realty Transfer Act serves two purposes. First, it is intended to identify all transfers of real property in order that the ~~assessment roll~~ property tax record in each county may be updated in a timely and accurate manner, reflecting the names and addresses of the people to whom property taxes are to be assessed. Second, the Realty Transfer Act provides market information on the current selling price of real estate and improvements.

(2) remains the same.

AUTH: Sec. 15-7-306 MCA; IMP: Secs. 15-7-304, 15-7-305, 15-7-307, and 15-7-308 MCA

42.20.202 REALTY TRANSFER CERTIFICATE (1) ~~Except as provided in ARM 42.20.203 and 42.20.204, t~~The certificate must be completed for all transfers of real property. Before an instrument may be recorded or the assessment changed to reflect

the transfer of a new owner, a completed certificate must be presented to the county clerk and recorder.

AUTH: Sec. 15-7-306 MCA; IMP: Sec. 15-7-304, 15-7-305, and 15-7-307 MCA

42.20.204 CHANGE OF ~~ASSESSMENT ROLL~~ PROPERTY TAX RECORD

(1) The ~~county assessor~~ department shall not make any change in the person to whom real property is assessed unless properly notified by means of an accurately prepared realty transfer certificate. Property assessments will continue to be made in the name of the previous owner until a realty transfer certificate has been completed and filed in the manner prescribed by law.

(2) In order to effectuate changes in the ~~assessment roll~~ property tax record, even exempt transfers must be filed with a certificate giving the names of the parties to the transfer, a description of the property, and the reason for exemption from the provisions relating to sales information.

AUTH: Sec. 15-7-306 MCA; IMP: Sec. 15-7-304, 15-7-305, and 15-7-307 MCA.

42.20.205 ACCURACY OF REALTY TRANSFER CERTIFICATE

(1) The name of the grantor (seller) reflected on the realty transfer certificate (RTC) must be identical to the name of grantor (seller) reflected on the accompanying deed. ~~It must also be identical to the name of the owner of record reflected on the most recent assessment roll.~~

(2) remains the same.

(3) "Breaks in the chain of title" mean that the grantor (seller) on the realty transfer certificate is not the same individual as the owner of record reflected on the most recent ~~assessment roll~~ property tax record. Breaks in the chain of title ~~are inaccurate filings and they~~ must be corrected ~~before the RTC will be accepted for processing by the department of revenue~~. Until the break in the chain of title is corrected through the filing of reliable information, the property will be carried on the property tax record in the name of the previous owner in care of the new owner (grantee). Realty transfer certificates that bridge the break in the chain of title must be filed. After the realty transfer certificate(s) which bridge the break in title are filed, the new owners name (grantee) will be placed on the property tax roll in place of the previous owner's name. Name identification and name abbreviation inaccuracies in items (1) and (2) may be corrected through the submission of an affidavit available at the department of revenue.

(4) remains the same.

AUTH: Sec. 15-1-201 MCA; IMP: Secs. 15-7-304 and 15-7-306 MCA

4. The department proposes to repeal the following rules:

42.20.113 TIMBERLAND CLASSIFICATION - GENERAL PRINCIPLES found at page 42-2011 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 MCA; IMP: Secs. 15-6-133, 15-7-201, and 15-8-111 MCA

42.20.114 TIMBERLAND VALUATION - GENERAL PRINCIPLES found at page 42-2012 of the Administrative Rules of Montana.
AUTH: Secs. 15-1-201 MCA; IMP: Secs. 15-7-103 and 15-8-111 MCA

42.20.115 TIMBERLANDS -- STUMPAGE VALUATION found at page 42-2013 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-8-111 MCA

42.20.116 TIMBERLANDS - DISCOUNT MULTIPLIERS found at page 42-2015 of the Administrative Rules of Montana.
AUTH: Sec: 15-1-201 MCA; IMP: Sec. 15-8-111 MCA

42.20.133 QUALIFICATION FOR CLASSIFICATION AS AGRICULTURAL OR FOREST LAND found at page 42-2042 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201 MCA; IMP: Secs. 15-7-201, 15-8-111, and 15-7-103 MCA

42.20.158 TIMBERLANDS found at page 42-2056 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201; IMP: Secs. 15-7-201 through 15-7-216 MCA

5. The department is proposing new rule I to comply with the requirements set forth with the enactment of SB138 enacted by the 1995 Legislature. These rules are necessary to spell out the procedure the department uses in the valuation of one acre areas beneath improvements on agricultural land in compliance with the provisions of SB138. It also outlines the procedure the department follows to ensure the one acre area beneath residential improvements are not double assessed. The rule reaffirms that a separate value for septic and water systems will not be added to the one acre land values.

The department is proposing to repeal these rules since the amendments made to the other rules on this notice, make these rules no longer necessary.

The department is proposing to amend 42.20.134, 42.20.135 and 42.20.139 to comply with the provisions of SB138. These amendments define the procedures to be used in the valuation of one acre beneath improvements on nonqualified agricultural land. They also change the term "timber" to "forest land" to comply with terminology found in 15-44-101 through 15-44-105, MCA. The rules change the deadline for filing an application for

agricultural land classification.

The proposed amendments to ARM 42.20.146 are submitted to comply with provisions of SB 198 and amendments to 15-7-201 and 15-7-221, MCA. The amendments to the rule provide for an additional $5.50 base water cost for all irrigated land.

Amendments to ARM 42.20.146 also implement a legal opinion issued by the department on March 28, 1994. The department is in compliance with existing law, 15-7-201(7), MCA, by establishing the minimum value of irrigated land at a value of similarly productive non irrigated land.

The amendments to ARM 42.20.147 and 42.20.150 are submitted to comply with HB 562 which amended 15-7-202, MCA. Beginning on January 1, 1996, the 10 acre minimum requirement for sod, ornamental, nursery and horticultural operations is no longer a criteria for agricultural classification of land.

The department is proposing the amendments to 42.20.201, 42.20.202, 42.20.204, and 42.20.205 to reflect changes required with the enactment of HB598. These proposed changes remove reference to the term "assessment roll" by replacing it with the term "property tax record" which is in keeping with the legislation. Further, these amendments spell out the manner in which the department is to handle "breaks in the chain of title" on its property tax records.

6. 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 February 16, 1996.

7. 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 January 2, 1996

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the adoption of rule I, overlapping work hours, multiple salaries from multiple public employers.	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF RULE I

TO: All Interested Persons.

1. On February 6, 1996, at 10:00 a.m. a public hearing will be held in room 108 of the Capitol Building at Helena, Montana, to consider the adoption of new rule I, addressing overlapping work hours, multiple salaries from multiple public employers for public employees, officers, and legislators.

2. The proposed new rule provides as follows:

RULE I OVERLAPPING SALARIES FROM MULTIPLE PUBLIC EMPLOYERS

(1) "Public employee" and "public officer" are defined in 2-2-102, MCA. For purposes of this rule, "public employee" does not include an employee in the federal system.

(2) All public employees, public officers, and legislators who receive multiple salaries from multiple public employers for overlapping work hours must file a completed multiple public employment disclosure form with the commissioner of political practices office within 15 business days of the occurrence, contract agreement, or receipt of payment. The multiple public employer disclosure form is available upon request from the commissioner of political practices, ethics office.

(3) The multiple public employment disclosure form will contain the following information:

(a) name, address, and telephone number of the public employee, public officer, or legislator;

(b) name, address, and telephone number of each public employer;

(c) date(s) of multiple employment;

(d) title(s) or description(s) of each overlapping position;

(e) amount(s) paid by each public employer and method(s) of payment.

(4) If multiple employment is ongoing, a multiple public employment disclosure form must be filed with the commissioner annually, prior to December 15 of the current year. If multiple employment is occasional, a multiple public employment disclosure form must be filed on each occasion.

(5) The commissioner of political practices will monitor statutory disclosure requirements and notify any public employee, public officer, or legislator who is not in compliance with 2-2-104, MCA, within a reasonable period of time. Non-compliant individuals must correct the infraction and submit supporting documentation to the commissioner of political practices within 15 business days upon receipt of notification.

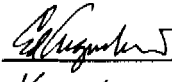
AUTH: 13-37-114, MCA IMP: 2-2-104, MCA

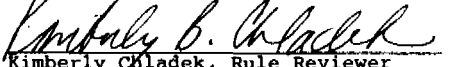
3. Adoption of the proposed rule is necessary to ensure consistent application of the notification and reporting requirements specified in 2-2-104, MCA.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to the Commissioner of Political Practices, PO Box 202401, Helena MT 59620-2401, and must be received no later than February 8, 1996.

5. Kimberly Chladek, Agency Legal Counsel, for the Commissioner of Political Practices, 1205 Eighth Ave, Helena MT 59620-2401, has been designated to preside over and conduct the hearing.

Ed Argenbright, Ed.D.
COMMISSIONER OF POLITICAL PRACTICES

By: 



Kimberly Chladek, Rule Reviewer

Certified to the Secretary of State January 2, 1996

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.10.331 and 44.10.334 regarding contribution limitations	))))	NOTICE OF PROPOSED AMENDMENTS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On February 10, 1996, the Commissioner of Political Practices proposes to amend rule 44.10.331, which applies limitations on receipts from political committees and 44.10.334, pertaining to aggregate contribution limits.

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

44.10.331 LIMITATIONS ON RECEIPTS FROM POLITICAL COMMITTEES (1) Pursuant to the operation specified in 13-37-218, MCA, and 15-30-101(8), MCA, limits on total combined ~~monetary~~ contributions from political committees other than political party committees to legislative candidates are as follows:

(a) a candidate for the house of representatives may receive no more than ~~$1050~~ $1100;

(b) a candidate for the state senate may receive no more than ~~$1750~~ $1850.

(2) These limits apply to total combined monetary receipts for the entire election cycle of ~~1994~~ 1996.

(3) Pursuant to 13-37-218, MCA, in-kind contributions must be included in computing these limitation totals.

AUTH: 13-37-114, MCA IMP: 15-30-101,~~(8)~~, MCA

44.10.334 ELECTION TO WHICH AGGREGATE CONTRIBUTION LIMITS APPLY (1) through (2)(a) remain the same.

(b) In judicial and other nonpartisan primary elections, if ~~two or more candidates compete for nomination, it is a "contested primary", resulting in two elections to which the contribution limits in 13-37-216, MCA, apply. For example, if two candidates seeks nomination in the primary election for the office of district judge, it is a contested primary even though both candidates will advance to the general election pursuant to 13-14-117, MCA.~~ a nonpartisan candidate automatically advances from the primary election to the general election pursuant to 13-14-117, MCA, it is not a contested primary election.

(2)(c) Remains the same.

AUTH: 13-37-114, MCA IMP: 13-37-216, MCA

3. Rule 44.10.331 is being amended because the aggregate limitation on contributions to candidates for the House of Representatives and State Senate from political committees was changed to reflect the current year's consumer price index as mandated by statute. Rule 44.10.334 is being amended to clarify the meaning of "contested primary" for nonpartisan candidates involving multiple nominees for a general election according to 13-14-117, MCA.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Commissioner of Political Practices, 1205 Eighth Ave, PO Box 202401, Helena MT 59620-2401. Any comments must be received no later than February 8, 1996.

5. If a person who is directly affected by the propose d 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 Commissioner of Political Practices, 1205 Eighth Ave, PO Box 202401, Helena MT 59620-2401. A written request for hearing must be received no later than February 8, 1996.

6. If the agency receives requests for a public hearing on the proposed amendment 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 127 persons based on the 1,269 candidates in the 1994 election cycle.

Ed Argenbright, Ed.D
Commissioner of Political Practices

By: _____

Kimberly Chladek, Rule Reviewer

Certified to the Secretary of State January 2, 1996

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the adoption of new rules I through III designation of contributions and combined contribution limits for write-in candidates.	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF RULES

TO: All Interested Persons.

1. On February 6, 1996, at 10:00 a.m. a public hearing will be held in room 108 of the Capitol Building at Helena, Montana, to consider the adoption of new rules I, II, and III.

2. The proposed new rules provide as follows:

RULE I DESIGNATION OF CONTRIBUTIONS FOR PRIMARY AND GENERAL ELECTIONS (1) Combined contributions for each election in a campaign are limited according to 13-37-216, MCA. An "election" in a campaign is defined as either a primary election or a general election.

(2) For purposes of applying combined contribution limits per election the following apply:

(a) Combined contribution limits for each election, as set forth in 13-37-216, MCA, apply to a primary election and to a general election as defined in ARM 44.10.334;

(b) Time periods for filing reports of contributions and expenditures are set forth in 13-37-226 and 13-37-228, MCA. All contributions received by a candidate prior to and including the day of a primary election are subject to the combined contribution limit for the primary election. Candidates shall not accept contributions designated for the general election during the primary election period specified in this rule;

(c) All contributions received by a successful primary election candidate after the day of the primary election are designated as general election contributions and are subject to the combined contribution limit for the general election;

(d) An unsuccessful candidate in a contested primary election may continue to receive contributions to pay campaign debts subject to the combined contribution limits for that election;

(e) A primary election candidate who is not involved in a contested primary as defined in ARM 44.10.334, may continue to receive contributions subject to the uncontested primary election limits in 13-37-216, MCA.

AUTH: 13-37-114, MCA IMP : 13-37-216, MCA

RULE II COMBINED CONTRIBUTION LIMITS FOR WRITE-IN CANDIDATES (1) For purposes of the limitations on contributions established in 13-37-216, MCA, and these rules, the term "election" is defined in 13-37-216, MCA, and the term "candidate" is defined in 13-1-101, MCA. Pursuant to 13-10-211,

MCA, a write-in candidate must file a declaration of intent. A candidate who is unsuccessful in a contested primary election, but who complies with applicable statutes to qualify as a write-in candidate for the general election, is subject to the combined contribution limits for both the primary election and the general election.

AUTH: 13-37-114, MCA IMP: 13-37-216, MCA

RULE III PERSONAL BENEFIT (1) Pursuant to 13-37-240, MCA, the term "direct or indirect benefit" means the distribution of surplus campaign funds that only benefit the candidate and/or a member of the candidate's immediate family. Nothing in this rule prohibits the distribution of surplus campaign funds to a group of individuals or an organization to which the candidate and/or a member of the candidate's immediate family belongs, as long as the candidate and/or a member of the candidate's immediate family do not control how the group or organization spends the surplus campaign funds received by the group or organization, and the candidate and/or a member of the candidate's immediate family receive only a benefit that is incidental to their membership or participation within the group or organization.

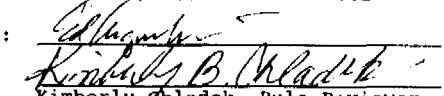
AUTH: 13-37-114, MCA IMP: 13-37-240, MCA

3. Adoption of the proposed rules is necessary to clarify and interpret 13-37-216, MCA, which was passed by citizen initiative. Ambiguities must be resolved in conjunction with other campaign finance statutes.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Commissioner of Political Practices, PO Box 202401, Helena MT 59620-2401, and must be received no later than February 8, 1996.

5. Kimberly Chladek, Agency Legal Counsel, for the Commissioner of Political Practices, 1205 Eighth Ave, Helena MT 59620-2401, has been designated to preside over and conduct the hearing.

Ed Argenbright, Ed.D
Commissioner of Political Practices

By: 
Kimberly Chladek, Rule Reviewer

Certified to the Secretary of State January 2, 1996

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 2.21.507 related to jury duty and witness leave	))))	NOTICE OF AMENDMENT OF ARM 2.21.507 RELATED TO JURY DUTY AND WITNESS LEAVE

TO: All Interested Persons.

1. On November 9, 1995, the department of administration published notice on the proposed amendment of ARM 2.21.507 related to jury duty and witness leave at page 2313 of the Montana Administrative Register, issue number 21.

2. The department has amended ARM 2.21.507 as proposed.

3. No comments or testimony were received.

Dal Smilie
Rule Reviewer

Lois Menzies
Director

Certified to the Secretary of State January 2, 1996

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed repeal of ARM 2.21.1101 through 2.21.1106 and 2.21.1111, the education and training policy	)))))	NOTICE OF REPEAL OF ARM 2.21.1101 THROUGH 2.21.1106 AND 2.21.1111 THE EDUCATION AND TRAINING POLICY

TO: All Interested Persons.

1. On November 9, 1995, the department of administration published notice of the proposed repeal of ARM 2.21.1101 through 2.21.1106 and 2.21.1111, the education and training policy at page 2317 of the 1995 Montana Administrative Register, issue number 21.

2. The department has repealed ARM 2.21.1101 through 2.21.1106 and 2.21.1111, found on pages 2-751 through 2-755 of the Administrative Rules of Montana.

AUTH. 2-18-102 MCA
IMP. 2-18-102 MCA

3. The department published notice of repeal of four personnel policies in order to comply with House Joint Resolution No. 5 of the 54th Legislature which calls for departments to review agency rules and delete unnecessary rules. The other policies are Moving and Relocation, Alternate Work Schedules and Employee Exchange/Loan.

The department received two written comments both of which are directed at all four rule actions. The written comments take opposing positions, one recommending against repeal and the other supporting it. At the December 19, 1995 meeting of the Personnel Policy Network, which is made up of personnel representatives from all state agencies, the written comments were shared. The personnel representatives supported repeal of all policies.

COMMENT:

The notice proposing the repeal states the rule repeal is not intended to disallow the practice, in this case education and training policy. However, if these rules are not in place,

employees may not be offered these or any other benefits because the rules are repealed and replaced with guidelines. The legal effect of the change will be to delete the rules giving the force of law to the policies, leaving the agency with complete discretion whether to provide the benefits. Arbitrary differences in treatment of employees within agencies and between employees of different agencies are likely to result. Since personnel-related administrative rules are small in number compared to other administrative rules, I would suggest that you reconsider repealing rules that offer benefits to state employees.

RESPONSE:

The department disagrees. Each of these personnel policies establishes a framework for administration of a personnel practice, but they do not and were never intended to replace each department's authority to make case-by-case decisions. The education and training policy did not mandate that each department provide any education or training opportunities to employees. Instead, it established a cost/benefit analysis process which allowed departments to examine available resources and needs and decide if an education or training opportunity was appropriate. Budget is a major factor for agencies in making education and training opportunities available. Agencies with greater finanacial resources typically are able to provide greater opportunities. Repeal of the administrative rules will not alter that.

COMMENT:

The other written comment supports the repeal of all the policies. That department has agency policies or practices on these matters they will continue to use and the repeal won't affect those internal policies.

RESPONSE:

The department finds this comment more accurately reflects both the legal and practical issues involved in repealing these policies.

Dal Smilie
Rule Reviewer

Lois Menzies
Director

Certified to the Secretary of State January 2, 1996

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed repeal of ARM 2.21.1601 through 2.21.1606 and 2.21.1611, the alternate work schedules policy	)))))	NOTICE OF REPEAL OF ARM 2.21.1601 THROUGH 2.21.1606 AND 2.21.1611, THE ALTERNATE WORK SCHEDULES POLICY

TO: All Interested Persons.

1. On November 9, 1995, the department of administration published notice of the proposed repeal of ARM 2.21.1601 through 2.21.1606 and 2.21.1611, the alternate work schedules policy, at page 2321 of the 1995 Montana Administrative Register, issue number 21.

2. The department has repealed ARM 2.21.1601 through 2.21.1606 and 2.21.1611, found on pages 2-807 through 2-811 of the Administrative Rules of Montana.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

3. The department published notice of repeal of four personnel policies in order to comply with House Joint Resolution No. 5 of the 54th Legislature which calls for departments to review agency rules and delete unnecessary rules. The other policies are Moving and Relocation, Education and Training, and Employee Exchange/Loan.

The department received two written comments both of which are directed at all four rule actions. The written comments take opposing positions, one recommending against repeal and the other supporting it. At the December 19, 1995 meeting of the Personnel Policy Network, which is made up of personnel representatives from all state agencies, the written comments were shared. The personnel representatives supported repeal of all policies.

COMMENT:

The notice proposing the repeal states the rule repeal is not intended to disallow the practice, in this case alternate work schedules. However, if these rules are not in place,

employees may not be offered these or any other benefits because the rules are repealed and replaced with guidelines. The legal effect of the change will be to delete the rules giving the force of law to the policies, leaving the agency with complete discretion whether to provide the benefits. Arbitrary differences in treatment of employees within agencies and between employees of different agencies are likely to result. Since personnel-related administrative rules are small in number compared to other administrative rules, I would suggest that you reconsider repealing rules that offer benefits to state employees.

RESPONSE:

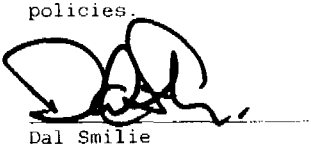
The department disagrees. Each of these personnel policies establishes a framework for administration of a personnel practice, but they do not and were never intended to replace each department's authority to make case-by-case decisions. The alternative work schedules policy did not mandate that each department provide alternate schedules to employees. Instead, it required adoption of an internal department policy and established some basic requirements for areas to be covered by the policy, such as core hours and supervision. There always has been a difference in the availability of alternate schedules both within and between agencies. Repeal of the administrative rules will not alter that.

COMMENT:

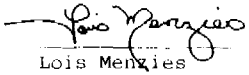
The other written comment supports the repeal of all the policies. That department has agency policies or practices on these matters they will continue to use and the repeal will not affect those internal policies.

RESPONSE:

The department finds this comment more accurately reflects both the legal and practical issues involved in repealing these policies.



Dal Smilie
Rule Reviewer



Lois Menzies
Director

Certified to the Secretary of State January 2, 1996

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 2.21.3006 related to decedent's warrants	)))	NOTICE OF AMENDMENT OF ARM 2.21.3006 RELATED TO DECEDENT'S WARRANTS

TO: All Interested Persons.

1. On November 9, 1995, the department of administration published notice of the proposed amendment of ARM 2.21.3006 related to decedent's warrants, at page 2319 of the 1995 Montana Administrative Register, issue number 21.

2. The department has amended ARM 2.21.3006 as proposed.

3. No comments or testimony were received.

Dal Smilie
Rule Reviewer

Lois Menzies
Director

Certified to the Secretary of State January 2, 1996

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed repeal of ARM 2.21.3901 through 2.21.3904, 2.21.3911, 2.21.3916 and 2.21.3921, the employee exchange/loan policy	))))))	NOTICE OF REPEAL OF ARM 2.21.3901 THROUGH 2.21.3904, 2.21.3911, 2.21.3916 AND 2.21.3921, THE EMPLOYEE EXCHANGE/LOAN POLICY

TO: All Interested Persons.

1. On November 9, 1995, the department of administration published notice of the proposed repeal of ARM 2.21.3901 through 2.21.3904, 2.21.3911, 2.21.3916 and 2.21.3921, the employee exchange/loan policy, at page 2315 of the 1995 Montana Administrative Register, issue number 21.

2. The department has repealed ARM 2.21.3901 through 2.21.3904, 2.21.3911, 2.21.3916 and 2.21.3921, found on pages 2-1151 through 2-1165 of the Administrative Rules of Montana.

AUTH: 2-18-102 MCA
IMP: 2-18-102 MCA

3. The department published notice of repeal of four personnel policies in order to comply with House Joint Resolution No. 5 of the 54th Legislature which calls for departments to review agency rules and delete unnecessary rules. The other policies are Moving and Relocation, Education and Training, and Alternate Work Schedules.

The department received two written comments both of which are directed at all four rule actions. The written comments take opposing positions, one recommending against repeal and the other supporting it. At the December 19, 1995 meeting of the Personnel Policy Network, which is made up of personnel representatives from all state agencies, the written comments were shared. The personnel representatives supported repeal of all policies.

COMMENT:

The notice proposing the repeal states the rule repeal is not intended to disallow the practice, in this case employee exchange/loan policy. However, if these rules are not in place,

employees may not be offered these or any other benefits because the rules are repealed and replaced with guidelines. The legal effect of the change will be to delete the rules giving the force of law to the policies, leaving the agency with complete discretion whether to provide the benefits. Arbitrary differences in treatment of employees within agencies and between employees of different agencies are likely to result. Since personnel-related administrative rules are small in number compared to other administrative rules, I would suggest that you reconsider repealing rules that offer benefits to state employees.

RESPONSE:

The department disagrees. Each of these personnel policies establishes a framework for administration of a personnel practice, but they do not and were never intended to replace each department's authority to make case-by-case decisions. The employee exchange/loan policy originally was adopted to facilitate movement of employees between departments in limited situations. Since the policy was adopted in 1988, it has been used on an extremely limited basis and in the opinion of the department is not necessary.

COMMENT:

The other written comment supports the repeal of all the policies. That department has agency policies or practices on these matters they will continue to use and the repeal will not affect those internal policies.

RESPONSE:

The department finds this comment more accurately reflects both the legal and practical issues involved in repealing these policies.

Dal Smilie
Rule Reviewer

Lois Menzies
Director

Certified to the Secretary of State January 2, 1996

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed repeal of ARM 2.21.4906 through 2.21.4909, 2.21.4911, 2.21.4914 through 2.21.4916 and 2.21.4922, the moving and relocation expenses policy	))))))	NOTICE OF REPEAL OF ARM 2.21.4906 THROUGH 2.21.4909, 2.21.4911, 2.21.4914 THROUGH 2.21.4916 AND 2.21.4922, THE MOVING AND RELOCATION EXPENSES POLICY

TO: All Interested Persons.

1. On November 9, 1995, the department of administration published notice of the proposed repeal of ARM 2.21.4906 through 2.21.4909, 2.21.4911, 2.21.4914 through 2.21.4916 and 2.21.4922, the moving and relocation expenses policy at page 2311 of the 1995 Montana Administrative Register, issue number 21.

2. The department has repealed ARM 2.21.4906 through 2.21.4909, 2.21.4911, 2.21.4914 through 2.21.4916 and 2.21.4922, found on pages 2-1259 through 2-1265 of the Administrative Rules of Montana.

AUTH: 2-18-102 MCA
IMP: 2-18-102 MCA

3. The department published notice of repeal of four personnel policies in order to comply with House Joint Resolution No. 5 of the 54th Legislature which calls for departments to review agency rules and delete unnecessary rules. The other policies are Alternate Work Schedules, Education and Training, and Employee Exchange/Loan.

The department received two written comments both of which are directed at all four rule actions. The written comments take opposing positions, one recommending against repeal and the other supporting it. At the December 19, 1995 meeting of the Personnel Policy Network, which is made up of personnel representatives from all state agencies, the written comments were shared. The personnel representatives supported repeal of all policies.

COMMENT:

The notice proposing the repeal states the rule repeal is not intended to disallow the practice, in this case moving and relocation expenses policy.

However, if these rules are not in place, employees may not be offered these or any other benefits because the rules are repealed and replaced with guidelines. The legal effect of the change will be to delete the rules giving the force of law to the policies, leaving the agency with complete discretion whether to provide the benefits. Arbitrary differences in treatment of employees within agencies and between employees of different agencies are likely to result. Since personnel-related administrative rules are small in number compared to other administrative rules, I would suggest that you reconsider repealing rules that offer benefits to state employees.

RESPONSE:

The department disagrees. Each of these personnel policies establishes a framework for administration of a personnel practice, but they do not and were never intended to replace each department's authority to make case-by-case decisions. The moving and relocation expenses policy established some maximum allowances, including total pounds to be paid, items which would not be paid, items related to moving mobile homes and work time and per diem allowed. This policy was targeted for repeal because departments found the limitations it established were not always realistic and were too inflexible. They would prefer the latitude to negotiate moving and relocation expenses on a case-by-case basis under broader, internal guidelines and the department agrees this is appropriate.

COMMENT:

The other written comment supports the repeal of all the policies. That department has agency policies or practices on these matters they will continue to use and the repeal will not affect those internal policies.

RESPONSE:

The department finds this comment more accurately reflects both the legal and practical issues involved in repealing these policies.

Dal Smilie
Rule Reviewer

Lois Menzies
Director

Certified to the Secretary of State January 2, 1996

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

In the matter of the general revision of rules (6.6.5001, 5004, 5008, 5020, 5024, 5028, 5032, 5036, 5044, 5050, 5058, 5060, 5062 and 5066) regarding employer health benefit plans and reinsurance and the repeal of existing rules 6.6.5012, 5016, 5040, 5094, and 5098	CORRECTED NOTICE OF AMENDMENT AND REPEAL

1. On August 10, 1995, the Department published a notice on page 1472 of the Montana Administrative Register, Issue No. 15 of the proposed amendment and repeal of the above-captioned rules regarding employer health benefit plans and reinsurance. On October 12, 1995, the Department published a notice at page 2127 of the Montana Administrative Register, Issue No. 19 of the adoption and repeal of the above-captioned rules.

2. Because of a typographical error in the notice of hearing and notice of amendment and repeal, 33-22-1822 was omitted from the line citing rule making authority for rule 6.6.5036. In the same line, 33-22-1812 should have been underlined, to indicate new text. The notice of hearing incorrectly changed the word "PLUS" to "+" in rule 6.6.5036(1)(a). In the notice of hearing, the words "or approved by" were inadvertently placed before the word "with" rather than after in 6.6.5044(1). In 6.6.5058(8)(b)(ii), the reference to (8) was inadvertently not changed to (7) when the renumbering of the paragraphs occurred. The corrected rule amendments read as follows:

6.6.5036 CALCULATION OF BENEFIT VALUES (1) remains the same as amended in the notice of amendment and repeal.

(a) An optional formula for calculating the benefit value is as follows:

BENEFIT VALUE = DEDUCTIBLE VALUE + COINSURANCE VALUE + LIFETIME MAXIMUM VALUE

where

DEDUCTIBLE VALUE = DEDUCTIBLE CLAIMS COST x Y x UTILIZATION(Y) / 0.8

and

COINSURANCE VALUE = COINSURANCE-STOPLOSS~~+~~ PLUS DEDUCTIBLE CLAIMS COST x {[Z x UTILIZATION(Z)] - [Y x UTILIZATION(Y)]} / 0.8.

(1)(b) through (e) remain the same as proposed, and (2) through (3) of the original rule are deleted as proposed in the notice of hearing.

(2) remains the same as amended in the notice of amendment and repeal.

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

6.6.5044 FILING AND APPROVAL OF BASIC AND STANDARD PLANS

(1) Every small employer carrier must file with the commissioner for prior approval a standard health benefit plan that the carrier markets or intends to market in this state which has not been previously filed ~~or approved by~~ with or approved by the commissioner as a standard health benefit plan. This filing must include a statement either that the policy has not previously been filed or approved in this state or that the policy has previously been filed or approved in this state as either a basic plan or as a plan which is neither standard nor basic. The latter statement must include the date of the previous filing or approval. This filing must include a demonstration of, and the result of, the benefit value calculation for that plan in compliance with ARM 6.6.5036.

(2) through (6) remain the same as proposed in the notice of hearing.

6.6.5058 REQUIREMENT TO INSURE ENTIRE GROUPS

(1) through (8)(b)(i) remain the same as proposed in the notice of hearing.

(ii) Eligible employees and eligible dependents who are provided an opportunity to enroll pursuant to this subsection must be treated as new entrants. Premium rates related to such individuals must be set in accordance with ~~(8)~~(7).

(iii) through (iv) remain the same as proposed in the notice of hearing.

3. Replacement pages for the corrected notice of amendment and repeal will be submitted to the Secretary of State on December 31, 1995.

MARK O'KEEFE
STATE AUDITOR AND
COMMISSIONER OF INSURANCE

BY: D. Russell Harper
G. Russell Harper
Deputy State Auditor

Gary L. Spaeth
Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State on this 29th day of December, 1995.

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

In the matter of the adoption of new rules concerning standards for marketing and appropriate sale criteria and nonforfeiture requirements and forms	) CORRECTED NOTICE) OF ADOPTION))

1. On October 26, 1995, the Department published a notice at page 2242 of the Montana Administrative Register, Issue No. 20, of the adoption of the above-captioned new rules concerning standards for marketing and appropriate sale criteria and nonforfeiture requirements and forms.

2. In 6.6.5602(b), the reference to (3)(a) was inadvertently not changed to (2)(a) when the renumbering of the paragraphs occurred. The corrected rule amendment reads as follows:

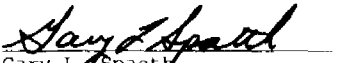
6.6.5602 APPROPRIATE SALE CRITERIA (1) through (2)(a)(iii) remain the same as adopted in the notice of adoption.

(b) The issuer, and where an agent is involved, the agent shall make reasonable efforts to obtain the information set out in ~~(3)~~(2)(a) above. The efforts shall include presentation to the applicant, at or prior to application, the "Long-Term Care Insurance Personal Worksheet." The personal worksheet used by the issuer shall contain, at a minimum, the information in the format contained in Form A, in not less than 12 point type. The issuer may request the applicant to provide additional information to comply with its appropriate sale criteria standards. A copy of the issuer's personal worksheet shall be filed with the commissioner.

(2)(c) through (8) remain the same as adopted in the notice of adoption.

3. Replacement pages for the corrected notice of adoption will be submitted to the Secretary of State on December 31, 1995.

MARK O'KEEFE
STATE AUDITOR AND
COMMISSIONER OF INSURANCE

By:  

G. Russell Harper
Deputy State Auditor

Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State on the 29th of December, 1995.

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment, repeal and adoption of rules pertaining to physician, acupuncturist, emergency medical technician, physician assistant-certified, podiatrist, and nutritionist licensure	CORRECTED NOTICE ON THE PROPOSED AMENDMENT, REPEAL AND ADOPTION OF RULES PERTAINING TO PHYSICIANS, ACUPUNCTURISTS, EMERGENCY MEDICAL TECHNICIANS, PHYSICIAN ASSISTANTS-CERTIFIED, PODIATRISTS AND NUTRITIONISTS

TO: All Interested Persons:

1. On September 14, 1995, the Board of Medical Examiners published a notice of public hearing on the proposed amendment, repeal and adoption of rules pertaining to physician, acupuncturist, emergency medical technician, physician assistant-certified, podiatrist, and nutritionist licensure at page 1736, 1995 Montana Administrative Register, issue number 17. The Board published an adoption notice of the rules at page 2480, 1995 Montana Administrative Register, issue number 22. The rules were adopted exactly as proposed.

2. ARM 8.28.908 should have been amended as shown below in the original proposed notice:

"8.28.908 EQUIVALENCY (1) through (4) will remain the same.

(5) No individual may function as an EMT, nor represent himself as an EMT until:

(a) he is certified by the board; or

(b) ~~comply~~ complies with ARM 8.28.908(4)~~.~~; or

(c) is certified in another state and functioning on an out-of-state emergency medical service licensed by the department of public health and human services to provide services in Montana; or

(d) is certified in another state and functioning on an out-of-state emergency medical service which is exempt from the department of public health and human services licensure requirements pursuant to ARM 16.30.104(8) and (9).

(6) through (8)(d) will remain the same."

Auth: Sec. 37-1-131, 50-6-203, MCA; IMP, Sec. 50-6-203, 50-6-204, 50-6-205, MCA

BOARD OF MEDICAL EXAMINERS
JAMES BONNET, JR., M.D.
PRESIDENT

BY: Annie M. Bartos

ANNIE M. BARTOS
RULE REVIEWER

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, January 2, 1996.

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment and adoption of rules pertaining to the outfitting industry	NOTICE OF AMENDMENT OF RULES PERTAINING TO FEES AND ADOPTION OF NEW RULES ON MORATORIUM AND OPERATIONS PLAN REVIEW

TO: All Interested Persons:

1. On September 14, 1995, the Board of Outfitters published a notice of public hearing on the proposed amendment and adoption of rules pertaining to the outfitting industry, at page 1761, 1995 Montana Administrative Register, issue number 17. On November 9, 1995, the Board published an adoption notice at page 2388, 1995 Montana Administrative Register, issue number 21, which amended ARM 8.39.518 and adopted new rules I (8.39.801) and II (8.39.802) exactly as proposed. The adoption of new rule III (8.39.803) was published at page 2797, 1995 Montana Administrative Register, issue number 24. The board tabled the adoption of proposed new rule IV until further discussion was completed.

2. The Board has now voted to adopt new rule IV (8.39.804) as proposed, but with the following changes:

"8.39.804 REVIEW ~~AND APPROVAL~~ OF NEW OPERATIONS PLAN AND PROPOSED EXPANSION OF NET CLIENT HUNTING USE UNDER AN EXISTING OPERATIONS PLAN ~~INVOLVING HUNTING USE~~ (1) An ~~currently licensed~~ outfitter ~~with an approved operations plan on file with the board of outfitters~~ shall not ~~initiate an expansion of~~ expand net client hunting use ~~under such plan~~ without first applying for and receiving approval from the board for such expansion.

(2) Except as provided in ~~(3)~~ (4) and ~~(4)~~ (5) below, net client hunting use for outfitters ~~licensed on or prior to October 1, 1995,~~ shall be determined by taking the highest total number of hunting clients served by the outfitter and any guides working under the ~~supervision~~ endorsement of the outfitter in ~~any one~~ a year ~~from 1988 until 1995, as specified on the outfitter's client report logs submitted to the board~~ during which the outfitter was licensed in the state of Montana, with a categorical breakdown of hunting clients served using licenses issued no later than December 31, 1995 as follows:

(a) nonresident deer or elk clients holding B-10 or B-11 licenses ("big game outfitter sponsored").

(b) deer or elk clients not holding B-10 or B-11 licenses, antelope, mountain lion, mountain sheep, mountain goat, bear or wild buffalo clients ("big game non-outfitter sponsored"), and

(c) upland game bird and migratory game bird (waterfowl) clients ("non-big game").

(3) The outfitter shall designate ~~existing~~ net client hunting use for each category, under affirmation by oath on a form provided by the board. ~~each outfitter shall be affirmed by oath of the outfitter,~~ The outfitter shall specify~~ing~~ the year

or years from which the use is designated, ~~and shall be submitted on a form provided by the board.~~ If use is designated from any year prior to 1988, the outfitter claiming such use must submit documentation of such use, which shall be subject to approval of the board. The use designated by the outfitter shall be subject to random audit ~~of client report logs~~ by the board's investigators. Submission of false information regarding net client hunting use is specifically designated as unprofessional conduct, and shall result in revocation of the outfitter's license.

~~(3)~~ (4) ~~Net client hunting use for outfitters licensed on or after October 1, 1995, shall be equal to the net client hunting use transferred from an existing outfitter to the applicant under new rule III(a), (b) or (c) as applicable, or in the case of new use, shall be determined by the board as part of its order issued under (8).~~ When an existing outfitter purchases an outfitting business or any portion thereof in the state of Montana and makes application to the board for an expansion, the outfitter may designate net client hunting use in an amount equal to his or her historical use, plus the net client hunting use transferred from the selling outfitter to the applicant outfitter. For proposed new use by a newly licensed outfitter, net client hunting use shall be determined by the board as part of its order under this rule.

~~(4)~~ (5) In cases where a federal agency ~~regulates~~ limits net client hunting use on federal lands, net client hunting use of the outfitter providing authorized services on such lands shall be taken from the use designated by such federal agency. In all other cases, net client hunting use on federal lands shall be determined under either (2), (3) or (4) as applicable.

(6) An outfitter shall not exchange, trade or substitute between the categories of net client hunting use without approval under this rule. Net client hunting use of each outfitter shall be specific as to the category designated by the outfitter (big game outfitter sponsored, big game non-outfitter sponsored and non-big game).

~~(5)~~ (7) An application for proposed expansion in net client hunting use under an existing operations plan, and applications by license applicants proposing new operations plans involving hunting use, shall be made on forms provided by the board. ~~If the proposal contemplates use on public land, the application must be accompanied by a letter or other written evidence of the public agency with jurisdiction, indicating that the use will be approved by the public agency if the board grants such approval.~~ The board shall ~~S~~solicit~~ation of~~ comments ~~on applications shall be made~~ by ~~publication in the Montana administrative register,~~ maintaining a copy of the proposal in the board's offices, and by publishing a notice of the existence of the proposal, with an invitation to submit and a deadline for receipt of comments on the proposal, in a paper of daily circulation that is closest to the land identified in the proposal, ~~and by~~ The board shall also mail~~ing~~ a copy of the proposal, with an invitation to submit, and a deadline for receipt of comments on the proposal, to:

(a) the Montana outfitters and guides association;

(b) the fishing outfitters association of Montana;

(c) the professional wilderness outfitters association;

~~(c)~~ (d) any state, federal, local, or tribal land managing agency with jurisdiction over the outfitter's area of operation where the net increase in client hunting use is proposed;

~~(d) any regional outfitters or guides association of which the board is aware that is located in close proximity to the area to be affected by the proposal; and~~

(e) any sportspersons' or outfitters' association ~~of which the board is aware that is located in close proximity to the area to be affected by the~~ requesting to receive such proposal.; and

(f) the Montana wildlife federation.

~~(6) The hearing shall be scheduled no earlier than 30 days after and no later than 60 days after publication in the Montana administrative register. Comments may be presented in writing prior to or on the hearing date, or orally at the hearing.~~

~~(7)~~ (8) The board shall review the proposal and any comments received before the expiration of the deadline for receipt of such comments. The board shall utilize comments received to decide whether to approve the proposal. The board shall not approve a new operation plan or the proposed expansion of net client hunting use under the existing operation plan if it finds that the proposal will cause an undue conflict with existing hunting uses of the area, constituting a threat to the public health, safety, or welfare. ~~submitted for consideration of the following:~~

~~(a) any documentation of prior hunting use by non-outfitted parties;~~

~~(b) any documentation of prior conflicts or other altercations between outfitted and non-outfitted parties in the area of the proposal;~~

~~(c) any documentation of prior hunting use by outfitted parties;~~

~~(d) any documentation of prior conflicts or other altercations between clients of one outfitter with the clients of another outfitter in the area of the proposal; and~~

~~(e) any data available from the department of fish, wildlife & parks or other agency as to the availability of game animals in the area of the proposal and the potential effect on such availability presented by the proposal.~~

~~(8)~~ (9) ~~The board shall determine, based on its consideration of the factors presented under (7), whether the proposal will cause an undue conflict with existing hunting uses of the area, constituting a threat to the public health, safety, or welfare.~~ The board shall issue an order, supported by findings of fact and conclusions of law, either granting, denying, or modifying the proposal. A copy of the order shall be provided by regular mail to the individual submitting the proposal and any association or agency submitting comments.

~~(9)~~ (10) Any party aggrieved by the board's decision may appeal such decision to the district court in the county affected by the proposal, within 30 days following the date of ~~publication~~ service by regular mail of the final order ~~in the Montana administrative register~~."

Auth: Sec. 37-47-201, MCA; IMP, Sec. 37-47-201, MCA

3. The board has thoroughly considered all comments and testimony received. A summary of comments received with regard to proposed rule IV were published on November 9, 1995, at page 2388, 1995 Montana Administrative Register, issue number 21. A summary of those same comments and the board's responses thereto follow:

COMMENTS REGARDING RULE IV "REVIEW AND APPROVAL OF NEW OPERATIONS PLAN AND PROPOSED EXPANSION OF NET CLIENT HUNTING USE UNDER AN EXISTING OPERATIONS PLAN INVOLVING HUNTING USE"

SUMMARY OF COMMENTS RECEIVED

COMMENT 1: Ten comments were received regarding the period of time an outfitter would be allowed to go back to designate net client hunting use. Six persons commented that an accurate picture could not be had of historic use if an individual had experienced adverse conditions during the proposed eight-year period. Of these six, two suggested that the board go back ten years and two suggested a case-by-case analysis. One person suggested that the period extend back to when the outfitter became licensed. Out of the ten comments, four people felt that the process of selecting "historic use" discriminated against new outfitters. One person suggested that new outfitters be given three to five additional years beyond 1995 in which to develop historic use. One person commented that the rule be clarified to extend the period of time "through" 1995 rather than "until" 1995.

RESPONSE: The Board accepts the comments regarding the narrowness of an eight-year window, having proposed this period because outfitter client records have been required to be kept since 1988. The Board has amended the rule to allow an outfitter to choose any year since becoming licensed and places the burden of proof on the outfitter to show the number of clients taken prior to 1988. The Board rejects a case-by-case analysis as it would be unduly burdensome to administer and would be less likely to withstand legal challenge. The Board rejects the comments regarding discrimination against new outfitters and the suggestion that they be given a period of time to develop historic use as a condition that cannot be cured in light of the legislative mandate to control growth of the outfitting industry. The Board accepts the suggestion to extend the time period "through" 1995.

COMMENT 2: Four comments criticized the concept of net client hunting use as unconstitutional. Of these, one individual stated that the price of hunting licenses should limit growth, not the number of clients. One person inquired as to whether the controlling of "expansion" included hunting days and acreage, and whether approval was required even if current land in the operations plan could sustain more clients. One person noted that use is already controlled by "use days" by the U.S. Forest Service.

RESPONSE: The Board rejects the comments. Section 37-47-201(5)(d), MCA states that the Board shall adopt "rules specifying standards for review and approval of proposed new

operations plans involving hunting use or the proposed expansion of net client hunting use under an outfitter's existing operations plan . . . ." The Board's authority to control hunting use specifically involves the number of clients served, not days or geographic expansion. Although use is controlled by some federal agencies in the form of "use days," this control only occurs on certain federal land. The Board's authority, as reflected in subsection (5) will be preempted by federal agencies who limit hunting user on federal lands.

COMMENT 3: One person questioned the reliability of client logs of outfitters who may be dishonest in completing the information.

RESPONSE: The Board relies on the honesty of the outfitter in submitting all information to the Board and makes the failure to do so a basis for disciplinary action. The Board in response to the concern of reliability in reporting a net client hunting figure, proposes a random audit of information submitted and revocation of licensure should the audit reveal false information.

COMMENT 4: Three persons commented that the proposed procedure for eliciting public comment under MAPA was too costly and time-consuming. Two persons suggested that publication in the newspaper would suffice.

RESPONSE: The Board accepts the comments and has amended the rule accordingly.

COMMENT 5: Three people stated their concerns with regard to "species shifting," i.e., that a figure of net client hunting use established by B-10 and B-11 licenses would include bird hunters and make it possible for outfitters who primarily bird hunt to expand their business into big game elk and deer.

RESPONSE: The Board accepts the comments and has amended the rule accordingly by requiring a net client hunting use figure for different categories of species and hunting licenses and requiring board approval prior to expansion or shifting between categories.

COMMENT 6: One comment suggested that the language of subsection (2) regarding the counting of clients served by outfitters and guides "limits net client use by taking into account the number of guides working for the outfitter during the same period."

RESPONSE: The Board rejects the comment as it appears to connect net client hunting use to the number of guides working for an outfitter. The number of guides working or not working would have no bearing on the number of clients actually served.

COMMENT 7: One person commented that the data on availability of game was an unreliable source for the board to use as criteria for determining undue conflict. Another comment suggested that a private landowner's desire to lease his or her property to an outfitter for hunting use be added to the criteria considered by the board in its review of proposed new use.

RESPONSE: In response to the comments, the Board has deleted the criteria as unnecessarily limiting to what it could consider as evidence of undue conflict and perhaps too suggestive in terms of framing comments submitted.

COMMENT 8: One comment stated that requiring new licensees to disclose their operations plans under the proposed review process while allowing pre-1995 licensees to maintain them as confidential violates the Equal Protection Clause.
RESPONSE: The comment is rejected as the rule does not contemplate nor require disparate treatment between pre-1995 licensees and post-1995 licensees. All applicants for proposed expansion of existing use or proposed new use must submit a proposal to the board for consideration.

COMMENT 9: One comment suggested that subsection (5) more clearly state that the review of proposed expansion or new use is required only with regard to public lands and not private lands.
RESPONSE: The comment is rejected. The review of the proposed expansion or proposed new use makes no distinction to public versus private lands with the exception of federal land where a federal agency otherwise limits client hunting use. See also Response #2.

COMMENT 10: One comment suggested that the board require "lateral expansions onto private property be subject to filing with the Board of Outfitters and Fish, Wildlife & Parks, ongoing permission for game wardens to patrol private areas for game violations."
RESPONSE: The comment is rejected. The Board lacks jurisdiction to compel private landowners to give such permission, particularly since the 1995 Montana Supreme Court decision in Bullock limiting game warden access to private property.

COMMENT 11: One comment suggested that the rule state that the board "shall approve" the proposal unless it finds that the proposed use presents a threat to the public health, safety, and welfare, contending there is no safeguard against arbitrary disapproval of expansion plans.
RESPONSE: The Board accepts the comment and has amended the rule accordingly.

4. The effective date of this rule will be March 15, 1996.

BOARD OF OUTFITTERS
O. KURT HUGHES, CHAIRMAN

Annie M Bartos
ANNIE M. BARTOS
RULE REVIEWER

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

Certified to the Secretary of State, January 2, 1996.

BEFORE THE BOARD OF PSYCHOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption of a rule pertaining to licensure of senior psychologists	)))	NOTICE OF ADOPTION OF NEW RULE I LICENSURE AS A SENIOR PSYCHOLOGIST

TO: All Interested Persons:

1. On November 23, 1995, the Board of Psychologists published a notice of proposed adoption of a new rule pertaining to licensure of senior psychologist applicants at page 2452, 1995 Montana Administrative Register, issue number 22.

2. The Board will adopt new rule I (8.52.604A) as proposed, but with the following changes:

"8.52.604A LICENSURE AS A ~~SENIOR~~ PSYCHOLOGIST BY EXPERIENCE (SENIOR) (1) A license as a ~~senior~~ psychologist by experience (senior) in the state of Montana may be issued provided the ~~senior~~ applicant ~~must~~ meets all of the following requirements:

(a) through (f) will remain the same as proposed."

Auth: Sec. 37-17-202, MCA; IMP, Sec. 37-17-307, 37-17-310, MCA

3. Written comments were accepted through December 20, 1995. The Board has thoroughly considered all comments and testimony received. Those comments, and the Board's responses thereto, are as follows:

COMMENT NO. 1: Two comments were received stating the rule appears to set up a new category of licensure for "senior psychologists," which implies that the applicants have more capability or experience than the other "psychologists." The comment noted that in reality, those applicants are unable to meet other requirements for licensure in Montana, which will create the appearance of a two tiered system, and confuse the public.

RESPONSE: The Board concurs with the comments and will change the language to state "psychologist by experience (senior)." Since 37-17-310, MCA (1995) enacted by the 1995 Legislature does use the phrase "senior psychologist," the Board may not disregard use of the phrase entirely, but the rule changes will better reflect that this is not a separate licensing level.

COMMENT NO. 2: One comment was received stating this rule appears to be a method to allow a form of licensure for individuals who do not meet Montana's current standards for licensure, but have practiced elsewhere for 20 or more years. The comment stated that Montana requirements are already fair and appropriate, and have been established to provide a minimum level of competency, so should be met by all applicants to protect the public.

RESPONSE: The Board noted that the intent of the statute and rule is to allow sufficient clinical and other psychological experience to substitute for other licensing requirements such as the national examination, which may not have been met by some applicants. The statute and rule will address a specific group of people who may have been licensed before the states moved toward uniform standards and therefore did not take the national exam, or obtain their Ph.D. in psychology, etc. Since the states now implement more uniform requirements, more recent licensees will not need this type of application, and the need for it may eventually wane.

BOARD OF PSYCHOLOGISTS
PASTOR JEFF OLSGAARD, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 2, 1996.

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION
AND THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the adoption of Rules I through XII concerning the future fisheries program, and amendment of Rule 12.2.454 pertaining to categorical exclusions.	)))))	NOTICE OF ADOPTION OF RULES AND AMENDMENT OF ARM 12.2.454

TO: All interested persons.

1. On September 28, 1995, the Department of Fish, Wildlife and Parks (department) and the Fish, Wildlife and Parks Commission (commission) published notice on page 1866, 1995 Montana Administrative Register, issue number 18 of the proposed adoption of new rules I - XII, and the proposed amendment of ARM 12.2.454.

2. The department and commission adopt the rules as proposed with the following changes (new material is in uppercase; material to be deleted is interlined):

12.7.1201 (NEW RULE I) PURPOSE (1) The purpose of these rules is to adopt procedures to implement THE FUNCTIONS OF THE COMMISSION AND THE DEPARTMENT IN the future fisheries improvement program established in 87-1-272, MCA. The purpose of the program is to restore essential habitats for the growth and propagation of wild fish populations in lakes, rivers, and streams through voluntary means. Funds may be used for long-term enhancement of streams and stream banks, instream flows, water leasing, lease or purchase of stored water or other voluntary programs to enhance wild fish and their habitats.

AUTH: 87-1-201, 87-1-301, MCA; IMP: 87-1-272, 87-1-273, MCA

12.7.1202 (NEW RULE II) same as proposed.

NEW RULES III through VI were not adopted.

12.7.1203 (NEW RULE VII) PROJECT RANKING AND APPROVAL (1) Eligible projects THAT HAVE BEEN APPROVED BY THE REVIEW PANEL will be reviewed, evaluated and ranked by a committee that includes at least ~~three~~ TWO department personnel with a background in fishery biology and an understanding of the habitat requirements of fish AND ONE MEMBER OF THE REVIEW PANEL.

(2) The department will submit a list of recommended projects to the commission for consideration at public hearings conducted as part of regularly scheduled commission meetings. The commission will grant final approval for project funding.

(3) The department and the commission will use the following criteria to evaluate AND PRIORITIZE projects:

(a) the degree to which the project optimizes PUBLIC benefits to ~~public~~ WILD fisheries;

(b) ~~the degree to which the project promotes benefits to other river resources such as water quality, wildlife habitat, recreational opportunity, and aesthetics;~~ WHETHER THE PROJECT BENEFITS A NATIVE FISH SPECIES WITH EMPHASIS ON SPECIES OF SPECIAL CONCERN;

(c) the importance of the river or stream (determined from the Montana interagency database -- a ranking of the habitat and species value of stream reaches);

(d) ~~the level of public support for the project;~~ THE EXPECTED BENEFITS OF THE PROJECT RELATIVE TO COST;

(e) the long-term effectiveness of the restoration;

(f) the level of in-kind services or cost-sharing from other sources~~;~~.

~~(g) expected benefits relative to cost.~~

(4) All applicants will receive written notification of action taken on their project~~'~~s proposal~~S~~ after the commission has made a final decision.

(5) Projects will be approved for funding only if account money is available as requested to complete the projects. Each approved project sponsor must enter into a written agreement with the department on a form prepared by the department.

~~(6) Projects do not require cost-sharing, but cost-sharing is an important factor in project scoring and ranking. The project applicant's share may consist of in-kind services, other funding sources or both.~~

(~~7~~6) When deemed necessary, the department will solicit outside technical design review of projects.

(~~8~~7) No project completed under this program may restrict or interfere with any water rights or property rights of landowners adjacent to projects.

~~(9) Completion of a project on private property does not guarantee public access to the site, but public access is considered in evaluating benefits to public fisheries and may be an important factor in project scoring and ranking.~~

(~~10~~8) Funds from this account may not be used to acquire any interest in land.

AUTH: 87-1-201, 87-1-301, MCA; IMP: 87-1-272, 87-1-273, MCA

12.7.1204 (NEW RULE VIII) same as proposed.

12.7.1205 (NEW RULE IX) INSPECTION AND PAYMENT BY DEPARTMENT (1) Funds granted from the account shall be used only for purposes described in the final project agreement. ~~Accurate records must be kept by the project applicant or sponsor.~~ Itemized invoices of expenses and receipts approved by the applicant must be submitted to the department for payment.

(2) Payment may be made in installments for completed work as the project progresses. Upon completion of a project, a final inspection and payment will be made within 45 days by the department. If the department determines after inspection that the project is not complete, final payment shall be withheld pending completion and reinspection.

(3) UNANTICIPATED EXPENSES OF UP TO 10% OF TOTAL PROJECT COSTS CAN BE APPROVED BY THE DEPARTMENT.

(4) ADDITIONAL FUNDING MAY BE AVAILABLE TO COMPLETE OR REPAIR A PROJECT IF A NATURAL CATASTROPHIC EVENT DAMAGES OR DESTROYS THE PROJECT WHILE THE PROJECT IS UNDER CONSTRUCTION. REQUESTS FOR ADDITIONAL FUNDING WILL BE EVALUATED BY THE DEPARTMENT.

AUTH: 87-1-201, 87-1-301, MCA; IMP: 87-1-272, 87-1-273, MCA

12.7.1206 (NEW RULE X) PROJECT MAINTENANCE (1) Projects funded under the program such as fences, bridges, fish screens, or other channel restoration measures will become the property of the landowner. Fish habitat improvement projects such as spawning channel development, fish barrier removal, fish screens, and riparian enhancements must be maintained for the useful life of the project by the applicant.

(2) Projects with demonstrated benefits to public fisheries and conservation of rivers may be eligible for maintenance funding under this program. ~~The application procedure and review and approval processes for maintenance projects are the same as for new projects.~~ MAINTENANCE COSTS OF UP TO 10% OF TOTAL PROJECT COSTS CAN BE APPROVED BY THE DEPARTMENT.

~~(3) Additional funding may be available to complete a project if a natural catastrophic event damages or destroys the project. Requests for additional funding will be evaluated by the review panel, department, and commission.~~

AUTH: 87-1-201, 87-1-301, MCA; IMP: 87-1-272, 87-1-273, MCA

12.7.1207 (NEW RULE XI) PROJECT MONITORING (1) Restoration projects shall be evaluated by either the applicant or the department according to terms stipulated in the project agreement. Monitoring will be conducted on each completed project AT TIMES AGREEABLE TO THE LANDOWNER. The type and frequency of monitoring will be established by the department.

AUTH: 87-1-201, 87-1-301, MCA; IMP: 87-1-272, 87-1-273, MCA

12.7.1208 (NEW RULE XII) same as proposed.

3. The department and commission amend 12.2.454 as proposed with the following changes (new material is in uppercase; material to be deleted is interlined):

12.2.454 ACTIONS THAT QUALIFY FOR A CATEGORICAL EXCLUSION

(1) The following types of actions do not individually, collectively, or cumulatively require the preparation of an environmental assessment or an environmental impact statement unless the action involves one or more of the extraordinary circumstances stated in (2) below:

(a) through (f) remain the same.

(g) inventory, survey or engineering activities for design or development of plans for river restoration and future fisheries improvement program projects;

(h) maintenance or repair of existing river restoration and future fisheries improvement program projects;

~~(i) procurement of a water lease or purchase of stored water;~~

(~~j~~i) improvement in fish habitat in lakes or reservoirs that do not pose a hazard to navigation.

(2) Remains the same.

AUTH: 2-3-103, 2-4-201, MCA; IMP: 2-3-104, 75-1-201, MCA

4. The legislative council raised concerns about the authority of the commission and the department to adopt rules to implement the future fisheries program established in 87-1-272 and 87-1-273, MCA. On October 24, 1995, state representative Bob Raney, who was the sponsor of the new legislation, and other interested parties met with department representatives to

discuss the proposed rules to implement the future fisheries program. As a result of that meeting and the comments of the legislative council, it was agreed that the rules should apply only to the roles of the department and the commission and not to the role of the citizen review panel established under the law.

Proposed Rules III through VI will not be adopted in response to comments from representative Raney and the legislative council that the rules of the commission and the department should not address functions of the review panel provided for in the new legislation. The citizen review panel has added and adopted these sections as draft guidelines and is seeking public review and comment on them.

The change in Rule I is being made by the department and the commission in response to comments to clarify that the final rules will apply only to the functions of these agencies.

Proposed Rules VII through XII have been changed in response to the suggestions of the sponsor and other interested parties who commented on the proposed rules. Specific comments to the proposed rules and responses are as follows:

Comment: Subsection (1) of Rule VII should reflect that the department reviews, evaluates and ranks only projects that have been approved by the review panel.

Response: Subsection (1) of Rule VII has been revised accordingly.

Comment: Subsection (3) of Rule VII should be revised to indicate the function of the agencies is to evaluate and prioritize projects.

Response: Subsection (3) of Rule VII has been revised accordingly.

Comment: The criteria used by the commission and the department should recognize benefits to the public in general, and not deal specifically with benefits such as aesthetics or wildlife habitat.

Response: The commission and department agree with this comment and have revised the rules accordingly.

Comment: The criteria in the rules should focus on wild fisheries, and particularly native species, in keeping with the intent of the statute.

Response: The commission and department agree with this focus, and Rule III(3)(b) has been revised accordingly.

Comment: Criteria dealing with public support and public benefits and costs should be combined into one criterion.

Response: The criteria in Rule III(4)(d) and (g) have been combined.

Comment: Cost-sharing on projects may be taken into account as a factor in evaluating and ranking projects under other criteria in this rule, and a separate criterion is not needed.

Response: The commission and department agree and Rule III(6) has been eliminated.

Comment: The statute does not require public access as a condition for funding a project, and the rules should not specifically address public access.

Response: The commission and department agree that public access should not be specifically listed in the rules, and proposed Rule III(9) has been eliminated. Benefits resulting from access can be considered under Rule VII(3)(a).

Comment: The primary record keeping requirements of the project applicant are to keep invoices and receipts of expenditures. Hence, it is redundant to state that accurate records will be kept in addition to invoices and receipts.

Response: Rule IX has been amended accordingly.

Comment: The department should have the authority to approve unanticipated project costs that are 10% or less of the original project cost without having to involve the review panel.

Response: Rule IX has been amended accordingly.

Comment: Rule X(4) is more appropriate as part of Rule IX.

Response: Rules IX and X have been amended accordingly.

Comment: Rule IX(4) should be changed to clarify that the section applies to natural catastrophic events that occur while the project is under construction and that funds will be available to repair as well as complete the project. The department should be able to independently approve these repairs or completions since the project has already been approved by the commission and review panel.

Response: Rule IX has been amended accordingly.

Comment: Applications for maintenance costs for completed projects that are 10% or less of the original project costs need not involve the review panel.

Response: Rule X(2) has been amended accordingly.

Comment: Some landowners may not want projects being monitored on their property at certain times of the year because there may be conflicts with their operation.

Response: Rule XI has been amended to clarify that monitoring will occur at times agreeable to the landowner.

Comment: ARM 12.2.454, concerning categorical exclusions from MEPA analysis, should not exclude water leases since in many instances water leases justify preparation of a MEPA document.

Response: The proposed amendment of ARM 12.2.454 concerning water leases has been deleted.

FISH, WILDLIFE AND PARKS COMMISSION AND MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS

Robert N. Lane
Reviewer

Patrick J. Graham, Commission Secretary and Department Director

Certified to the Secretary of State on January 2, 1996.

BEFORE THE TRANSPORTATION COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of rule 18.6.211 concerning application fees for outdoor advertising	))))	NOTICE OF AMENDMENT OF ARM 18.6.211 CONCERNING PERMITS FOR OUTDOOR ADVERTISING

TO: All Interested Persons.

1. On October 12, 1995, the Montana Transportation Commission, formerly the Montana Highway Commission, published notice of the proposed amendment of rule 18.6.211 concerning permits at page 2091 of the 1995 Montana Administrative Register, issue number 19.

2. The Commission has amended the rule as proposed.

3. No comments or testimony were received.

MONTANA TRANSPORTATION COMMISSION

By: _____
THORM FORSETH, Chairman

_____
Lyle Manley, Rule Reviewer

Certified to the Secretary of State January 2, 1996.

BEFORE THE DEPARTMENT OF
PUBLIC HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of Rules I through XI and the amendment of rules 46.12.514, 46.12.515, 46.12.516 and 46.12.517 pertaining to medicaid coverage and reimbursement of therapeutic family care	CORRECTED NOTICE OF ADOPTION AND AMENDMENT OF RULES

TO: All Interested Persons

1. On November 22, 1995, the Department of Public Health and Human Services published notice of the adoption of Rules I through XI and the amendment of rules 46.12.514, 46.12.515, 46.12.516 and 46.12.517 pertaining to medicaid coverage and reimbursement of therapeutic family care at page 2501 of the 1995 Montana Administrative Register, issue number 22.

2. The department, in response to a comment from the public, stated its intention to remove the requirements and authorization of passive physical restraint and behavioral modification in the therapeutic family care rules it adopted. The department inadvertently did not show the removal of the requirements from ARM 11.13.221 [RULE XI] in its notice. The rule is adopted with the following changes:

11.13.221 [RULE XI] THERAPEUTIC FAMILY CARE, MEDICAL NECESSITY, ADDITIONAL TRAINING REQUIREMENTS (1) Remains as proposed.

(2) Treatment parents and mental health assistants must receive a minimum of 15 hours of training annually directly related to:

(a) the special needs of youth with emotional disturbances receiving treatment for their emotional disturbance in a treatment family environment; and

(b) the use of non-physical methods of controlling youth to assure the safety and protection of the youth and others.~~;~~

~~(c) the use of approved passive physical restraint methods; and\or~~

~~(d) the use of approved behavioral modification techniques.~~

AUTH: Sec. 41-3-1103, 52-1-103 and 52-2-111, MCA
IMP: Sec. 41-3-1103, 41-3-1122 and 41-3-1105, MCA

3. All portions of the November 22, 1995 notice of adoption and amendment not specifically changed by this amended notice remain the same.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State January 2, 1996.

BEFORE THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES OF THE STATE OF MONTANA

In the matter of the amendment of rule 16.10.702A pertaining to the reduction of the required height of water risers in trailer courts	)))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On November 9, 1995, the Department of Public Health and Human Services published notice of the proposed amendment of rule 16.10.702A pertaining to the reduction of the required height of water risers in trailer courts at page 2384 of the 1995 Montana Administrative Register, issue number 21.

2. The department has amended rule 16.10.702A as proposed.

3. No comments or testimony were received.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State January 2, 1996.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF AMENDMENT
of ARM 42.22.1311 and 42.22.1312)
relating to Industrial Property)

TO: All Interested Persons:

1. On October 26, 1995, the Department published notice of the proposed amendment of ARM 42.22.1311 and 42.22.1312 relating to industrial property at page 2230 of the 1995 Montana Administrative Register, issue no. 20.

2. A Public Hearing was held on November 29, 1995, to consider the proposed amendments. No one appeared to testify and no written comments were received.

3. The Department has amended the rules as proposed.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State December 28, 1995.

VOLUME NO. 46 OPINION NO. 11

CITY JUDGES - Enactment of ordinance requiring elected city judge to be resident of city;
COURTS, CITY - Enactment of ordinance requiring elected city judge to be resident of city;
ELECTIONS - Enactment of ordinance requiring elected city judge to be resident of city;
JUDGES - Enactment of ordinance requiring elected city judge to be resident of city;
RESIDENCE - Enactment of ordinance requiring elected city judge to be resident of city;
MONTANA CODE ANNOTATED - Sections 1-2-101, 2-16-501, 3-10-202, 3-11-202(1), 7-4-4102(3);
MONTANA CONSTITUTION - Article VII, sections 1, 9;
MONTANA LAWS OF 1989 - Chapter 300.

HELD: A Montana city that elects its city judge may enact an ordinance requiring that the judge be a resident of the city.

December 28, 1995

Mr. Eric F. Kaplan
City Attorney
P.O. Box 329
Columbia Falls, MT 59912

Dear Mr. Kaplan:

Your predecessor requested my opinion on the following question:

> May a city enact an ordinance requiring that its elected city judge be a resident of the city?

The city of Columbia Falls is a city of the third class that is considering going to a system of electing rather than appointing its city judge, pursuant to Mont. Code Ann. § 7-4-4102(3). Also under consideration is an additional requirement that the city judge be a resident of the city.

The office of city judge, and the qualifications for it, including residency, are creatures of statute. Mont. Const. art. VII, §§ 1, 9. The particular statute enumerating the qualifications for the office of city judge says in pertinent part:

> (1) A city judge, at the time of election or appointment, shall:

(a) meet the qualifications of a justice of the peace under 3-10-202;

(b) be a resident of the county in which the city or town is located; and

(c) satisfy any additional qualifications prescribed by ordinance.

Mont. Code Ann. § 3-11-202. The only question at this point is whether a city may proceed under subsection (1)(c) to prescribe an ordinance that is more restrictive than the residence requirement set forth in subsection (1)(b). I find nothing in the statute that would prohibit a city's governing body from doing so.

The argument could be made that in enacting the county residence requirement of subsection (1)(b), the legislature sought to preempt any more restrictive local residence restrictions, because the subsection authorizing the imposition of "any additional qualifications prescribed by ordinance," subsection (1)(c), predates subsection (1)(b). However, I do not subscribe to this interpretation because the two subsections do not conflict; they supplement one another, and statutes should be construed so as to give effect to all of them. Mont. Code Ann. § 1-2-101; Gibson v. State Fund, 255 Mont. 393, 396, 842 P.2d 338, 340 (1992). Subsection (1)(b) sets a statewide minimum residence requirement for city judges, and subsection (1)(c) authorizes cities to enact additional qualifications for their city judges if they so choose. A local residence requirement less restrictive than the statewide requirement would conflict and thus be nugatory, and one more restrictive would be a permissible supplement. Also, subsection (1)(b) was enacted for the purpose of ensuring that local justices of the peace could also serve as city judges within their counties of residence (1989 Mont. Laws, ch. 300; Mins., House Comm. on Judiciary, Hr'g on H.B. 201, Jan. 27, 1989, at 1, 2; Mins., Senate Comm. on Local Gov't, Hr'g on H.B. 201, Feb. 16, 1989, at 6, 7). This is entirely different from the apparent purpose of subsection (1)(c): to permit city governing bodies to establish additional qualifications for city judges. Finally, the legislature left no indication that it saw any conflict between the two subsections, or that it intended the enactment of subsection (1)(b) to restrict the authority of cities to enact additional residence qualifications. In sum, the wording of the two statutes, as well as the legislative history of the statute, shows that the county residence requirement was not intended to be exclusive. In fact, there is statutory support for the argument that a city judge ought to reside within the city, Mont. Code Ann. §§ 2-16-501, 7-4-4111.

The objection might also be made that a city residence requirement constitutes a denial of equal protection and is, thus, unconstitutional. McQuillin, Municipal Corporations

§ 12.59.05. While I generally decline to offer my opinion on constitutional questions, city governments contemplating residency limitations should consider that if challenged on equal protection grounds, "the [residency] requirement need only be shown to have a rational relationship to a legitimate government purpose in order to pass constitutional muster." McQuillin, Municipal Corporations § 12.59.10 at 314.

THEREFORE, IT IS MY OPINION:

A Montana city that elects its city judge may enact an ordinance requiring that the judge be a resident of the city.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/rfs/kaa

VOLUME NO. 46 OPINION NO. 12

ANNEXATION - Authority of municipality to annex land parcel as condition of continuing water and/or sewer service;
CITIES AND TOWNS - Annexation as condition of continuing water and/or sewer service;
MUNICIPAL GOVERNMENT - Authority to annex property as condition of continuing water and/or sewer service;
PROPERTY, REAL - Authority of municipality to annex land parcel as condition of continuing water and/or sewer service;
SEWERS - Authority of municipality to annex land parcel as condition of continuing sewer service;
MONTANA CODE ANNOTATED - Sections 7-13-4314, 69-7-201;
MONTANA LAWS OF 1981 - Chapter 607;
MONTANA LAWS OF 1971 - Chapter 229.

HELD: A city or town in Montana may adopt a rule for the operation of its municipal sewer and/or water utility requiring a property owner's consent to annexation as a condition of continued sewer and/or water service.

December 29, 1995

Mr. Joseph R. Hunt
Shelby City Attorney
P.O. Box 743
Shelby, MT 59474

Dear Mr. Hunt:

You have requested my opinion on the following question:

> May a city or town in Montana impose annexation as a requirement of continued water and/or sewer service?

Shelby, a city of general government powers, has for some time extended water and sewer service to several parcels of land outside the city limits without requiring the annexation of the parcels into the city. Shelby now seeks to annex the parcels in order to thoroughly address problems that have arisen with the privately installed water systems.

It is clear that Shelby could have annexed the property involved prior to the initiation of water and/or sewer services. Mont. Code Ann. § 7-13-4314. However, because the annexation did not occur then, the question arises whether the city now has the power to require annexation.

It is my opinion that Shelby has the authority to adopt a rule requiring annexation of properties utilizing the municipal water and/or sewer services.

Mont. Code Ann. § 69-7-201 states in pertinent part:

> Each municipal utility shall adopt, with the concurrence of the municipal governing body, rules for the operation of the utility. The rules shall contain, at a minimum, those requirements of good practice which can be normally expected for the operation of a utility. . . . ***The rules shall outline the utility's procedure for*** discontinuance of service and reestablishment of service as well as ***the extension of service to users*** within the municipal boundaries and ***outside the municipal boundaries***.

(Emphasis added.) The legislature's use here of the phrase "extension of service" is significant. It indicates a legislative intent to grant cities and towns broad authority to adopt rules for the operation of municipal utilities in situations such as the one you present. Rather than merely establishing a condition to initiate service, as in Mont. Code Ann. § 7-13-4314, cities and towns are authorized to adopt rules such as ones that would condition ongoing service upon consent to annexation.

The argument could be made that because the legislature chose only to specifically authorize making consent to annexation a condition of initiating sewer or water service, it did not intend that consent be a condition of anything else, such as continuing service.

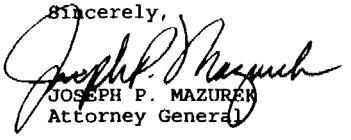
I disagree with this view for several reasons. First, the legislature's choice of different language in the two code sections under discussion implies that a different meaning and effect were intended. In re Kesl's Estate, 117 Mont. 377, 386, 161 P.2d 641, 645 (1945). Second, the legislature authorized making consent to annexation a condition of initiating municipal water or sewer service in 1971 (1971 Mont. Laws ch. 229). Ten years later, the legislature authorized municipalities to adopt rules for the extension of service to users outside the municipal boundaries (1981 Mont. Laws ch. 607). As a general rule, one should attempt to harmonize related statutes, Matter of W.J.H., 226 Mont. 479, 483, 736 P.2d 484, 486-87 (1987); however, to the extent of any repugnancy, later statutes control earlier ones, Wiley v. District Court, 118 Mont. 50, 55, 164 P.2d 358, 361 (1945). I conclude that the 1981 legislature intended to authorize increased municipal powers in the operation of municipal utilities and, as I said above, permit the adoption of a rule of the type about which you inquire.

The fact that the city of Shelby does not have self-government powers does not pose a problem here, because the power to adopt a rule of this type is implied by law from the language of Mont. Code Ann. § 69-7-201, and is thus a power of all municipalities whether having general or self-government powers.

THEREFORE, IT IS MY OPINION:

A city or town in Montana may adopt a rule for the operation of its municipal sewer and/or water utility requiring a property owner's consent to annexation as a condition of continued sewer and/or water service.

Sincerely,



JOSEPH P. MAZUREK
Attorney General

jpm/rfs/kaa

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the petition for declaratory ruling on the administration of regional analgesia through epidural catheter by non-anesthetist registered nurses	)))))	NOTICE OF PETITION FOR DECLARATORY RULING

1. On February 8, 1996 at 10:00 a.m., in the conference room of the Professional and Occupational Licensing Bureau, 111 North Jackson, Arcade Building, Lower Level, Helena, Montana, the Board of Nursing will consider a petition for declaratory ruling on the authority of non-anesthetist registered nurses to administer regional analgesia through an epidural catheter upon the order of a physician.

2. This petition is filed on behalf of the registered nurses of St. Peter's Community Hospital, 2475 Broadway, Helena, Montana 59601, by Jackie Lamphier, M.N., Nurse Manager.

3. The Petitioner notes numerous interested parties, namely, registered nurses employed at St. Peter's Community Hospital.

4. The Petitioner alleges as follows: registered nurses at St. Peter's Community Hospital currently administer regional analgesia through an existing epidural catheter under the written order and general supervision of an anesthesiologist. The procedure is used for pain control following surgery, for acute pain control, or chronic pain conditions and in the following settings: the surgical floor, medical floor, OB, ICU and home health care. There are no mortality or morbidity statistics for this practice.

5. The Petitioner further alleges as follows: registered nurses performing this procedure at St. Peter's Community Hospital have obtained educational inservice and certification through a comprehensive inservice program. The hospital Nursing Practice Committee, hospital administration, and several physicians specifically listed in the petition support the procedure being included in a registered nurse's scope of practice.

6. The statute upon which the Petitioner requests a declaratory ruling is incorrectly cited in the Petition as section 37-8-102(5)(a), MCA. The scope of practice of a registered nurse, to which Petitioner makes reference, is found at section 37-8-102(5)(b), MCA. That statute provides:

> (b) "Practice of professional nursing" means the performance for compensation of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health; the

prevention, case finding, and management of illness, injury, or infirmity; and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (5)(b):

(i) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(ii) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals.

7. The Petitioner requests that the Board of Nursing declare administration of regional analgesia through an epidural catheter under a physician's order to be within the scope of permissible functions of a registered nurse.

8. The Petitioner requests this ruling with the understanding that hospitals "provide registered nurses with adequate education on epidural injections and documented, annual competency evaluations."

9. 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 the Board of Nursing, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m. February 2, 1996.

BOARD OF NURSING
JEAN BALLANTYNE, RN, MN

By: Anne M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Anne M. Bartos .
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 2, 1996.

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 September 30, 1995. This table includes those rules adopted during the period September 1, 1995 through December 31, 1995 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 September 30, 1995, 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 and 1995 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions. Accumulative Table entries will be listed with the department name under which they were proposed, e.g., Department of Health and Environmental Sciences as opposed to Department of Environmental Quality.

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