MONTANA ADMINISTRATIVE REGISTER

1996 ISSUE NO. 23
DECEMBER 5, 1996
PAGES 3095-3173

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 23

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Page Number

TABLE OF CONTENTS

NOTICE SECTION

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of rule 2.4.136 relating to state accounting.	)))))	NOTICE OF PROPOSED AMENDMENT OF RULES NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons

1. On January 6, 1997, the Department of Administration proposes to amend rule 2.4.136 relating to state accounting.

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

2.4.136 REIMBURSEMENT FOR RECEIPTABLE LODGING (1) Employees shall be reimbursed for their actual out-of-pocket lodging expenses, including room tax, up to the maximum amounts set by 2-18-501, MCA, for in-state and out-of-state travel. Lodging in those areas specifically designated as high cost ~~cities~~ will be reimbursed at actual cost. The department of administration will issue a quarterly memo designating those high cost ~~cities~~ areas which qualify for reimbursement of lodging at actual cost.

(2)(a) All areas within the State of Montana are designated as high cost under the following circumstances:

(i) lodging costs have temporarily escalated due to special functions such as fairs, sporting events or conventions;

(ii) emergency travel arrangements preclude being able to find accomodations at state rates; or

(iii) remote locations with limited accomodations within a 15 mile radius preclude obtaining accomodations at state rates.

(b) An agency director may approve reimbursement of lodging at actual cost under the circumstances listed in (2)(a) upon receipt of adequate justification from an employee along with the original lodging facility receipt. The expenditure of these costs may not cause the agency to overexpend its appropriation authority.

(3) In order to claim lodging reimbursement ~~of this nature, a bona fide~~ the original ~~copy of a~~ receipt from a licensed lodging facility must be attached to the travel expense voucher,

form DA-101, and retained by the agency. Other receipts, such as credit card receipts, are not acceptable.

~~(2)~~(4) Language remains the same. AUTH: Sec. 2-18-501 MCA; IMP, 2-18-501 MCA

3. The department has the statutory authority to designate the areas in which an employee can be reimbursed the actual cost of lodging. The present rule is not flexible enough to react to market forces that, during certain periods of the year, deny lodging at current in-state flat rates. The purpose of the amendment is to establish the circumstances under which actual lodging may be reimbursed.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment to Connie L. Griffith, Administrator, Accounting and Management Support Division, Room 255 Mitchell Building, PO Box 200102, Helena, MT 59620-0102 no later than January 2, 1997.

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 hearing and submit this request along with any written comments to Connie L. Griffith, Administrator, Accounting and Management Support Division, Room 255 Mitchell Building, PO Box 200102, Helena, MT 59620-0102 no later than January 2, 1997.

6. If the agency receives requests for a public hearing on the proposed amendment from either 25 persons or 10%, which ever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature, from a government subdivision or agency, or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 2,240 persons based on 22,400 state and university system employees.

DAL SMILIE, CHIEF LEGAL COUNSEL, RULE REVIEWER

LOIS MENZIES, DIRECTOR DEPARTMENT OF ADMINISTRATION

Certified to the Secretary of State on November 25, 1996.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of rules 2.5.401, 2.5.404, 2.5.406, 2.5.602, 2.5.605 and 2.5.702 relating to state purchasing.	)))))	NOTICE OF PROPOSED AMENDMENT OF RULES NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons

1. On January 6, 1997, the Department of Administration proposes to amend rules 2.5.401, 2.5.404, 2.5.406, 2.5.602, 2.5.605 and 2.5.702 relating to state purchasing.

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

2.5.401 VENDORS LIST (1) Remains the same.

(2) To get on the vendors list, a vendor must ~~submit an affidavit~~ register with the division on a form supplied by the division ~~completed as appropriate~~, including information sufficient to identify proper commodity(ies) on which the vendor wishes to bid. ~~Affidavit~~ Registration forms are available from the procurement and printing division. (AUTH: Sec. 18-4-221 MCA; IMP, Sec. 18-4-221 MCA.)

2.5.404 BID PREPARATION ~~(1) All bids must be signed by an authorized person.~~

(2) through (5) remain the same but are renumbered (1) through (4).

~~(6)~~ (5) Payment will be due 30 days from ~~the issuance of a signed Montana purchase order and~~:

(a) the receipt of a properly executed claim; or

(b) upon delivery of the merchandise received in a satisfactory condition, whichever is later.

(7) through (9) remain the same but are renumbered (6) through (8). (AUTH: Sec. 18-4-221 MCA; IMP, Sec. 18-4-221 MCA.)

2.5.406 VENDOR PROTEST PROCEDURE (1) through (4) remain the same. (AUTH: Sec. 18-4-221 MCA; IMP, Sec. 18-4-221 and 18-1-402 MCA.)

2.5.602 COMPETITIVE SEALED PROPOSALS (1) through (4) remain the same.

(5) Proposals shall not be opened publicly but shall be opened in the presence of a procurement official. Proposals and modifications shall be time-stamped upon receipt and held in a secure place by an employee of the agency until the established due date. Proposals and modifications shall be shown only to ~~procurement officials having a legitimate interest in them~~

persons participating in the evaluation or contracting process.

(6) After the date established for receipt of proposals, a register of proposals shall be prepared which shall include for all proposals the name of each offeror and a description sufficient to identify the supply or service offered. The register of proposals shall be open to public inspection only after award of the contract. Interested parties are responsible for making their own arrangements to make copies of proposal materials.

(7) The evaluation shall be based on the evaluation factors set forth in the request for proposals. Numerical rating systems may be used but are not required. Factors not specified in the request for proposal shall not be considered. ~~Multiple award contracts are allowable if determined to be in the best interest of the state.~~

(8) through (12) remain the same. (AUTH: Sec. 18-4-221 MCA; IMP, Sec. 18-4-304 MCA.)

2.5.605 EXIGENCY PROCUREMENTS (1) An exigency procurement of ~~$2,000~~ $5,000 or greater shall be limited to those supplies or services necessary to meet the exigency, as defined in ARM 2.5.201.

(2) through (4) remain the same. (AUTH: Sec. 18-4-221 MCA; IMP, Sec. 18-4-133 MCA.)

2.5.702 DISPOSITION OF SURPLUS SUPPLIES (1) through (7) remain the same.

(8) The state may permit local governments, non-profit organizations, or private businesses to participate in an auction or other appropriate marketing methods. (AUTH: Sec. 18-4-226 MCA; IMP, Sec. 18-4-226 MCA.)

3. It is necessary to amend the rules for the following reasons:

ARM 2.5.401 is amended to clarify that an "affidavit" is not required by the division to be placed on the vendors list. Affidavits are only required if the vendor is attesting to a claim for resident preference. Vendors only need to be registered to be on the vendors list.

ARM 2.5.404 (1) is deleted concerning signatures on bids. ARM 2.5.505 considers the lack of a signature a correctable mistake and therefore would conflict with this rule. Vendors currently receive bid forms that contain a signature block.

ARM 2.5.404(6) is amended to remove the requirement that a signed purchase order be in place, before vendor payment can be made. In some cases, purchase orders are not used, or not signed even if one is issued. Accountability is maintained by requiring the "receipt of a properly executed claim" or the delivery and acceptance of the merchandise before payment can be made.

ARM 2.5.406 is amended to add a statutory cite to the history notes. Section 18-1-402 MCA was inadvertently left off as an additional implementation reference when this rule was adopted. This section of law concerns the exhaustion of

administrative procedures before a contractor may bring an action in court.

ARM 2.5.602 is amended in three places. First, we added clarifying language stating that not just "procurement officials" can view proposal materials. Often evaluation committees are made up of persons not directly involved in procurement. We changed the language to make it clear that any "person involved in the evaluation or contracting process" may see the proposal contents prior to contract award.

The second amendment to ARM 2.5.602 states that interested parties are responsible for making their own arrangements for the copying of proposal materials. This has been the long-held policy of the division because of the great length and cost of copying some proposals.

The third amendment simply strikes language in (7) which duplicates language in (11).

ARM 2.5.605 raises the dollar limit for which agencies need to document their purchases made in the event of an exigency. The declaration of an exigency permits agencies to go outside of normal procurement methods. Justification for that action would now only be required for purchases made over $5,000. This change would make the documentation requirement consistent for those involving small purchases.

ARM 2.5.702 would permit interested parties to participate in state surplus property auctions or other marketing methods. The division has earlier permitted this participation when it was financially justifiable to permit outside participation in an auction.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments to Marvin Eicholtz, Administrator, Procurement and Printing Division, PO 200135, Mitchell Building, Helena, MT 59620-0135 no later than January 2, 1997.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make a written request for hearing and submit this request along with any written comments to Marvin Eicholtz, Administrator, Procurement and Printing Division, PO 200135, Mitchell Building, Helena, MT 59620-0135 no later than January 2, 1997.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a government 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 800 persons based on 8,000 vendors interested in submitting bids for supplies and services to the state of Montana.

DAL SMILIE, CHIEF LEGAL
COUNSEL, RULE REVIEWER

LOIS MENZIES, DIRECTOR
DEPARTMENT OF ADMINISTRATION

Certified to the Secretary of State on November 25, 1996.

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of a rule pertaining to unprofessional conduct	)))))	NOTICE OF PROPOSED AMENDMENT OF 8.58.419 GROUNDS FOR LICENSE DISCIPLINE - GENERAL PROVISIONS - UNPROFESSIONAL CONDUCT

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 4, 1997, the Board of Realty Regulation proposes to amend the above-stated rule.

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

"8.58.419 GROUNDS FOR LICENSE DISCIPLINE - GENERAL PROVISIONS - UNPROFESSIONAL CONDUCT (1) through (3)(af) will remain the same.

(ag) Licensees or agencies, when advertising, shall be especially careful to present a true picture and shall not advertise without disclosing his or her name and identity as a real estate licensee or real estate agency. Such disclosure shall be required whenever the licensee or agency negotiates or attempts to negotiate the listing, sale, purchase or exchange of real estate which belongs to the licensee, the agency or the principal.

(4) will remain the same."

Auth: Sec. 37-1-131, 37-1-136, 37-51-102, 37-51-203, 37-51-321, MCA; IMP, Sec. 37-51-102, 37-51-201, 37-51-202, 37-51-321, 37-51-512, MCA

REASON: This section was inadvertently deleted during the last major rule amendments published by the Board. This section requires licensees to disclose that they are licensed in all advertising.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Realty Regulation, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., January 2, 1997.

4. If a person who is directly affected by the proposed amendment wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Realty Regulation, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., January 2, 1997.

5. If the Board receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 530 based on the 5300 licensees in Montana.

BOARD OF REALTY REGULATION
JACK K. MOORE, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 25, 1996.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of rule 17.30.716 eliminating a list of activities predetermined to be nonsignificant and adopting a category of nonsignificance for individual sewage systems	)))))	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULES (Water Quality)

To: All Interested Persons

1. On January 7, 1997, at 1:30 p.m., the Board will hold a public hearing at Room 111 of the Metcalf Building, 1520 E. 6th Ave., Helena, Montana, to consider the amendment of the above-captioned rule.

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

17.30.716 CATEGORIES OF ACTIVITIES THAT CAUSE NONSIGNIFICANT CHANGES IN WATER QUALITY (1) In addition to the categories listed in 75-5-317, MCA, ~~T~~the following categories or classes of activities have been determined by the department to cause changes in water quality that are nonsignificant due to their low potential for harm to human health or the environment and their conformance with the guidance found in 75-5-301(5)(c), MCA:

~~(a) activities which are nonpoint sources of pollution where reasonable land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be fully protected;~~

~~(b) use of agricultural chemicals in accordance with a specific agrichemical management plan promulgated under 80-15-212, MCA, if applicable, or in accordance with a US EPA approved label and where existing and anticipated uses will be fully protected;~~

~~(c) changes in existing water quality resulting from an emergency or remedial activity that is designed to protect public health or the environment and is approved, authorized, or required by the department;~~

~~(i) changes in existing water quality resulting from treatment of a public water supply system as defined in 75-6-102(12), MCA, or a public sewage system as defined in 75-6-102(11), MCA, by chlorination or other similar means designed to protect the public health or the environment and approved, authorized, or required by the department.~~

~~(d) use of drilling fluids, sealants, additives, disinfectants and rehabilitation chemicals in water well or monitoring well drilling, development, or abandonment, if used according to department approved water quality protection~~

~~practices (ARM Title 36, chapter 21);~~

~~(e) short term changes in existing water quality resulting from activities authorized by the department pursuant to 75-5-308, MCA;~~

~~(f) land application of animal waste, domestic septage, or waste from public sewage treatment systems containing nutrients where wastes are land applied in a beneficial manner, application rates are based on agronomic uptake of applied nutrients and other parameters will not cause degradation;~~

~~(g) incidental leakage of water from a public water supply system as defined in 75-6-102(12), MCA, or from a public sewage system as defined in 75-6-102(11), MCA, utilizing best practicable control technology designed and constructed in accordance with ARM 17.38.101 through 17.38.106;~~

~~(h) discharges of water from monitoring well or water well tests, hydrostatic pressure and leakage tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs conducted in accordance with department approved water quality protection practices;~~

~~(i) oil and gas drilling, production, abandonment, plugging, and restoration activities performed in accordance with ARM Title 36, chapter 22;~~

~~(j) short term changes in existing water quality resulting from ordinary and everyday activities of humans or domesticated animals, including but not limited to recreational activities such as boating, hiking, fishing, wading, swimming and camping, fording of streams or other bodies of water by vehicular or other means, and drinking from or crossing of streams or other bodies of water by livestock and other domesticated animals;~~

~~(k) coal and uranium prospecting performed in accordance with ARM 26.4.1001, et seq.;~~

~~(l) solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle graveyards licensed and operating in accordance with ARM Title 17, chapter 50;~~

~~(m) hazardous waste management facilities permitted and operated in accordance with ARM Title 17, chapter 54.~~

(a) changes in water quality resulting from the use of individual sewage systems that comply with the construction standards in ARM 17.36.304 and WQB-6 and that are used for domestic living units on lands where the conditions described in either (i), (ii), (iii), or (iv) are met:

(i) (A) a single living unit is situated on an individual lot that is 1 acre or larger;

(B) the depth to ground water in the uppermost aquifer beneath the individual sewage system site is greater than 200 feet; and

(C) the distance from the individual sewage system site to the nearest state surface water is greater than 300 feet;

(ii) (A) a single living unit is situated on an individual lot that is 2 acres or larger;

(B) the depth to ground water in the uppermost aquifer beneath the individual sewage system site is greater than 50 feet;

(C) the distance from the individual sewage system site to

the nearest state surface water is greater than 300 feet;

(D) the existing concentration of nitrate as nitrogen in ground water in the uppermost aquifer beneath the individual sewage system site is less than 3.0 mg/L;

(E) the natural slope of the land surface in the drainfield area is less than 12%;

(F) irrigation systems above the drainfield do not cause saturated conditions in the drainfield;

(G) soils in the drainfield area are classified as uniform fine textured silty or clayey throughout the first 8 feet, with no more than 15% of such soils retained on a number 10 sieve weight;

(H) percolation rates are slower or equal to 31 minutes per inch;

(I) the drainfield installation will maximize evapotranspiration and agronomic uptake; and

(J) the drainfield will be pressure dosed according to the requirements of WQB-4, section 60.7.

(iii) (A) a single living unit is situated on an individual lot that is 5 acres or larger;

(B) the depth to ground water in the uppermost aquifer beneath the individual sewage system site is greater than 15 feet;

(C) the distance from the individual sewage system site to the nearest state surface water is greater than 500 feet;

(D) the existing concentration of nitrate as nitrogen in ground water in the uppermost aquifer beneath the individual sewage system site is less than 1.0 mg/L; and

(E) percolation rates are slower or equal to 16 minutes per inch; or

(iv) (A) a single living unit is situated on an individual lot that is 20 acres or more;

(B) the depth to ground water in the uppermost aquifer beneath the individual sewage system site is greater than 25 feet; and

(C) the distance from the individual sewage system site to the nearest state surface water is greater than 300 feet.

(2) Remains the same.

AUTH: 75-5-301, 75-5-303, MCA; IMP: 75-5-303, 75-5-317, MCA

3. The Board is proposing these amendments in order to simplify review of individual sewage systems under the nondegradation policy by providing categorical exemptions for systems that will produce nonsignificant changes in water quality due to construction requirements, location and site conditions. Based on its experience, the Department has determined that sewage systems located on lots that meet the conditions described in these amendments would be nonsignificant under the criteria in ARM 17.30.715.

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 the Board of Environmental Review, Department of Environmental Quality, Metcalf Building, PO

Box 200901, Helena, MT 59620-0901, no later than January 7, 1997.

5. Claudia Massman has been designated to preside over and conduct the hearing.

BOARD OF ENVIRONMENTAL REVIEW

CINDY E. YOUNKIN, Chairperson

Reviewed by:

JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State November 25, 1996.

BEFORE THE BOARD OF OIL AND GAS CONSERVATION
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of rule 36.22.1408, pertaining to underground injection control	)))	NOTICE OF PUBLIC HEARING

TO: All Interested Persons

1. On January 3, 1997, at 10:00 a.m., a public hearing will be held in the conference room of the Oil and Gas Conservation Office, 2535 St. John's Avenue, Billings, Montana, to consider the amendment of rule 36.22.1408.

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

36.22.1408 FINANCIAL RESPONSIBILITY (1) The owner or operator of any injection well outside the exterior boundaries of Indian reservations must comply with the bonding requirements of ~~ARM 36.22.1308; provided, however, that such bonding requirements must also apply to lands owned or held in trust by the United States~~ this sub-chapter.

(2) Owners or operators of injection wells in compliance with the U.S. environmental protection agency (EPA) financial assurance requirements on the date primary enforcement authority is delegated to the board of oil and gas conservation must provide a bond on board Form No. 3 or Form No. 14 in an amount equal to that provided to the EPA, unless an alternative multi-well bond is approved as provided in this rule. This bond is limited to wells covered under the EPA bond. The bond may be reduced to reflect the plugging or re-completion of wells to other approved use. The reduction will be in the proportion each plugged or re-completed well represents to the total bond amount at the time the bond was initially accepted.

(3) Owners or operators proposing to drill or acquire additional injection wells must provide the individual well bonds described in ARM 36.22.1308 1(a)(i) or (ii) as appropriate for the depth of the well unless such additional well(s) are covered under a multiple well UIC bond as provided in this rule. The multiple well bond described in ARM 36.22.1308(1)(b) is not available for injection wells.

(4) Injection well operators may propose an alternative multiple well UIC bond to the board's staff. The staff will review the proposed bond and provide a recommendation for its approval, modification, or rejection by the board at its next available scheduled meeting. In support of its request for a multi-well bond the operator may provide cost estimates for plugging and restoring the surface of wells of the type and in the area to be covered by the bond, the operator's estimate of any residual or salvage value that may reduce the costs of plugging, and any other information the operator wishes to provide. In reviewing a proposed bond, the staff must consider the reasonableness of the cost estimates provided, the compli-

ance history of the operator, the operator's history of promptly plugging unneeded wells, and the financial condition of the operator. Multiple well bonds will be in a minimum amount of $50,000.

(5) The board may accept a letter of credit in lieu of a surety bond or certificate of deposit. A letter of credit must meet the following conditions:

(a) it must be issued by a Montana bank;

(b) it must be in an amount equal to the bond otherwise required;

(c) it must be for a term of unlimited duration and irrevocable;

(d) the letter of credit will remain in the custody of the board; and

(e) the letter of credit must provide that it is immediately payable in full upon demand by the board if the person on whose behalf the letter is issued fails to properly plug each dry or abandoned well and restore the surface of the location as provided by board rules.

(6) The board may reject a letter of credit and demand other security if it has reason to doubt the solvency of the bank or to believe the obligation of the letter of credit has become impaired. The board may require a financial statement from the principal and proof of solvency of the bank at any time before or after acceptance of the letter of credit.

AUTH: Sec. 82-11-111, MCA;
IMP: Sec. 82-11-111, 82-11-121, 82-11-123, 82-11-124, 82-11-127, and 82-11-137, MCA

3. Amendment of rule 36.22.1408 is necessary to provide adequate financial assurance under the UIC program for new and existing injection wells and to provide flexibility to accept letters of credit in lieu of surety or certificate of deposit bonds.

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 Thomas P. Richmond, Administrator, Oil and Gas Conservation Division, 2535 St. John's Avenue, Billings, Montana, 59107, and must be received no later than January 2, 1997.

5. The Board of Oil and Gas Conservation will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the division no later than one week before the date of the hearing you plan to attend to advise us of the nature of the accommodation that you need. Providing an interpreter for the deaf or hearing impaired may require more time. Please contact Thomas P. Richmond, Administrator, Oil and Gas Conservation Division, 2535 St. John's Avenue, Billings, Montana, 59107, telephone (406) 656-0040, no later than January 2, 1997.

6. Thomas P. Richmond, Administrator, has been designated to preside over and conduct the hearing.

BOARD OF OIL & GAS CONSERVATION

By: Rictman for Thomas P. Richmond
THOMAS P. RICHMOND, ADMINISTRATOR

DON MacINTYRE, RULE REVIEWER

Certified to the Secretary of State on November 25, 1996.

BEFORE THE MONTANA BOARD OF LAND COMMISSIONERS
AND THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of Rules 36.25.146 and 36.25.167 pertaining to state land leasing	NOTICE OF PROPOSED AMENDMENT OF RULES NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On January 5, 1997, the Department proposes to amend Rules 36.25.146 and 36.25.167 pertaining to state land leasing.

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

36.25.146 GENERAL RECREATIONAL USE OF STATE LANDS: LICENSE REQUIREMENT Subsections (1) and (2) remain the same.

(3) A person who uses state lands for general recreational use shall abide by the restrictions imposed pursuant to ARM 36.25.149 and may not use for general recreational purposes state lands that have been closed pursuant to ARM 36.25.150, ~~ARM 26.3.188, ARM~~ 36.25.152, or ~~ARM~~ 36.25.153. Violation of this provision subjects the violator to civil penalties pursuant to ARM 36.25.157.

Subsections (4) through (7) remain the same.

AUTH: 77-1-106, 77-1-209, 77-1-802, and 77-1-804, MCA
IMP: 77-1-106, 77-1-801, 77-1-802, 77-1-804, and 77-6-210, MCA

36.25.167 BLOCK MANAGEMENT AREAS: RENEWAL OF AGREEMENT Subsection (1) remains the same.

(2)~~(a)~~ Subject to (b), renewal of a block management agreement that meets the criteria of ARM 36.25.164 may be subject to the review procedures contained in ARM 36.25.164 only if:

~~(i)~~(a) during the term of the agreement, the department or department of fish, wildlife and parks have received public comments or complaints tending to:

~~(A)~~(i) raise significant concerns regarding compliance with the agreement;

~~(B)~~(ii) indicate that continued enrollment in the block management program may not be in the best interests of the public or the trust; or

~~(ii)~~(iii) there will be changes in the agreement that impose more stringent restrictions than those contained in the existing agreement.

Subsections (b) through (5) remain the same.

AUTH: 77-1-804, MCA
IMP: 77-1-804, MCA

3. The proposed amendment of Rule 36.25.146 is necessary to delete reference to ARM 26.3.188 which was repealed in 1996 MAR Issue no. 7. The amendment to ARM 36.25.167 is necessary to make formatting style changes.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to Don MacIntyre, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT 59620-1601. Any comments must be received no later than January 4, 1997.

5. If a person who is directly affected by the proposed amendments 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. A written request for hearing must be received no later than January 4, 1997.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10 percent 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 agency or subdivision; 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 more than 25 based on the numbers of persons holding leases issued by the Department.

BOARD OF LAND COMMISSIONERS

Marc Racicot, Chair

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

for Bud Clinch, Director

Donald D. MacIntyre, Rule Reviewer

Certified to the Secretary of State November 25, 1996.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) NOTICE OF THE PROPOSED ADOPTION
of RULE I relating to)
Agricultural Improvements from)
Property Land Classification) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 16, 1997, the Department of Revenue proposes to adopt Rule I relating to Agricultural Improvements from Property Land Classification

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 PROCEDURE FOR REMOVING ONE ACRE BENEATH AGRICULTURAL IMPROVEMENTS FROM PROPERTY LAND CLASSIFICATION

(1) All agricultural land acreage will be classified and valued based upon its productive capacity.

(2) All one acre tracts beneath residential improvements on agricultural land valued pursuant to ARM 42.20.154 will be valued based upon the class with the highest productive value and production capacity of agricultural land.

(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.

(4) The department of revenue will attempt to determine the current land classification of land beneath all agricultural improvements. Should the department of revenue be unable to make accurate determinations on current land classification of the one acre area beneath agricultural improvements, the following estimation procedures are adopted.

(a) For agricultural land:

(i) Subtract one acre of the highest per acre productive value of grazing classification 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.

(5) During the reappraisal cycle, additional review of one acre areas beneath agricultural improvements will be conducted to ensure the correct land classification has been subtracted from the property ownership.

AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-6-134 and 15-7-206, MCA.

3. Rule I is proposed to comply with the requirements set forth by the amendments of sections 15-6-134 and 15-7-206, MCA which were enacted by the 1995 legislature. The rule is necessary to clarify the procedures the department will use when valuing one acre areas beneath improvements on agricultural land. It spells out that the valuation will be based on its productive capacity. It also outlines the procedure the department follows to ensure the one acre area beneath agricultural improvements are not double assessed.

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 January 3, 1997.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than January 3, 1997.

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 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 greater than 25.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State November 25, 1996

BEFORE THE BOARD OF BARBERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment, repeal and adoption of rules pertaining to barbers, barber shops and barber schools	))))	NOTICE OF AMENDMENT, REPEAL AND ADOPTION OF RULES PERTAINING TO BARBERS, BARBER SHOPS AND BARBER SCHOOLS

TO: All Interested Persons:

1. On June 6, 1996, the Board of Barbers published a notice of public hearing on the proposed amendment, repeal and adoption of rules pertaining to barbers, barber shops and barber schools, at page 1432, 1996 Montana Administrative Register, issue number 11.

2. The Board has amended ARM 8.10.403 and 8.10.405; repealed ARM 8.10.404, 8.10.406, 8.10.801, 8.10.802, 8.10.1001, 8.10.1003, 8.10.1004, 8.10.1006, 8.10.1007 and 8.10.1009; and adopted new rules I (8.10.408), II (8.10.409), III (8.10.410), IV (8.10.411), V (8.10.412), VII (8.10.414), VIII (8.10.415), XII (8.10.504), XIII (8.10.505), XIV (8.10.506), XV (8.10.507), XVI (8.10.508), XVII (8.10.509), XVIII (8.10.1011), and XIX (8.10.1012) exactly as proposed. The Board has adopted new rules VI (8.10.413), IX (8.10.501), X (8.10.502) and XI (8.10.503) as proposed, but with the following changes: (the authority and implementing sections will remain the same as in the original notice)

"8.10.413 COMPLIANCE WITH APPLICABLE REGULATIONS (1) and (2) will remain the same as proposed.

(a) Mobile homes, moveable trailers and structures on skids will not be considered fixed places of business for the purposes of enforcing ARM 8.70.505.

(3) will remain the same as proposed."

"8.10.501 TOILET FACILITIES (1) through (5) will remain the same as proposed.

(6) Each toilet facility shall be provided with hot and cold water tempered by means of a mixing valve or combination faucet. Any self-dispensing, slow-closing or metering faucet used shall be designed to provide a flow of water for at least 15 seconds without the need to reactivate the faucet. Steam mixing valves are prohibited.

(7) will remain the same as proposed, but will be renumbered (6).

(a) through (c)(v) will remain the same as proposed."

"8.10.502 SINK AND BASIN REQUIREMENTS (1) through (4) will remain the same as proposed.

(5) The shop is not permitted to use the hand washing facilities in the toilet and shampoo sink for disposal of floor cleaning and janitorial fluids, due to cross-contamination issues."

"8.10.503 TOWELS AND LINENS (1) All towels or linens provided to a client must be clean and laundered after every use. All towels and linens must be laundered in accordance with ARM 16.10.737, which requires the use of a hot water supply system capable of supplying water at a temperature of at least 130° F. to the washer during all periods of use, and a drying cycle of at least 300° F.

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

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

Repeal of ARM 8.10.801 and adoption of new rule VI

COMMENT: The Food and Consumer Safety Section (FCSS) of the Department of Public Health and Human Services concurred with the Board continuing restrictions against operating a commercial enterprise in a mobile home, as they too have had difficulty with other types of commercial operations that propose to operate in a mobile home. They felt that, unless extensive alteration and construction is engaged, mobile homes fail to meet commercial building, plumbing, electrical and mechanical codes.

RESPONSE: The Board acknowledged this comment.

New Rule IX

COMMENT: FCSS noted that (5) discusses the requirement for having a dedicated hand washing lavatory and they stated that they have specific lavatory requirements in ARM 16.10.221. FCSS strongly recommended that the Board insert the language contained in ARM 16.10.221(7) in this proposed rule. FCSS further stated that it is very important that both hot and cold water for warm water hand washing be employed to effectively remove bacteria and potential pathogens from hands through the hand washing procedure described in (6). The effectiveness of the hand washing procedure is significantly reduced without the use of warm water.

RESPONSE: The Board concurred with adding the language suggested for (5) and has amended the rule as shown above. The Board rejected the comments made by the FCSS regarding the use of the wording "hot and cold water" versus "warm water." The Board felt that the wording "warm water" versus "hot and cold water" did not significantly reduce the effectiveness of the rule.

New Rule X

COMMENT: FCSS stated that the proposed rule does not appear to adequately address requirements for a basin or wash sink system for equipment that has hot and cold running water and is adequately trapped and drained for required disinfection techniques as stated in new rule XVI. They inquired how the

Board intended for barbers to disinfect their equipment. They noted that neither new rule X nor new rule XVI address the necessity for having the equipment (sink setup) necessary to employ the disinfection method of choice. They state that the best sink equipment requirement is a three-compartment sink for separate washing, rinsing and sanitizing. FCSS stated that they would not approve of the use of either the dedicated hand washing lavatory or shampooing sinks for this purpose.

FCSS further stated that the new rules do not adequately address the necessity of having a mop sink for disposal of water/cleaning fluids, etc. from floor mopping procedures. They stated that hand washing lavatories, shampooing sinks and equipment washing/disinfection equipment should not be used for this purpose due to cross-contamination issues.

RESPONSE: The Board rejected the comments made by the FCSS regarding the third sink or three-compartment sink for the washing equipment. The shops are required to have toilet hand washing facilities and a shampoo sink. Equipment and tools can be sanitized in the shampoo sink and then the sink cleaned after. To require a third sink or three-compartment sink would be cost prohibitive for the shops.

The Board concurred with FCSS regarding the disposal of water/cleaning fluids and has amended the rule as shown above.

New Rule XI

COMMENT: FCSS noted that the proposed rule does not address commercial laundry requirements as written in ARM 16.10.637 Laundry Facilities which requires the use of a hot water supply system capable of supplying water at a temperature of 130° F. to the washer during all periods of use, and a drying cycle of 300° F. FCSS stated that the temperatures required for commercial public lodging facility linens addresses human body pests such as mites, lice, etc. which can be transferred from person-to-person through inadequately laundered linens.

RESPONSE: The Board concurred with the comment and has amended the rule as shown above.

New Rule XV

COMMENT: FCSS stated (1) is not consistent with the hand washing sign posting requirements of new rule IX(6) and suggested inserting the additional "when" to wash hands in proposed subsections (c)(iii), (vi) and (v), in order to make the sign requirement enforceable.

RESPONSE: The Board rejected the comment because the rule is clear as to when a barber must wash hands. Given the educational requirements for obtaining a barber license, including instruction in sanitation, the Board determined that further language regarding washing is unnecessary.

New Rule XVII

COMMENT: FCSS stated (1) authorizes the Board to grant a variance from any safety and sanitation rule. FCSS recommended inserting language that would state: "the variance request must be documented in writing to the board; the variance applicant must demonstrate and state in writing to the Board that the variance will not adversely affect the public health of either the employees or the clients; and, if application of the variance does result in adverse public health effects, the Board may revoke the variance.

RESPONSE: The Board rejects the FCSS comments regarding changing the wording of the rule. The Board feels that the FCSS comments are already implied, because an application must be submitted to the Board for consideration with the following requirements:

(1) Demonstrate to the Board that strict compliance would be highly burdensome and impartial due to special conditions or cause;

(2) The Board finds that the public or private interest to grant the variance clearly outweighs the interest of uniform rules; and

(3) That the alternative measures or variance will provide adequate public health and safety protection.

BOARD OF BARBERS
MAX DEMARS, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 25, 1996.

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment, repeal and adoption of rules pertaining to dentists, dental hygienists and denturists	)))	NOTICE OF AMENDMENT, REPEAL AND ADOPTION OF RULES PERTAINING TO THE PRACTICE OF DENTISTRY AND DENTURITRY

TO: All Interested Persons:

1. On October 3, 1996, the Board of Dentistry published a notice of proposed amendment, repeal and adoption of rules pertaining to dentists, dental hygienists and denturists at page 2478, 1996 Montana Administrative Register, issue number 19.

2. The Board has amended ARM 8.16.402, 8.16.405, 8.16.605, 8.16.606, 8.16.608, 8.16.719, 8.16.722, 8.16.1002, 8.16.1003, 8.16.1004, 8.16.1005, 8.17.403, 8.17.404, 8.17.501, 8.17.702, 8.17.705, 8.17.706, 8.17.707 and 8.17.801; repealed ARM 8.16.404, 8.16.510, 8.16.801, 8.16.802, 8.16.803, 8.16.804, 8.16.805, 8.16.806, 8.16.808, 8.17.807, 8.17.809 and 8.17.810; and adopted new rules II (8.16.402B), III (8.16.410), IV (8.16.411), VII (8.16.610), VIII (8.17.709), IX (8.17.811) and X (8.17.812) exactly as proposed. The Board has amended ARM 8.16.408, 8.16.602, 8.16.607, 8.16.707A and 8.17.708, and adopted new rules I (8.16.402A), V (8.16.605B) and VI (8.16.605C), as proposed, but with the following changes: (authority and implementing sections remain the same as proposed)

"8.16.408 APPLICATION TO COVERT AN INACTIVE STATUS LICENSE TO AN ACTIVE STATUS LICENSE (1) through (2)(b) will remain the same as proposed.

(c) submits 20 hours of continuing education for each year the license has been inactive, for a maximum of 60 hours each three-year cycle;

(d) and (e) will remain the same as proposed."

"8.16.602 FUNCTIONS FOR DENTAL HYGIENISTS (1) through (3)(c) will remain the same as proposed.

(d) administering or dispensing any drugs, without the prior authorization and direct supervision of the supervising dentist. This does not pertain to topical agents or to ~~sucular~~ sulcular medicaments;

(e) through (8) will remain the same as proposed."

"8.16.607 APPLICATION TO CONVERT AN INACTIVE STATUS LICENSE TO AN ACTIVE STATUS LICENSE (1) through (2)(b) will remain the same as proposed.

(c) submits 12 hours of continuing education for each year the license has been inactive, for a maximum of 36 hours each three-year cycle;.

(2) was stricken in the original notice and should not remain at all.

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

"8.16.707A FUNCTIONS FOR DENTAL AUXILIARIES (1) Allowable functions for a dental auxiliary practicing under the direct supervision of a licensed dentist shall include dental procedures as allowed by board rule and subject to (2) below, in which:

(a) through (11) will remain the same as proposed."

"8.17.708 EXEMPTIONS AND EXCEPTIONS (1) and (2) will remain the same as proposed.

(3) Inactive denturist licensees shall be exempt from the continuing education requirements so long as the license remains on inactive status. Inactive licensees seeking to convert to an active status must ~~comply with [new rule IX]~~ submit 12 hours of continuing education for each year the license has been inactive, for a maximum of 36 hours each three-year cycle."

"8.16.402A DENTIST APPLICATION REQUIREMENT (1) through (2)(n) will remain the same as proposed.

(3) Applicants shall successfully pass the jurisprudence examination."

"8.16.605B DENTAL HYGIENIST APPLICATION REQUIREMENT

(1) through (2)(a) will remain the same as proposed.

(b) certification of successful completion of the ~~regional board written examination~~ western regional examining board practical examination;

(c) through (i) will remain the same as proposed.

~~(j) successful passage of the jurisprudence examination;~~

(k) through (m) will remain the same as proposed, but will be renumbered (j) through (l).

(3) Applicants shall successfully pass the jurisprudence examination.

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

"8.16.605C DENTAL HYGIENE OUT-OF-STATE APPLICANTS

(1) through (1)(d) will remain the same as proposed.

~~(e) successful passage of the jurisprudence examination.~~

(f) through (k) will remain the same as proposed, but will be renumbered (e) through (j)."

3. The Board accepted written comment received by October 31, 1996. The Board has thoroughly considered all comments received. Those comments, in summary form, and the Board's responses thereto are as follows:

COMMENT NO. 1: Two comments were received stating that ARM 8.16.408(2)(c) should not require a dentist licensee to submit 20 hours of continuing education for each year the license has been inactive, as this may cause the necessity of hundreds of hours of CE if the license has been inactive for some time. Instead, the rule should require active practice as a substitution or a maximum of 20 hours be submitted.

RESPONSE: The Board concurs with the comment and will amend the rules for dentist, dental hygienists and denturists to require a maximum of 60 hours, which is the usual cycle of reporting every three years. The dental hygienist and denturist rule will insert a maximum of 36 hours, which is the requirement for one three year cycle.

COMMENT NO. 2: One comment was received in support of the amendment to ARM 8.16.602(2).

RESPONSE: The Board acknowledges receipt of the comment.

COMMENT NO. 3: One comment was received stating ARM 8.16.707A(1)(a) should include the word "direct" before "supervision," as the statute states an auxiliary must practice under the direct supervision of a dentist.

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

COMMENT NO. 4: Two comments were received stating ARM 8.16.707(1)(b) should not allow unlicensed auxiliaries to initiate, adjust, or monitor nitrous oxide, as only 12 states allow dental hygienists to perform this function, and the probability of lawsuits is high in this area.

RESPONSE: The Board noted that (1)(b) had not been proposed for change in this rule notice, and should therefore remain the same on this adoption notice. This section had been adopted on a previous notice, and had therefore been fully addressed at previous meetings and through previous public comment periods.

COMMENT NO. 5: One comment was received stating ARM 8.16.707(1)(j) should not allow auxiliaries to use high speed handpieces to polish amalgams, due to safety concerns.

RESPONSE: The Board noted that (1)(j) had not been proposed for change in this rule notice, and should therefore remain the same on this adoption notice. The Board has previously addressed this concern when the subsection was changed, and noted the Board is regulating procedures, and not equipment.

COMMENT NO. 6: One comment was received stating ARM 8.16.707(1)(m) should not allow auxiliaries to perform coronal polishing, as this is part of a prophylaxis, which falls under the scope of the practice of dentistry and dental hygiene as per the ADA insurance code definitions.

RESPONSE: The Board noted the Administrative Code Committee had previously addressed this issue at some length, and did not find a problem with the definition as presented. The Administrative Code Committee also found this definition to be within the Board's authority to promulgate.

COMMENT NO. 7: One comment was received stating ARM 8.16.707(4) should have included a prohibition on auxiliaries' use of ultrasonic scalers. This procedure falls within the

definition of the practice of dental hygiene, and a person should complete the prescribed accredited courses with an examination before being allowed to use this procedure on the public.

RESPONSE: The Board noted that auxiliaries are not allowed to scale anyway. This function is already prohibited, and it is not therefore necessary to repeat the prohibition by specifically referring to this device.

COMMENT NO. 8: One comment was received stating the radiology program now available within the state should be used by the Board as an education standard to prepare dental auxiliaries to use ionizing radiation. The rules should include, however, a clause allowing dental auxiliaries to challenge the test without having to complete the course. The rules should also change the manner in which auxiliaries can obtain radiation safety and clinical education, as no standard is set.

RESPONSE: The Board noted that the radiology test can be challenged currently, as no education is required as a prerequisite. The exam could be taken at any time. The section was re-written at the suggestion of the Administration Code Committee, and with their guidance on presenting a clear statement as to how to proceed, and their agreement to allow in-office training.

COMMENT NO. 9: Two comments were received stating ARM 8.16.719 should not define dental screening by allowing any person to perform this task, whether or not licensed.

RESPONSE: The Board did not concur, and noted that dental screenings do not always fall within the scope of practice of licensed practitioners. The Board's rules can only regulate its own licensees, so the definition is appropriate to make this a non-licensed function.

COMMENT NO. 10: One comment was received in support of 8.16.1004 on disciplinary actions for those who fail to comply with CE rules.

RESPONSE: The Board acknowledged receipt of the comment in support.

COMMENT NO. 11: One comment was received in support of ARM 8.17.705 on standardizing the language of the rules for the different professions regulated.

RESPONSE: The Board acknowledged receipt of the comment in support.

COMMENT NO. 12: One comment was received in support of ARM 8.16.602(a)-(m) on acceptable duties for dental hygienists under general supervision.

RESPONSE: The Board acknowledged receipt of the comment in support.

COMMENT NO. 13: One comment was received stating ARM 8.16.606 should clarify whether applicants for licensure will be provided a copy of Board laws and rules for study for the jurisprudence exam.

RESPONSE: The Board noted the application packet does contain a copy of Board laws and rules for study for the jurisprudence exam. The Board also noted it will send a current copy of laws and rules to all in-state licensees when they are re-printed in 1997.

COMMENT NO. 14: One comment was received stating ARM 8.16.607 contains an error in that (2) has been deleted, and the statement that "(2) will remain the same but be renumbered" is therefore an error.

RESPONSE: The Board noted the error and will correct the section numbering on the adoption notice.

COMMENT NO. 15: One comment was received in support of ARM 8.16.707A(2)(o) stating that a coronal polishing is not a prophylaxis, and that a prophylaxis may not be provided by a dental auxiliary.

RESPONSE: The Board noted this section was not proposed for change in this rule notice, and the Board is not therefore required to respond to this comment. The definition of coronal polishing will stand as adopted earlier.

COMMENT NO. 16: One comment was received stating ARM 8.16.707A(8)(a)-(c) should refer to the statute and identify the procedure for all dental auxiliaries to be certified in use of radiology equipment.

RESPONSE: The Board noted the statute is not relevant to the radiation question, as per the ruling of the Administrative Code Committee. The Committee has allowed the Board's definition and procedure to be implemented.

COMMENT NO. 17: One comment was received stating ARM 8.16.707A(9)(a)-(b) should better clarify how the 6 month training period is established and documented. The date should be reported to the Board, followed by an application for certification within 6 months.

RESPONSE: The Board noted the rule states the training period will commence at the time the auxiliary commences training. It is the responsibility of the practitioner hiring and training the auxiliary to do this. A violation of this rule will be handled the same as any other disciplinary action.

COMMENT NO. 18: One comment was received stating ARM 8.16.1001 and 8.16.1002 are supposed to be deleting language which is no longer applicable. However, it is not clear whether the language is covered in the model practice act or in another section of the rules.

RESPONSE: The Board noted that 8.16.1001 was not deleted. 8.16.1002 deleted language no longer applicable due to these rule changes. This language does not need to be covered

elsewhere. Since the rules have been re-drafted and re-worded, the language was rendered unnecessary.

COMMENT NO. 19: One comment was received in support of ARM 8.16.1004 on reporting procedures for CE.
RESPONSE: The Board acknowledged receipt of the comment in support.

COMMENT NO. 20: One comment was received stating new rule I(2)(j) should be renumbered "3" as successful completion of the jurisprudence exam cannot be completed at the time of application.
RESPONSE: The Board concurred with the comment, and will amend the rule as shown above to move (j) to be numbered "(3)."

COMMENT NO. 21: One comment was received stating new rule V(2)(j) should be renumbered "3" as successful completion of the jurisprudence exam cannot be completed at the time of application.
RESPONSE: The Board concurred with the comment and will amend the rule as shown above to move (j) to be numbered "(3)."

COMMENT NO. 22: One comment was received stating new rule VI(1)(e) and (h) are repetitive of each other, and furthermore, that successful completion of the jurisprudence exam cannot be completed at the time of application.
RESPONSE: The Board concurred with the comment and will amend the rule as shown above to strike (e).

COMMENT NO. 23: One comment was received stating ARM 8.16.722(5) should consider that the current infection control procedures have not been proven to prevent cross contamination, and it will be difficult to enforce something that has little true scientific evidence for its effectiveness.
RESPONSE: The Board did not agree, and noted that disinfection protocols do change over time, and the rule is therefore written very broadly to encourage use of the newest procedures.

COMMENT NO. 24: One comment was received stating ARM 8.16.719 should not delete language that defines unprofessional conduct for dentists, as this will affect the ability to serve the needs of impaired and disabled dentists, and reduce the likelihood of voluntary reporting among affected licensees.
RESPONSE: The Board noted the unprofessional conduct rule changes did not delete any behavior or conduct not covered elsewhere in the statutes or rules. The majority of unprofessional conduct language is now found in statute at 37-1-316, MCA.

COMMENT NO. 25: One comment was received stating new rule I(2)(e) should delete the phrase "board approved" and replace it with the phrase "accredited," as this would be consistent with statutory language.

RESPONSE: The Board noted that the phrase "board approved" is defined in the statutes to include CODA accredited schools. The statute therefore already includes this language, and it is not necessary to repeat it in the rules, but is more proper to simply refer to this definition.

COMMENT NO. 26: One comment was received stating new rule V(2)(b) should delete the phrase "regional board written exam" and replace it with "western regional board practical exam" as a written exam is already addressed in the rule, and a practical exam is not mentioned.

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

COMMENT NO. 27: One comment was received stating new rule V(2)(e) should delete the phrase "a board approved" and replace it with "an accredited" and "a letter from the dean of the accredited school of dental hygiene" to be consistent with 37-4-302, MCA.

RESPONSE: See response to Comment No. 25 above.

BOARD OF DENTISTRY
DONALD NORDSTROM, DDS, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 25, 1996.

BEFORE THE PETROLEUM TANK RELEASE COMPENSATION BOARD
DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the transfer and amendment of rules 16.47.101, 201, 301-311, 314, 317, 323-344, the repeal of rules 16.47.312, 313, 316, 318, 321, 322 and 351, and adoption of new rule I pertaining to the petroleum tank release compensation board.	NOTICE OF TRANSFER, AMENDMENT, REPEAL, AND ADOPTION OF RULES

(Petroleum Board)

To: All Interested Persons

1. On June 20, 1996, the Board published notice of proposed transfer, amendment, repeal, and adoption of the above-captioned rules at page 1587 of the 1996 Montana Administrative Register, issue number 12.

2. The rules were transferred, amended, repealed and adopted as proposed, with the following changes (new material is underlined; material to be deleted is interlined):

17.58.302 CONDUCT OF BOARD MEETINGS (1) Same as proposed.

(2) The presiding officer may call any meeting of the board to order, pursuant to notice, when he or she determines that a quorum is present. A quorum is at least 4 members present, physically or by teleconference media.

(3)-(4) Same as proposed.

17.58.311 DEFINITIONS (1)-(7) Same as proposed.

~~(6)~~(8) "De minimis", as referenced in the definition of "petroleum product" in 75-11-302, MCA, means that amount of a hazardous substance, as defined in this rule, mixed with a petroleum product which does not alter the detectability, effectiveness of corrective action, or toxicity of the petroleum product to any significant degree.

(8)-(11) Same as proposed but are renumbered (9)-(12).

~~(12)~~(13) "Reasonably incurred", for purposes of reimbursing claims, means work required under an approved corrective action plan or necessary to respond to an emergency; or provide compensation to third parties for bodily injury or property damage caused by a release.

~~(13)~~(14) "Residential tank" as defined at ARM 17.56.101.

~~(14)~~(15) "Responsible party" means the person, whether owner or operator, or any subsequent owner of the subject property who accepts responsibility for the release, who undertakes a corrective action after a release from a tank is discovered.

~~(15)~~(16) "Site/facility" means a complex of tanks under the same ownership on a contiguous piece of property.

(16)-(19) Same as proposed but are renumbered (17)-(20).

17.58.312 RELEASE DISCOVERED ON OR AFTER APRIL 13, 1989

CONSTRUED/TANK ELIGIBILITY REQUIREMENTS (1)-(2) Same as proposed.

(3)(a) An owner or operator of a farm or residential tank that was installed on or before April 27, 1995, is not eligible for reimbursement of otherwise eligible costs incurred after that date, unless the tank was voluntarily removed ~~prior to~~ on or before December 31, 1995.

(b) Same as proposed.

(4) Same as proposed.

17.58.334 APPLICATION PROCEDURE--REIMBURSEMENT AFTER EXPENDITURE (1)-(3) Same as proposed.

(4) Charges for work conducted 2 years or more prior to the submittal of the application are ineligible for reimbursement.

17.58.341 CONSULTANT LABOR CODES, TITLES, AND DUTIES (1)-(4) Same as proposed.

(5) A responsible party or consultant/contractor, or subcontractor may overcome the presumption that a rate is unreasonable by presenting ~~clear and concise~~ evidence to the board as provided under ARM 17.58.336(5).

(6) Same as proposed.

NEW RULE I [17.47.343] REVIEW AND DETERMINATION OF THIRD PARTY DAMAGE COSTS Same as proposed.

3. Following is a summary of the comments received and the board's responses:

COMMENT: When the rules reference department, what department is being referenced?

RESPONSE: "Department" is defined in 75-11-302(7), MCA, -- "the department means the department of environmental quality provided for in 2-15-3501." However, the primary statutes administered by the department affecting the Board's function are the underground storage tank statutes. As such, the Board understands statutory references to the "department" to be references to the bureau(s) within the department of Environmental Quality which currently administer the underground storage tank statutes.

COMMENT: The question was asked as to whether third party compensation for bodily injury or property damage caused by a release includes expenses incurred by the third party, such as investigative expenses.

RESPONSE: Under the statutes governing the Board, the main factor in determining whether a third party claim will be reimbursed is whether the tank from which the release occurred is eligible for the fund. If a third party incurs expenses associated with the release but the tank is determined to be ineligible for the fund, then those third party expenses would

also be ineligible for reimbursement from the fund. If, however, a third party has been affected by a release from an eligible tank, then the Board can only reimburse those damages that are characterized as "bodily injury" or "property damage" as defined in Board statute at 75-11-302, MCA. A third party's investigative expenses would not fall under either definition.

COMMENT: Under the definition of "consultant" the phrase "professional person or organization" is used. Does "professional" mean a certified professional engineer or a person or organization with the proper education and experience to advise responsible parties?

RESPONSE: For the purpose of these rules, "professional" means either a person or organization that has sufficient knowledge through education, experience, or training to carry out the duties required by a certain task. While the language of the rule does not require all individuals to be licensed or certified, certain tasks which require licensing (well drilling, for example) must be accomplished by properly licensed professionals before reimbursement will be granted.

COMMENT: A subcontractor is a person who performs billable labor in association with a corrective action at the release site when that person is under contract with the contractor-consultant. Subcontractor services do not include delivery or pick up services, and vendors performing delivery services at the site are not required to submit to an audit. Can you further explain the reasoning for this?

RESPONSE: The Board is defining subcontractor and vendor to further explain when a markup will be reimbursed under ARM 17.58.342(3)(c). Markups will not be reimbursed on vendor invoices. Delivery services are considered to be vendors, not subcontractors.

COMMENT: Rule 17.58.302(2)--"he" assumes that the presiding officer is male; it should reflect gender neutrality.

RESPONSE: The Board agrees with the comment, the change is reflected in the final rule.

COMMENT: With respect to proposed Rule 17.58.311(4), DEQ comments: "DEQ is not sure that bodily injury must be proven 'certain to occur in the future.' The applicable burden of proof in this type of civil action for bodily injury may be a preponderance of the evidence."

RESPONSE: In reimbursing a third party's claim for future damages, the Board employs the statutory language found at 27-1-203, MCA. That section provides: "Damages may be awarded in a judicial proceeding for detriment resulting after the commencement thereof or certain to result in the future." The Board agrees that, at trial, the claimant's burden of proof as

to future damages is a preponderance of the evidence. However, the claimant's standard of proof for future damages as set forth in the statute is that the future damages must be "certain to result in the future." Based upon the statutory language set forth above, the Board will preserve the language of the rule as it currently exists.

COMMENT: Rule 17.58.311(e[sic])--Because this rule is amended to use numbers rather than letters, the definition of "de minimis" should be "8" rather than "e".

RESPONSE: The Board agrees and is changing (e) to (8). This will result in changes to the numbering throughout the rest of the rule.

COMMENT: Rule 17.58.311(12)--the clause after the semicolon seems incompatible with the definition of "reasonably incurred."

RESPONSE: The Board agrees and has amended the section after the semicolon to read "or provide compensation to third parties for bodily injury or property damage caused by a release."

COMMENT: Rule 17.58.311(17)--the last sentence of the "subcontractor" definition relates to services and seems superfluous to the actual definition.

RESPONSE: The last sentence of 17.58.311(17) further defines "subcontractor." The Board interprets the definition of "subcontractor" to exclude pickup or delivery services whether or not there is a contract in place reflecting an agreement for those services.

COMMENT: Rule 17.58.312(3)--"prior to December 31, 1995" should read "on or before December 31, 1995" relative to reimbursement of eligible costs related to the removal of farm or residential tanks of 1,100 gallons or less that were installed as of April 27, 1995.

RESPONSE: The Board agrees and has modified the rule to reflect this comment.

COMMENT: Rule 17.58.323(3) and (4)--The reference to "other regulatory agencies" and "another regulatory agency" in these subsections assumes that PTRCB is a regulatory agency. DEQ is a regulatory agency but the PTRCB is not a regulatory agency.

RESPONSE: The Board is not a regulatory agency. The reference in 17.58.323(3) and (4), reflects the fact that the Board will rely on information received from any regulatory agency (federal, state, or local) to determine compliance issues. This information is used in determining eligibility for the fund.

COMMENT: Rule 17.58.323(5)--DEQ is concerned that this rule does not provide financial assurance to tank owners and operators.

Under this rule, a tank owner or operator must provide significant information to Board staff so that the Board will make an eligibility determination on a pre-release basis. The determination will then, however, be only that the facility is "potentially" eligible. DEQ believes the process should allow a tank owner or operator to know absolutely, for financial assurance reasons, that he or she has coverage for a release at that point in time. Otherwise, there is no reason for a tank owner or operator to ever apply for a pre-release determination of eligibility.

RESPONSE: Section 75-11-308(1)(e), MCA, requires "with the exception of the release, the operation and management of the tank complied with applicable state and federal laws and rules when the release occurred and remained in compliance following detection of the release." Under voluntary registration, the Board can opine as to the eligibility of a tank as of the date of the most recent inspection of the tank. Based upon the statutory language of 75-11-308, MCA, outlined above, the Board's opinion as to eligibility cannot be absolutely guaranteed for all future releases. This is because, under the language of the statute, the tank must remain in compliance in the future in order to remain eligible for the Fund. EPA has approved the fund as a financial assurance mechanism. For an owner/operator to be in compliance with state and federal law they must have written notice of fund eligibility. The potential eligibility is to satisfy the written requirement of financial assurance.

COMMENT: Rule 17.58.334(4)--"for reimbursement" should be added to the end of the sentence.

RESPONSE: The Board agrees and has amended the rule.

COMMENT: Rule 17.58.336(5) and (6)--There is a singular/plural dichotomy present in these 2 subsections when you consider "responsible party" and "their application."

RESPONSE: The Board takes note of the dichotomy and, for consistency, changes all plural references "responsible party" or "applicant" to singular. Nonetheless, the Board does recognize that, in rare instances, joint ownership may result in co-applicant status.

COMMENT: Rule 17.58.340(4), allowing the Board to conduct examinations of third party claims using physicians or property appraisers appears to empower the Board to disregard a "judgement" of district court.

RESPONSE: The Board is required by statute to ensure that any reimbursement from the Petroleum Tank Release Cleanup Fund is based upon "actual, necessary and reasonable" expenses. When the Board is informed of third party litigation or settlement negotiations in a timely fashion, there is usually ample

opportunity for the Board to determine which expenditures are eligible for reimbursement from the fund. However, when the Board has not been kept current on the third party litigation or settlement negotiations until they are complete, the Board must still meet its statutory obligations prior to releasing monies from the fund. The language of the rule contemplates a situation where the responsible party has not kept the Board apprised of settlement negotiations or litigation developments as required by Board rule.

COMMENT: Is the "clear and concise" standard set forth in proposed Rule 17.58.341(5) a proper evidentiary standard in the context of a proceeding before the Board?

RESPONSE: The Board agrees with this comment and has deleted the "clear and concise" language.

COMMENT: Rule 17.58.101(4)--Should third party compensation be limited further? When will these charges be paid - when the cleanup is complete, i.e., fund solvency?

RESPONSE: The functions of the Board are defined in its enabling statutes (75-11-301, MCA, et seq.). Limiting the availability of the fund is not under the purview of the Board's rulemaking authority. Decisions to limit disbursements from the fund are legislative and would require a change in the statute.

COMMENT: Rule 17.58.331--Should the rule state an assent to audit form is only required once a year?

RESPONSE: Under its statute and rules, the Board has the latitude to determine how often an assent to audit is required. The Board wishes to remain flexible on the number of assents required during the life of a project. As such, the Board feels that it would be counter-productive to require an assent to audit form to be filed on an annual basis under all circumstances.

COMMENT: Rule 17.58.333--Do not delete "A designated representative may execute and file all forms and documents, other than form one, required by the Board." Add option to include long-term designations for larger projects.

RESPONSE: Under the modification to the rule set forth in 17.58.333, the Board believes that a properly executed designation of representative form would allow the designated representative to complete applications for reimbursement on behalf of the responsible party.

COMMENT: Rule 17.58.336(1)--Staff should notify the responsible party and anyone listed in box number two on application. When will this notification happen? Reasonable time frames possible to include here?

RESPONSE: The Board staff will notify the responsible party and copy other interested parties as listed on the forms. It is the responsible party's responsibility to provide information to the Board. The notification will occur as soon as feasible.

COMMENT: Rule 17.58.336(2)--Why does it take so many days (60) once all the review is complete?

RESPONSE: The reason for the 60 day period mentioned in ARM 17.58.336(2) is to allow time for a separate accounting review to take place, all information to be sent to the State Auditor's office for the drafting and disbursement checks, and to allow sufficient time for these objectives to be completed in light of current board meetings schedule which is every 6 weeks.

COMMENT: Rule 17.58.341(1)--Does this change the format that invoices are being submitted now? Does this place additional requirements on contractors and subcontractors current billing procedures?

RESPONSE: This should not place additional requirements on contractors/subcontractors. The information submitted on the invoice should correspond to the Board approved fee schedule for each contractor.

COMMENT: Rule 17.58.342(1)(g)--Increase meal rate for inflation, why not reimburse actual expenses up to a maximum - $26.00/day?

RESPONSE: The $20.00/day is above the state meal rate of $15.50/day. The Board does not recommend any change to this rate.

COMMENT: Rule 17.58.342(3)(c)--A question was asked as to why proof of payment is required between contractors and subcontractors.

RESPONSE: The language of the above-reference rule does not change the previous rule. Generally the proof of payment is required to determine whether there has been an "actual" payment between the consultant and a subcontractor. When proof of payment is established, the Board will allow markup on subcontractor services pursuant to its rule.

COMMENT: New Rule--Why is the time frame for third party claims longer than for corrective action costs, 90 days as compared or 60 days.

RESPONSE: Generally, third party claims require additional review time as compared to corrective action claims. In many cases third party claim administrators are hired to review these claims, and setting up contracts and reviewing these claims takes additional time. Additionally, third party damages are not submitted in a work plan for prior approval and this contributes to longer time frames.

PETROLEUM TANK RELEASE COMPENSATION BOARD
GARY TSCHACHE, PRESIDING OFFICER

BY: JEAN A. RILEY, Executive Director

Reviewed by:

JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State November 25, 1996.

BEFORE THE MONTANA TRANSPORTATION COMMISSION
AND THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of rules concerning debarment of contractors due to violations of department requirements and determination of contractor responsibility	)))))	NOTICE OF ADOPTION

TO: All Interested Persons.

1. On July 18, 1996, the Montana Transportation Commission and the Montana Department of Transportation published notice of the proposed adoption of rules revising existing written policy on debarment of contractors from public contracts and relating to nonresponsibility of contractors at page 1930 of the 1996 Montana Administrative Register, issue number 14.

2. The Commission and Department have adopted new Rule I (18.3.101), new Rule II (18.3.102), new Rule III (18.3.103), new Rule IV (18.3.104), new Rule V (18.3.105), new Rule VI (18.3.106), and new Rule VII (18.3.201) exactly as proposed.

3. No comments, testimony or requests for public hearing were received.

MONTANA DEPARTMENT OF TRANSPORTATION

By: _____
MARVIN DYE, Director

MONTANA TRANSPORTATION COMMISSION

By: _____
THORM FORSETH, Chairman

_____
LYLE MANLEY, Rule Reviewer

Certified to the Secretary of State November 15, 1996.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION OF RULES PERTAINING TO THE OPERATION, INSPECTION, CLASSIFICATION, ROTATION, AND INSURANCE OF COMMERCIAL TOW TRUCKS	)))))	NOTICE OF ADOPTION

TO: All Interested Persons

1. On August 22, 1996, the Department of Justice published a notice of public hearing regarding the adoption of new rules I through IX, pertaining to the operation, inspection, classification, rotation, and insurance of commercial tow trucks. Notice of the hearing was published at pages 2267 through 2275 of the Montana Administrative Register, issue number 16.

2. The department has adopted rule III (23.6.105) TOW TRUCK CLASSIFICATION DISPUTE RESOLUTION ADVISORY COMMITTEE - ESTABLISHMENT exactly as proposed.

3. The department has deleted rule IX in its entirety.

4. The department has adopted rules I, II, and IV through VIII with the following changes (text of the rule with stricken matter interlined, new matter underlined):

RULE I (23.6.101) DEFINITIONS In addition to the definitions contained in 61-8-903 ~~and 61-9-416~~, MCA, and unless the context requires otherwise, the following definitions apply to this subchapter:

(1) "Certified" means having passed the annual tow truck safety inspection administered by the Montana highway patrol pursuant to 61-8-907, MCA.

(2) "Class 'D' towing" means, for purposes of the state law enforcement rotation system, that a class "A" or "B" tow truck has been called from the rotation system, but the operator finds that the call involves only retreiving an inoperable vehicle from a roadway or its immediate vicinity, so that the use of a rollback or car carrier would be more appropriate.

(3) "Class 'E' towing" means, for purposes of the state law enforcement rotation system, that a class "A", "B", or "C" tow truck has been called from the rotation system, but the operator finds, upon inspection of the scene, that it cannot perform the recovery and towing without at least one more tow truck and access to supportive equipment.

(4) "Classified" means having been placed in one of the classes of commercial tow trucks, pursuant to 61-8-905, MCA.

~~(1)~~(5) "CVSA" means the Commercial Vehicle Safety Alliance.

~~(2)~~(6) "Garage keeper's legal liability insurance" means insurance coverage for loss or damage to motor vehicles (as

defined in the policy) which are in the care of the insured, an entity that keeps customers' motor vehicles for storage or repair, which loss or damage is caused by the insured's failure to exercise the degree of care required by law.

~~(3)~~ (7) "Independent classification" means classification by a qualified person independent of the patrol, but having written authorization from the patrol to classify tow trucks pursuant to ~~rule II~~ ARM 23.6.103.

~~(4)~~ (8) "Manufacturer's rating" means the weight rating set forth on the vehicle's nomenclature plate or in a written communication from the manufacturer. ~~If the nomenclature plate is not available, the rating is established using a static load test with actual loads meeting the requirements of the class, done in the presence of a patrol officer.~~

~~(5)~~ (9) "Noncommercially modified tow truck equipment" means tow truck equipment that has been noncommercially modified in a way that the operational characteristics of the equipment have been affected.

~~(6) "Operator" means the business entity that owns or operates a commercial tow truck as defined in 61-9-416, MCA; the business entities referred to include, but are not limited to, sole proprietorships, partnerships, and corporations.~~

~~(7)~~ (10) "Patrol" means the highway patrol division of the Montana department of justice.

~~(8)~~ (11) "State rotation system" means the state law enforcement rotation system established in 61-8-908, MCA.

~~(9) "Tow truck equipment" means:~~

~~(a) the chassis of the tow truck;~~

~~(b) the specialized equipment mounted on the truck chassis which is designed and intended for towing or recovery of wrecked, disabled, or abandoned vehicles or other objects creating a hazard on the public roadways; and~~

~~(c) the equipment listed in 61-9-416, MCA, and in rule VII.~~

AUTH: 61-8-911, MCA IMP: 61-8-903, MCA

RULE II (23.6.103) CLASSIFICATION OF TOW TRUCK EQUIPMENT (1) All operators of commercial tow truck equipment in the state of Montana who wish to participate in the state law enforcement rotation system must have their tow trucks classified. In order to have a tow truck classified, an operator must submit a request for classification to the patrol. This request must contain the following:

(a) the operator's name, address, and telephone number;

(b) the tow truck's serial number and base of operations;

(c) appropriate proof of the tow truck's weight rating; and

(d) an affidavit of use, if required.

(2) In order to meet the requirements of (1)(c) above, ~~A~~all operators of commercially manufactured tow truck equipment must submit to the department proof of the manufacturer's rating of their tow truck(s). If the tow truck's nomenclature plate is not available for inspection by the patrol, the operator must

obtain written documentation of the weight rating from the manufacturer and submit it to the patrol.

(3) In order to meet the requirements of (1)(c) and (d) above, all operators of noncommercially manufactured or modified tow truck equipment must:

(a) have their equipment classified by the department if the equipment was in service on or before October 1, 1995; or

(b) have their equipment independently classified ~~or meet the requirements of subsection (5)(b) below~~, if the equipment was placed in service after October 1, 1995.

~~(4) In order to have noncommercially manufactured or modified tow truck equipment classified, an operator must submit to the patrol a written and signed application which contains the following:~~

~~(a) a request that a particular tow truck be classified;~~

~~(b) the tow truck's serial number and base of operations;~~

~~(c) the operator's name, address and telephone number; and~~

~~(d) (if applicable).~~

~~(5) If an operator seeks to have noncommercially manufactured or modified tow truck equipment which was placed in service after October 1, 1995 certified, the operator must, in addition to the things required by (4), submit:~~

~~(a) a written and signed independent classification; or~~

~~(b) proof that the tow truck equipment is covered by a suitable policy of product liability insurance.~~

~~(6)~~(4) Upon receipt of an operator's request for classification of his or her equipment, the patrol shall set and inform the operator of a time for inspecting and classifying the equipment.

~~(7)~~(5) Upon completion of the classification inspection, the patrol shall inform the operator in writing of the results of the classification; in addition, the patrol shall inform the operator that it has 20 days in which to inform the chief of the patrol that the operator disputes the classification of its equipment.

AUTH: 61-8-911, MCA IMP: 61-8-905, MCA

RULE IV (23.6.106) TOW TRUCK CLASSIFICATION DISPUTE RESOLUTION ADVISORY COMMITTEE - JURISDICTION AND PROCEDURE

(1) Pursuant to 61-8-905, MCA, the dispute resolution advisory committee shall hear all disputes that arise regarding the classification ~~or qualification~~ of noncommercially manufactured or modified tow truck equipment. ~~In addition, the committee shall hear any dispute concerning the Montana Professional Tow Truck Act that the attorney general refers to it.~~

(2) At its initial meeting following the appointment of any new member, the committee shall elect a chairman to preside over its meetings and hearings. The committee shall also elect a vice chairman to preside in the chairman's absence. A quorum of the committee shall consist of at least two members, one of whom must be from the tow truck industry. A majority vote of a

quorum shall be necessary to take any official action of the committee.

(3) After receiving an operator's written notification that it disputes the classification of its equipment, ~~or after the attorney general has referred a dispute to it,~~ the committee shall:

(a) give all parties to the dispute reasonable notice of the date, time, and location at which the committee will hear the dispute;

(b) request notification by any party of its desire to call witnesses, and the proposed subject of the witnesses' testimony;

(c) provide the complaining party an opportunity to present reasons the proposed action should not be taken;

(d) provide the responding party an opportunity to answer the complaining party;

(e) provide any other party an opportunity to address the committee regarding the dispute;

(f) provide any witness it deems relevant an opportunity to address the committee;

(g) keep a tape recording of any hearing that may be copied or transcribed at the request of any ~~party~~ person who pays the cost thereof;

~~(h) ensure that all hearings are public unless the presiding officer determines that, as a matter of law, the hearing must be closed;~~ and

~~(i)~~ (h) issue a written proposal for decision which may be contested before the attorney general pursuant to 2-4-621, MCA.

AUTH: 61-8-911, MCA IMP: 61-8-905, MCA

RULE V (23.6.108) VEHICLE STORAGE REQUIREMENTS - INSURANCE

(1) For purposes of compliance with the insurance standards of 61-8-906, MCA, an operator's storage facility is deemed to be part of its business premises.

(2) The chief of a local law enforcement agency or of the patrol may request that a qualified operator in the state rotation system improve its storage facility so as to comply with 61-8-906, MCA. If the operator wishes to contest the request, he or she must contact the office of the attorney general.

(3) Pursuant to 69-12-102, MCA, each and every commercial tow truck operator shall cause proof of insurance coverage to be filed with the Montana public service commission in accordance with ARM 38.3.712, notwithstanding the fact that any individual operator may be a subsidiary of another operator and may be covered by the parent operator's insurance.

(4) If the department is advised at any time by the public service commission that an operator's insurance is expired or cancelled, the operator will be given 48 hours to correct the problem, then he or she will be removed from the rotation list.

(5) If the operator provides proof of insurance at a later date, the operator will be placed back on the rotation list;

such placement is not retroactive. A complete inspection will not be required.

(6) If the operator's insurance expires on a date other than the due date of the inspection, the following procedure will be followed:

~~(a) The inspector will determine that the policy is at a minimum an annual policy;~~

~~(b)~~ (a) The inspector will enter the date of the insurance expiration on the inspection form and decal; and

~~(c)~~ (b) If the decal indicates that the insurance is expired, the operator need only produce written proof of current insurance. Such proof is to be carried in the tow truck at all times.

AUTH: 61-8-911, MCA IMP: 61-8-906, MCA

RULE VI (23.6.109) SAFETY INSPECTION PROCESS (1) All operators of commercial tow truck equipment in the state of Montana must have an annual safety inspection as set forth in ~~subsections~~ (2), (3), and (4).

(2) The department hereby adopts by reference the CVSA level 1 inspection, 49 CFR Chapter III, Subchapter B, Appendix G, as standards for the chassis portion of the safety inspections required by 61-8-907, MCA. Copies of these regulations may be obtained from the Montana Highway Patrol, 2550 Prospect Avenue, Helena, Montana 59620. Compliance with the CVSA level 1 standards must be determined before the tow truck is placed in the state rotation system. The inspector need not complete the CVSA level 1 form unless the tow truck operator requests CVSA certification, but all applicable standards must be met.

(3) Standards for the safety inspection of the towing and recovery equipment that is mounted on the chassis are set forth in ~~rules VIII and IX~~ ARM 23.6.110.

(4) Standards for the safety inspection of the equipment that a commercial tow truck must carry are set forth in 61-9-411 and 61-9-416, MCA.

(5) All safety inspectors must have a CVSA level 1 inspector's certification before being qualified to inspect tow trucks.

(6) A department-approved inspection form will be completed by the inspector. If minimum standards are met, a department-approved decal will be affixed to the lower right hand corner of the windshield indicating passage of the inspection. The decal will indicate the date of the inspection, the expiration date of the tow truck's insurance, and the class and license plate number of the tow truck.

(7) The safety certification is effective for one year, beginning October 1 of each year. There will be a 60-day grace period at the expiration of the certification to allow for the scheduling of and inspection of the tow truck.

(8) It is the responsibility of the tow truck ~~owner/~~operator to contact the Montana highway patrol and request the inspection. The inspection site must be relatively flat and

of a hard surface to allow for movement of the inspector under the tow truck.

(9) The department may inspect any tow truck when questions or concerns arise as to the safety or serviceability of the tow truck and there are reasonable grounds for those concerns. The operator must be given advance written notice of such an inspection, and the notice must specify the alleged defect(s).

(10) If any additional tow truck is put into service the tow truck must be qualified and classified prior to answering any calls from the law enforcement rotation system.

(11) If any commercial tow truck is sold, the tow truck is not qualified until it is reinspected by the department. In addition, the seller must remove the tow truck's certification decal.

(12) This rule is subject to the following qualifications:

(a) if the inspection identifies a defect of any type the operator is entitled to request a second inspection by another inspector;

(b) if the inspection identifies a non-safety-related defect or deficiency, ~~the defect or deficiency must be corrected and the tow truck reinspected. If the defect or deficiency is not corrected and the tow truck reinspected within 10 days, the tow truck must be removed from the state rotation system~~ the operator will be informed of the defect or deficiency and requested to correct it;

(c) if the inspection identifies a safety-related defect or deficiency the tow truck will be immediately taken out of service. The tow truck cannot be used in the state rotation system until the reinspection confirms that the defect or deficiency has been corrected; and

(d) if either the inspection form or certification decal is lost, removed, rendered unreadable, or destroyed, the operator must immediately notify the nearest patrol office that can provide a copy of the inspection report from its files and/or reissue a certification decal.

(13) Once a successful inspection is completed, the inspecting officer will provide a copy of the approved inspection report to the tow truck operator. The inspector will also personally affix the certification decal to the windshield.

AUTH: 61-8-911, MCA IMP: 61-8-907, MCA

RULE VII (23.6.113) STATE LAW ENFORCEMENT ROTATION SYSTEM - ADMISSION AND SUSPENSION (1) The state law enforcement rotation system consists of lists of the names and telephone numbers of qualified class "A", "B", and "C" tow truck operators in different parts of the state. Operators are called as needed from the rotation lists for different classes of tow trucks in succession, subject to considerations of public safety and (5).

(2) Class D and class E towing operations are not part of the state law enforcement rotation system. Pursuant to the definitions of the two classes given in ARM 23.6.101, they are

subsumed under class "A", "B", or "C", depending on the weight rating of the tow truck needed.

~~(1)~~(3) An operator seeking to participate in the state law enforcement rotation program must submit a written application to the patrol showing:

(a) the name of the operator's insurance company;

(b) the class of the operator's tow truck(s);

(c) that the operator meets the safety standards of the patrol, as set forth in ~~the Administrative Rules of Montana~~ ARM 23.6.109 and 23.6.110; and

(d) that the operator possesses a unique business name and telephone number.

~~(2)~~(4) In administering the state rotation system, the department:

(a) is subject to all requirements of 61-8-908, MCA; and

(b) shall reexamine the rotation system as needed to ensure compliance with the statute.

~~(2)~~(5) An operator participating in the state rotation system must respond to or decline any call from the rotation system; he or she may not authorize any other operator to respond to that call. Violation of this rule may result in suspension (permanent or temporary) from the rotation system.

~~(3)~~(6) This rule does not apply to ~~class "E" towing operations, or to~~ a qualified operator who, with the approval of the officer at the scene, subcontracts with another operator for temporary assistance in the interests of public safety.

AUTH: 61-8-911, MCA IMP: 61-8-908, MCA

RULE VIII (23.6.110) GENERAL TOW TRUCK EQUIPMENT SAFETY STANDARDS (1) All towing and recovery equipment mounted on the chassis of a commercial tow truck ~~operators~~ must meet the following standards:

(a) ~~for any wire rope purchased or received and placed into service after October 1, 1995, the operator must have documentation of the type of wire rope installed, the date of installation, and the tow truck on which it was installed~~ chain or cable capable of safely handling loads equal to the minimum manufacturer's ratings established in 61-8-905, MCA;

(b) ~~all~~ drums ~~must be~~ capable of fully extending and retracting the ~~wire rope~~ cable ~~and retracting it fully~~;

(c) ~~any~~ winch equipment~~, snatch blocks or block and tackle equipment must not show any deformation, significant wear or damage~~ capable of safely handling loads equal to the minimum manufacturer's ratings established in 61-8-905, MCA;

(d) ~~the operator's business name and address must be visible on both sides of the tow truck and readable at 50 feet in normal sunlight;~~ a boom capable of safely handling loads equal to the minimum manufacturer's ratings established in 61-8-905, MCA.

~~(e) the operator must have two way radio equipment capable of communicating to a base station. A mobile or cellular phone is acceptable; and~~

~~(f) adequate wire rope. Wire rope with any of the following defects will be deemed inadequate:~~

~~(i) more than 6 randomly distributed broken wires in one lay or 3 broken wires in one strand;~~

~~(ii) any abrasion that causes more than 1/3 loss of any individual wire;~~

~~(iii) any evidence of deterioration from corrosion;~~

~~(iv) any kinking, crushing, flattening, or damage that distorts the rope structure;~~

~~(v) any heat damage;~~

~~(vi) any opening up of any tucked splice or core protrusion along the entire length;~~

~~(vii) any hooks that are twisted more than 10 degrees; or~~

~~(viii) any indication of attachment slippage or more than one broken wire at the fitting.~~

AUTH: 61-8-911, MCA IMP: 61-8-907, MCA

5. COMMENTS AND RESPONSES:

Generally

Numerous comments were submitted by the following persons or groups: Representative Bruce Simon (hereafter Rep. Simon); Robert Johnson of J&H Motors in Billings (hereafter Mr. Johnson); John McMaster, counsel for the Administrative Code Committee (hereafter ACC); Bob Gilbert on behalf of the Montana Tow Truck Association (hereafter MTTA); Melvin Brush of Brush Towing in Miles City (hereafter Mr. Brush); and Tom Downey, independent insurance agent from Butte (hereafter Mr. Downey).

The adoption of these rules has become very contentious. The comments made were numerous and sometimes unrelated to the substance of the rules. In attempting to be as concise as possible, the department has not been able to respond to every comment made, but it has incorporated many suggestions and attempted to respond to all substantive comments.

Specific Comments

COMMENT: Several people expressed confusion with the department's use of the term "certified" and "classified".

RESPONSE: The department agrees that these terms need to be defined, and it has added definitions to rule I.

COMMENT: Several witnesses commented about class "D" and "E" towing; the comments varied widely, but they all demonstrated that the department had failed to clearly describe how class "D" and class "E" towing would work.

RESPONSE: The department agrees that the current and future operation of class "D" and class "E" towing needs to be clarified, especially their place in the rotation system.

Therefore, definitions of these two classes have been added, as well as language in rule VII that the department hopes will clarify the methods of operation of class "D" and class "E" towing.

COMMENT: The ACC commented on proposed rule I(4) that all commercially manufactured tow trucks must have a weight rating from the manufacturer, regardless of whether or not they have a nomenclature plate. The static load test should be used only for noncommercially manufactured tow trucks.

RESPONSE: The department has altered rules I(4) and II in accordance with the ACC's comment.

COMMENT: The ACC commented on proposed rule I(6) that it unnecessarily repeated statutory language.

RESPONSE: The department has reexamined the definition of "operator", and has deleted it because it adds nothing to the statutory definition.

COMMENT: Several persons commented on rule I(9) that they considered the definition and use of the term "tow truck equipment" to be improper. The general consensus of those who commented was that "tow truck equipment" means only that equipment that is mounted on the tow truck's chassis.

RESPONSE: The department does not agree that "tow truck equipment" has a single meaning, and for this reason it has deleted the definition altogether. The meaning of the term for the purposes of the safety inspection, as discussed below, derives from the Act's legislative history. For the purposes of analyzing and deleting rules VIII and IX, the department was guided by 61-9-416, MCA.

COMMENT: Rep. Simon commented that all operators seeking to have their tow trucks classified, not just the operators of noncommercially manufactured or modified equipment, should have to submit written requests to the patrol.

RESPONSE: The department agrees, and has modified rule II(1), (4), and (5) accordingly.

COMMENT: Rep. Simon and Mr. Johnson commented regarding rule II(5)(b) that the alternative exceeded statutory authority.

RESPONSE: The department agrees, and has deleted rule II(5).

COMMENT: Concerning rule IV(1), several people felt that the tow truck dispute resolution committee should have no part in any disputes other than those involving the classification of noncommercially manufactured or modified tow truck equipment.

RESPONSE: The department has deleted this provision from rule IV.

COMMENT: The ACC commented that they thought the first sentence of proposed rule V(2) was unnecessary. The ACC's reasoning was that any law enforcement officer could "request anyone not following the law to do so," and any operator could proceed by all legal means to contest the request.

RESPONSE: The department disagrees that the first sentence of rule V(2) should be deleted. The Montana Professional Tow Truck Act is a civil regulatory act, and the status of the request of a law enforcement officer in this context is not clear. Given this lack of clarity, the department believes that a dispute resolution mechanism that operates short of litigation is to be preferred. If any party remains dissatisfied, "all legal means" are still open.

COMMENT: Several witnesses commented on that portion of rule V(3) that allows for the insurance of subsidiary operators. Mr. Downey addressed this issue, and stated that many commercial trucking companies have subsidiaries and master policies of insurance that cover all listed subsidiaries.

RESPONSE: The department agrees with Mr. Downey and finds no indication that the legislature intended that tow truck operators should be treated differently from other trucking companies in this regard. The rule remains as proposed.

COMMENT: Several witnesses commented on rule V (6)(a) that an annual insurance policy was an onerous and unwarranted requirement.

RESPONSE: The department agrees and has deleted this requirement.

COMMENT: Several people commented regarding rule VI that the use of the term "tow truck equipment" in 61-8-907, MCA, meant that the Montana highway patrol could not make a safety inspection of anything but the equipment which is mounted on the chassis of a tow truck.

RESPONSE: The department disagrees. As used in 61-8-907, MCA, "tow truck equipment" does not have a plain meaning. The legislative history indicates that the legislature's intention was that the safety inspections of tow trucks should be the same as the safety inspections of commercial trucks. Those inspections include the chassis. The department has therefore retained rule VI(2) and other rules which relate to the safety inspections for commercial trucks (which includes the inspection of the chassis etc.).

COMMENT: Several witnesses commented relative to proposed rule VI (12)(b) that the department did not have statutory authority to adopt rules regarding non-safety-related defects.

RESPONSE: The department agrees, and has deleted this portion of the rule.

COMMENT: The ACC commented thrice on Rule VII: (1) that the rotation system must be equitable for the tow truck drivers and the owners of wrecked, abandoned, or disabled vehicles, as well as for operators; (2) that it did not understand how the department's rule met the statutory requirement of an equitable rotation system; and (3) that proposed rule VII(1)(c) was unnecessarily vague.

RESPONSE: The department agrees with the ACC that a description of the structure and operation of the rotation system is needed, and has added (1) to address this need. The department also agrees that the rotation system must be periodically reexamined to ensure equity for all persons involved, especially in light of the three mandates of 61-8-908(1), MCA, and has accordingly added (2) to accomplish this. Finally, the department has amended rule VII(3)(c) to meet the ACC's third comment.

COMMENT: Rep. Simon and Mr. Johnson commented that the department should significantly expand the provisions of rule VII, which establish criteria for an "equitable" rotation system, as mandated by 61-8-908(1), MCA; Mr. Brush concurred.

RESPONSE: The description of an "equitable rotation system" is problematic. Montana law defines the term "equitable distribution" (in the context of the equitable distribution of marital property) as not necessarily an equal distribution, but one that uses reasonable judgment and relies on common sense. Most dictionary definitions of equitable emphasize terms such as fairness, so the term "equitable" does not appear capable of precise definition in many of the contexts where it is used.

The department notes here that it has had a rule providing for a rotation system since 1972, ARM 23.3.405. That rule requires in part that, "...officers shall distribute tow car service calls on an equitable basis..." Because the requirement of equity is now statutory, the department has added (3)(c) and (5) to rule VII.

However, most of the comments on the issue of equity went considerably farther than the department proposed to, and in fact appeared to be attempts to counteract the perceived ability of some larger operators to "take advantage" of the current system. Many comments appeared to advocate a rotation system weighted toward a certain type of tow truck operator, the "independent" operators.

The proposed rule elaborates slightly on the definition of "equitable", while trying to be fair to tow truck operators of all sizes. Without more direction from the legislature as to its intention in the use of the term "equitable", the department believes it is without statutory authority to further expand the definition in rule.

COMMENT: Several people commented that rules VIII and IX appeared to be beyond statutory authority, and were thus invalid.

RESPONSE: The department agrees that the rules in question engraft additional requirements onto the Act that were not envisioned by the legislature. It has deleted significant portions and amended the remainder of rule VIII, and deleted rule IX in its entirety.

COMMENT: Mr. Johnson commented on several rules to the effect that a system of self-regulation and self-classification by the individual tow truck operators would be preferable and was envisioned by the legislature.

RESPONSE: The department disagrees. The previous system was one of self-regulation. In passing the Act, the legislature indicated that it wanted to change that system. Self-regulation was not envisioned by the legislature and cannot be adopted by rule.

COMMENT: Several witnesses commented that the department has existing rules that regulate certain aspects of the tow truck industry. The witnesses suggested that these rules needed to be amended or repealed.

RESPONSE: The department agrees, and will amend and repeal these rules as necessary after the proposed rules are adopted.

DEPARTMENT OF JUSTICE

By _____
Joseph P. Mazurek
Attorney General

_____
Rule Reviewer

Certified to the Secretary of State November 13, 1996

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) of ARM 42.11.243, 42.13.105,) 42.13.221 relating to Liquor) Regulations for Golf Courses) and Moveable Devices)	NOTICE OF THE AMENDMENT

TO: All Interested Persons:

1. On October 3, 1996 the Department published notice of the proposed amendment of ARM 42.11.243, 42.13.105, and 42.13.221 relating to Liquor Regulations for Golf Courses and Moveable Devices and Sampling at page 2564 of the 1996 Montana Administrative Register, issue no. 19.

2. A public hearing was held on October 30, 1996 where oral comments were received.

Oral and written comments received during and subsequent to the hearing are summarized as follows along with the response of the Department:

COMMENT: Tom Hopgood, representing the Montana Beer and Wine Wholesalers Association, proposed additional amendments to ARM 42.13.221 to include Federal Regulation 27 C.F.R. 6.94 which allows an industry member to sponsor educational seminars for employees of retailers either at the industry member's premises or at the retail establishment and provide nominal hospitality.

RESPONSE: The Department agrees. ARM 42.13.221 will be amended to include the reference to C.F.R. 6.94.

COMMENT: Mr. Glantz, representing himself as an agency store owner, commented that he supports the amendments to ARM 42.11.243. However, he further stated that the statute which governs this rule should be amended to allow for sampling by the agency liquor stores. At the present time, 16-2-107, MCA prohibits sampling on the premises of an agency store. He stated that it may have been an oversight at the time the statutes were changed to create agency stores.

RESPONSE: Discussion of legislative changes should be brought to the legislature rather than at the hearing on the amendments to these rules. To allow sampling of wine products on an agent's premises requires legislative action.

COMMENT: Mr. Glantz, further stated that amendments to ARM 42.11.243 do not provide a limit on the amount of products a vendor can purchase from an agent nor do the amendments provide any compensation for the agent's work and effort. No amendments to the rule were submitted.

RESPONSE: These comments were considered. However, limiting

the amount of product a vendor can purchase or requiring a vendor to compensate an agent would limit the vendor's ability to promote the product.

3. The Department has further amended ARM 42.13.221 as follows:

42.13.221 ADOPTION OF CERTAIN FEDERAL REGULATIONS

(1) The United States department of treasury, bureau of alcohol, tobacco, and firearms regulations 4, 5, 6.91, 6.94, and 7, as set forth in 27 CFR, along with any amendments and supplements are adopted by reference. These regulations apply to labeling, sampling and advertising of liquor (distilled spirits, wine, and malt beverages) sold within this state except where the provisions of these federal regulations may be contrary to or inconsistent with the provisions of Montana law or regulations of the department. AUTH: Sec. 16-1-303, MCA; IMP, Sec. 16-3-103 and 16-3-244, MCA

4. Therefore, the Department adopts ARM 42.13.221 with the amendments listed above. The Department amends ARM 42.13.105 and ARM 42.11.243 as proposed.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State November 25, 1996

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.15.506 and 42.15.507 relating to Computation of Residential Property Tax Credit	)))))	NOTICE OF THE AMENDMENT

TO: All Interested Persons:

1. On October 24, 1996 the Department published notice of the proposed amendment of ARM 42.15.506 and 42.15.507 relating to Computation of Residential Property Tax Credit at page 2829 of the 1996 Montana Administrative Register, issue no. 20.

2. No public comments were received regarding these rules.

3. The Department has amended the rules as proposed.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State November 25, 1996.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT OF ARM 42.18.106; 42.18.109; 42.18.112; 42.18.115; 42.18.118; 42.18.124; 42.18.126; 42.18.201 through 42.18.203; and 42.18.211 and REPEAL of ARM 42.18.105; 42.18.108; 42.18.111; 42.18.114; 42.18.117; and 42.18.123 and ADOPTION OF NEW RULE I (42.18.107), RULE II (42.18.110), RULE III (42.18.113), RULE IV (42.18.116), RULE V (42.18.119), and RULE VI (42.18.122) relating to Reappraisal Plan Property Rules)	NOTICE OF THE AMENDMENT, REPEAL, AND ADOPTION OF PROPERTY RULES

TO: All Interested Persons:

1. On October 24, 1996 the Department published notice of the proposed amendment of ARM 42.18.106, 42.18.109, 42.18.112, 42.18.115, 42.18.118, 42.18.124, 42.18.126, 42.18.201 through 42.18.203, and 42.18.211; the repeal of ARM 42.18.105, 42.18.108, 42.18.111, 42.18.114, 42.18.117, and 42.18.123; and the adoption of Rule I (ARM 42.18.107), Rule II (42.18.110), Rule III (42.18.113), Rule IV (42.18.116), Rule V (42.18.119), and Rule VI (42.18.122) relating to the Reappraisal Plan at page 2783 of the 1996 Montana Administrative Register, issue no. 20.

2. A Public Hearing was held on November 20, 1996, to consider the proposed amendment, adoption, and repeal. No one appeared to testify and no written comments were received.

3. The Department has adopted, amended, and repealed the rule as proposed.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State November 25, 1996

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) OF ARM 42.19.501, relating to) Property Tax Exemption for) Disabled Veterans)	NOTICE OF THE AMENDMENT

TO: All Interested Persons:

1. On October 3, 1996, the Department published notice of the proposed amendment of ARM 42.19.501 relating to Property Tax Exemption for 100% Disabled Veterans at page 2568 of the 1996 Montana Administrative Register, issue no. 19.

2. No public comments were received regarding this rule.

3. The Department has amended the rule as proposed.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State November 25, 1996

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF AMENDMENT OF RULES
of ARM 42.21.106; 42.21.107;)
42.21.113; 42.21.122; 42.21.)
123; 42.21.131; 42.21.137;)
42.21.138; 42.21.139; 42.21.)
140; 42.21.151; 42.21.153;)
42.21.155; 42.21.158 and)
42.21.305 relating to Personal)
Property Rules)

TO: All Interested Persons:

1. On October 24, 1996, the Department published notice of the proposed amendment of ARM 42.21.106; 42.21.107; 42.21.113; 42.21.122; 42.21.123; 42.21.131; 42.21.137; 42.21.138; 42.21.139; 42.21.140; 42.21.151; 42.21.153; 42.21.155; 42.21.158 and 42.21.305 relating to Personal Property Rules at page 2805 of the 1996 Montana Administrative Register, issue no. 20.

2. A Public Hearing was held on November 20, 1996, to consider the proposed amendments. No one appeared at the hearing to present oral testimony but written comments were received. As a result of the comments received, the Department has amended ARM 42.21.106; 42.21.107; 42.21.113; 42.21.123; 42.21.131; 42.21.137; 42.21.138; 42.21.139; 42.21.140; 42.21.151; 42.21.153; 42.21.155; 42.21.158 and 42.21.305 as proposed.

3. Written comments which were received during and subsequent to the hearing are summarized as follows along with the response of the Department:

COMMENT: Maria Young of Frenchtown, Montana provided written testimony for the hearing which shows state and regional market information on llamas.

RESPONSE: This information convinced the Department to change the valuation category of female llamas from its current show, roping, and race horse category to the category for work and pack horses, riding and pack mules. That will result in a value reduction for female llamas. The written testimony did not convince the Department to change the valuation categories for male llamas or neutered llamas.

4. The Department has amended the ARM 42.21.122 as follows:

42.21.122 LIVESTOCK (1) and (2) remain the same.
(3)(a) remains as proposed.
(b) through (f) remain the same.

(4) and (5) remain the same.

(6)(a) remains as proposed.

(b) through (d) remain the same.

(E) FEMALE LLAMAS SHALL BE VALUED THE SAME AS WORK AND PACK HORSES, RIDING AND PACK MULES;

~~(e)~~ (F) ~~female llamas and~~ miniature horses shall be valued the same as show, roping and race horses;

~~(f)~~ (G) exotic goats shall be valued the same as doe goats; and,

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

(7) remains as proposed.

5. Therefore, the Department amends ARM 42.21.122 with the amendments listed above.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State November 25, 1996

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) ARM 42.22.101; 42.22.116;) 42.22.1304; 42.22.1305; and) 42.22.1311 relating to) Industrial Property Rules)	NOTICE OF THE AMENDMENT

TO: All Interested Persons:

1. On October 24, 1996, the Department published notice of the proposed amendment of ARM 42.22.101, 42.22.116, 42.22.1304, 42.22.1305, and 42.22.1311 relating to Industrial Property Rules at page 2793 of the 1996 Montana Administrative Register, issue no. 20.

2. A Public Hearing was held on November 20, 1996, to consider the proposed amendment. 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 November 25, 1996

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

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

TO: All Interested Persons.

1. On October 3, 1996, the Secretary of State published notice of the proposed amendment of ARM 1.2.419 regarding the scheduled dates for the Montana Administrative Register for 1997 at page 2574 of the 1996 Montana Administrative Register, issue no. 19.

2. On October 9, 1996 a memo was sent to each agency which included a revised schedule. To reiterate that memo, the original proposed schedule was revised to allow for both filing and publication of the Montana Administrative Register to normally fall on Mondays instead of filing on Monday with publication on the second Thursday following the filing date. A public hearing was held on October 24, 1996 and no one appeared to comment on either the original proposal or the revised schedule. No written comments were received on the original proposal. However, two written comments were received on the revised schedule. Neither of these commentors felt that extending the time between filing and publication would cause problems.

3. The Secretary of State is amending the rule as proposed in the revised schedule. The following shows the changes from the 1997 proposal to the revised schedule:

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

19~~96~~97 Schedule

Filing	Compiling	Printer Pickup	Publication
January ~~6~~3	January ~~7~~6	January 8	January 16
January ~~21~~13	January ~~22~~14	January ~~23~~16	January ~~30~~27
January ~~29~~27	January ~~30~~28	January ~~31~~30	February ~~8~~10
February ~~3~~10	February ~~4~~11	February ~~5~~13	February ~~13~~24
February ~~18~~24	February ~~19~~25	February ~~20~~27	~~February 27~~ March 10
March ~~3~~10	March ~~4~~11	March ~~5~~13	March ~~13~~24

March ~~17~~24	March ~~18~~25	March ~~19~~27	~~March 27~~April 7
~~March 31~~April 7	April ~~1~~8	April ~~2~~10	April ~~10~~21
~~April 14~~	~~April 15~~	~~April 16~~	~~April 24~~
April ~~28~~21	April ~~29~~22	April ~~30~~24	May ~~8~~5
May ~~12~~5	May ~~13~~6	May ~~14~~8	May ~~23~~19
~~June 2~~May 19	~~June 3~~May 20	~~June 4~~May 22	June ~~12~~2
June ~~16~~9	June ~~17~~10	June ~~18~~12	June ~~26~~23
June 23	June 24	June 26	July 7
July 7	July 8	July 9	July ~~17~~21
July 21	July 22	July ~~23~~24	~~July 31~~August 4
August 4	August 5	August ~~6~~7	August ~~14~~18
August ~~18~~25	August ~~19~~26	August ~~20~~28	~~August 28~~
			September 8
September ~~2~~8	September ~~3~~9	September ~~4~~11	September ~~11~~22
September ~~15~~22	September ~~16~~23	September ~~17~~25	~~September 25~~
			October 6
~~September 29~~	~~September 30~~	October ~~1~~9	October ~~9~~20
October 6	October 7		
October ~~14~~20	October ~~15~~21	October ~~16~~23	~~October 23~~
			November 3
~~October 27~~	~~October 28~~	~~October 29~~	~~November 6~~
November ~~10~~3	November ~~12~~4	November ~~13~~6	November ~~20~~17
November ~~24~~17	November ~~25~~18	November ~~26~~20	December ~~4~~1
December ~~8~~1	December ~~9~~2	December ~~10~~4	December ~~18~~15

(2) Remains the same.

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

4. The Secretary of State is adopting the revised 1997 schedule as shown above in order to allow the Administrative Rules Bureau and the contract printer a few extra days for preparation and publication of the Register.

MIKE COONEY
Secretary of State

Angela Fultz, Rule Reviewer

Dated this 22nd day of November 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 June 30, 1996. This table includes those rules adopted during the period July 1, 1996 through September 30, 1996 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1996, 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 1995 and 1996 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.

AGRICULTURE, Department of, Title 4

I Emergency Adoption - Imposing a Quarantine on the Importation of Grain Into Montana, p. 898
I and other rule - Spread of Late Blight Disease of Potatoes - Civil Penalties - Matrix, p. 3, 900
I-XVI Preventing the Introduction of Noxious Weed Seeds from Forage in the State, p. 830, 1361
4.3.401 and other rules - Registration Requirements - Applicator Classifications and Requirements - Student Loans - Wheat and Barley Food and Fuel Grants - Restriction of Pesticide Rules - Endrin - 1080 Livestock Protection Collars - Registration and Use of M-44 Sodium Cyanide Capsules and M-44 Devices - Rodenticide Surcharge and Grants - Montana Agricultural Loan Authority - Agriculture Incubator Program, p. 2714, 545, 667
4.5.102 and other rules - Projects, Procedures and Updates and Repeal of Requirements to the Noxious Weed Trust Fund, p. 2473
4.9.101 and other rules - Wheat and Barley Committee Rules, p. 1343, 1826
4.13.1001 and other rule - Grain Fee Schedule of Lab Hours, Travel Time and Fees, p. 2343, 2842

STATE AUDITOR, Title 6

I Securities Regulation on the Internet, p. 1346, 1828
I-X Actuarial Opinion, p. 842, 1371
I-XIV Medicare Select Policies and Certificates, p. 9, 907, 1645
6.2.103 and other rules - Procedural Rules of the State Auditor's Office, p. 1227, 1636
6.6.1101 and other rules - Credit Life - Disability Insurance, p. 955, 1646, 2157
6.6.1104 Limitation of Presumption of Reasonableness of Credit Life - Disability Rates, p. 7, 746, 1131
6.6.2001 and other rules - Unfair Trade Practices on Cancellations, Non-renewals, or Premium Increases of Casualty or Property Insurance, p. 2720, 414, 2158
6.6.2007 and other rules - Unfair Trade Practices on Cancellations, Non-renewals, or Premium Increases of Casualty or Property Insurance, p. 869, 1370, 2159
6.6.4102 and other rules - Fee Schedules - Continuing Education Program for Insurance Producers and Consultants, p. 963, 1661
6.10.102 and other rules - Securities Regulation, p. 2724, 1133
6.10.122 Securities Regulation - Broker-Dealer Books and Records, p. 15, 1136

(Classification Review Committee)
6.6.8301 Updating References to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 ed., p. 2349, 2843

6.6.8301 Updating References to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 ed., p. 1348, 1827

6.6.8301 Updating References to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 ed., p. 866, 1372

COMMERCE, Department of, Title 8

8.2.208 Renewal Dates, p. 346, 1373

(Board of Alternative Health Care)

I Vaginal Birth After Cesarean (VBAC) Delivery, p. 348, 1829

8.4.301 and other rules - Fees - Renewal - Unprofessional Conduct - Licensing of Out-of-State Applicants - Certification for Speciality Practice of Naturopathic Physician Continuing Education - Direct Entry Midwife Apprenticeship Requirements, p. 2230, 2576

(Board of Architects)

8.6.405 and other rules - Practice of Architecture, p. 2060, 2476

(Board of Athletics)

8.8.2804 and other rules - Athletic Events - Participants, p. 969, 1664

(Board of Barbers)

8.10.403 and other rules - Barbers, Barber Shops and Barber Schools, p. 1432

(Board of Chiropractors)

8.12.601 and other rules - Chiropractors, p. 974, 2844

(Board of Clinical Laboratory Science Practitioners)

8.13.304 and other rules - Practice of Clinical Laboratory Science, p. 350, 1296

(Board of Cosmetologists)

8.14.802 License Examinations, p. 871

(Board of Dentistry)

8.16.402 and other rules - Dentists - Dental Hygienists - Denturists - Practice of Dentistry and Denturitry, p. 2478

(State Electrical Board)

8.18.401 and other rules - Electrical Industry, p. 2065, 3039

(Professional and Occupational Licensing Bureau)

8.19.101 and other rules - Transfer from the Department of Justice - Fire Prevention and Investigation, p. 1825, 2087, 748

(Board of Hearing Aid Dispensers)
8.20.401 and other rules - Hearing Aid Dispensers, p. 3009

(Board of Horse Racing)
8.22.501 and other rules - Definitions - General Provisions - Claiming, p. 217, 763
8.22.703 and other rule - Exercise Persons - Pony Persons, p. 1350, 1964

(Board of Landscape Architects)
8.24.403 and other rules - Landscape Architects - Applications - Seals - Examinations - Renewals - Replacement Licenses - Fee Schedule - Unprofessional Conduct, p. 2944

(Board of Medical Examiners)
I Physicians - Inactive License, p. 2635
8.28.911 and other rule - Nutritionists, p. 616, 2279

(Board of Funeral Service)
8.30.101 and other rules - Morticians - Mortuaries - Crematories - Crematory Operators - Crematory Technicians, p. 2073, 2425

(Board of Nursing)
8.32.413 and other rules - Conduct of Nurses - Survey and Approval of Schools - Annual Report - Definitions - Registered Nurse's Responsibility to the Nursing Process - Standards for Schools of Nursing - Standards for IV Therapy - Charge Nurse for Licensed Practical Nurses, p. 2638
8.32.413 Conduct of Nurses, p. 353, 1489

(Board of Occupational Therapists)
8.35.401 and other rules - Practice of Occupational Therapy, p. 1448, 1586, 2379

(Board of Optometry)
8.36.406 and other rules - General Practice Requirements - Unprofessional Conduct - Fees - Disciplinary Actions - Continuing Education concerning the Practice of Optometry, p. 2238, 2654

(Board of Outfitters)
8.39.202 and other rules - Outfitting Industry, p. 2327, 668, 909
8.39.518 and other rules - Fees - Moratorium - Operations Plan Review, p. 1761, 2388, 2797, 145, 765

(Board of Pharmacy)
8.40.1601 and other rules - Out-of-State Mail Service Pharmacies, p. 2339, 220, 1297

(Board of Physical Therapy Examiners)
8.42.402 and other rules - Licensure of Physical Therapists - Physical Therapist Assistants - Foreign-Trained Physical Therapists, p. 2245

(Board of Plumbers)
8.44.402 and other rules - Plumbing Industry, p. 2081, 2426, 2577

(Board of Professional Engineers and Land Surveyors)
8.48.401 and other rules - Practice of Professional Engineers and Land Surveyors, p. 2085

(Board of Private Security Patrol Officers and Investigators)
8.50.423 and other rules - Private Security Patrol Officers and Investigators, p. 2656

(Board of Public Accountants)
8.54.402 and other rules - Practice of Public Accounting, p. 3018
8.54.402 and other rules - Examinations - Out-of-State Candidates for Examination - Education Requirements - Fees, p. 1460, 2280
8.54.402 and other rules - Emergency Amendment - Examinations - Out-of-State Candidates for Examination - Education Requirements - Fees, p. 1490

(Board of Radiologic Technologists)
8.56.402 and other rules - Radiologic Technologists, p. 618, 1138

(Board of Real Estate Appraisers)
8.57.403 and other rules - Real Estate Appraisers, p. 2665

(Board of Respiratory Care Practitioners)
8.59.402 and other rules - Respiratory Care Practitioners, p. 1464

(Board of Sanitarians)
8.60.401 and other rules - Sanitarians, p. 626, 985, 1965, 2578

(Board of Speech-Language Pathologists and Audiologists)
8.62.413 and other rules - Practice of Speech-Language Pathology and Audiology, p. 2103, 2976

(Board of Passenger Tramway Safety)
8.63.503 and other rules - Passenger Tramway Safety Industry, p. 2952
8.63.504 and other rule - Registration of New, Relocated or Major Modification of Tramways - Conference Call Meetings, p. 633, 1299

(Board of Veterinary Medicine)

8.64.402 and other rule - Fee Schedule - Examination for Licensure, p. 2679

8.64.402 and other rules - Fees - Application Requirements - Temporary Permits - Examinations - Annual Renewals - Continuing Education - Unprofessional Conduct - Applications for Certification of Embryo Transfer - Unprofessional Conduct for Embryo Transfer - Disciplinary Actions - Advisory Committee, p. 2253, 2579

(Building Codes Bureau)

8.70.101 and other rules - Uniform and Model Codes - Plumbing and Electrical Requirements - Recreational Vehicles - Boiler Safety - Swimming Pools, p. 2682

8.70.101 Incorporation by Reference of Uniform Building Code, p. 707

8.70.101 Emergency Amendment - Building Permit Fees, p. 676

8.70.108 and other rules - Incorporation by Reference of CABO One and Two Family Dwelling Code - Funding of Code Enforcement Programs - Extension of Municipal Jurisdictional Area - Incorporation by Reference of Safety Code for Elevators and Escalators, p. 1475, 2160

8.70.208 and other rule - Emergency Amendment - Funding of Code Enforcement Programs - Extension of Municipal Jurisdictional Area, p. 1494

(Weights and Measures Bureau)

8.77.302 NIST Handbook 130 - Uniform Laws and Regulations, p. 2957

(Consumer Affairs Office)

8.78.202 and other rules - Repair and Servicing of Automobiles - Consumer Reporting Agencies - Operation of Proprietary Schools, p. 1352, 2284

(Banking and Financial Institutions Division)

8.80.108 Limitations on Loans, p. 355, 2161

8.80.307 Dollar Amounts to which Consumer Loan Rate are to be Applied, p. 986, 2165

(Local Government Assistance Division)

I & II and other rules - 1996 Federal Community Development Block Grant Program - 1996 Treasure State Endowment (TSEP) Program - 1987 and 1988 Federal Community Development Block Grant Programs, p. 2454, 1300

8.83.401 and other rules - State Grants to Counties for District Court Assistance, p. 988, 1665

(Board of Investments)

8.97.715 and other rules - Municipal Finance Consolidation Program - Montana Cash Anticipation Financing Program, p. 360, 766, 910

(Economic Development Division)
8.99.401 and other rules - Microbusiness Advisory Council, p. 636, 2166, 2580, 2978

(Board of Housing)
8.111.305 and other rules - Lending Institutions - Loan Servicers, p. 2577, 679

(Board of Science and Technology Development)
8.122.102 and other rules - Award and Administration of Loans by the Montana Board of Science and Technology Development, p. 2351
8.122.601 Application Procedures for a Seed Capital Technology Loan - Submission and Use of Executive Summary, p. 2204, 548, 912

(Montana Lottery)
8.127.101 and other rules - Organizational Rule - Instant Tickets - Prizes, p. 2110, 2849
8.127.407 and other rule - Retailer Commission - Sales Staff Incentive Plan, p. 1479, 2850

EDUCATION, Title 10

(Office of Public Instruction)
10.7.103 and other rules - School Transportation, p. 2689
10.20.201 and other rules - School Finance - Budgeting and Funding, p. 1230, 2168

(Board of Public Education)
10.57.107 Teacher Certification - Emergency Authorization of Employment, p. 2961
10.57.211 and other rule - Test for Certification - Minimum Scores on the National Teacher Examination Core Battery, p. 2416, 2979
10.57.211 Test for Certification, p. 2457, 680
10.57.301 Endorsement Information, p. 990, 1666, 1835
10.58.505 Teacher Education Programs - Business Education, p. 2962
10.66.101 Adult Secondary Education - Requirements Which Must Be Met in Order to Receive High School Equivalency Diplomas, p. 2959

(Montana Historical Society)
I-XIV Procedures that State Agencies Must Follow to Protect Heritage Properties and Paleontological Remains - Providing General Procedures which the State Historic Preservation Office Must Follow in Implementing Its General Statutory Authority, p. 1920

(State Library Commission)
10.102.5102 and other rule - Allocation of Funding Between Federations and Grant Programs - Arbitration of Disputes Within Federations, p. 18, 1374

FISH, WILDLIFE, AND PARKS, Department of, Title 12

I Application Process and Criteria for a Scientific Collectors Permit, p. 373, 1148, 2171

12.6.1604 and other rules - Regulation of Roadside Zoos - Game Bird Farms - Fun Farms - Migratory Game Bird Avicultural Permits - Tattooing of Certain Captive Predators, p. 1002, 1839

(Fish, Wildlife, and Parks Commission)

12.4.102 Stream Access Definitions in Rules, p. 994, 1838

12.6.901 Water Safety on Johnson and South Sandstone Reservoirs, p. 710, 1375

12.6.901 Restriction of Motor-Propelled Water Craft on the Clark Fork River, p. 712, 1376

12.9.105 and other rules - Wild Turkey Policy - 10-80 Baits - Reintroduction of Peregrine Falcon, p. 1014, 1842

(Fish, Wildlife, and Parks Commission and Department of Fish, Wildlife, and Parks)

12.2.304 and other rules - Natural Resources Policies - Public Participation, p. 997, 1836

12.3.104 and other rules - Licensing, p. 221, 768

12.3.107 and other rules - Issuance of Hunting, Fishing and Trapping Licenses, p. 991, 1837

12.4.202 and other rules - Hunter Access and Landowner Incentives Under the Block Management Program, p. 483, 1139

12.7.401 and other rules - Fish Ladders - River Restoration Program, p. 1007, 1840

12.8.101 and other rules - State Park System - State Recreational Waterway System - Cultural Resources, p. 1011, 1841

ENVIRONMENTAL QUALITY, Department of, Title 17

16.2.101 and other rules - MEPA - Transfer of Department of Health and Environmental Sciences and Department of State Lands Procedural Rules for the Montana Environmental Policy Act, p. 1497

16.40.101 and other rules - Occupational Health - Transfer from Department of Health and Environmental Sciences - Radiation Control - Occupational Health, p. 433, 681

17.54.102 and other rules - Waste Management - Federal Regulations for the Hazardous Waste Program, p. 2711

17.54.102 and other rules - Updating Federal Incorporations by Reference, p. 20, 1382

26.4.101A and other rules - Reclamation - Transfer from the Department of State Lands - Reclamation, p. 2852, 3042

36.7.901 and other rules - Energy - Transfer from the Department of Natural Resources and Conservation -

Major Facility Siting - Renewable Energy Grant and Loan Program, p. 2863

(Board of Environmental Review)

I Water Quality - Temporary Water Standards for Daisy Creek, Stillwater River, Fisher Creek, and the Clark's Fork of the Yellowstone River, p. 1652, 1872, 2211, 1049, 2502

I-IX Air Quality - Incorporating Federal Transportation Conformity Rules - Adopting Interagency Consultation Procedures, p. 1775, 2299

16.8.701 and other rules - Air Quality - Adopting the Current Federal Definition of Volatile Organic Compounds, p. 1019, 1843

16.8.704 and other rules - Air Quality - Updating the Incorporations by Reference and References to the MCA to the Most Recent Regulations and Statutes - Combining Certain Provisions of the Air Quality Rules, p. 1034, 1844

16.8.1101 and other rules - Air Quality - Adding Human Health Risk Assessment to the Preconstruction Permit Application Requirements for Incineration Facilities Subject to 75-2-215, MCA, p. 1026, 2291

16.8.1102 and other rules - Air Quality - Allowing Existing Facilities Flexibility to make Minor Changes without Revising their Air Quality Preconstruction Permits, p. 1772, 2293

16.8.1107 Air Quality - Public Review of Air Quality Preconstruction Permit Applications, p. 488, 1149

16.8.1419 Air Quality - Fluoride Emissions - Phosphate Processing, p. 1017, 1852

16.8.1429 and other rule - Air Quality - Adopting Federal Regulations for the Administration of Maximum Achievable Control Technology Standards, p. 1024, 2298

16.8.1903 and other rule - Air Quality - Air Quality Operation Fees - Air Quality Permit Application Fees, p. 1928, 2581

16.8.1906 and other rules - Air Quality - Rules Regarding Air Quality, p. 2260, 3041

16.8.2026 Air Quality - Acid Rain, p. 1022, 1853

17.30.640 and other rules - Water Quality - Water Quality, p. 1047, 1854

17.30.1501 and other rules - Water Quality - Permitting of In-Situ Uranium Mining, p. 2263

17.54.102 and other rules - Waste Management - Bringing Current Rules in Line with EPA Regulations in Order to Maintain Federal Authorization of the State Hazardous Waste Program, p. 2357, 2851

26.2.641 and other rules - MEPA - Montana Environmental Policy Act for the Department of State Lands, p. 491, 1150

26.4.107M and other rules - Hard Rock - Enforcement - Penalties, p. 1786, 2586

26.4.301 and other rules - Abandoned Mines - Abandoned Mine Reclamation Program, p. 2265, 3050

(Department of Environmental Quality and Board of Environmental Review)

16.8.101 and other rules - Air Quality - Transfer from Department of Health and Environmental Sciences - Air Quality - Air and Water Quality Tax Certification, p. 2285

16.8.1906 and other rules - Air Quality - Rules Regarding Air Quality, p. 2260, 3041

16.16.101 and other rules - Water Quality - Transfer from Department of Health and Environmental Sciences - Water Quality, p. 493, 1499

(Petroleum Tank Release Compensation Board)

16.47.101 and other rules - Petroleum Tank Release Compensation Board, p. 1587

TRANSPORTATION, Department of, Title 18

I and other rules - Establishing Refund Percentages for PTO or Auxiliary Engines - Motor Fuels, p. 2733, 913

I-XV Railroad Crossing Signalization - Signal Removal - Improved Crossing Surface Installation, p. 3028

18.8.101 and other rules - Motor Carrier Services Program, p. 714, 1971, 2980

18.8.509 and other rule - Motor Carrier Services Program, p. 2964

18.12.501 and other rules - Aeronautical Powers and Duties, p. 1943, 2983

(Transportation Commission)

18.6.202 and other rules - Outdoor Advertising Regulations, p. 39, 1855

(Transportation Commission and Department of Transportation)

I-VII Debarment of Contractors Due to Violations of Department Requirements - Determination of Contractor Responsibility, p. 1930

JUSTICE, Department of, Title 23

Notice of Proposed Amendments to the Certificate of Public Advantage and Approving the Merger of Columbus Hospital and Montana Deaconess Medical Center, p. 1481A

I-III Handling, Collection, Transportation, Sampling and Storage of Blood Samples for DNA Indexing, p. 1605, 2172

I-VIII Operation, Inspection, Classification, Rotation and Insurance of Tow Trucks, p. 503

I-IX Operation, Inspection, Classification, Rotation, and Insurance of Commercial Tow Trucks, p. 2267

23.5.102 Emergency Amendment - Hours-of-Service Requirements for Certain Industries to Conform with Changes in Federal Law Presently Incorporated by Reference Pertaining to Motor Carrier and Commercial Vehicle Safety Standard Regulations, p. 2177
23.16.101 and other rules - Public Gambling, p. 2504

(Board of Crime Control)
23.14.401 and other rules - Peace Officers Standards and Training - DARE Trust Fund, p. 1260, 2984

LABOR AND INDUSTRY, Department of, Title 24

I and other rules - Unemployment Insurance Case Procedures - Employment Status [Independent Contractor] Issues, p. 1051, 1667
I and other rules - Procedure in Workers' Compensation Matters - Employment Status [Independent Contractor], p. 1061, 1673
I-III and other rules - Wage Claim Procedures - Employment Status [Independent Contractor] Issues, p. 1056, 1668
I-V Workers' Compensation Administrative Assessment, p. 1609
I-V and other rule - Exemption of Independent Contractors from Workers' Compensation Coverage, p. 725, 1303
I-XI Creating One Process for Determining All Employment Status Issues, Including that of Independent Contractor, p. 1070, 1676
I-XVII and other rules - Workers' Compensation Plan Number One [Plan 1] Requirements and Eligibility, p. 512, 1151, 2427
24.16.1509 and other rule - Minimum Hourly Wage Rate, p. 2363, 2882
24.16.9007 Prevailing Wage Rates - Building Construction, p. 873, 1669
24.21.414 Adoption of Wage Rates for Certain Apprenticeship Programs, p. 875
24.29.706A and other rules - Transfer of Independent Contractor Rules to ARM Title 24, Chapter 35, p. 1863

(Human Rights Commission)
24.9.801 and other rules - Proof of Discrimination, p. 1790, 2871

LIVESTOCK, Department of, Title 32

(Board of Livestock)
32.3.121 and other rules - Disease Control - Animal Feeding, Slaughter, and Disposal - Fluid Milk and Grade A Milk Products - General Licensing and Provisions - Marketing of Livestock - Branding and Inspection, p. 376, 1864

32.3.201 and other rules - Importation of Animals and Semen into Montana - Brucellosis - Tuberculosis - Poultry - Animal Identifications - Control of Biologics - Rendering Plants - Vehicles and Equipment - Animal Health Requirements for Livestock Markets - Official Tuberculin Tests, p. 1803, 2300

(Board of Milk Control)

I-IV and other rule - Milk Utilization - Marketing of Class III Milk, p. 2114, 2428

8.86.301 Wholesale Prices for Class I, II and III Milk, p. 641, 2181

32.8.103 Circumstances Under Which Raw Milk May be Sold for Human Consumption, p. 2222, 769

32.24.501 and other rules - Quota Rules, p. 2718

MILITARY AFFAIRS, Department of, Title 34

34.3.101 and other rules - Emergency and Disaster Relief Policy, p. 1482

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

I Reject, Modify, or Condition Permit Applications in the Houle Creek Basin, p. 1952, 2432

I-VII Resolution of Disputes over the Administration of the Yellowstone River Compact, p. 1078, 1866

26.2.201 and others rules - Leasing or Other Use of State Lands - Sale of State Lands - Schedule of Fees - Homesite and Farmyard Leases - Antiquities on State Lands - Ownership Records for Non School Trust Land, p. 225, 771

36.2.401 and other rules - Minimum Standards and Guidelines for the Streambed and Land Preservation Act, p. 1946, 2366

36.6.101 and other rules - Referendums for Creating or Changing Conservation District Boundaries - Conservation District Supervisor Elections, p. 2755, 772

36.12.102 and other rule - Forms - Application and Special Fees, p. 1954, 2430

36.19.101 and other rules - Reclamation and Development Grants Program, p. 228, 775

36.20.102 and other rules - Weather Modification, p. 381, 1159

(Board of Land Commissioners)

I-X All Activities on Classified Forest Lands Within Montana during the Legal Forest Fire Season - Debris Disposal - Fire Prevention on Forest Lands, p. 877, 1502, 2183

26.2.301 and other rules - Rental and Royalty Charges on State Land - Surface Management - Sale of State Land - Oil and Gas Leases - Geothermal Resources - Uranium Leasing - Coal Leasing on State Land, p. 2753, 916

PUBLIC SERVICE REGULATION, Department of, Title 38

REVENUE, Department of, Title 42

SECRETARY OF STATE, Title 44

(Commissioner of Political Practices)