

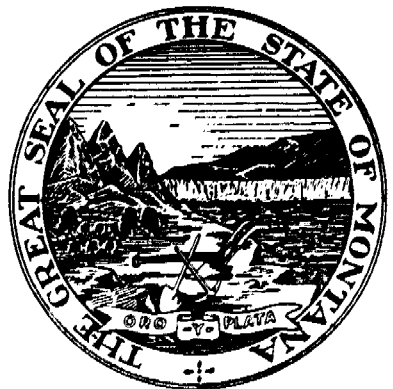
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RESERVE

MONTANA ADMINISTRATIVE REGISTER

STATE OF MONTANA
AUG 14 1981
OF MONTANA

**1981 ISSUE NO. 15
PAGES 792-864**



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AUG 14 1981
OF MONTANA

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The 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 Joint Resolution directing an agency to adopt, amend or repeal 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 existing or proposed rules. The address is Room 138, State Capitol, Helena, Montana, 59620.

15-5/13/81

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

Definitions: Administrative Rules of Montana (ARM) is a loose-leaf 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 statute 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 General Index, Montana Code Annotated to determine department or board associated with subject matter or statute number. |
| Department | 2. Refer to Chapter Table of Contents, Title 1 through 46, page i, Volume 1, ARM, to determine title number of department's or board's rules.
3. Locate volume and title. |
| Subject Matter and Title | 4. Refer to topical index, end of title, to locate rule number and catchphrase. |
| Title Number and Department | 5. Refer to table of contents, page 1 of title. Locate page number of chapter. |
| Title Number and Chapter | 6. Go to table of contents of chapter, locate rule number by reading catchphrase (short phrase describing rule.) |
| Statute Number and Department | 7. Go to cross reference table at end of each title which lists each MCA section number and corresponding rules. |
| Rule in ARM | 8. Go to rule. Update by checking the accumulative table and the table of contents for the last register issued. |

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, 1981. This table will include those rules adopted during the period July 1, 1981 through September 30, 1981, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1981, this table and the table of contents for this issue of the MAR.

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BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PUBLIC HEARING
of Rule 12.6.901 relating to) ON PROPOSED AMENDMENT OF
water safety regulations) RULE 12.6.901 -- WATER
) SAFETY REGULATIONS

TO: All Interested Persons.

1. On September 14, 1981, at 7:00 p.m., a public hearing will be held in the Mansfield Room of the Sheraton Hotel, 400 10th Ave. S., Great Falls, Montana, to consider the amendment of Rule 12.6.901.

2. The proposed amendment would close a portion of the Missouri River near Great Falls to the use of motorboats.

3. The rule as proposed to be amended provides as follows: (The underlined portion is the only part of the rule affected by this proposal.)

12.6.901 WATER SAFETY REGULATIONS (1) In the interest of public health, safety, or protection of property, the following regulations concerning the public use of certain waters of the state of Montana are hereby adopted and promulgated by the Montana fish and game commission.

(a) The following waters are closed to use of any motor-propelled water craft except in case of use for official patrol, search and rescue craft, or for scientific purposes:

Beaverhead County:	Big Hole River
Big Horn County:	Arapoosh access area
Cascade County:	Smith River
	<u>That portion of the Missouri</u>
	<u>River from the Burlington</u>
	<u>Northern Railway Bridge No. 119.4</u>
	<u>at Broadwater Bay in Great Falls</u>
	<u>to Black Eagle.</u>
Custer County:	Branum Pond
Deer Lodge County:	Big Hole River
Granite County:	Bear Mouth rest area pond
Hill County:	Bearpaw Lake
Jefferson County:	Park Lake
Lewis & Clark County:	Wood Lake
Madison County:	Big Hole River
Meagher County:	Forest Lake - Smith River
Missoula County:	Frenchtown Pond - Harpers Lake
Ravalli County:	Twin Lakes
Richland County:	Gartside Reservoir
Silver Bow County:	Big Hole River
Toole County:	Axtman, Feys, and Henry Reservoirs
	- Fitzpatrick Lake

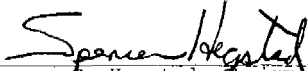
(remainder of the rule remains the same)

4. The department is proposing this amendment because of a request from the City of Great Falls and for public safety and protection of property.

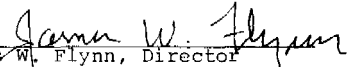
5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Stan Bradshaw, Staff Attorney, Department of Fish, Wildlife, & Parks, 1420 E. 6 Ave., Helena, Montana 59620, no later than September 11, 1981.

6. Stan Bradshaw has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendment is based on Sections 87-1-303 and 23-1-106(1), MCA, and the rule implements Sections 87-1-303 and 23-1-106(1), MCA.



Spencer S. Hegstad, Chairman
Montana Fish & Game Commission



James W. Flynn, Director
Department of Fish, Wildlife,
& Parks

Certified to Secretary of State August 3, 1981

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

In the matter of the adoption) NOTICE OF PUBLIC HEARING
of rules establishing a) FOR ADOPTION OF RULES
procedure for variances from) (Solid Waste Management-
solid waste management rules) Variances)

To: All Interested Persons

1. On September 15, 1981 at 9:00 a.m. a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of rules which provide a procedure whereby an owner or operator of a solid waste management system may apply to the Board of Health and Environmental Sciences of the State of Montana for a variance from the solid waste management rules contained in sub-chapter 5, Chapter 14, Title 16 of the Administrative Rules of Montana.

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

3. The proposed rules provide as follows:

RULE 1 INITIAL APPLICATION (1) A person may apply for a variance from solid waste management rules contained in sub-chapter 5, chapter 14, Title 16 of the Administrative Rules of Montana on forms obtained from the department. Such forms must contain at least the following information:

(a) Name and business address of applicant.

(b) Legal and general description of the location of the solid waste management system for which the variance is being requested including documentation of ownership, lease or rental agreement.

(c) Population served by the system.

(d) Citation of administrative rule from which a variance is requested.

(e) Documentation of liability insurance coverage.

(f) Financial statements of the operation costs of the solid waste management system including sources of revenues and the proposed costs to operate the system in compliance with the rule from which a variance is sought.

(g) Copy of a return receipt of a certified letter sent to each owner of real property which is contiguous to the real property on which the solid waste management system is located.

(i) The certified letter required in subsection (g) of this rule must state: "I, (name of applicant), intend to apply to the Board of Health and Environmental Sciences of the State of Montana for a variance from (citation of rule from which variance is sought), which states: (text of rule). A hearing will be scheduled before the Board on the variance application. For further information, you may contact the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, MT 59620 (telephone number: 449-2821)." Authority: Section 75-10-204, MCA; Implementing: Sec. 75-10-206, MCA.

(h) A compliance plan indicating the dates by which improvements will be implemented at the solid waste management system to bring it into compliance with the rule from which a variance is sought.

(2) An application for a variance is not considered filed until the applicant has submitted all information and completed all application forms required by subsection (1) of this rule. Authority: Sec. 75-10-204 MCA; Implementing: Sec. 75-10-206 MCA.

RULE II NOTICE (1) Upon notification by the department that the variance application is complete, the applicant must publish the notice provided to him by the department once in a newspaper of general circulation in the geographical area within which the solid waste management system is located. This notice must be published not less than 45 days before the date of the hearing on the variance application before the Board.

(2) The contents of the public notice must include at least the following:

- (a) Name and address of the applicant;
- (b) Citation and text of the administrative rule from which a variance is sought;
- (c) Time, location and brief description of the purpose of the hearing,

(d) Address and phone number of the office at which interested persons may obtain further information, and inspect or obtain a copy of the application;

(e) The deadline as established by the hearing examiner for making a request to participate in the hearing; and

(f) Name and address of the hearing examiner to whom a request to participate is made.

(3) The applicant shall provide to the department a certification from the newspaper indicating the notice was published as required. The certification must be received by the department not less than 20 days prior to the board hearing. Failure of the applicant to provide certification at least 20 days prior to the hearing renders the application incomplete and causes cancellation of the scheduled hearing. Authority: Sec. 75-10-204 MCA; Implementing: Sec. 75-10-206 MCA.

RULE III PARTICIPATION IN HEARING (1) A person who wishes to participate in the hearing on the variance application shall submit a request to be a party within the deadline stated in the public notice required by Rule II. A request to be a party must be directed to the hearing examiner named in the public notice and must state:

- (a) Name and address of the person making the request;
- (b) Identification of any person or group requester represents; and

(c) Requestor's position, whether for or against, the application for a variance.

Authority: Sec. 75-10-204 MCA; Implementing: Sec. 75-10-206 MCA.

RULE IV CONDUCT OF HEARINGS (1) All hearings held under the provisions of this sub-chapter must be conducted in accordance with the Montana Administrative Procedure Act, Part 6, Chapter 4, Title 2 of the Montana Code Annotated and rules implementing that part.

Authority: Sec. 75-10-204 MCA; Implementing: Sec. 75-10-206 MCA.

RULE V DURATION OF VARIANCE A variance may be granted by the board for a period of time not to exceed 3 years from the date granted, except the board may modify or revoke the variance as provided in Rule VI.
Authority: Sec. 75-10-204 MCA; Implementing: Sec. 75-10-206 MCA.

RULE VI VARIANCE REVIEW HEARING--REVOCATION--MODIFICATION

(1) A variance review hearing to modify or revoke a variance may be held before the board at the request of the department during the term of a variance if:

(a) violations of the conditions of the variance occur;
or

(b) complaints are received by the department from property owners or residents affected by the solid waste management system operating under the variance.

(2) The board may revoke or modify a variance if it finds the conditions of the variance have been violated or if it finds the complaints received by the department warrant revocation or modification.

Authority: Sec. 75-10-204 MCA; Implementing: Sec. 75-10-206 MCA.

RULE VII RENEWAL OF A VARIANCE (1) No renewal of a variance may be granted except on application, submitted on a form designated "Application for Renewal of a Variance" obtained from the department.

(2) After the department determines that the application for renewal of a variance is complete, the requirements for public notice, participation in hearings, conduct of hearings, duration of variance renewal, and variance renewal review hearings are the same as provided in Rules II through VI respectively.

Authority: Sec. 75-10-204 MCA; Implementing: Sec. 75-10-206 MCA.

4. The Department is proposing these rules because rules establishing application and review procedures were necessary to implement Chapter 563, Laws of Montana (1981), codified as section 75-10-206, MCA, effective October 1, 1981.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, MT, no later than September 14, 1981.

6. Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, MT, has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed rules is based on section 75-10-204, MCA, and the rules implement section 75-10-206, MCA, effective October 1, 1981. The proposed rules, if adopted, will become effective on or after October 1, 1981.


JOHN S. DRYNAN, M.D., Director

Certified to the Secretary of State August 3, 1981

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

In the matter of the amendment)	CORRECTION OF NOTICES:
of rule 16.8.1405)	SUBSTITUTION OF
-and-)	PRESIDING OFFICER
In the matter of the amendment)	FOR PUBLIC HEARING
of rules 16.2.501, 16.2.502 and)	ON PROPOSED
16.2.503)	AMENDMENT OF RULES
-and-)	
In the matter of the amendment)	
of rules 16.14.101, 16.14.103,)	
16.14.104, 16.14.105, 16.14.109,)	
and 16.14.111)	

TO: All Interested Persons

1. On July 30, 1981, the Board and Department published notices of a public hearing, to be held on September 11, 1981, on the proposed amendment of rules ARM 16.2.501, 16.2.502, 16.2.503, 16.14.101, 16.14.103, 16.14.104, 16.14.105, 16.14.109, and 16.14.111, and notice of public hearing to be held on November 13, 1981 on the proposed amendment of rule 16.8.1405. (MAR Notice 16-2-178, page 704, 1981 MAR, Issue No. 14; MAR Notice 16-2-179, page 708, 1981 MAR, Issue No. 14; MAR Notice 16-2-181, page 715, 1981 MAR, Issue No. 14; MAR Notice 16-2-182, page 717, 1981 MAR, Issue No. 14; MAR Notice 16-2-183, page 719, 1981 MAR, Issue No. 14; MAR Notice 16-2-184, page 721, 1981 MAR, Issue No. 14; MAR Notice 16-2-185, page 723, 1981 MAR, Issue No. 14; MAR Notice 16-2-186, page 724, 1981 MAR, Issue No. 14.)

2. The Department and Board wish to substitute a different presiding officer, and therefore amend the above-referenced notices to read as follows:

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 Sandra R. Muckelston, Room C216, Cogswell Building, Helena, MT. 59620, no later than September 1, 1981 (September 30, 1981 in MAR Notice 16-2-179--rule 16.8.1405).

Sandra R. Muckelston, Room C216 Cogswell Building, Helena, Montana, has been designated to preside over and conduct the hearing.

John F. McGregor, M.D.

 JOHN F. MCGREGOR, M.D., Chairman,
 Board of Health and Environmental
 Sciences

BY *John J. Drynan, M.D.*

 JOHN J. DRYNAN, M.D., Director,
 Department of Health and
 Environmental Sciences

FOR THE DEPARTMENT: *John J. Drynan, M.D.*

 JOHN J. DRYNAN, M.D., Director,
 Department of Health and Environmental Sciences

Certified to the Secretary of State August 3, 1981
 15-8/13/81 MAR Notice No. 16-2-188

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the Amendment	)	NOTICE OF PUBLIC
of Rule 18.8.601 regarding	)	HEARING FOR AMENDMENT
Overweight Single Trip Permits	)	OF RULE 18.8.601,
and the repeal of Rules	)	OVERWEIGHT SINGLE
18.8.1202 through 18.8.1215	)	TRIP PERMITS, AND
establishing conditions for	)	REPEAL OF RULES
movement of various special	)	18.8.1202 THROUGH
vehicles.	)	18.8.1215, VARIOUS
	)	SPECIAL VEHICLE
	)	MOVEMENT CONDITIONS.

TO: All Interested Persons

1. On September 9, 1981 at 9:00 A.M., a public hearing will be held in the highway auditorium of the Department of Highways building, to consider the amendment of Rule 18.8.601, Overweight Single Trip Permits, and the repeal of Rules 18.8.1202 through 18.8.1215 establishing conditions for movement of specific vehicles.

2. The amendment and repeal is proposed in response to a petition filed by the Montana Motor Carrier's Association, 201 E. Sixth Avenue, Helena, Montana 59601. The petition states the proposals will "facilitate the movement of overweight loads by single trip permit by conforming the restrictions imposed thereon with neighboring states and continuing the protection of Montana's highways through the utilization of size, weight and axle ratios presently in force and effect within the State."

3. The amendment as proposed provides as follows:
"18.8.601 OVERWEIGHT SINGLE TRIP PERMITS

(1) The Department of Highways hereby adopts and incorporates by reference the WEIGHT ANALYSIS MANUAL, which sets forth the weights and conditions for movements of various equipment. A copy of the WEIGHT ANALYSIS MANUAL published by the Bridge Bureau of the Department of Highways may be obtained from the Gross Vehicle Weight Division, Box 4639, Helena, Montana 59604.

(12) Overweight Permits may be issued for single trips only pursuant to Section 61-10-125, MCA.

(23) ~~G-V-W-Form-32, Special-Permit,~~ \$6-00, shall be issued for excess weight. The permittee must first obtain a special permit, G.V.W Form 32, pursuant to Section 61-10-124, MCA. The permit shall be valid for the period of the license or G.V.W. Fee, whichever is the lesser period of time. Example: A permit issued to a unit licensed with a Trip Permit would expire in 72 hours. Term permits expire December 31 and are extended to the grace period of the license or gross weight fees,

whichever is the lesser.

~~(3) The Special Permit for the excess weight shall not be valid unless accompanied by a Single-Trip Mileage Permit, G.V.W. Form 327, at a fee of \$5.00 for up to 100 miles, \$15.00 for a distance of 101 to 199 miles, or a fee of \$25.00 for 200 miles or over.~~

(4) All miles to be travelled shall be included in computing the fee. The total miles shall include all public roads (county roads), streets (city streets), and highways (interstate, primary, and secondary).

~~(5) Excess width, height, and length may be included in a Term Overweight Permit provided the width does not exceed 15 feet and the length does not exceed 70 feet and the height is as per regulations. A Single-Trip Special Permit may be issued for width, height, or length in excess of those stated above upon approval of the Helena G.V.W. Office.~~

(65) The maximum axle loads and the minimum axle spacing for which overweight permits may be issued for non-built-up loads without analysis shall conform to the illustration on MAR page 297. Any weights in excess of those shown on the illustration shall be approved by the Helena G.V.W. Office. A special analysis will be required if any axle spacing is less than those shown on the illustration or if any axle weight is greater than those shown on the illustration.

~~(7) In the interest of safety and convenience, d~~ ener blades may be removed from the tractor and hauled on the same unit, provided the total weight is below the analysation of the units and no other attachments are carried. requirements of the WEIGHT ANALYSIS MANUAL which manual is hereby adopted by reference and is on file and of record with the Office of the Secretary of State. Refer to paragraph (1) of this Rule.

(6) An overweight load shall be considered to be a non-built-up load when it consists of a single item that cannot be readily dismantled, divided, or otherwise reduced. Loads of heavy equipment (i.e. bull dozers with blades and rippers attached and cranes with counterweights and booms attached) loaded in configurations closely approximating operational configurations, shall generally not be considered reducible or divisible. Such heavy equipment that meet these criteria may, with the approval of the issuing authority, be partially dismantled and rearranged to achieve safer highway configurations.

(7) Subject to the exercise of discretion of

the Helena G.V.W. Office, permits may be issued for overweight loads of more than one item or for greater weights than those provided in the Weight Analysis Manual where written application is made showing good cause for such exception. Refer to paragraph (1) of this Rule.

(8) Overweight-Permits-with-a-maximum-of 34,000-pounds-on-tandems-and-no-overwidth-may be-allowed-to-travel-unrestricted-nighttime, Saturdays, Sundays, and holidays,--This-could also-include-a-maximum-height-of-14-feet. Overweight permits for vehicles with maximum dimensions of 70 feet in length, 9 feet in width and 14.5 feet in height, or such other dimensional restrictions as may be imposed for a non-restricted speed overweight permit shall be allowed to travel unrestricted nighttime, Saturdays, Sundays, and holidays. Overweight vehicles in excess of these dimensions shall be limited as provided for in such permit.

(9) Overweight Permits are not transferable from one person to another, nor are they transferable with the change of ownership of a vehicle.

(10) Permits may be issued for travel on any state highway provided that seasonal load limits are not in effect restricting weights below normal limits.

(11) Alteration of any word or figure on the face of a permit will void the permit immediately and subject the permit to confiscation by the inspecting officer.

(12) No verbal permit shall be issued by telephone or otherwise. A written permit is required by Montana law."

4. The Department of Highways is proposing to amend the above petition to Rule 18.8.601 by substituting the following for paragraphs (7) and (8):

"(7) Subject to the exercise of discretion of the Administrator, G.V.W. Division, permits may be issued for overweight loads of more than one item or for greater weights than those provided in the Weight Analysis Manual where written application is made showing good cause for such exception. Refer to paragraph (1) of this Rule."

"(8) Overweight permits for vehicles with maximum dimensions of 70 feet in length, 9 feet in width and 14.5 feet in height, or such other dimensional restrictions as may be imposed, shall be allowed to travel during the hours of darkness, Saturdays, Sundays and holidays unless special speed restrictions are imposed. Overweight vehicles in excess of these dimensions shall be limited as provided for in such permit."

5. The proposed amendment will not increase maximum gross vehicle weights. The Weight Analysis Manual has been

used by the Gross Vehicle Weight Division since February 25, 1980.

6. The petition requests the repeal of Rules 18.8.1202 through 18.8.1215, which are found on pages ARM 18-310 through 18-318. These rules give conditions for movement of specific types of equipment, such as Dart Hough 400 Front End Loader, Caterpillar Tractor Loader Model 988, etc. These rules can be eliminated with the proposed amendment to Rule 18.8.601.

7. 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 Beate Galda, Staff Attorney, Department of Highways, 2701 Prospect Avenue, Helena, Montana 59620, no later than September 17th.

8. Beate Galda, Staff Attorney, Department of Highways, 2701 Prospect Avenue, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

9. The authority of the agency to make the proposed amendment and repeal is implied in section 61-10-121, MCA, and the rule implements Sections 61-10-101 through 61-10-148, MCA.

Gary J. Wicks, Director
Department of Highways

By: *John L. Prebil*
John L. Prebil

Certified to the Secretary of State August 3, 1981.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
Amendment of the Attorney	)	AMENDMENTS TO THE
General's Model Rules For	)	MODEL RULES 1.3.101
Use With The Administrative	)	THROUGH 1.3.234
Procedure Act)	
)	

TO: All Interested Persons:

1. On September 12, 1981, The Department of Justice proposes to amend the Model Rules 1.3.101 through 1.3.234.

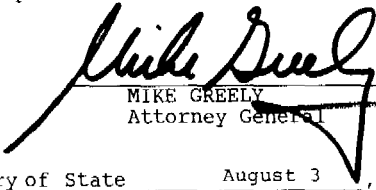
2. The proposed Amendments are designed to bring the Model Rules into conformity with the Administrative Procedure Act as amended during the last session of the legislature by Chapters 381 and 591, L. 1981. A copy of the Amendments as proposed may be obtained by contacting Allen Chronister, Attorney General's Office, State Capitol, Helena, Montana 59601. Phone 449-2026.

3. The rationale for the proposed Amendments is to update the Model Rules to reflect current statutes and to assist agencies relying upon the Model Rules.

4. All interested parties may submit their data, views or arguments concerning the proposed Amendments in writing to Allen Chronister, State Capitol, Room 225, Helena, Montana 59601 no later than September 10, 1981.

5. A hearing will be held if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule; by a governmental subdivision or agency; by the administrative code committee, or by an association having not less than 25 members who will be directly affected. No practical way is known for determining the number of persons directly affected.

6. The authority for the proposed Amendments is 2-4-202, MCA, and the rules implement that same section.


MIKE GREELY
Attorney General

Certified to the Secretary of State August 3, 1981

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER of the Proposed) NOTICE OF PUBLIC HEARING ON
Amendment of ARM 24.9.252,) PROPOSED AMENDMENT of ARM
relating to Petitions for) 24.9.252, relating to Peti-
Declaratory Rulings before the) tions for Declaratory Rulings
Montana Human Rights Commission) before the Human Rights
) Commission

TO: All Interested Persons:

1. On September 28, 1981, at 1:15 P.M., a public hearing will be held in the conference room of the Department of Labor and Industry, Aspen Court, 35 Last Chance Gulch, Helena, Montana, to consider the amendment of ARM 24.9.252.

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

"24.9.252 DECLARATORY RULINGS: FILING AND NOTIFICATION OF DISPOSITION OF PETITION. (1) Filing of petition. The petition shall be deemed filed when received by the Commission at its Staff office in Helena, Montana. Upon receipt of a petition, the Staff will promptly send a copy of petition to each Commission member.

(2) Notification of Disposition of Petition. After the petition has been filed, the Commission shall determine within twenty (20) days whether or not it intends to consider the petition and issue a ruling. If the Commission does intend to issue a ruling, the Commission shall mail to the petitioner:

A copy of the petition together with a copy of the Commission's rules of practice and a notice of the hearing at which the petition shall be considered.

In addition, the Commission shall mail to every person or organization identified in the petition as interested in requested declaratory ruling.

A copy of the petition together with a copy of the Commission rules, and notice of hearing at which the petition will be considered informing them that they have been identified by the petitioner as having interest in the petition and informing them that they may, upon proper showing, petition to be allowed to intervene in the proceeding either generally or for the limited purpose of presenting their particular point of view concerning the petition of the Commission.

In addition, the Commission shall publish notice of the hearing in the administrative register along with a copy of the petition.

If the Commission does not intend to issue a ruling, the Commission shall within twenty (20) days

mail to the petitioner and to all persons or organizations identified in the petition as interested in the proposed ruling a copy of the order denying the petition for declaratory ruling, with grounds for denying the ruling clearly stated."

3. The Commission is proposing Amendment of the above rule in conformance with the ADMINISTRATIVE PROCEDURE ACT, particularly MCA 2-4-501.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing or may submit the data, views, or arguments in writing to John Frankino, 23 S. Last Chance Gulch, Helena, Montana 59620, no later than September 18, 1981.

5. John Frankino, 23 Last Chance Gulch, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

6. The authority of the Commission to make the proposed Amendment is based on MCA 49-2-204, implementing MCA 2-4-501.

HUMAN RIGHTS COMMISSION
JOHN FRANKINO, CHAIR

BY: 

RAYMOND D. BROWN
ADMINISTRATOR
HUMAN RIGHTS DIVISION

Certified to the Secretary of State, August 3, 1981.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER of the Proposed)	NOTICE OF PUBLIC HEARING ON
Amendment of ARM 24.9.217,)	PROPOSED AMENDMENT of ARM
relating to Notice of Com)	24.9.217 relating to Notice
plaints to the Commission by)	of Complaints to the Com-
the Division)	mission by the Division

TO: All Interested Persons:

1. On September 28, 1981, at 1:15 P.M., a public hearing will be held in the conference room of the Department of Labor and Industry, Aspen Court, 35 Last Chance Gulch, Helena, Montana, to consider the amendment of ARM 24.9.217.

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

"24.9.217 COMPLAINT: NOTICE TO COMMISSION. (1) The Division Administrator shall each ~~month~~, quarter, in writing, notify the Commission of all complaints filed that ~~month~~ quarter and the disposition of those complaints already reported to the Commission in prior ~~months~~ quarters."

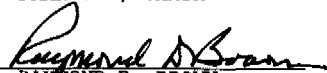
3. The Commission is proposing Amendment of the above Rule because monthly notification is unnecessary and cumbersome.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing or may submit the data, views, or arguments in writing to John Frankino, 23 S. Last Chance Gulch, Helena, Montana 59620, not later than September 18, 1981.

5. John Frankino, 23 Last Chance Gulch, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

6. The authority of the Commission to make the proposed Amendment is based on MCA 49-2-204, implementing MCA 49-2-502.

HUMAN RIGHTS COMMISSION
JOHN FRANKINO, CHAIR

BY: 
RAYMOND D. BROWN
ADMINISTRATOR
HUMAN RIGHTS DIVISION

Certified to the Secretary of State, August 3, 1981.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER of the Proposed)	NOTICE OF PUBLIC HEARING ON
Amendment of ARM 24.9.255,)	PROPOSED AMENDMENT of ARM
dealing with the effect of)	24.9.255, dealing with the
publication of a declaratory)	effect of publication of
rulings of the Montana Human)	declaratory rulings of the
Rights Commission)	Human Rights Commission

TO: All Interested Persons:

1. On September 28, 1981, at 1:15 P.M., a public hearing will be held in the conference room of the Department of Labor and Industry, Aspen Court, 35 Last Chance Gulch, Helena, Montana, to consider the amendment of ARM 24.9.255.

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

"24.9.255 DECLARATORY RULING: EFFECT OF RULING. (1) A declaratory ruling issued in accordance with these rules is binding between the Commission and the petitioner on the state of facts alleged, or found to exist. Judicial review may be had in the same manner as decisions or orders in contested cases.

(2) The Commission shall publish its declaratory ruling in the Administrative Register."

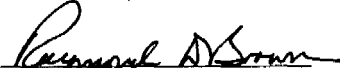
3. The Commission is proposing Amendment of the above rule to comply with the ADMINISTRATIVE PROCEDURE ACT, particularly MCA 2-4-501.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing or may submit the data, views, or arguments in writing to John Frankino, 23 S. Last Chance Gulch, Helena, Montana 59620, not later than September 18, 1981.

5. John Frankino, 23 Last Chance Gulch, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

6. The authority of the Commission to make the proposed Amendment is based on MCA 49-2-204, implementing MCA 2-4-501.

HUMAN RIGHTS COMMISSION
JOHN FRANKINO, CHAIR

BY: 
RAYMOND D. BROWN
ADMINISTRATOR
HUMAN RIGHTS DIVISION

Certified to the Secretary of State, August 3, 1981.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER of the Proposed)	NOTICE OF PUBLIC HEARING ON
Amendment of ARM 24.9.802,)	PROPOSED AMENDMENT of ARM
regarding Commission decision)	24.9.802 regarding Human
making authority)	Rights Commission decision
)	making authority

TO: All Interested Persons:

1. On September 28, 1981, at 1:15 P.M., a public hearing will be held in the conference room of the Department of Labor and Industry, Aspen Court, 35 Last Chance Gulch, Helena, Montana, to consider the amendment of ARM 24.9.255.

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

"24.9.802 COMMISSION MEETINGS: QUORUM: DECISION MAKING AUTHORITY (1) (a) The Commission shall meet upon call of the chairperson, or at the written request of at least 3 members, the time or place to be designated by whomever calls the meeting.

(b) a majority of the membership constitutes a quorum to do business. A contested case may be heard before a hearing officer, an individual Commissioner acting as hearing officer, or by at least 3 members of the Commission. The Commission may designate one or more non-members to substitute for a Commission member or members in the case of disqualification or other appropriate circumstances.

(c) The Commission shall appoint a member of the staff to act as secretary of the Commission, and general minutes of all Commission meetings whether in person or by telephone conference call shall be kept as public record.

(2) A single Commission member may issue an order in a contested case proceeding which is of a purely procedural nature. For example, a single Commissioner may sign an order regarding a briefing schedule, or an order extending the time in which a party may file exceptions when both parties stipulate that such may be done."

3. The Commission is proposing Amendment of the above Rule in order to help to expedite the processing of contested cases in the area of non-substantive decisions.

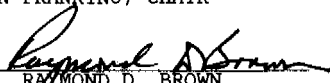
4. Interested persons may present their data, views or arguments either orally or in writing at the hearing or may submit the data, views, or arguments in writing to John Frankino, 23 S. Last Chance Gulch, Helena, Montana 59620, not later than September 18, 1981.

5. John Frankino, 23 Last Chance Gulch, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

6. The authority of the Commission to make the proposed Amendment is based on MCA 49-2-204, implementing MCA 49-2-505.

HUMAN RIGHTS COMMISSION
JOHN FRANKINO, CHAIR

BY:


RAYMOND D. BROWN
ADMINISTRATOR
HUMAN RIGHTS DIVISION

Certified to the Secretary of State, August 3, 1981.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER of the Proposed)	NOTICE OF PUBLIC HEARING ON
Adoption of a rule regarding)	the proposed Adoption of a
the dismissal by the Human)	Rule regarding the dismissal
Rights Commission of)	of Complaints by the Human
Complaints also pending in)	Rights Commission which are
court)	also pending in court.

TO: All Interested Persons:

1. On September 28, 1981, at 1:15 P.M., a public hearing will be held in the conference room of the Department of Labor and Industry, Aspen Court, 35 Last Chance Gulch, Helena, Montana, to consider the adoption of the following Rule:

"24.9.261 DISMISSAL OF COMPLAINTS ALSO PENDING IN COURT. At any time after a complaint is filed, any party to the complaint, or the Division, may move the Commission to dismiss the complaint on the grounds that the issues therein are also before a court of competent jurisdiction, either state or federal. The Commission may dismiss the complaint without prejudice if it finds that the parties and issues before the Commission are also before a court of competent jurisdiction, and that the court's determination will be res judicata as to the complaint before the Commission.

If the court later finds that it does not have jurisdiction over the above-described parties or issues, then the Charging Party or Division may apply to reopen the complaint before the Commission."

2. The Commission is considering the adoption of the above rule in order to set a standard for dealing with the hundreds of complaints which have been initiated before the Commission but then moved to a court before Commission proceedings were completed. As evidenced by the amendments to MCA 49-3-303 in the last legislative session, legislative intent seems to be that the Commission should not be a duplicative forum for cases being tried elsewhere.

3. Interested persons may present their data, views or arguments either orally or in writing at the hearing or may submit the data, views, or arguments in writing to John Frankino, 23 S. Last Chance Gulch, Helena, Montana 59620, not later than September 18, 1981.

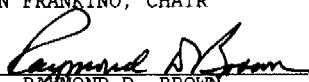
4. John Frankino, 23 Last Chance Gulch, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

5. The authority of the Commission to make the proposed Rule is based on MCA 49-2-204, implementing MCA 49-2-501, 49-2-505, and 49-3-303.

-810-

HUMAN RIGHTS COMMISSION
JOHN FRANKINO, CHAIR

BY:


RAYMOND D. BROWN
ADMINISTRATOR
HUMAN RIGHTS DIVISION

Certified to the Secretary of State, August 3, 1981.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amend-) NOTICE OF THE AMENDMENT OF RULES
ment of rules pertaining to) 1.2.210 ADOPTION OF AN AGENCY
adoption by reference.) RULE BY INCORPORATION BY REFER-
ENCE; 1.2.211 MODEL RULES:
LOCATION AND INCORPORATION BY
REFERENCE; 1.2.419 FILING,
COMPILING, PRINTER PICKUP AND
PUBLICATION SCHEDULE FOR MAR

No Public Hearing Contemplated

TO: All Interested Persons:

1. On September 12, 1981, the Secretary of State proposes to amend rules pertaining to the adoption of an agency rule by incorporation by reference.

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

1.2.210 ADOPTION OF AN AGENCY RULE BY INCORPORATION BY REFERENCE (1) All agencies adopting by reference any of those documents or types of rules specified in 2-4-307, MCA, shall utilize the following form in the Administrative Rules of Montana or the Montana Administrative Register when adopting by reference.

(2) The (department) hereby adopts and incorporates by reference (citation to incorporated material) which sets forth (substance of rule). A copy of the (citation to federal agency rule, model code, ~~like-publication~~, rule of any agency of this state or other similar publication) may be obtained from the (department or agency name and address).

(3) The above form will be placed in the first subsection of each rule that adopts by reference. If there is more than one citation in the same rule to the same adoption by reference citation, then a reference back to the paragraph which includes this form will be necessary for each citation.

(4) The director or head of the department must submit a cover letter, addressed to the secretary of state, ~~with their request and consent~~, indicating their intention to adopt an agency rule by incorporation by reference.

(5) Upon request of the secretary of state, a copy of the omitted material must be filed with the secretary of state.

AUTH: 2-4-306, MCA IMP: 2-4-307, MCA

1.2.211 MODEL RULES: LOCATION AND INCORPORATION BY REFERENCE

(1) The attorney general of the state of Montana has developed model organization and procedural rules which have been recommended to the departments. These model rules are stated in their entirety under chapter 3 of this title. Where a department has adopted the model rules for its own procedural rules, such is indicated under the department's procedural rules section in sub-chapter 1 of its chapter 2.

15-8/13/81

MAR Notice No. 44-2-21

(2) If the department chooses to adopt the attorney general's rules verbatim then such rules need not be stated verbatim. Rather, this type of adoption may be noted simply by stating in the first rule under chapter 2, that "~~The Department of ----- adopts the attorney general's model procedural rules ----- through ----- and all subsequent amendments to the model procedural rules, and incorporates herein those rules by reference.~~" The (Department) hereby adopts and incorporates by reference (citation to model rules) ARM through ARM which sets forth the attorney general's model procedural rules. A copy of the model rules may be obtained from (agency's name and address).

(3) However, it is contemplated that a particular law may require a variation from the procedural rules set down by the model rules. If such is the case, then such variation should be noted and explained in the form of a subsection to the model procedural rule from which it varies.

(4) And as mentioned above, if the department adopts the attorney general's procedural rules, but with slight variations, then this can be noted by stating, in a rule under chapter 2, sub-chapter 1, that: "~~The Department of ----- has herein adopted and incorporated the attorney general's model procedural rules with the following exceptions thereto:--(i) Subsection-~~" The (Department) hereby adopts and incorporates by reference (citation to model rules) ARM through ARM which sets forth the attorney general's model rules with the following exceptions thereto: The attorney general's model rule ARM is modified in that (In this regard be sure and clearly state which model rule is being modified and state the law which requires the modification.) A copy of the model rules may be obtained from (department's name and address).

AUTH: 2-4-306, MCA IMP: 2-4-307, MCA

1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER

(1) remains the same

(2) ~~A notice of proposed action or a notice of adoption that contains an adoption by reference must be submitted by noon of the scheduled filing date.~~ All other material to be published must be submitted by 5:00 p.m. of the scheduled filing date. All material submitted after the listed deadline will not be published until the next scheduled publication.


AUTH: 2-4-306, MCA IMP: 2-4-307, MCA

3. The rules are proposed to be amended so that the format and procedures for adopting an agency rule by reference, comply with the amendment to 2-4-307, MCA, by the 1981 Legislature.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Julie Glosser, Office of the Secretary of State, Room 202, Capitol Building, Helena, Montana, 59620, no later than September 10, 1981.

5. The authority and implementing sections are listed at the end of each rule.

Dated this 3rd day of August 1981.



JIM WALTERMIRE
Secretary of State

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF PUBLIC HEARING
of rules pertaining to fees)	FOR ADOPTION OF RULES -
for filing documents and)	Fees for Filing Documents
issuing certificates.)	and Issuing Certificates
	(Business Corporations;
	Limited Partnerships;
	Miscellaneous Charges)

TO: All Interested Persons:

1. On September 2, 1981, at 10:00 a.m., a public hearing will be held in Room 108, Capitol Building, Helena, Montana, to consider the adoption of rules pertaining to fees for filing documents and issuing certificates for business corporations, limited partnerships and miscellaneous charges.

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

3. The proposed rules provide as follows:

RULE I FEES FOR FILING DOCUMENTS AND ISSUING CERTIFICATES -
BUSINESS CORPORATIONS The secretary of state shall charge and collect for:

- (1) filing articles of incorporation and issuing a certificate of incorporation, \$15.00,
- (2) filing articles of amendment and issuing a certificate of amendment, \$15.00,
- (3) filing restated articles of incorporation and issuing a restated certificate of incorporation, \$15.00,
- (4) filing articles of merger or consolidation and issuing a certificate of merger or consolidation, \$17.50,
- (5) filing an application to reserve a corporate name, \$10.00,
- (6) filing a notice of transfer of a reserved corporate name, \$5.00,
- (7) filing a statement of change of address of registered office or change of registered agent, or both, \$7.50,
- (8) filing a statement of the establishment of a series of shares, \$20.00,
- (9) filing a statement of cancellation of shares, \$12.50,
- (10) filing a statement of reduction of stated capital, \$15.00,
- (11) filing a statement of intent to dissolve, \$12.50,
- (12) filing a statement of revocation of voluntary dissolution proceedings, \$20.00,
- (13) filing articles of dissolution and issuing a certificate of dissolution, \$12.50,
- (14) filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, \$15.00,

- (15) filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, \$12.50,
- (16) filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this state, \$12.50,
- (17) filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this state, \$15.00,
- (18) filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, \$12.50,
- (19) filing an annual report within allotted time, \$5.00,
- (20) filing an annual report after the April 15 statutory deadline, \$10.00,
- (21) filing any other statement or report, except an annual report, of a domestic or foreign corporation, \$12.50,
- (22) issuing a certificate of good standing, \$2.50;
- (23) issuing a certificate of fact, \$12.50.

AUTH: 35-1-1301 & Sec. 59, Ch. 475, Montana Session Laws of 1981,
IMP: 35-1-1202

RULE II FEES FOR FILING DOCUMENTS AND ISSUING CERTIFICATES - LIMITED PARTNERSHIPS The secretary of state shall charge and collect for:

- (1) filing a certificate of limited partnership and issuing a certificate, \$15.00,
- (2) filing a certificate of amendment of limited partnership and issuing a certificate, \$15.00,
- (3) filing a certificate of cancellation of limited partnership and issuing a certificate, \$12.50,
- (4) filing an application to reserve a limited partnership name, \$10.00,
- (5) filing a notice of transfer of a reserved limited partnership name, \$5.00,
- (6) filing a statement of change of address of registered office or change of resident agent, or both, \$7.50,
- (7) filing an application for registration of a foreign limited partnership and issuing a certificate, \$15.00,
- (8) filing a certificate of cancellation or correction of a foreign limited partnership and issuing a certificate, \$12.50,
- (9) filing any other statement or report of a domestic or foreign limited partnership, \$12.50,
- (10) issuing a certificate of fact of limited partnership, \$12.50.

AUTH & IMP: Sec. 65, Ch. 522, Montana Session Laws 1981

RULE III MISCELLANEOUS CHARGES - LIMITED PARTNERSHIPS

The secretary of state shall charge and collect:

- (1) for furnishing a certified copy of any document, instrument or paper relating to a limited partnership, 50 cents per page and \$2.00 for the certificate,
- (2) for furnishing any certificate not mentioned in this rule or Rule II, \$5.00.

AUTH & IMP: Sec. 65, Ch. 522, Montana Session Laws 1981

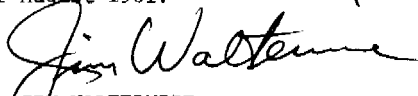
4. The rules are being proposed to establish fees for filing documents and issuing certificates required by Title 35, Chapters 1 and 12. Records to support the fee charged for the filing requirements are maintained in the Office of the Secretary of State and are available to the public.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Larry Akey, Room 202, Capitol Building, Helena, Montana, 59620, no later than September 10, 1981.

6. Larry Akey, Room 202, Capitol Building, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority and implementing sections are listed at the end of each proposed rule.

Dated this 3rd day of August 1981.


JIM WALTERMIRE
Secretary of State

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

In the matter of the amendment of) NOTICE OF PUBLIC
Rule 46.2.209 pertaining to) HEARING ON PROPOSED
hearing procedures) AMENDMENT OF RULE
) 46.2.209 PERTAINING
) TO HEARING PROCEDURES

TO: All Interested Persons

1. On September 3, 1981, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rule 46.2.209 pertaining to fair hearing procedures.

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

46.2.209 HEARING PROCEDURE (1) The hearing shall be conducted: at a reasonable time and date and shall be held in the county seat of the county of the claimant's residence, unless the parties to the hearing agree to a different location or, in the case of an appeal of an adverse action by a county welfare department which is not the county of claimant's residence, the hearing may be held in the county whose adverse action is being appealed at that county's option, if that county agrees to pay all the actual and necessary expenses incurred by the claimant and necessary witnesses to attend the hearing.

(a) All provider hearings shall be held at the place designated by the Department, by telephone conference, unless a party to the hearing requests in writing an in-person hearing; and

(b) at a reasonable time and date.

(2) The hearing shall be held in the county seat of the county of the claimant's residence, unless the parties to the hearing agree to a different location or, in the case of an appeal of an adverse action by a county welfare department which is not the county of the claimant's residence, the hearing may be held in the county whose adverse action is being appealed at that county's option, if that county agrees to pay all the actual and necessary expenses incurred by the claimant and necessary witnesses to attend the hearing.

(a) All provider hearings shall be held at the place designated by the department.

(2) (3) The Department shall notify the claimant or his authorized representative by registered mail at least ten (10) days in advance of the time and place of the hearing. The claimant may waive in writing the right to ten (10) days notice.

- (a) The notice of hearing shall include:
- (i) the name, address and telephone number of the person to notify in the event that it is not possible for claimant to attend the hearing;
 - (ii) notification that the hearing request will be dismissed if the claimant or provider or his authorized representative fails to appear at the hearing without good cause;
 - (iii) the Department's hearing procedures and any other information that would contribute to claimant's understanding of the proceedings and effective presentation at the hearing; and
 - (iv) an explanation of claimant's rights as enumerated in ~~subparagraph 3~~ subsection (4) of this ~~section~~ rule; and
 - (v) notification of the claimant's right to request an in-person hearing.
- ~~(3)~~ (4) The claimant or provider shall have adequate opportunity:

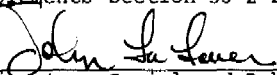
- (a) to examine the contents of his case file, except for those portions which the claimant is precluded from examining by federal regulation or directive of a medical professional, and all documents and records to be used by the Department at the hearing at a reasonable time prior to the hearing as well as during the hearing. Portions of the case file, documents and records that the claimant is not allowed to examine are not admissible as evidence at the hearing;
- (b) at his option, to present his case himself or with the aid of an authorized representative;
- (c) to bring witnesses;
- (d) to establish all pertinent facts and circumstances;
- (e) to advance arguments without undue interference; and
- (f) to question or refute any testimony or evidence, including opportunities to confront and cross-examine adverse witnesses.

3. The purpose in amending this rule is for cost effectiveness and timeliness in disposing of hearing requests through SRS. SRS is not eliminating the in-person hearing procedure but where the issue is not complex and both parties to the action are agreeable, a telephone conference hearing will be used in place of an in-person hearing.

4. Interested parties may submit their data, views, or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana, no later than September 11, 1981.

5. The Office of Legal Affairs, Department of Social and Rehabilitation Services has been designated to preside over and conduct the hearing.

6. The authority of the agency to amend the rule is based on Sections 53-2-201, 53-2-206, 53-4-212, 53-6-113, and 53-7-102, MCA, and the rule implements Section 53-2-201, MCA.



Director, Social and Rehabilitation Services

Certified to the Secretary of State August 3, 1981.

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

In the matter of the amendment	)	NOTICE OF THE PROPOSED
of Rules 46.5.114, 46.5.115	)	AMENDMENT OF RULES 46.5.114
and 46.5.116 pertaining to	)	46.5.115, AND 46.5.116 PER-
eligibility for child and	)	TAINING TO ELIGIBILITY FOR
family protective services,	)	CHILD AND FAMILY PROTECTIVE
legal termination of parental	)	SERVICES, LEGAL TERMINATION
rights and central registry	)	OF PARENTAL RIGHTS AND
operation	)	CENTRAL REGISTRY OPERATION

TO: All Interested Persons

1. On September 3, 1981, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services building, 111 Sanders, Helena, Montana, to consider the amendment of Rules 46.5.114, 46.5.115, and 46.5.116 pertaining to eligibility for child and family protective services, legal termination of parental rights, and central registry operation.

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

46.5.114 ELIGIBILITY FOR CHILD AND FAMILY PROTECTIVE SERVICES (1) Source of referral:

(a) The parent may request agency intervention in the form of services in the home (i.e., parent-child conflict) or placement (i.e., family emergency, relinquishment, abuse or neglect), as provided in these rules.

(b) The child may request agency intervention regarding alleged abuse or parental failure.

(c) The request for agency intervention may come from another agency or individual and may be oral or written.

(2) Response to the referral:

(a) Any referral indicating that the child may be in immediate danger requires an immediate investigation.

(b) Where immediate danger is not a factor, the nature of the report will determine the urgency of the initiation of an investigation.

(c) All reports shall be entered into the state ~~central registry reporting protective services information~~ system.

(3) Service to the child in the home:

(a) Unless the child is in immediate danger, available community resources should be provided to preserve family unity. The exception to this policy would be the voluntary relinquishment by the parent(s) of the young child, where it is anticipated that the child can be stabilized successfully by an early adoptive placement.

(4) Placement Policy:

(a) Emergency Placement:

(i) When a child is in imminent danger an immediate placement may be made.

(ii) Whenever possible, all efforts should be made to locate parents or relatives rather than placing the child in foster care.

(iii) When an emergency placement is made a parental agreement must be obtained or petition for custody filed with the court within forty-eight hours, not including weekends and holidays.

(b) Temporary placement:

(i) Temporary placement refers to the intent and plan for the child to be returned to his natural home. ~~within six (6) months.~~

(c) Permanent placement:

(i) Permanent placement refers to the intent and plan for the child to be placed in a stabilized setting such as an adoptive home or permanent foster care home.

3. The authority of the agency to amend the rule is based on Section 53-4-111, MCA and the rule implements Section 41-3-202, MCA and Section 41-3-302, MCA, C. 511, L. 1981.

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

46.5.115 LEGAL TERMINATION OF PARENTAL RIGHTS (1) Custody of children:

(a) Refer to section 41-3-102 MCA for definitions of abuse and neglect, dependent youth, and youth in need of care.

(b) Permanent custody means giving the legal status created by an order of the youth court giving a person or agency the right and duty to the care, custody and control of a youth with the authority to consent to the adoption of said youth and severing the rights and duties of the natural parent(s) to the child.

~~(c) Limited custody means the legal status created by an order of the youth court, giving a person or agency the right and duty to the care, custody and control of a youth without the authority to consent to the adoption of the youth and severing the rights and duties of the natural parent to the child.~~

~~(d) (c) Temporary custody means the legal status created by an order of the youth court, giving a person or agency the right and duty to the care, custody and control of the youth, in an emergency situation pending a hearing and final disposition.~~

~~(e) (d) Parental agreement means a time-limited voluntary agreement between the parents and the department permitting the department authority to temporarily place a~~

child in foster care and provide necessary routine medical care. The parents may remove the child from placement and may visit the child during placement.

(2) Voluntary relinquishment occurs when the parents voluntarily relinquish their right to care, custody and control of their child.

(a) When parents wish to relinquish their child giving the department custody, they shall execute an affidavit of waiver of all parental rights, irrevocable relinquishment, relinquishment of child, and consent to adoption. file a petition for relinquishment of custody pursuant to section 40-6-132, MCA.

(b) Voluntary relinquishment documents should accompany a petition to the court for permanent custody with the right to place the child for adoption. The department shall assist any parent requesting assistance in the preparation and filing of petitions for relinquishment of custody.

(c) if the mother of the child is a minor and unwed, one of her parents shall sign the affidavit or the court may appoint a guardian ad litem other than the parent, or both. The department shall offer counseling concerning the consequences of relinquishment to parents desiring to relinquish the custody of their child to the department.

(d) The putative father of a child born out of wedlock shall be informed of his rights regarding the child, and those rights shall be legally terminated if the child is to be free for adoption.

(e) if the putative father of the child born out of wedlock is a minor, one of his parents shall sign the affidavit or the court may appoint a guardian ad litem other than the parent, or both.

(f) (e) If an unwed mother refuses to name the putative father, the record shall show that she was advised of the possibility that the father may have a legal basis to reverse the custody action because of his failure to receive due process required by law and that notification to him by publication may be necessary.

(g) (f) No mother of a child may be compelled to divulge the identity of the father or possible father of her child.

(h) (g) If a mother relinquishes or proposes to relinquish a child for adoption whose natural father's rights have not been properly terminated because of the mother's refusal to name the natural father, the agency shall file a petition for termination of parental rights of the father in the district court to terminate the parental rights of the father. This petition shall be filed and heard prior to or conjointly with the petition for permanent or limited custody, relinquishment.

(i) if a married woman wishes to relinquish a child conceived out of wedlock, her husband, as the legal father must also sign the affidavit cited or summoned by publication.

if a child is born within ten months or 300 days of a divorce, the former husband's rights must be terminated as described above.

(3) Custody of Indian children:

(a) When custody of an Indian child is considered, the tribal heritage shall be documented.

(b) If at all possible, Indian children shall be enrolled in the appropriate tribe.

(c) When permanent or limited custody is sought, the rights of the child to inheritance as a result of his Native American heritage shall be ensured by filing an appropriate petition with the court.

(d) When tribal membership is determined the department shall cooperate with the district court in notifying the child's tribe of, at a minimum:

(i) name of child;

(ii) tribal affiliation;

(iii) nature of the pending proceeding;

(iv) name of the petitioner(s);

(v) statement of right of the child's tribe to intervene;

(vi) location and address, of the court;

(vii) time limit in which to respond.

(4) Termination of Custody:

(a) When the court has placed the custody of a child with the department, it is terminated only by further order of the court, the child's attaining majority, or the death of the child.

(b) Legal adoption of a child terminates the department custody. In the event that the court sets aside an adoption, custody of the child reverts to the agency unless the order states otherwise.

(c) When a child is returned to the natural parent(s) with the intent that he remain in their care, (after a reasonable probationary period) the department shall petition the court to vacate the department's custody.

(5) Jurisdiction:

(a) The jurisdiction for the child custody proceedings is in district court or youth court in the county where the child resides. If the residency of the child is not known, then the court of jurisdiction is the court in the county where the child ~~resides~~ is found.

(b) Tribal courts have jurisdiction over matters which arise on reservations. The tribal court may grant the agency the right of placement and supervision, usually for the purpose of AFDC-foster care payments, but this does not constitute full custody. The tribal court will usually retain the wardship of the child.

(c) The agency does not have the legal base to provide protective services on reservations, with the exception of the Flathead Indian Reservation. The department may enter into

cooperative agreements with the Indian tribes to provide protective services on the reservations.

(6) Proceeding not instituted by the department:

(a) When court proceedings relating to children who are dependent, neglected, abused or in danger of delinquency are initiated by an agency or person other than the department or its local affiliate, the county welfare department, a citation shall be served upon a representative of the department prior to the court hearing. The above applies in all situations other than petitions for temporary investigative authority.

5. The authority of the agency to amend the rule is based on Section 53-4-111, MCA and the rule implements Section 41-3-202, MCA and Sections 40-6-132 through 40-6-134, MCA, C. 530, L. 1981.

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

46.5.116 CENTRAL REGISTRY OPERATION PROTECTIVE SERVICES INFORMATION SYSTEM OPERATION (1) Requirements:

(a) The department is responsible for maintaining a central registry protective services information system on all referrals for child abuse and neglect.

(b) The central registry protective services information system is maintained and administered by the Community services division, hereafter referred to as the division.

(2) Confidentiality of reports:

(a) All reports of the central registry protective services information system are confidential.

(b) Misuse of the information by any employee of the department is grounds for immediate dismissal.

(c) Misuse of information by persons other than department employees shall be grounds for termination of the person's rights to such information.

(d) Periodic statistical reports will be compiled.

(3) Operation of central registry:

(a) Definitions:

(i) "Expungement" means the process of destroying child abuse and neglect information contained in the central registry- protective services information system.

(ii) "Central Registry" or "Registry" "Protective services information system" means a collection of records in a central location of all referrals of child abuse or neglect cases.

(b) Unsubstantiated Unvalidated referrals must be expunged by the division.

(c) Persons who are subjects of the reports have the right to examine the central registry protective services information system material on their case and request changes of incorrect or inaccurate information.

(i) Request for examination of central registry-protective services information system records or changes in the information shall be made to community services division.

(ii) Persons dissatisfied with the response to their request for change of information in the central registry protective services information system have the right to a fair hearing.

(d) At no time shall the identity of the referral source making the initial referral or providing information in the course of the investigation be shared with the person or persons about whom the referral is made.

7. The department is proposing to amend ARM 46.5.114, and ARM 46.5.116 to change the name of the central registry reporting agency since the original name was in conformity with a now-defunct national reporting system. ARM 46.5.114 is also being modified to reflect the deletion by the 47th Legislature in Chapter No. 511 of the concept of limited legal custody which necessitates expanding the time limitations on temporary custody to cover those instances where the child may not be able to return to the family home for an extended period of time.

The proposed amendments to ARM 46.5.115 are necessary to make the rule consistent with statutory changes made by the 47th Legislature concerning the procedure for termination of the parent/child legal relationship by the parent. The amendments further allow for cooperative agreements with Indian tribes concerning protective services as authorized by the 47th Legislature in Chapter No. 309 and notice of Indian child custody proceedings to the child's tribe pursuant to federal law. All other changes are in wording for clarification purposes only.

8. Interested parties may submit their data, views, or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, MT 59604, no later than September 11, 1981.

9. The Office of Legal Affairs, Social and Rehabilitation Services has been designated to preside over and conduct the hearing.

10. The authority of the agency to amend the rule is based on Section 53-4-111, MCA and the rule implements Section 41-3-202, MCA.



Director, Social and Rehabilitation Services

Certified to the Secretary of State August 3, 1981.

15-8/13/81

MAR Notice No. 46-2-300

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

In the matter of the amendment) NOTICE OF PUBLIC HEARING ON
of Rules 46.5.802, and 46.5.803) PROPOSED AMENDMENT OF RULES
pertaining to the licensing of) 46.5.802 AND 46.5.803 PER-
community homes for the develop-) TAINING TO THE LICENSING OF
mentally disabled) COMMUNITY HOMES FOR THE
) DEVELOPMENTALLY DISABLED

TO: All Interested Persons

1. On September 3, 1981, at 2:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider amendments of Rules 46.5.802 and 46.5.803 pertaining to the licensing of community homes for the developmentally disabled.

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

46.5.802 PROCEDURES FOR OBTAINING, SUSPENDING AND REVOKING LICENSES (1) The applicant or licensee may either be the nonprofit corporation sponsoring the community home or the department if an agent of the department has applied for or is sponsoring the community home.

~~(1)~~ (2) Any non-profit corporation ~~or nonprofit association~~ or agent of the department may apply for a license to operate a community home for the developmentally disabled by filling out an application for license, which can be obtained at any office of the department of social and rehabilitation services, ~~or the department of health and environmental sciences.~~

~~(2)~~ (3) Any non-profit corporation ~~or nonprofit association~~ or agent of the department may request that the departments determine whether or not a proposed community home should be licensed according to the law.

~~(3)~~ (4) The department of social and rehabilitation services, in conjunction with the department of health and environmental sciences, shall have the responsibility of licensing community homes.

~~(4)~~ (5) ~~Either~~ The department may make or suspend a license if the home is not in compliance with any of the regulations promulgated by ~~either~~ the department. Revocation or suspension of a license shall not be effective until 10 days after written notification to the licensee, setting forth the areas of noncompliance. The licensee may request a thirty day reprieve to allow the home to obtain or return to compliance. Such reprieve shall be granted upon receiving the

written request setting forth the plan and steps, including time elements of completion for each by the department. Such reprieve shall begin the date of license revocation or suspension, not the date of receiving the request. If the licensee does not submit the written request within five days of the written notice of revocation or suspension, the licensee shall lose such right by default.

If the licensee home is in disagreement with the decision reached by the department, the licensee may appeal the decision in a manner set forth by the departments and provided in these codes. Refer to section ~~(5)~~ subsection (6) below.

~~(5)~~ (6) Any decision regarding licensing may be appealed. The procedure to be followed can be found in ARM 46.2.202. ~~for the department of social and rehabilitation services, and in Title 16, Chapter 27 of the Administrative Rules of Montana for the department of health and environmental sciences.~~

~~(6)~~ (7) The license will be issued for a period not to exceed one year, and shall be renewed annually.

(8) One temporary license may be issued for no longer than 60 days if there are unavoidable delays in the certification process.

~~(7)~~ (9) Any changes in circumstances of the home's original license shall require reevaluation for relicensing.

3. The authority of the agency to amend the rule is based on Sections 53-20-204(1) and 53-20-305(1), (3) MCA, C. 271, L. 1981 and the rule implements Sectins 53-20-303(1) and 53-20-305 MCA, C. 271, L. 1981.

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

46.5.803 REQUIREMENTS FOR LICENSES (1) The departments of health and environmental sciences and social and rehabilitation services will license only those community homes for the developmentally disabled persons which comply with Montana law and these regulations.

(a) A community home for the developmentally disabled will only be licensed by the department if there is written certification from the state fire marshal's office that the home meets the life-safety codes as adopted by that office.

(b) A community home for the developmentally disabled will only be licensed by the department if there is written certification from the local health sanitarian or state health sanitarian (if the local sanitarian is unavailable) that the home meets health and safety regulations as outlined in the following applicable regulations.

(c) Local health sanitarians are permitted to charge a reasonable fee to the applicant or licensee for their inspection services.

(i) Reasonable fee means a fee consistent with the normal charges made for similar licensing services such as hotel/motel licensing services or room and board licensing services.

(a) (d) The community home for the developmentally disabled may be licensed for two to eight residents and, with special permission from ~~both~~ the departments, can be licensed for nine to twelve residents.

(2) Rights of residents:

(a) In addition to rights guaranteed to all citizens of the United States, the following specific rights are to be insured.

(i) Residents shall have a right to dignity, privacy, and humane care.

(ii) As part of the functional training in the home, residents shall be allowed to function as independently as possible. Residents shall be expected to make choices about use of leisure time, what clothes to wear, financial management, goal setting, and other basic functions in daily living, insofar as they are able to make these choices.

(iii) Residents shall have the freedom to enter and leave the home as long as their health permits and they observe the rules established through the self-government system of the home.

(iv) Visiting privileges shall be the right of all residents. Some limitation regarding hours and undesirable visitors may be established by the self-government system of the home.

(v) Mail to and from residents is the personal property of the residents.

(vi) No form of restraint shall be used in caring for any resident. Likewise, no sedative will be given in lieu of restraint, except in an emergency under direction of a licensed physician for a temporary period.

(vii) Discipline through deprivation of resident rights, basic needs, or by physical contact shall not be used, unless all other means of control have failed and it is necessary for the safety of the individual, others, or the home. All instances must be recorded in detail, specifying the resident's behavior, the withheld rights and needs, and the form of physical contact.

(viii) The resident shall have access to private telephone communication.

(ix) Each resident shall have adequate clothing.

(x) Each resident shall have the right to keep and use his own personal possessions.

(xi) Each resident shall have the right of access to his own personal money except where abridged by law.

(xii) The residents shall have a system of self-government. This system shall include the means by which the residents participate in the self-government. The system shall be flexible and change accordingly.

(3) Training program:

(a) Training programs shall be provided by the group home. Training is a systematic service of learning experiences directed toward a specific goal. The goal of group home living is to learn to live as independently as possible. This shall be done in as normal a way as possible.

(i) Group homes shall provide training in the areas of the individual, the home, and the community.

(A) Training in the area of the individual is to include skill training such as toileting, eating, dressing, grooming, motor, communication, and social interaction.

(B) Training in the area of the home includes items such as housekeeping, cooking, clothing care, money management, shopping, meal planning, telephone use, and yard maintenance.

(C) Training in the area of community includes items such as use of public transportation, public recreation facilities, restaurants, knowledge of safety and traffic signs, and knowledge of places to receive assistance.

(b) Training sessions shall be of sufficient frequency and duration to demonstrate progress.

(i) Documentation of training sessions and progress shall be done during or immediately after each session.

(ii) The documentation of training and progress shall be recorded in each resident's record.

(iii) An evaluation review and summary shall be completed each month to determine the effectiveness of each training program and to determine new needs.

(iv) When a review shows a program not to be progressing, the program should be examined for possible necessary alterations. Alternatives may be necessary in areas such as: the training technique is not appropriate; the objectives are not stated in small enough units; the training sessions are not of sufficient frequency or duration; or the resident may not be ready to learn that level of skill.

(c) There shall be continuity and consistency between the training program in the group home and other training the individual is receiving in any other program in the community in which each resident participates.

(4) Administration:

(a) Organization:

(i) The community home for the developmentally disabled shall be organized and under a governing authority which assumes full legal responsibility for the overall conduct of the facility. The governing authority may be an individual, partnership, board, non-profit association, non-profit corporation, or governmental unit.

(ii) The governing authority may serve as administrator or shall appoint an administrator and delegate to him the internal operation of the facility in accordance with established policies.

(A) The administrator and community home operators shall be capable of making mature judgements and have no relevant disabilities which interfere with carrying out their responsibilities.

(B) The administrator's and community home operator's employment shall be based upon their qualifications and abilities. There shall be no discrimination because of sex, color, creed, ethnic or national origin.

(b) Personnel policies and records:

(i) Hours of work, vacation time, pay and allowances and duties of employees shall be established.

(ii) A record shall be kept of all accidents to employees sustained in the course of employment in accordance with the regulations established by the division of worker's compensation.

(iii) All personnel shall furnish acceptable medical evidence of freedom from communicable and infectious diseases at the time of employment and annually thereafter.

(iv) Required staffing--there shall be someone in charge of the home at all times capable of providing assistance to the residents. There shall be additional personnel as necessary to provide the necessary services in the home.

(v) Community home operators shall have the ability to understand, accept, and work with the developmentally disabled. Community home operators or their designated representatives shall be responsible for:

(A) the care and development of each resident;

(B) the development and maintenance of a normal home-like environment that is conducive to the achievement of optimal development by each resident;

(C) supervision of all employees of the home giving service to the residents;

(D) objective observation of each resident;

(E) making a record of the details of any accident to a resident within or outside the home;

(F) calling the resident's family or interested persons and the attending physician when considered necessary; and

(G) assuring basic nutritional requirements are provided and assisting in menu planning, budgeting, shopping, and housekeeping.

(c) Admission, transfer and discharge:

(i) Admission standards:

(A) A resident shall be able to enjoy residential accommodations which meet his needs, participate in training, educational programs, and participate in community life activities.

(B) A resident shall have mobility. This includes persons who use devices such as canes, crutches, walkers and wheelchairs to facilitate mobility.

(C) A resident shall require only guidance or supervision with self-administered medication or treatment.

(ii) The administrator, community home operator, and governing authority of a community home for the developmentally disabled, together with the placing agency, shall be responsible for determining the residents to be admitted to the facility. Placement planning shall include the resident's choice. The desires of the parents, guardian, or advocate will also be considered.

(iii) The administrator shall require that each applicant is medically determined to be free of communicable and infectious diseases at the time of admission and annually thereafter. The resident shall have annual physical examinations, as well as other medical, eye and dental services as needed. Other medical services shall be arranged for each resident when determined appropriate by the community home operator and service worker of the resident.

(iv) Any change in living arrangements because of a change in health or behavior shall be done in consultation with the administrator, community home operator, placing agency worker, the resident, family, guardian or advocate.

(v) All personal property belonging to a resident must be returned to him on transfer or discharge.

(5) Records and reports:

(a) Records:

(i) Records shall be maintained in the home by the administrator and/or the community home operator at all times and be available to the resident, administrator, community home operator, governing authority, placing agency, family or guardian, and licensing agencies. Records, therefore, should record objective data and observable behaviors rather than inferences, assumptions, and interpretations that may not be defensible.

(ii) Each resident record shall be composed of the following:

(A) Admission record, including data of admission and discharge; name and address of resident; birthdate; social security number; marital status; financial responsibility; religious affiliation; age of onset of disability; name, telephone number and address of medical personnel, the physician and person to be notified in an emergency; and names, addresses and telephone numbers of other interested persons or agencies.

(B) A record of any medical determination.

(C) An incident report shall be kept of all accidents and shall include the following: name and address of resident, resume and cause of accident, injuries sustained, and time physician notified.

(D) Objective observations, significant occurrences, and monthly progress notes shall be recorded. Training records as required would also be included here.

(iii) The disposition of resident records shall be as follows:

(A) All resident records shall be returned to the placement agency after discharge or death of the resident.

(B) In the case of private placement, all resident records shall be retained for five (5) years after the last discharge date or proof of death.

(iv) Prior to returning to the placement agency or to destroying any record, a summary must be prepared containing the name of the resident; age; date of birth; social security number; admission and discharge; name of attending physician and next of kin or placing agency. The summary shall be in a permanent record of the home. In the event the home ceases to operate, the summary of the permanent record shall be submitted to the department of social and rehabilitation services.

(v) Provision shall be made for the safe storage of all records required by these rules. All records shall be checked for completeness prior to filing.

(6) Resident prescriptions:

(a) Medications:

(i) All medications prescribed by a physician shall be self-administered under supervision of the community home operator or their designated representative.

(ii) Stocking of drugs is prohibited.

(iii) All prescribed medications are the property of the resident and may be stored by the administrator or houseparent. Any medication prescribed for a resident shall not be used by any other person. Unused, outdated and discontinued medication shall be disposed of on advice of a physician.

(7) Dietary services:

(a) Nutritional requirements:

(i) Food shall be prepared, served, and eaten family style.

(ii) Food served shall meet the nutritional needs of the residents in accordance with recommendations of the food and nutritional board of the national research council adjusted for age, sex and activity. Consultation, for assistance of nutritionist or dietitian, is recommended.

(iii) Therapeutic diets shall be prepared and served if prescribed by a physician.

(iv) A choice and variety of foods should be available.

(v) Snacks should be available at appropriate times.

(8) Maintenance, housekeeping and sanitation:

(a) Maintenance: Every home shall have an effective maintenance program to:

(i) Keep the building in good repair and free of hazards, such as cracks in floors, walls or ceilings; warped or loose boards, broken, loose or cracked floor coverings; loose or broken windowpanes and similar hazards.

(ii) Keep all electrical, mechanical, water supply, fire protection and sewage disposal systems in a safe, functioning condition. Electrical cords, outlets, switches and appliances shall be maintained in a safe condition.

(iii) Keep all plumbing fixtures in good repair, properly functioning and provided with protections to prevent contamination from entering the water supply.

(iv) Inspect the heating system regularly and make all necessary repairs to maintain it in a safe, functioning condition.

(v) Maintain interior and exterior of the building. Loose, cracked or peeling wallpaper or paint shall be promptly replaced or repaired to provide a satisfactory finish.

(vi) Keep all furniture and furnishings in good repair.

(vii) Keep the grounds and other buildings in a safe and sanitary condition. Grounds shall be kept free of insect and rodent breeding areas.

(b) Housekeeping: Every home shall have an effective housekeeping program to:

(i) Maintain the building in a clean, safe and orderly condition using accepted practices and procedures.

(ii) Keep all rooms and corridors clean and arranged in an orderly fashion. This includes food preparation, storage and serving areas.

(iii) Keep floors clean, slip-proof and free from tripping hazards.

(iv) Control odors by cleanliness and proper ventilation. Deodorant shall not be used to cover up odors caused by unsanitary conditions or poor housekeeping practices.

(v) Keep storage areas, attics, basements and similar areas free of accumulations of refuse, discarded furniture, old newspapers, boxes, discarded equipment and similar items.

(vi) Keep the home free of unnecessary accumulations of combustible materials.

(c) Food handling sanitation:

(i) All poisonous compounds shall be used with extreme caution and compounds harmless to humans shall be substituted whenever possible. Poisonous compounds shall not be stored in kitchens, food preparation areas, or food storage areas.

(ii) Effective procedures shall be established by the governing body or administrator for the storage, preparation, and cleaning of food and food handling items.

(d) Laundry service:

(i) If an outside laundry service is not used, the handling of soiled linen will be away from any clean linen. The washing machine and sorting area should be as removed as possible from the dryer and folding operation. Physical separation is desirable, but if exhaust fans are used, the air should pass from clean linen over soiled linen.

(ii) Optimum water temperature should be 120 degrees F. If no-iron linens are used, effective sanitizing action may be obtained by using soft bleach. If regular cotton sheets are used, bleach will be the sanitizing agent. Soaps used for washing must be applied according to the manufacturer's directions.

(iii) The dryer should not be overloaded to insure sanitizing action by drying and not heat.

(e) Garbage disposal:

(i) All garbage shall be stored and disposed of in a manner that will not permit the transmission of contagious diseases, create a nuisance, or provide a breeding place for flies. All containers for garbage should be watertight, have tight-fitting covers and be rodent proof. Containers shall be thoroughly scrubbed.

(9) Water supply and sewerage disposal:

(a) Water supply:

(i) Where a public supply of water of satisfactory quantity and pressure is available, connection shall be made thereto and its supply used exclusively.

(ii) If a public supply is not available, a private water supply system may be developed and used as approved by the department of health and environmental sciences.

(A) No well casing shall terminate in any pit or space extending below ground level. All well casings shall be properly sealed and shall terminate above the ground level by at least one foot.

(B) The local sanitarian should be contacted to make the water test. Water samples shall be submitted for testing at least once monthly and, where conditions demand, twice monthly.

(b) Sewerage system:

(i) All sewage and liquid waste shall be disposed of in the public sewerage system if available.

(ii) Where a public sewerage system is not available, sewage and liquid waste shall be collected, treated and disposed of in private treatment facilities, the construction, maintenance and operation of which must be approved by the department of health and environmental sciences.

(iii) Plans for any proposed disposal system must be approved by the department of health and environmental sciences before construction is started.

(10) Furnishings, equipment and supplies:

(a) Furnishings:

(i) Living rooms for resident use shall be provided with reading lamps, tables, chairs and sofas.

(ii) Each resident shall have his own bed which shall be provided with springs in good repair, a clean, firm, comfortable mattress standard in size for the bed. Each bed shall have at least one pillow. There shall be additional pillows available in the facility to satisfactorily serve all needs of the residents.

(iii) Each resident shall have a bedside table or its equivalent with a drawer and a washable top. Each resident shall be provided with adequate private drawer and wardrobe or closet space for clothing in the room.

(iv) Adequate space will be provided for residents' personal possessions.

(v) A reading lamp or equivalent shall be provided for each resident.

(vi) Each bedroom should be provided with a mirror.

(vii) Each bedroom shall have clean, flame-resistant window shades or equivalent in good repair.

(viii) Dining room furnishings shall be provided to accommodate the occupants of the home for meal service.

(b) Equipment and supplies:

(i) Linen. There shall be an adequate supply of linen and other bedding according to the number of residents accepted by the home. Each bed shall be completely changed weekly or as often as necessary.

(ii) Blankets. Sufficient blankets shall be provided to assure warmth for each resident, shall be available as needed, and laundered as often as necessary to assure cleanliness and freedom from odors.

(iii) Bedspreads and mattress covers. There shall be a clean, washable spread and mattress cover for each bed.

(iv) Towels and washcloths. Residents shall be supplied at all times with a clean bath towel and washcloth. They shall be changed at least two times a week.

(v) Towels and soap for common use should not be permitted.

(vi) Adequate and convenient storage space shall be provided for linens, pillows and bedding.

(vii) There shall be cleaning equipment properly maintained and in sufficient quantity to meet housekeeping needs of the home.

(viii) All residents' bedrooms shall be thoroughly cleaned and sanitized between occupancies.

(11) Building and grounds:

(a) Location:

~~(i) Every community home for the developmentally disabled located within the corporate limits of a municipality shall comply with all local ordinances except as provided by statute.~~

~~(ii) Every community home for the developmentally disabled located outside the corporate limits of a municipality shall have identifiable fire and police protection.~~

~~(iii) (i) The home should be located to facilitate use of community services. If the home is not within walking distance of needed services such as recreation and shopping, then transportation shall be readily available at a reasonable cost to the resident.~~

~~(ii) Every community home for the developmentally disabled located outside the corporate limits of a municipality shall have identifiable fire and police protection.~~

(b) Building, general: Every community home for the developmentally disabled shall meet the following requirements.

(i) It shall be in compliance with the National Montana Electrical Code, and be certified by a licensed electrician.

(ii) All plumbing shall comply with applicable local codes, National Plumbing Code and the Montana Plumbing Code.

(iii) Gas piping and appliances shall be approved by the American gas association and shall be connected in accordance with the requirements of the utility company furnishing the gas.

(iv) Any existing elevators or dumbwaiters shall comply with all local and state codes.

(v) All stairways and ramps shall be provided with sturdy handrails on one side for their full length. All stairways shall be provided with non-skid tread.

(vi) Windows in living and sleeping rooms are required.

(vii) Each floor used for living or sleeping purposes shall be provided with a toilet.

(viii) Each bedroom or toilet should open directly into a corridor or common use area such as a living room.

(ix) A resident who is blind or who is not fully ambulatory shall be housed in ground level bedrooms.

(c) Required fire safety standards: Community homes for the developmentally disabled shall conform to the Life Safety Code of 1973, Sections 11-5 and 11-6, as adopted by the state fire marshal's office, as well as local fire and building codes.

(d) Resident bedrooms:

(i) A minimal clear space of 7' x 9' shall be provided for a single bedroom; 13' x 9' for a double room; and 13' x 17' for a three-bed room.

(ii) Residents shall be housed only in rooms designated as bedrooms by the licensing authority. These bedrooms shall only be utilized for the occupants' personal use.

(iii) Beds or other furniture shall not be placed so as to obstruct passage to corridors or exits.

(iv) No part of any room shall be enclosed or subdivided unless such part be separately lighted and ventilated.

(e) Living, dining and recreation areas: The home shall provide a comfortable area, well furnished and well lighted for the use of residents. Under no circumstances shall the living room be used as a bedroom.

(i) The living, dining, or recreation area shall be large enough to provide necessary space for the activities of the residents.

(ii) Dining area shall be well lighted and large enough to accommodate all residents.

(f) Storage space: Every existing home shall provide storage space for supplies, personal possessions of residents and staff, linen and similar items.

(g) Laundry rooms: The laundry area, if provided, shall be in a separate room or rooms.

(i) The following facilities shall be provided when the laundry is done commercially:

(A) adequate space for sorting, processing, and storing soiled linen and storage facilities for clean linen; and

(B) storage space located to facilitate convenient pick-up and deliveries.

(12) Compliance:

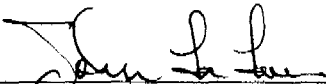
(a) Within fifteen (15) days following the licensing inspection, the licensing authorities shall give written notification to the home of its status for a license. If a home is notified that it does not comply with regulations, it shall provide the licensing authorities within fifteen (15) days of such notification a plan of correction. Approval of a full or provisional license shall be made by the licensing authorities.

5. The authority of the agency to amend the rule is based on Sections 53-20-204(1) and 53-20-305(1), (3) MCA, C. 271, L. 1981 and the rule implements Sections 53-20-303(1) and 53-20-305 MCA, C. 271, L. 1981.

6. The rule is proposed to be amended to give authority to license community homes for the developmentally disabled to the Department of Social and Rehabilitation Services and to remove that licensing authority from the Department of Health and Environmental Sciences. The proposed amendment will also provide for certification for health and fire safety of community homes by the state fire marshal's office and by local or state sanitarians. The proposed amendment to the rule will allow local sanitarians to charge a fee for their certification services. The 47th legislature passed SB 137, which authorizes the changes incorporated in the provisions of these proposed amendments to the rule.

7. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana, 59604, no later than September 11, 1981.

8. The Office of Legal Affairs, Social and Rehabilitation Services has been designated to preside over and conduct the hearing.



Director, Social and Rehabilitation
Services

Certified to the Secretary of State August 3, 1981.

15-8/13/81

MAR Notice No. 46-2-301

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

In the matter of the amend-)
ment of Rules 46.9.302,)
46.9.304 and 46.9.305 per-)
taining to emergency grants-)
in-aid to counties)
)
)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT OF RULES
46.9.302, 46.9.304 AND
46.9.305 PERTAINING TO
EMERGENCY GRANTS-IN-AID TO
COUNTIES

TO: All Interested Persons

1. On September 8, 1981, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rules 46.9.302, 46.9.304 and 46.9.305 pertaining to emergency grants-in-aid to counties.

2. Rule 46.9.302 proposed to be amended provides as follows:

46.9.302 AMOUNT OF GRANT (1) A grant-in-aid will be awarded only for the portion of a poor fund deficiency which is attributable to nonmedical general assistance, the county share of federal-state matching programs, or medical services for indigent persons except those covered by medicaid.

(2) All expenditures from the poor fund from the fiscal year for which a grant-in-aid is requested must be reasonable, necessary, and legal.

(a) All staff of the county department of public welfare will be paid in accordance with 53-2-304, MCA. The department will approve the staffing patterns and approve the filling of any vacant positions consistent with workload and caseload size.

(b) All reimbursement of costs for services provided by consultants and for contracted services will be based on policies in effect at the time for state agencies.

(c) No reimbursement through a grant-in-aid will be allowed if the costs were legally payable or reimbursable from another source.

3. The authority of the agency to amend the rule is based on Section 53-2-201, MCA and the rule implements Sections 53-2-207 and 53-2-323, MCA.

4. Rule 46.9.304 proposed to be amended provides as follows:

46.9.304 INFORMATION REQUIRED (1) An application by a county for an emergency grant-in-aid must be submitted on a form prepared by the department and must contain all information required by the form, including but not limited to the following.

(a) Detailed information and documentation to show:
(i) all sources of revenue to the county poor fund, and all amounts received from each source during the county fiscal year for which the application is made;

(ii) all expenditures from the county poor fund for the fiscal year in which the application is made, including both the amount and purpose of the expenditures;

(iii) projected revenues to the poor fund during the remainder of the fiscal year for which the application is made, including both the amount and source of the projected revenues;

(iv) projected expenditures from the poor fund during the remainder of the fiscal year for which the application is made, including both the amount and purpose of the expenditures; and

(v) an explanation of why the county is experiencing the county poor fund deficiency upon which the application is based.

(b) Detailed documentation, including all relevant fiscal information, to demonstrate that no part of the poor fund deficiency upon which the application is based was caused by expenditures for services, including medical services, to nonindigent persons.

(c) Detailed documentation, including all relevant fiscal information, to demonstrate that the rates for services, including medical services, charged by a county facility to indigent persons do not exceed the lesser of the rates charged for like services for nonindigent persons, or up to but not more than medicaid reimbursement rates.

(2) If the county operates a county facility, the application must contain the following:

(a) the name of the facility;

(b) the fund used for fiscal operations of the facility;

(c) whether or not the facility limits admissions or services solely to indigent persons; and

(d) if the facility serves or admits both indigent and nonindigent persons, percentage of the facility's admissions of, and other services provided to each.

5. The authority of the agency to amend the rule is based on Section 53-2-201, MCA and the rule implements Sections 53-2-207 and 53-2-323, MCA.

6. Rule 46.9.305 proposed to be amended provides as follows:

46.9.305 CONDITIONS FOR GRANTS (1) A county will be awarded an emergency grant-in-aid only if it supplies all information and meets all other conditions required by applicable Montana law and these rules.

(2) A county which operates a county facility will be awarded an emergency grant-in-aid only if it meets, in addi-

tion to all other conditions imposed by law, one of the following conditions:

(a) the county must limit admissions to or services provided by any county facility solely to indigent persons; or

(b) the county must operate any county facility out of a fund separate and distinct from the county poor fund, and must bill the county poor fund or other appropriate party (such as medicaid) for services provided to indigent persons. Rates for services provided to indigent persons by such a facility may not exceed the lesser of the rates for like services charged to nonindigent persons, or up to but not more than medicaid reimbursement rates; or

(c) the county, if it operates a county facility out of the county poor fund, must use a fiscal record keeping system by which it can demonstrate that no part of the poor fund deficiency upon which the application is based was caused by expenditures for services for nonindigent persons. Rates for services provided to indigent persons by such a facility may not exceed the rates for like services charged to nonindigent persons.

(3) Applications which fail to supply all required information, or meet all required conditions will be denied.

7. The authority of the agency to amend the rule is based on Section 53-2-201, MCA and the rule implements Sections 53-2-207 and 53-2-323, MCA.

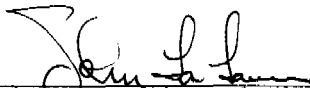
8. The 47th legislature passed HB 94 and 291, both of which required the department to develop rules governing the grant-in-aid process. The statement of legislative intent attached to HB 291 directed the department to develop rules in four broad categories:

- 1) Staffing patterns required by caseload;
- 2) Necessity of county medical costs as consistent with Medicaid reimbursement rates;
- 3) Consultants and contracted services based on policies followed by state agencies; and
- 4) Costs which are legally payable from other sources.

These rules are developed to comply with the statement of legislative intent.

9. Interested parties may submit their data, views, or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana, no later than September 17, 1981.

10. The Office of Legal Affairs, Department of Social and Rehabilitation Services has been designated to preside over and conduct the hearing.



Director, Social and Rehabilitation Services

Certified to the Secretary of State August 3, 1981.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF LANDSCAPE ARCHITECTS

In the matter of the amendment) NOTICE OF AMENDMENT OF ARM
of ARM 40.22.409 concerning) 40.22.409 FEE SCHEDULE
fees.)

TO: All Interested Persons:

1. On June 11, 1981 the Board of Landscape Architects published a notice of proposed amendment of ARM 40.22.409 concerning fees at pages 535 - 536, 1981 Montana Administrative Register, issue number 11.
2. The board has amended the rule exactly as proposed.
3. No comments or testimony were received.

BOARD OF LANDSCAPE ARCHITECTS
ESTHER HAMEL, CHAIRMAN

BY: 

GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 3, 1981.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amend-)
ment of ARM 10.57.207, re-)
garding additional teacher)
credits) NOTICE OF AMENDMENT OF
ARM 10.57.207, CORRES-
PONDENCE, EXTENSION AND
INSERVICE CREDITS

TO: All Interested Persons:

1. On June 25, 1981 the Board of Public Education proposed to amend rule 10.57.207, Correspondence, Extension and Inservice Credits, at page 591 of the 1981 Montana Administrative Register, issue number 12.
2. The agency has amended the rule as proposed.
3. No comments or testimony were received.

Allen D. Gunderson

ALLEN D. GUNDERSON, CHAIRMAN
BOARD OF PUBLIC EDUCATION

by *Heidi Ann D. ...*
Assistant to the Board

Certified to the Secretary of State August 4, 1981.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amend-)
ment of ARM 10.57.208, re-)
garding teacher reinstatement)
ment)

) NOTICE OF AMENDMENT OF
) ARM 10.57.208, REIN-
) STATEMENT
)

TO: All Interested Persons:

1. On June 25, 1981 the Board of Public Education published notice of amendment to ARM 10.57.208, Reinstatement, at page 593 of the 1981 Montana Administrative Register, issue number 12.
2. The agency has amended the rule as proposed.
3. No comments or testimony were received.

Allen D. Gunderson

ALLEN D. GUNDERSON
BOARD OF PUBLIC EDUCATION

by

Wanda Van Dyke
Assistant to the Board

Certified to the Secretary of State August 4, 1981

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amend-) NOTICE OF AMENDMENT OF
ment of ARM 10.57.402 re-) ARM 10.57.402 CLASS 2
garding the standard) STANDARD TEACHING CERTI-
teaching certificate) FICATE

TO: All Interested Persons:

1. On June 25, 1981 the Board of Public Education proposed to amend rule 10.57.402, Class 2 Standard Teaching Certificate, at page 595 of the 1981 Montana Administrative Register, issue number 12.
2. The agency has amended the rule as proposed.
3. No comments or testimony were received.

Allen D. Gunderson

ALLEN D. GUNDERSON, CHAIRMAN
BOARD OF PUBLIC EDUCATION

by *Wanda L. Dym*
Assistant to the Board


Certified to the Secretary of State August 4, 1981.

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

In the matter of the amendment) NOTICE OF THE AMENDMENT
of rule 16.2.704, relating to) OF RULE 16.2.704
the assessment of EIS fees for)
subdivision review)

TO: All Interested Persons

1. On June 25, 1981, the department published notice of a proposed amendment of rule 16.2.704 concerning assessment of EIS fees for subdivision review at page 597 of the 1981 Montana Administrative Register, issue number 12.
2. The department has amended the rule as proposed.
3. No comments or testimony were received from the public.



JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State August 3, 1981

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

In the matter of the amendment) NOTICE OF AMENDMENT
of rule 16.8.806, definitions) OF RULE 16.8.806
for ambient air quality) (Fluoride in Forage
regarding fluoride in forage) Definitions)

TO: All Interested Persons

1. On April 16, 1981, the board published notice of a proposed amendment of rule 16.8.806 concerning definitions for ambient air quality regarding fluoride in forage at page 335 of the 1981 Montana Administrative Register, issue number 7.

2. The board has amended the rule with the following changes:

16.8.806 DEFINITIONS In this sub-chapter, the following words and phrases shall have the following meanings:

(1) "Act" means the Montana Clean Air Act.

(2) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(3) "Ambient air quality standards" means a permissible level of an air contaminant in the ambient air as defined by the maximum frequency with which a specified level may be exceeded or by a maximum level of an air contaminant in or on body or plant tissues.

(4) "Annual average" means an arithmetic average of all valid recorded averages of any 12 consecutive calendar months provided that:

(a) at least forty-five 24-hour average recorded values are necessary and each of these values must be separated from the previous value by at least 6 days, or

(b) at least 6570 hourly average valid recorded values are necessary with a minimum of 400 of such values recorded in each of the 12 consecutive calendar months.

(5) "Approved equivalent method" means any method of measuring concentrations of air contaminants regulated in this sub-chapter which has been approved as an equivalent method by the U.S. Environmental Protection Agency pursuant to Title 40, Part 53, Code of Federal Regulations or which has been approved by the department. Methods approved by the department are kept on file and are available for inspection and copying.

(6) "Carbon monoxide" means the gas having the molecular composition of one carbon atom and one oxygen atom.

(7) "Department" means the department of health and environmental sciences.

(8) "Eight hour average" means the arithmetic average of all valid recorded values during any consecutive eight hours but not less than six valid hourly averages.

(9) "Fluoride" means fluorine combined with one or more other substances.

(10) "Forage" means any plant part which is grazed or browsed.

(11) "Grams per square meter" (gm/m²) means a concentration numerically equal to the mass of an air contaminant (in grams) deposited on one square meter of surface.

(12) "Grazing season average" means, for each SAMPLE plot, an arithmetic average of all monthly averages for ~~that sample plot for the months of April through September--~~ WHICH SAMPLING OCCURRED IN ACCORDANCE WITH ARM 16.8.813. The minimum number of ~~sample plot values~~ MONTHLY AVERAGES shall be ~~five~~ AT LEAST THREE for each ANY sample plot.

~~(12)~~ (13) "Hourly average" means an arithmetic average of all valid values recorded between the first minute and ~~sixtieth~~ 60th minute of the hour (e.g. 1:00 to 2:00), but not less than two-thirds of the data obtainable from the monitoring device during the hour, or an integral sample of more than 40 minutes.

~~(13)~~ (14) "Hydrogen fluoride" means the gas having the molecular composition of one fluorine atom and one hydrogen atom.

~~(14)~~ (15) "Hydrogen sulfide" means the gas having molecular composition of one sulfur atom and two hydrogen atoms.

~~(15)~~ (16) "Lead" means elemental lead or lead in combination with any other substance.

~~(16)~~ (17) "Micrograms per cubic meter" (ug/m³) means a concentration numerically equal to the mass of an air contaminant present (in micrograms) in a one cubic meter of air, corrected to standard conditions.

~~(17)~~ (18) "Micrograms per gram" (ug/g) means a concentration numerically equal to the mass of an air contaminant (in micrograms) in one gram of dry material.

~~(18)~~ (19) "Monthly average" means ~~an~~ the arithmetic average ~~of all valid recorded values of fluoride in forage samples collected in accordance with the department's approved forage sampling protocol during any calendar month--~~ The minimum number of such valid recorded values shall be ~~four~~, provided that each of these ~~four~~ values must be separated from the previous value by at least ~~six~~ days-- for a sample plot, taken for a calendar month ~~April through September only--~~ ALL APPLICABLE MONTHS IN ACCORDANCE WITH ARM 16.8.813 of all sample plot values of fluoride in or on forage samples collected. The minimum number of sample plot values must be two. ~~These 2~~ THE TWO sample plot values must be separated by at least a 12-day interval. Any number of sample plot values in excess of two for any month must be sampled at least X days from each other, where X is the integer value described by the following equation:

$$X = (30 / \text{Number of Sample Plot Values}) - 2$$
 Regardless of the number of sample plot values used to calculate a monthly average, at least one sample plot value must lie within 12 days of the end of the month.

~~(19)~~ (20) "Ninety-day average" means an arithmetic average of all valid recorded values during any ~~ninety~~ 90 consecutive days. The minimum number of valid recorded values shall be ~~ten~~ 10 provided that each of these values must be separated from the previous value by at least ~~six~~ 6 days.

{20} (21) "Nitrogen dioxide" means the gas having the molecular composition of one nitrogen atom and two oxygen atoms.

{21} (22) "Ozone" means the gas having the molecular composition of three oxygen atoms.

{22} (23) "Particle scattering coefficient" means the fractional change in the light intensity per meter of sight path due to particulate matter.

{23} (24) "Particulate matter" means any material, except water in an uncombined form, that is or has been airborne and exists as a liquid or a solid at standard conditions.

{24} (25) "Parts per billion" (ppb) means a concentration of an air contaminant numerically equal to the volume of a gaseous air contaminant present in one 1 billion volumes of air at the same conditions of temperature and pressure.

{25} (26) "Parts per million" (ppm) means a concentration of an air contaminant numerically equal to the volume of a gaseous air contaminant present in one 1 million volumes of air at the same conditions of temperature and pressure.

(27) "Sample plot value" means the results of any chemical analysis performed on a composite of forage grass clippings TAKEN FROM A GIVEN SAMPLE PLOT ON A SPECIFIC SAMPLING DAY.

{26} (28) "Standard conditions" means a temperature of 25° Celsius and a pressure of 760 millimeters of mercury.

{27} (29) "Sulfur dioxide" means the gas having the molecular composition of one sulfur atom and two oxygen atoms.

{28} (30) "Thirty-day average" means an arithmetic average of all recorded values during any consecutive ~~thirty~~ 30 days, but not less than ~~twenty~~ 20 valid ~~twenty-four~~ 24 hour average recorded values or an integral sample of more than ~~twenty~~ 20 days.

{29} (31) "Twenty-four hour average" means an arithmetic average of each valid recorded value during any consecutive ~~twenty-four~~ 24 hours, but not less than ~~eighteen~~ 18 valid hourly averages or an integral sample of more than ~~eighteen~~ 18 hours.

{30} (32) "Valid recorded value" means data recorded, collected, transmitted and analyzed as required by ARM 16.8.811.

{31} (33) "Year" means any 12 consecutive months.

3. Comment: Definition of "grazing season average" [(12) above] must be changed. Many were dissatisfied with proposed definition; to some the season was too long, to others, the season was too short, particularly for the eastern portion of Montana.

Response: Because of the comments received, the definition of grazing season average was changed from a set period of April through September to a flexible season in which geography and climatology will dictate the length of the season. This change ameliorated the concerns that eastern Montana would not

be protected since its grazing time period is longer than the grazing period in other parts of Montana. Changes in "grazing season average" required accommodating changes in "monthly average".

Comment: Clarify "sample plot value."

Response: Proposed clarification accepted.

In the matter of the amendment	)	NOTICE OF THE AMENDMENT
of rule 16.8.813, setting an	)	OF RULE 16.8.813
ambient air quality standard	)	(Fluoride in Forage)
and protocol for fluoride in)	
forage)	

TO: All Interested Persons

1. On April 16, 1981, the board published notice of a proposed amendment of rule 16.8.813 concerning an ambient air quality standard and protocol for fluoride in forage at page 338 of the 1981 Montana Administrative Register, issue number 7.

2. The board has amended the rule with the following changes:

16.8.813 FLUORIDE IN FORAGE (1) No person shall may cause or contribute to concentrations of fluoride in or on forage which exceed the following standard standards:

~~(a)--Monthly average--20-micrograms-per-gram-~~

~~(2)--Sampling method for fluoride in or on forage--For determining compliance with this rule, concentrations of fluoride in or on forage shall be determined from forage collected according to a sampling protocol approved by the department and analyzed by the semiautomated method, as more fully described in "Methods of Air Sampling and Analysis, Second Edition" (1977), Method No. 122-2-02-68T, provided that the surfaces of the plant material are not to be washed or by an approved equivalent method--~~

NOTE: The following is all new material as proposed in the April 16, 1981 notice. Deletions and additions resulting from the board hearing are indicated by interlining and underlining for your convenience in reading:

(a) Monthly average, ~~April through September only~~: 50 micrograms per gram.

(b) Grazing season average: 35 micrograms per gram.

(2) The following sampling protocol must be applied:

(a) A sample plot must be located on an area which has forage grass being grazed by domestic livestock, or an area upon which forage is grown for use or commercial sale as a livestock feed. A sample plot must be located on a U.S.

Geological Survey Map, or on an aerial photograph, for consistency of resampling. A written description of the plot location is acceptable, in the alternative, if the area can be verbally defined to the satisfaction of the department. Plot descriptions must be filed with the department's Air Quality Bureau on standard site identification forms provided by the department. The location of sample plots must be approved by the department.

(b) The sample plot must be a minimum of one acre in area. At locations where forage growth is sparse, the sample plot must be large enough to allow a sampling capability, which meets the provisions of sample number and size, as described in this protocol under subsection (3) (e). Location of the plot must be chosen according to the predicted location of maximum fluoride impact. This location must be determined through modeling, historical monitoring data or other scientifically supportable procedures acceptable to the department. In the event that the predicted location of maximum concentration lies in an area unsuitable for sampling, another nearby plot suitable for sampling must be chosen. Locations where grasses are less than 3 cm in height or locations less than 100 meters from dirt roads or at locations less than 30 meters from paved roads must not be sampled.

(c) Sampling of each plot must be performed at least twice per month. The sampling schedule, if twice per month, must provide a minimum of 12 days between sampling periods. Should additional sampling be conducted, sampling intervals must be spaced in accordance with the definition of monthly average to represent the entire monthly forage fluoride uptake. Grazing season sampling must commence in April and continue through September and terminate on the appropriate month following the constraints in subsections (2)(a) and (2)(f) of this rule.

(d) Samples must be collected through the sample period by alternately using S, U, W, S, U, W etc., shaped transects, which traverse the full sample plot. Samples must be collected at regularly spaced distances as one progresses along the transect. Regardless of the plot size, a minimum of 25 clippings per plot must be collected. Clippings collected at each plot must be placed into a single composite sample. Samples must not be washed or in any way treated to remove particulate material from the plant.

(e) Approximately equal-sized clippings of at least 10 grams each must be cut from the forage ~~grasses~~ in a given sample plot. The entire aerial portion above 3 cm of the base of the plant must be collected, unless the splashline is clearly above the 3 cm mark, in which case the vegetation must be cut slightly above the splashline. The clipping must include old and new leaves. Entire leaves must be collected and analyzed rather than only leaf tips or edges. An attempt must be made whenever possible to obtain plant

tissue that is free of dew or other moisture. ~~During April, however, only new growth must be sampled.~~

(f) Only forage grasses must be sampled and only on sample plots on which livestock are actively grazing or sample plots on which forage is grown for use or commercial sale as livestock feed. In order to determine compliance with this rule, forage sampling must occur during months for which any livestock can obtain its minimum nutritional requirements by grazing the land. Sampling may not take place on forage grown for use or commercial sale as a livestock feed unless the sampling takes place during a month in which the forage is growing and the growth is expected to be harvested for use in livestock feeding.

(g) Plant tissue must be stored in the laboratory in labeled and ventilated kraft bags, or other acceptable containers, at temperatures of 2-8° C. The sample tissue must be air dried at a temperature of 80° C (\pm 5° C) for 24 to 48 hours prior to grinding. The tissue shall be milled to pass a 40-mesh sieve.

(h) The composite sample must be thoroughly mixed prior to any chemical analysis. Replicate aliquots are to be taken using a sample splitter or any other unbiased technique, and analyzed chemically for fluoride using the semi-automated method, as more fully described in Methods of Air Sampling and Analysis, Second Edition (1977), Method No. 122-2-02-68T, except that the surfaces of the plant material must not be washed, or by an approved equivalent method. (EDITORIAL NOTE: REMAINDER OF THIS PARAGRAPH HAS BEEN MOVED TO SUBSECTION (j) BELOW.)

(i) A 5-gram replicate aliquot from each plot must be forwarded to the department for quality control purposes. Another aliquot of the collected plant material must be saved for a minimum of 3 years in labeled air-tight plastic containers in the event additional analyses are required.

(j) The department hereby adopts and incorporates herein by reference Methods of Air Sampling and Analysis, Second Edition (1977), Method No. 122-2-02-68T. Methods of Air Sampling and Analysis, Second Edition is a nationally recognized authority setting forth the laboratory analytic procedure for chemical analysis of plant tissue. A copy of Methods of Air Sampling and Analysis, Second Edition (1977), Method No. 122-2-02-68T may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Complex, Helena, Montana, 59620.

3. Comment: A random design be implemented for each sampling plot. Several commentators felt that the proposed manner of walking through a field in an "S," "U," or "W" pattern would be a biased sample and would therefore not yield a correct value.

Response: The Department of Health and Environmental Sciences (Department) considered such a scheme but it was

rejected since the Department felt that such a scheme would be too complicated and expensive for many circumstances. The Department evaluated data collected under intensive sampling in October of 1980 and found no difference between the values produced by either method. While the Board does not dispute the fact that the random sampling technique is superior, it believes that it is not necessary at this time. The Department will attempt to keep abreast of this technique and will not hesitate to request a change in the rule if it turns out that as a practical matter there is a significant difference between the two techniques.

Comment: The sampling ought to be conducted more frequently in light of a study which suggested large day-to-day fluctuation in fluoride concentrations.

Response: The Department is aware of the study and in fact used some of the work in developing the protocol. The Board is aware of the daily variation but is not convinced of the necessity for weekly sampling as suggested. The Department will attempt to more closely analyze the situation by conducting some experiments to determine if the same variation applies to Montana.

Comment: Alfalfa and other plants normally consumed by cattle are not grasses. These commentators believed that these types of plants would not apply in the sampling protocol.

Response: The Board believes that the inclusion of these plants is within its rulemaking authority and intends that they be sampled as part of the rule.

Comment: Sampling exactly 10 grams would be difficult for each clipping. The commentator also noted that it would be difficult to determine which part of the plant would be ignored in this method.

Response: The Board did not intend that exactly a 10 gram clipping was to be gathered. It is intended that at least 10 grams be sampled, but more would be acceptable as long as all clippings were approximately of equal size. The entire clipping, therefore, would be analyzed and not just a portion of the plant.

Comment: The protocol in the proposed rule could prevent local "hot spots" from being sampled. It was noted that one clipping could have values as low as 20 while the next clipping could be as high as 59.

Response: The Board believes that it is appropriate to sample a plot of one-acre minimum size because livestock do not simply stand in one area and eat; they move around the field from one location to another, and sample the entire area. The protocol was designed to better reflect the habits of livestock rather than select local "hot spots."

Comment: The protocol should be modified to keep the 25 clippings separate up through the grinding procedure. After grinding, it was suggested that equal-portion aliquots be drawn and composited for analysis. These commentators felt this to be a more accurate method of analysis.

Response: The Board does not believe any significant benefit would be gained from such a scheme. As long as approximately equal-sized clippings are being drawn from the sample plot, the proposed protocol should be equal to or superior from the suggested method. The proposed method of combining the entire sample is believed to be adequate.

Comment: The sampling method could be improved by analyzing all of the 25 clippings and then using an arithmetic average of these values.

Response: The Board finds no justification for such a method. It is easier to composite the entire sample rather than make 25 analytical determinations. As long as the sample can be thoroughly mixed prior to analysis, no benefit from the 25 analyses exists except to better understand the variability of the sampling plot. The Board does not dispute that the 25 samples offers an advantage of obtaining more information, but it does not offer an advantage in determining compliance with the rule.

Comment: The proposed standards are too lenient or too strict.

Response: The Board reviewed literature data and economic data which were submitted as part of the original MAAQS hearings. The Board believes that based upon this data, the values of 35 (grazing season) and 50 (monthly average) best balance the needs of both agriculture and industry.

Comment: Wildlife will not be adequately protected by the sampling protocol since it was limited in area and in its temporal distribution.

Response: The Board felt it important to balance the demands of several groups, the most important groups being the agricultural and industrial sectors. The Board did not specifically include wildlife within the scope of the protocol for the following reasons:

(1) It is believed that livestock are more "sensitive" to fluoride than wildlife, and hence they would already be afforded some protection.

(2) Wildlife have a considerably larger home-range than livestock and would in all likelihood be subject to lower levels of fluoride, since they would probably not frequent industrial areas. Cattle on the other hand are kept within a small area and are likely to graze near an emitting facility for longer periods than wildlife and hence livestock would be likely to receive a larger dose.

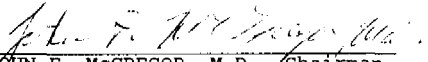
(3) It was unclear which wildlife needed to be protected. The Board has attempted to include deer, elk, and so forth in the consideration by (1) and (2) above. The Board does not know if deer mice, gophers, and the like should also be protected. If these animals are to be protected, then the Board is not aware of any data showing what levels would be considered safe.

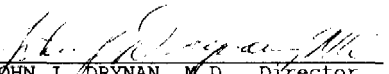
Comment: Landowners near a source should be notified of sampling results.

Response: Results of sampling are public information and available upon request.

Comment: Monthly average should be limited to current year's forage growth.

Response: The purpose of the fluoride in forage standard is to protect livestock. Since livestock are not discriminating epicures, the livestock will eat both new and old growth. Therefore, to adequately protect livestock, it is necessary to monitor old and new forage growth.


JOHN F. MCGREGOR, M.D., Chairman

By 
JOHN J. DRYNAN, M.D., Director
Department of Health and
Environmental Sciences

Certified to the Secretary of State August 3, 1981

VOLUME NO. 39

OPINION NO. 28

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES - Review of condominiums by Department of Health and Environmental Sciences under Sanitation in Subdivisions Act;

LAND DEVELOPMENT - Review of condominiums by Department of Health and Environmental Sciences under Sanitation in Subdivisions Act;

SEWAGE - Review of condominiums by Department of Health and Environmental Sciences under Sanitation in Subdivisions Act;

SUBDIVISIONS - Review of condominiums by Department of Health and Environmental Sciences under Sanitation in Subdivisions Act.

- HELD:1. Condominiums, including those that do not provide "permanent multiple space for recreational camping vehicles or mobile homes," are "subdivisions" and therefore subject to review by the Department of Health and Environmental Sciences under the provisions of the Sanitation in Subdivisions Act, Title 76, Chapter 4, MCA.
2. The Department of Health and Environmental Sciences is required to review condominiums including those condominiums to be constructed on parcels of land that fall outside the definition of subdivision.
 3. The Department of Health and Environmental Sciences' authority to review condominiums includes condominiums to be constructed on parcels of land subdivided before the enactment of the Sanitation in Subdivisions Act.

4. The Department's authority to review condominiums includes condominiums to be built on parcels of land previously approved by the Department for uses not including condominiums.

28 July 1981

John W. Bartlett, Deputy Director
Department of Health and
Environmental Sciences
Cogswell Building
Helena, Montana 59620

Dear Mr. Bartlett:

You have requested my opinion on the following questions:

- I. Are condominiums that do not provide "permanent multiple space for recreational camping vehicles or mobile homes" "subdivisions" and therefore subject to review by the Department of Health and Environmental Sciences under the provisions of the Sanitation in Subdivisions Act, Title 76, Chapter 4, MCA?
- II. Is the Department of Health and Environmental Sciences required to review condominiums to be constructed on parcels of land that fall outside the definition of subdivision?
- III. Is the Department of Health and Environmental Sciences required to review condominiums to be constructed on parcels of land subdivided before the enactment of the Sanitation in Subdivisions Act, Chapter 95, Laws of Montana, 1961?
- IV. Is the Department of Health and Environmental Sciences required to review a condominium to be built on a parcel of land previously approved by the Department for a use not including condominiums?

The application of the Sanitation in Subdivisions Act to condominiums has not arisen often in Montana. However, the

increasing preference for this form of real estate ownership has raised questions concerning the precise status of condominiums under the Act.

I.

Because of the awkward wording of the definition of "subdivision" in the Sanitation in Subdivisions Act, it is not altogether clear whether the definition includes all condominiums or an extremely small class of condominiums. Section 76-4-102(7), MCA provides:

'Subdivision' means a division of land or land so divided which creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and any condominium or area, regardless of size, which provides permanent multiple space for recreational camping vehicles or mobile homes.

The particular ambiguity at the heart of your question arises because it is not clear whether the phrase "...regardless of size, which provides permanent multiple space for recreational camping vehicles or mobile homes" refers only to one antecedent, "area", or to all antecedents, "any resubdivision and any condominium or area." I conclude that the phrase refers to only one antecedent, "area."

This conclusion is consistent with the interpretation found in a recent Attorney General's Opinion construing identical language found in the Montana Subdivision and Platting Act, Title 76, Chapter 3, MCA. In 39 OP. ATT'Y GEN. NO. 14, (April 27, 1981), I stated:

On its face this section provides that the following activities are deemed to be subdivisions:

1. A division of land or land so divided which creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed.

2. Any resubdivision.

3. Any condominium.
4. Any area, regardless of size, which provides or will provide multiple space for recreational camping vehicles.
5. Any area, regardless of size, which provides or will provide multiple space for mobile homes.

This construction is supported by a number of rationales.

First, construing the definition of "subdivision" in this manner liberally construes the term "condominium." As the Montana Supreme Court noted in State ex rel. Florence-Carlton School District v. Board of County Commissioners of Ravalli County, Mont., 590 P.2d 602, 605 (1978):

Legislation enacted for the promotion of public health, safety, and general welfare, is entitled to 'liberal construction with a view towards the accomplishment of its highly beneficent objectives'.

It is clear that the lease or sale of space for use by recreational vehicles or mobile homes on a combination of individual and common ownership basis may possibly occur in contemporary real estate practice. Nonetheless, the term condominium has a broader meaning and can include a variety of structural and ownership arrangements such as townhouses, multiple family dwellings, or multi-unit dwellings sold on a time-share or interval ownership basis.

In recent years..."condominium" has come to refer specifically to a multiunit dwelling, each of whose residents (unit owners) enjoys exclusive ownership of his individual apartment or unit, holding a fee simple title thereto, while retaining an undivided interest, as a tenant in common, in the common facilities and areas of the building and grounds which are used by all the residents of the condominium.

Typically, a condominium consists of an apartment house in which the units consist of individual apartments and the common areas consist of the remainder of the building and grounds.

15A Am. Jur.2d Condominiums and Co-operative Apartments §1 (1976).

It is significant to note that the inclusion of "condominium" in the Sanitation in Subdivisions Act occurred in 1973. At the Senate and House hearing on HB 465, which included this language, the Department of Health and Environmental Sciences offered testimony in support of the amendments including the following:

In recent years, there has been developed a new form of selling property known as the condominium. In this method, each person buying an apartment, lot or residence also obtains an interest in all of the land surrounding the development. In several subdivisions, the purchasers are buying small lots with the understanding that they will have the benefits of large tracts of land surrounding each lot for their recreational use. In some instances, utilities such as wells or drainfields are being installed in the community or open space areas. At the present time, there is no way to control such developments except where each individual lot site is platted and filed.

Thus, it was clearly understood by the Legislature at that time that the broader definition of condominium was intended.

This interpretation is consistent with the public policy stated in section 76-4-101, MCA.

It is the public policy of this state to extend present laws controlling water supply, sewage disposal, and solid waste disposal to include individual wells affected by adjoining sewage disposal and individual sewage systems to protect the quality and potability of water for public water supplies and domestic uses and to protect the quality of water for other beneficial uses, including uses relating to agriculture, industry, recreation, and wildlife.

This expression of legislative concern regarding water supply, sewage disposal, and solid waste disposal logically includes concern for the impact of the high density development that is characteristic of condominiums. Another rationale supporting the conclusion that the qualifying

phrase in the definition of "subdivision" applies only to the word "area" involves the application of well-established rules of statutory construction. In a recent case, the Montana Supreme Court noted that "...a relative clause must be construed to relate to the nearest antecedent that will make sense." [Citations omitted.]" Dussault v. Hjelm, Mont., 627 P.2d 1237, 1239 (1981). Applied to the definition of subdivision, this rule supports the conclusion that the phrase "regardless of size, which provides permanent multiple space for recreational camping vehicles or mobile homes" only applies to the antecedent "area".

In reaching this conclusion I have given careful consideration to the arguments that have been presented in support of an alternative conclusion. I will briefly address one such argument, that a condominium is a division of a building under section 76-3-204, MCA, and therefore exempt from review under section 76-4-125, MCA, and state my reasons for rejecting it.

Section 76-4-125(2), MCA, provides in pertinent part:

(2) A subdivision excluded from the provisions of chapter 3 shall be submitted for review by the department according to the provisions of this part, except that the following divisions are not subject to review by the department:

(a) the exclusions cited in 76-3-201 and 76-3-204;

* * *

Proponents of a narrow construction of the definition of "subdivision", i.e., limiting the reference to "condominium" to an extremely narrow class of condominiums, argue that section 76-3-204, MCA, exempts the larger class of condominiums from review by the department. Section 76-3-204, MCA, provides:

The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land, as that term is defined in this chapter, and is not subject to the requirements of this chapter.

It is relevant to note that the preceding section, section 76-3-203, MCA, refers specifically to "condominiums," it

provides:

Condominiums constructed on land divided in compliance with this chapter are exempt from the provisions of this chapter.

If section 76-3-204, MCA, is a further exemption for condominiums, as has been suggested, the legislature should have used consistent terminology throughout and referred to condominiums specifically in creating the latter exemption. Since the legislature did not use consistent terminology I must conclude that section 76-3-204, MCA, refers to something other than condominiums and that the section does not exempt condominiums from review, in light of the compelling arguments supporting inclusion.

II.

Your next question concerns whether a condominium to be constructed on a parcel of land containing twenty (20) acres or more is subject to review by the department. I conclude that it is.

The definition of "subdivision" found in section 76-4-102(7), MCA, encompasses divisions of land containing less than twenty (20) acres "and includes any resubdivision and any condominium..." (Emphasis added.) "Resubdivision" is simply a class within the larger definition of "subdivision" comprising those subdivisions that have been previously divided. Likewise, "condominium" is an additional independent class expressly included in the definition of "subdivision." This interpretation is consistent with legislative concern respecting developments where more dense populations result in more intense water and sewer usage thereby prompting concern for public health. It is also consistent with the construction expressed in my recent opinion concerning the Montana Subdivision and Platting Act and section 76-4-103, MCA. See 39 OP. ATT'Y GEN. NO. 14 (April 27, 1981).

III.

You have also asked about the effect of the exemption codified in section 76-4-111, MCA, which provides that "[c]ondominiums constructed on land divided in compliance with the Montana Subdivision and Platting Act and this part are exempt from the provisions of this part." That section is

intended to cover instances where construction of condominiums on a site specifically approved for that use does not commence until a time significantly later than the approval. The effect of the statute, under this construction, is to remove the need for any subsequent review of parcels already approved for condominiums. This result is consistent with the intent of the Sanitation in Subdivisions Act.

A related question arising under section 76-4-111, MCA, is whether the exemption exempts from review land that was divided prior to enactment of the Sanitation in Subdivisions Act and the Subdivision and Platting Act. The question is based on the theory that the impossibility of compliance with a not yet enacted act is somehow the same as complying with the act. I conclude that it is not.

The fact that a division occurred prior to enactment of the Sanitation in Subdivisions Act thereby rendering technical noncompliance with the Act impossible is not the same as being "in compliance" with the Act. In most instances, land that was divided prior to the enactment of these statutes is not subject to review under either act. However, since condominiums as a class are subject to review under the Act, the fact that they may be built on parcels of land first divided years ago does not affect the review requirement triggered by the new development.

IV.

Finally you have asked whether a previously reviewed subdivision is subject to a second review when the intended use of the parcel is changed, e.g., for condominiums. I conclude that consistent with the general purpose of the act, such a subdivision constitutes a new subdivision by definition and is therefore subject to review under the express terms of the Sanitation in Subdivisions Act.

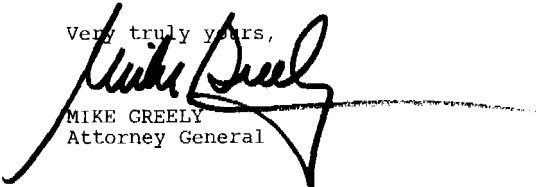
It stands to reason that a significant change in the intended use of a parcel of land alters the basis for approval. Where the nature and size of the intended development is substantially different from that which was reasonably expected, the Act clearly contemplates a review of the new use to assure property owners a safe dependable water supply system, a non-polluting reliable sewage treatment system, and a licensed solid waste disposal site in order to protect the quality and potability of water supplies outside

of the subdivisions and to preserve the quality of adjacent water for other beneficial uses.

THEREFORE, IT IS MY OPINION:

1. Condominiums, including those that do not provide "permanent multiple space for recreational camping vehicles or mobile homes," are "subdivisions" and therefore subject to review by the Department of Health and Environmental Sciences under the provisions of the Sanitation in Subdivisions Act, Title 76, Chapter 4, MCA.
2. The Department of Health and Environmental Sciences is required to review condominiums including those condominiums to be constructed on parcels of land that fall outside the definition of subdivision.
3. The Department of Health and Environmental Sciences' authority to review condominiums includes condominiums to be constructed on parcels of land subdivided before the enactment of the Sanitation in Subdivisions Act.
4. The Department's authority to review condominiums includes condominiums to be built on parcels of land previously approved by the Department for uses not including condominiums.

Very truly yours,



MIKE GREELY
Attorney General