MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 12

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RULE SECTION

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of Rules concerning any reduction in work force of State employees.	))))	NOTICE OF PROPOSED ADOPTION OF THE REDUCTION IN WORK FORCE RULE. NO PUBLIC HEARING CONTEMPLATED.

TO: All interested persons

1. On or after January 25, 1978, the Department of Administration proposes to adopt a Rule concerning any reduction in work force of State employees.

2. The proposed Rule does not replace or modify any section currently found in the Montana Administrative Code.

3. The proposed Rule reads as follows:

RULE I. INTRODUCTION. Although no immediate reduction in the State work force is anticipated, the following Rule shall be adhered to whenever layoffs may become a necessity. It shall be the basic Rule of all agencies of the Executive Branch that no reduction in the work force shall be instituted until all alternatives to accomplish the desired objective have been considered and exhausted.

RULE II. POLICY. (a) If it is necessary to achieve a reduction in the work force, consideration must be given to the programs to be carried out by the agency and the staff structure which, after the reduction, will most expeditiously achieve program objectives. Accordingly, employees will be retained giving consideration to the importance of the following qualities possessed by the work force: skill, proximity of retirement, hardship created, and tenure.

(b) Each employee lay-off action must be personally reviewed and approved by the agency director or equivalent, and each employee must be counseled as much in advance of the anticipated action as possible regarding available options and reasons for the lay-off.

(c) An employee must be given written notice a minimum of ten (10) working days preceding the effective date of the lay-off through use of the prescribed standard form.

(d) Each agency shall maintain a roster of employees who have been laid off and offer reinstatement on a "last out, first in" basis, by skill match of job classification.

(e) Each agency shall make a concerted effort to make other agencies aware of both the names and persons laid off and their job classifications, and agencies with vacancies shall give reinstatement preference to those employees laid off by other agencies when recruiting for a specific skill if compatible with their Affirmative Action Plan and EEO goals.

(f) To avert a break in service, an employee who is laid off must elect to convert to an inactive status and must NOT withdraw accumulated retirement contributions or sick leave credits (accumulated vacation credits can be used to delay the lay-off effective date or the balance may remain intact at the option of the employee). During the absence caused by a lay-off, no vacation or sick leave accrue to the employee, nor does any time in a lay-off status count toward earning time for qualifying periods for sick or vacation leave. Longevity credits shall continue to accrue to laid off employees during the approved period, and the employee's merit system anniversary date shall NOT be reset upon reinstatement. An employee may claim "inactive status by reason of lay-off" for a maximum of 260 working days. (Working days is defined as those days an employee would have normally been in a pay status). At the expiration of that time, the individual must be reinstated or terminated. A termination caused by lay-off shall not constitute a break in service for longevity purposes unless the employee has refused to accept a bona fide reinstatement offer within the 260 working days. An employee should be advised to check with the personnel/payroll clerk regarding continuing health insurance benefits.

(g) An employee may exercise the option of withdrawing accumulated vacation, sick leave, and retirement contributions only if the lay-off is anticipated to be other than a temporary lay-off for a specific period of time, not to exceed fifteen (15) working days. Such action constitutes a termination and a break in service.

(h) Specific reinstatement offers shall be made to the employee in writing. The employee must accept or reject the reinstatement offer in writing within five (5) working days following receipt of the offer. If a reinstatement offer is rejected by the employee, the employee loses all rights to the employment offered, but remains in an inactive status if applicable.

(i) Upon recall from a lay-off or upon placement of an employee during the inactive period necessitated by a lay-off, the employee's salary shall be determined as if the employee had never been laid off. If the employee is appointed to a lower grade as a result of the lay-off/reinstatement process, the employee's salary shall be determined by the appropriate Rule in the State Pay Plan in effect at the time of reinstatement.

If an individual re-enters State employment after the inactive period has expired, that individual's salary shall be Step 1 of the assigned grade. Further, the employee must begin a new earning time toward the qualifying period for vacation and sick leave. A termination caused by lay-off shall not constitute a break in service for longevity purposes unless the employee has refused to accept a bona fide reinsta-

tement offer.

(j) Lay-off shall NOT be used as an alternative to discharging an employee for cause or disciplinary purposes. Unsatisfactory employees should not be placed on a recall list and should not be given priority rehire consideration, but should be terminated subsequent to complete and appropriate evaluation, review and documentation.

(k) In the process of achieving necessary reduction in the work force, an intra-department "bumping process" wherein individuals may be assigned to lower classifications within a series in lieu of a lay-off can be used. This "bumping process" policy must be described in writing, posted for employees to see and submitted to the Personnel Division, Department of Administration.

(l) The Lay-Off Policy described above will apply to permanent, full-time or part-time employees, and would not apply to seasonal employees whose employment is regularly interrupted by the seasonal nature of their work, or to temporary employees with a specific employment period.

RULE III. PROCEDURES. As a general rule, the following procedures are to be used to achieve a reduction in the workforce as provided for in the attached layoff Rule.

(a) DETERMINE THE EXTENT OF THE LAYOFF REQUIRED. Establish the amount of savings required and the period in which the savings must be achieved. Beginning with the less crucial, identify the positions that can be eliminated for the period involved together with the weighted salaries of each. Continue this process until the desired cost reduction has been achieved.

(b) SELECT THE EMPLOYEES TO BE LAID OFF. In achieving a reduction in the workforce, consideration must be given to the programs to be carried out by the agency and the staff structure which, after the reduction, will most expeditiously achieve program objectives. Accordingly, employees will be retained giving consideration to the importance of the following factors prossessed by the workforce: skill, proximity of retirement, hardship created, and tenure.

(c) DISCUSS LAYOFF WITH EMPLOYEE. Discuss the reasons underlying the reduction in force with the employee and explain the options of being terminated or going inactive. Make CERTAIN that the employee understands the significance of termination.

(d) PREPARE THE NECESSARY PAPERWORK. Prepare the "Layoff Notice" form in original and three copies (see attached) to provide for the following distribution (the Notice may be accompanied by a personalized letter):

Original:	Employee's Personnel File
1st Carbon:	Employee (retained)
2nd Carbon:	Agency Layoff Recall File

3rd Carbon: Local Job Service Office (via employee)

If required, prepare the regular documentation to remove the employee from the active payroll files and post the leave transactions, if any, to the employee's leave records (or flag "Layoff - Subject to Recall").

(e) REINSTATEMENT OFFER. Prepare the "Reinstatement Offer" form in original and three copies (see attached) to provide the same distribution as the "Layoff Notice" outlined above. It is recommended that this "Reinstatement Offer" be delivered personally to the employee or, if mailed, be sent by certified mail.

RULE IV. CLOSING. (a) The above forms may be obtained from General Services, Mitchell Building, Helena, Montana 59601.

(b) All State agencies should be familiar with this Rule and its procedures in the event there is a necessity for a reduction in workforce.

(c) This Rule shall be followed unless it conflicts with negotiated labor contracts which shall take precedence to the extent applicable.

4. The reason for this Rule is as follows:

There is a critical need to provide uniform Rules to be consistently applied in the event of a reduction in work force in any State agency. Adoption of these Rules will lessen the possible discriminatory treatment of employees during a reduction in work force and provide safeguards to an employee's benefits and privileges while in a lay-off status.

5. Interested persons may submit their data, views or arguments concerning the proposed adoption to Mr. William Gosnell, Administrator, Personnel Division, Department of Administration, Room 101, Mitchell Building, Helena, Montana 59601.

6. If a person directly affected wishes to express his data, views, or arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit his request along with any written comments to Mr. William Gosnell before January 23, 1978.

7. If the department receives requests for a public hearing on the proposed Rule from more than ten percent (10%) or twenty-five (25) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

8. The authority of the Department to make the proposed adoption of the Rule is based on Section 59-913, R.C.M. 1947. Implementation is based on Section 59-913, R.C.M. 1947.

Jack C. Crosser, Director
Department of Administration

Certified to the Secretary of State, December 13, 1977.

State of Montana

LAYOFF NOTICE

EMPLOYEE'S NAME

EMPLOYEE'S SOCIAL SECURITY NO.

EFFECTIVE DATE OF LAYOFF NOTICE

As previously discussed with you, it is necessary that this agency reduce its workforce. As indicated by your signature below, you have elected to:

☐ TERMINATE STATE SERVICE. ☐ BE PLACED IN AN INACTIVE STATUS.

In either case, this Notice establishes the fact that this action was involuntary on your part and that you were an employee in good standing as of the subject effective date. If you have elected to be placed in an inactive status, you must notify this agency in writing if you desire to terminate your employment with the State or if you have obtained employment with some other State agency (to receive proper service credits, etc.).

	Code	Title	Grade	Step
EMPLOYEE'S CLASSIFICATION				
EMPLOYER DEPARTMENT				
DIVISION				
BUREAU/UNIT				

Employee's Signature and Date

Signature of Department Official and Date

PD 1 Rev 11 76

STATE OF MONTANA

Reinstatement Offer

EMPLOYEE'S NAME	▶
EMPLOYEE'S SOCIAL SECURITY NUMBER	▶
EFFECTIVE DATE OF LAYOFF NOTICE	▶
EFFECTIVE DATE OF REINSTATEMENT OFFER	▶

	Code	Title	Grade	Step
EMPLOYEE'S CLASSIFICATION AT TIME OF LAYOFF				
EMPLOYER DEPARTMENT				
DIVISION				
BUREAU/UNIT				

Per layoff notice dated _____, you elected to be placed in an inactive status for up to 260 working days pending a reinstatement offer. The State of Montana is prepared to make you a reinstatement offer as follows:

	Code	Title	Grade	Step
CLASSIFICATION				
EMPLOYER DEPARTMENT				
DIVISION				
BUREAU/UNIT				

OFFER APPROVED BY	Signature of Department Official	Date

You must accept or reject the above offer in writing within five (5) working days by signing this form and returning it to the employer department making the reinstatement offer.

I (accept) (reject) the above reinstatement offer. If I reject this offer, I understand that I may remain in an inactive status for only 260 working days from the effective date of layoff.

▼ SIGN ONE ONLY ▼

ACCEPTED _____ REJECTED _____

Employee Signature and Date — Employee Signature and Date

PD 2 Rev 11 76

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of Rules concerning procedures to apply for a Maternity Leave.	)))	NOTICE OF PROPOSED ADOPTION OF MATERNITY LEAVE RULE. NO PUBLIC HEARING CONTEMPLATED.

TO: All interested persons

1. On or after January 25, 1978, the Department of Administration proposes to adopt a Rule concerning Maternity Leave for State employees.

2. The proposed Rule does not replace or modify any section currently found in the Montana Administrative Code.

3. The proposed Rule reads as follows:

RULE I. INTRODUCTION. This policy is adopted to provide uniform application of maternity leave by all State agencies to all State employees who have served a six month probationary period and are in permanent status. Employees and supervisors must be aware that maternity leave is disability leave and as such must be certified by medical authority if requested by the employee's supervising agency.

RULE II. EMPLOYEE'S RESPONSIBILITY: (a) The employee needing maternity leave shall advise her supervisor of her condition well in advance of the date she believes maternity leave may need to begin and she shall estimate the duration of the leave realizing, of course, that the actual duration of the maternity leave depends upon the extent and duration of her disability. The employee shall, as soon as is practical, submit on the prescribed Request for Disability Leave form (see attached) a request for anticipated maternity leave, noting the date she expects to leave her job and the tentative date she plans to return depending upon the extent and duration of her actual disability. The request shall detail the proposed status of the employee during the course of the leave. The employee should use all available accrued sick leave first since maternity leave is disability leave due to pregnancy. The remaining length of the leave required may then be taken as annual leave, accrued compensatory time, or leave without pay at the employee's option. The Request Form for Disability Leave should be prepared in triplicate to provide for the following distribution:

Original: Employee's Personnel File
1st Carbon: Employee
2nd Carbor: Supervisor

(b) If an employee's pregnancy prohibits the employee from performing her employment duties before delivery, she may be required to submit medical certification to her employing agency of her inability to perform her duties. Such

medical certification shall only be required for usages of accrued sick leave, and/or leave without pay, exceeding five (5) working days. A copy of a doctor's Medical Certification of Physical Disability form is attached. Both of these forms are available from General Services, Mitchell Building, Helena, Montana 59601.

(c) If the employee is unable to return to her job as originally specified, she shall be required to submit medical certification of her continued inability to perform her employment duties if requested by her employing agency.

RULE III. SUPERVISOR'S RESPONSIBILITY: (a) Upon being notified by the employee of her anticipated need for maternity leave, the supervisor shall provide a copy of this Rule to the employee and shall attempt to answer the employee's questions concerning maternity leave as provided by this Rule. The following facts shall be discussed:

(i) The employee's eligibility for longevity credit will be determined in accordance with the State Pay Plan Longevity Rules.

(ii) The employee's credit towards any Step Increase will be determined in accordance with the State Pay Plan Step Increase Rules.

(iii) The employee utilizing maternity leave shall not earn sick or annual leave credits unless she is in a pay status.

(iv) The employee may use accrued leave benefits in computing her total approved maternity leave.

(v) The supervisor shall advise the employee to check with the agency's personnel/payroll clerk if she wishes to individually continue her health insurance benefits during the leave in order not to lose any continuity of coverage. The State does not continue to contribute to the employee's health insurance group plan when the employee is in a leave without pay status.

(vi) If, for any reason, the supervisor disapproves the request for leave, the supervisor shall list the reason(s), what action(s) the employee may take to have the leave approved, and shall also ask the employee to sign the form indicating that the employee is aware the leave has been disapproved and the reasons. If the employee refuses to sign the form indicating notification of the leave request denial, her supervisor shall note upon the Request form that the employee saw the written denial and simply refused to sign.

(b) If the employee upon her Request for Disability Leave form signified her intention to return at the end of her leave of absence, such employee shall be reinstated to her original job or to an equivalent position with equivalent

pay and accumulated seniority, retirement, fringe benefits, and other service credits when the employee is physically able to return to work.

(c) If, at the end of the leave, the employee does not return to work as originally planned and does not provide medical certification of continuing disability, the employing agency shall not be required to reinstate the employee to her original or equivalent position. If this situation does occur, the employee should be advised in writing that the State is released from future employment liability.

RULE IV. LENGTH OF LEAVE: An employee must be granted a "reasonable leave of absence" for disability due to pregnancy, which may include pre-natal care, birth, miscarriage, abortion and/or post-natal care. The length of time to which an employee is entitled because of such disability depends totally upon the extent and duration of the disability resulting from pregnancy. There is no specific length of time for maternity leave. Maternity leave is disability leave and pregnancy must be treated as any other disability. Therefore the disability will vary from employee to employee and the duration of maternity leave can only be determined with each employee based upon agreement between the employee and her supervising agency and/or proper medical certification that the employee is not able to perform her employment duties.

RULE V. CLOSING. This Rule shall be utilized unless it conflicts with negotiated labor contract provisions, which shall take precedence to the extent applicable.

4. Reason for this Rule is as follows:

There is a need for uniform Rules to provide procedures and forms for an employee to apply for a maternity leave. An employee also needs to be aware of responsibilities and rights as a State employee while on a Maternity Leave.

5. Interested persons may submit their data, views or arguments concerning the proposed adoption to Mr. William Gosnell, Administrator, Personnel Division, Department of Administration, Room 101, Mitchell Building, Helena, Montana 59601.

6. If a person directly affected wishes to express his data, views, or arguments orally or in writing at a public hearing, he/she must make written request for a public hearing and submit his/her request along with any written comments to Mr. William Gosnell before January 23, 1978.

7. If the department receives requests for a public hearing on the proposed Rule from more than ten percent (10%) or twenty-five (25) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication to the Administrative Register.

8. The authority of the Department to make the

proposed adoption of the Rule is based on Section 59-913, R.C.M. 1947. Implementation is based on Section 59-913, R.C.M. 1947.

Jack C. Crosser
Jack C. Crosser, Director
Department of Administration

Certified to the Secretary of State, December 13, 1977.

STATE OF MONTANA

EMPLOYEE REQUEST FOR DISABILITY LEAVE

EMPLOYEE NAME _____ SOCIAL SECURITY NUMBER _____

DEPARTMENT _____ DIVISION _____

UNIT _____ POSITION TITLE _____

I AM REQUESTING A DISABILITY LEAVE FOR THE FOLLOWING REASON(S) _____

THE LEAVE IS ANTICIPATED TO BEGIN ON _____ ,19__ AND TENTATIVE DATE OF RETURN TO POSITION IS _____ ,19__ .

TYPE OF LEAVE (Check appropriate box(es))	APPROXIMATE NUMBER OF HOURS
☐ Sick	_____
☐ Vacation	_____
☐ Compensatory	_____
☐ Leave without pay	_____
Total:	_____

IF THIS REQUEST IS FOR MATERNITY LEAVE, THE EMPLOYEE SHOULD USE ALL AVAILABLE ACCRUED SICK LEAVE FIRST SINCE MATERNITY LEAVE IS DISABILITY LEAVE DUE TO PREGNANCY. THE REMAINING LENGTH OF THE LEAVE REQUIRED MAY THEN BE TAKEN AS ANNUAL LEAVE, ACCRUED COMPENSATORY TIME, OR LEAVE WITHOUT PAY. I UNDERSTAND THAT MY EMPLOYING AGENCY MAY REQUIRE THAT I PROVIDE MEDICAL CERTIFICATION(S) OF PHYSICAL DISABILITY.

Employee's Signature and date		Supervisor's approval and date	
Signature	Date	Signature	Date

REQUEST IS DENIED FOR THE FOLLOWING REASONS: _____

FURTHER ACTION REQUESTED OF EMPLOYEE: _____

THIS IS TO CERTIFY THAT I HAVE SEEN AND REVIEWED THE DENIAL OF MY REQUEST FOR DISABILITY LEAVE. EMPLOYEE COMMENTS: _____

Employee Signature	Date	Supervisor Signature	Date

PD-3 New 5-77

DISTRIBUTION: Original: Employee's Personnel File. First Carbon: Retained by Employee. Second Carbon: Retained by Supervisor.

STATE OF MONTANA	MEDICAL CERTIFICATION OF PHYSICAL DISABILITY

NOTE: This certification to be completed upon request of agency.

A. To be completed by employee:

EMPLOYEE NAME _____ SOCIAL SECURITY NUMBER _____

DEPARTMENT _____ DIVISION _____

UNIT _____ POSITION TITLE _____

REASON FOR DISABILITY LEAVE: _____

I HEREBY AUTHORIZE THE ATTENDING PHYSICIAN TO PROVIDE THE REQUESTED INFORMATION.

SIGNATURE OF EMPLOYEE _____ DATE _____

B. To be completed by physician:

DATE OF MOST RECENT TREATMENT _____, 19____.

DISCHARGE FROM TREATMENT _____, 19____.

MAY EMPLOYEE RESUME WORK? _____ yes _____ no

TENTATIVE DATE EMPLOYEE MAY RESUME WORK? _____, 19____.

BRIEF EXPLANATION OF DISABILITY: _____

(Signature and address of attending physician) _____ Date _____

PD-4 New 5-77

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 2-2.14(2)-S1420 relating to State employees who are members of the National Guard of the State of Montana.	NOTICE OF PROPOSED AMENDMENT OF ARM RULE 2-2.14(2)-S1420 (CONTINUING EMPLOYEE BENEFITS)
	NO PUBLIC HEARING CONTEMPLATED

TO: All interested persons

1. On or after January 25, 1978, the Department of Admintration proposes to amend ARM Rule 2-2.14(2)-S1420 which now limits employee benefits to thirty calendar days when a State employee takes leave without pay when ordered to active service in the National Guard of the state of Montana.

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

(1) Remains the same.

(2) Remains the same.

(3) If the employee elects to take leave without pay during the period for which ordered to active duty, the employee shall continue to accumulate annual vacation leave, sick leave and other employee benefits, ~~for up to thirty (30) calendar days,~~ during the time of active duty since the employee is paid from State monies for the time he/she is on active duty for the State.

3. The rule is proposed to be amended so that the benefits accrued during the time of active duty would continue for as long as the employee had to serve on active duty, rather than limit benefits accrual to thirty calendar days.

4. Interested parties may submit their data, views or arguments concerning the proposed amendement in writing to Mr. William S. Gosnell, Administrator, Personnel Division, Department of Administration, Room 101, Mitchell Building, Helena, Montana 59601, no later than January 23, 1978.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Mr. William Gosnell, at the above address, no later than January 23, 1978.

6. If the agency receives requests for a public hearing on the proposed amendment from more than 10% or 25 or more persons who are directly affected by the proposed amendment, or from the Administrative Code Committee of the legislature, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority of the agency to make the proposed amendment is based on section 59-913, R.C.M. 1947. Implementation is based on Section 59-913, R.C.M. 1947.

Jack C. Crosser, Director
Department of Administration

Certified to the Secretary of State, December 13, 1977.

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE
STATE OF MONTANA

In the matter of the amendment of Rule ARM 2-2.11(6)-S11440 concerning the enforcement of the elevator code.	) NOTICE OF PUBLIC HEARING ON) AMENDMENT OF RULE) Elevator Code Enforcement) Program.

1. On January 25, 1978, at 9:30 a.m., a public hearing will be held in the Auditorium of the Montana State Highway Building, Helena, Montana, to consider the amendment of rule ARM 2-2.11(6)-S11440 concerning the elevator code enforcement program.

2. The proposed amendments add to the present rule ARM 2-2.11(6)-S11440 found in the Administrative Rules of Montana. The proposed amendments add rules concerning the actual operation of the elevator code enforcement program.

3. The proposed amendments provide in summary as follows:

(a) ARM 2-2.11(6)-S11440(3) Amendment to Model Code. Section 1001, Rule 1001.6B, p. 234-235, of ANSI A.17.1, is amended such that the test period for hydraulic cylinders is increased from 12 months to 36 months.

(b) ARM 2-2.11(6)-S11440(4) Reinspections and Certificates of Inspection. This section explains when reinspections will be performed and what the charge will be. Also, it covers the issuance of final certificates, conditional certificates, temporary certificates, unsafe certificates and the fee for lost certificates.

(c) ARM 2-2.11(6)-S11440(5) Accidents. This section covers accident reporting requirements.

(d) ARM 2-2.11(6)-S11440(6) Appeals, Variances, and Violations. This section covers procedures for handling appeals, variances and violations.

A copy of the proposed amendments can be obtained by contacting: Building Codes Division, State of Montana, Capitol Station, Helena, Montana, 59601, Phone (406) 449-3933.

4. The Division is proposing the amendments to its rule because presently the items addressed are not adequately covered in the adopted standards.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing.

6. J. Michael Young, Administrator, Insurance and Legal Division, State of Montana, Capitol Station, Helena, Montana, 59601, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendment is based on Section 69-2111, R.C.M. 1947. Sec. 69-2111 provides the power of implementation to cover the above rules.

Jack C. Crosser
Director
Department of Administration

Certified to the Secretary of State December 7, 1977.

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE
STATE OF MONTANA

In the matter of the adoption of Rules ARM 2-2.11(6)-S11400, 2-2.11(6)-S11410, 2-2.11(6)-S11420 concerning the state plumbing code enforcement program.	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES State Plumbing Code

1. On January 25, 1978, at 9:30 a.m., a public hearing will be held in the Auditorium of the Montana State Highway Building, Helena, Montana, to consider the adoption of Rules ARM 2-2.11(6)-S11400, 2-2.11(6)-S11410, 2-2.11(6)-S11420 concerning the state plumbing code enforcement program.

2. The proposed rules replace those rules previously adopted and repealed by the State Board of Plumbers.

3. The proposed rules provide in summary as follows:

(a) ARM 2-2.11(6)-S11400 DEFINITIONS. This section defines several terms used throughout the rules

(b) ARM 2-2.11(6)-S11410 INCORPORATION BY REFERENCE OF UNIFORM PLUMBING CODE. This section covers the adoption of the 1976 Edition of the Uniform Plumbing Code along with the amendments thereto.

(c) ARM 2-2.11(6)-S11420 PLUMBING PERMITS. This section covers the procedure for issuing permits, inspections, reinspections and issuance of certificate of compliance.

A copy of the proposed rules can be obtained by contacting: Building Codes Division, State of Montana, Capitol Station, Helena, Montana, 59601, Phone (406) 449-3933.

4. The Division is proposing these rules because Senate Bill 401, Chapter 504, Session Laws of Montana 1977, transferred the duty of plumbing code enforcement to the Department of Administration; therefore, rules are needed to establish this program.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing.

6. J. Michael Young, Administrator, Insurance and Legal Division, State of Montana, Capitol Station, Helena, Montana, 59601, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rule is based on Sections 66-2416, 66-2427, 69-2111 and 69-2124, Chapter 504, Session Laws of Montana 1977, Section 69-2119, R.C.M. 1947. Sec. 69-2111 provides the power of implementation to cover the above rules.

Jack C. Crosser
Director
Department of Administration

Certified to the Secretary of State December 7, 1977.

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE
STATE OF MONTANA

In the matter of the amendment of Rule ARM 2-2.11(1)-S11020, Subsection (9)(i) and (9)(ii) concerning the insignia fees for factory-built buildings.	NOTICE OF PUBLIC HEARING ON AMENDMENT OF RULE Insignia Fees for Factory-Built Buildings

1. On January 25, 1978, at 9:30 a.m., a public hearing will be held in the Auditorium of the Montana State Highway Building, Helena, Montana, to consider the amendment of rule ARM 2-2.11(1)-S11020, Subsection (9)(i) and (9)(ii) concerning insignia fees for factory-built buildings.

2. The proposed amendment replaces present rule ARM 2-2.11(1)-S11020, Subsection (9)(i) and (9)(ii) found in the Administrative Rules of Montana. The proposed amendment would raise the insignia fee for factory-built buildings from $25 to $60.

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

'(9) Insignia fees. (a) The following are the insignia fees to be charged by the Division.

(i) Factory-built Buildings - ~~Twenty-five~~ Sixty dollars ~~($25)~~ ($60) per unit up to two parts~~.~~. This insignia fee covers the building construction, plumbing, and electrical;

(ii) Multiple Unit (more than two parts) Factory-built buildings - ~~Twenty-five~~ Sixty dollars ~~($25)~~ ($60) per part, or if a building permit, electrical permit, and plumbing permit ~~is~~ are obtained for the total building, no insignia fee will be charged;

4. The Division is proposing this amendment to its rule because presently building manufacturers are required to obtain factory-built building insignias, plumbing permits and electrical permits, thus causing much confusion and paper work. The proposed fee would replace all three fees, thus simplifying the process.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing.

6. J. Michael Young, Administrator, Insurance and Legal Division, State of Montana, Capitol Station, Helena, Montana, 59601, 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 69-2124 and 69-2125, Chapter 504, Session Laws of Montana 1977. **Sec. 69-2124 provides the power of implementation to cover the above rule.**

Jack C. Crosser
Director
Department of Administration

Certified to the Secretary of State December 7, 1977.

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE
STATE OF MONTANA

In the matter of the adoption of Rules ARM 2-2.11(2)-S11100, 2-2.11(2)-S11110, 2-2.11(2)-S11120, 2-2.11(2)-S11130, 2-2.11(2)-S11140, 2-2.11(2)-S11150, 2-2.11(2)-S11160 concerning the state electrical code enforcement program.	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES State Electrical Code

1. On January 25, 1978, at 9:30 a.m., a public hearing will be held in the Auditorium of the Montana State Highway Building, Helena, Montana, to consider the adoption of Rules ARM 2-2.11(2)-S11100, 2-2.11(2)-S11110, 2-2.11(2)-S11120, 2-2.11(2)-S11130, 2-2.11(2)-S11140, 2-2.11(2)-S11150, 2-2.11(2)-S11160 concerning the state electrical code enforcement program.

2. The proposed rules replace those rules previously adopted and repealed by the State Electrical Board.

3. The proposed rules provide in summary as follows:

(a) ARM 2-2.11(2)-S11100 ELECTRICAL INSPECTORS. This section covers qualifications, duties, and right of entry of the electrical inspectors.

(b) ARM 2-2.11(2)-S11110 ELECTRICAL PERMIT. This section covers the type of work requiring a permit, when a permit is to be obtained, duration of a permit, and transferability of a permit.

(c) ARM 2-2.11(2)-S11120 ELECTRICAL INSPECTIONS. This section covers the rough-in inspections, advance notice of requested inspections, and written notice of violations.

(d) ARM 2-2.11(2)-S11130 ELECTRICAL INSPECTION CERTIFICATE. This section covers final inspections and the issuance of the final certificate.

(e) ARM 2-2.11(2)-S11140 ELECTRICAL INSPECTION FEES. This section covers the inspection fees for residential and commercial construction.

(f) ARM 2-2.11(2)-S11150 NATIONAL ELECTRICAL CODE. This section covers the adoption of the 1978 Edition of the National Electrical Code.

(g) ARM 2-2.11(2)-S11160 WIRING STANDARDS. This section covers the amendments to the National Electrical Code.

A copy of the proposed rules can be obtained by contacting: Building Codes Division, State of Montana, Capitol Station, Helena, Montana, 59601, Phone (406) 449-3933.

4. The Division is proposing these rules because Senate

Bill 401, Chapter 504, Session Laws of Montana 1977, transferred the duty of electrical code enforcement to the Department of Administration; therefore, rules are needed to establish the program.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing.

6. J. Michael Young, Administrator, Insurance and Legal Division, State of Montana, Capitol Station, Helena, Montana, 59601, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rule is based on Sections 66-2802, 66-2805.1, 69-2111, and 82A-1607, Chapter 504, Session Laws of Montana 1977. Sec. 69-2111 provides the power of implementation to cover the above rules.

Jack C. Crosser
Director
Department of Administration

Certified to the Secretary of State December 7, 1977.

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

In the Matter of the Amendment of Rule 8-3.14(14)-S1440 Relating to the Pricing of Milk	))))	NOTICE OF PUBLIC HEARING ON AMENDMENT OF RULE 8-3.14(14)-S1440 (PRICING RULES)

1. On January 13, 1978, beginning at 9:30 o'clock a.m. (and continuing on January 14 and 21, 1978, if necessary) a public hearing will be held in the Lewis Room of the Colonial Motor Hotel and Convention Center, 2301 Colonial Drive, Helena, Montana, to consider the amendment of Rule 8-3.14(14)-S1440.

2. This hearing will be held because of requests for amendment received from the consuming public, the milk industry, and for reasons initiated by the Board of Milk Control. The following matters will be considered:

(a) Amendments to the producer formula (Rule 8-3.14(14)-S1440(6)(a)).

(b) Amendments to the distributor formula (Rule 8-3.14(14)-S1440(6)(b)).

(c) Pricing of chocolate low-fat milk in quantities of 1/2 pints, 1 quart, 1 gallon and dispensers.

(d) Pricing of low-fat milk in quantities of 1/2 pints for schools.

(e) Pricing differential for milk sold in one gallon plastic containers and plastic bags (Rule 8-3.14(14)-S1440(6)).

(f) Changes in Class I, II and III butterfat differential (Rule 8-3.14(14)-S1440(6), (7) and (8)).

(g) Additional hauling charge on Class I, II and III milk (Rule 8-3.14(14)-S1440(9)).

(h) Reducing distributor and retailer margins (Rule 8-3.14(14)-S1440(6)(b) and (g)).

(i) Increasing the interval in the distributor's formula (Rule 8-3.14(14)-S1440(6)(b)).

(j) Method of arriving at retail price after wholesale price has been established (Rule 8-3.14(14)-S1440(6)(g)).

(k) Changing from monthly to quarterly computations and price announcements (Rule 8-3.14(14)-S1440(6)(d)).

3. The Board takes official notice of judgments relating to pricing differentials for certain methods of packaging in the following cases: Cloverleaf Jersey Dairy, Inc. v. Montana Milk Control Board; Lewis and Clark County Cause No. 29882; State ex rel Safeway Stores, Inc. v. State of Montana Milk Control Board, Silver Bow County Cause No. 52907; and, Phillips Dairies, Inc. v. Montana Milk Control Board, Lewis and Clark County Cause No. 30483.

4. The Board will consider cost studies performed by the Milk Control Division of the Department of Business

Regulation as they relate to the matters enumerated in paragraph 2 of this Notice.

5. Copies of the documents mentioned in paragraphs 4 and 5 are available for inspection during regular business hours at the offices of the Department of Business Regulation, 805 North Main Street, Helena, Montana 59601. Copies will be provided as requested, upon payment of copying charges.

6. Interested persons may present their data, views or arguments either orally or in writing at the hearing.

7. James T. Harrison, Jr., 1721 Eleventh Avenue, Helena, Montana 59601, has been designated by the Board to preside over and conduct the hearing.

8. The authority of the Board to conduct this hearing is based on Section 27-407, R.C.M. 1947.

BY ORDER OF THE BOARD OF MILK CONTROL

Curtis C. Cook, Chairman

By _____

K. M. Kelly, Administrator
and Executive Secretary
Milk Control Division

Certified to the Secretary of State on December 15, 1977.

BEFORE THE DEPARTMENT OF FISH AND GAME
OF THE STATE OF MONTANA

In the matter of the Adoption of Rule 12-2.10(26)-S10290 Relating to Taxidermist Regulations	) NOTICE OF PROPOSED ADOPTION OF) RULE 12-2.10(26)-S10290) NO PUBLIC HEARING) CONTEMPLATED

TO ALL INTERESTED PERSONS:

1. On the 26th day of January, 1978, the Department of Fish and Game proposes to adopt Rule 12-2.10(26)-S10290 as follows:

Rule 12-2.10(26)-S10290 TAXIDERMIST REGULATIONS (1) Exhibiting proof of lawful taking. A taxidermist licensee is prohibited from accepting dead species or parts of protected wildlife for mounting, preserving, or preparing unless the individual in possession exhibits proof that the wildlife was lawfully taken by showing one of the following:

(a) Fishing, hunting, or trapping license (and tag when applicable).

(b) Receipt, invoice, or tag for wildlife obtained from a private fish pond licensee, game or fur farm licensee, or shooting preserve licensee.

(c) Fur dealer or fur dealer's agent license.

(d) Federal waterfowl propagating permit.

(e) Indian game transport permit indicating:

(i) Hunter's name.

(ii) Tribe and roll number.

(iii) Species of game and reservation where taken.

(iv) Date of issue.

(v) Authorized signature and title of issuing officer.

(2) Recording information. A taxidermist licensee must record the document title and identifying number (or items indicated on the Indian game transport permit) exhibited as proof of lawful taking along with that information required under 26-907 for each species of protected wildlife accepted for mounting, preparing, or preserving.

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

3. The rationale for this Rule's adoption is as follows: Requiring that proof of lawful taking be exhibited to the taxidermist licensee for recording with other required

information will protect the licensee from violating the provisions of Section 26-806, which prohibit unlawful possession of protected wildlife. This will also assist in the enforcement of licensing requirements for the taking of protected wildlife.

4. Interested parties may submit their data, views, or arguments covering the proposed rule in writing to Robert F. Wambach, Director, Department of Fish and Game, 1420 East 6th Avenue, Helena, Montana 59601. Written comments in order to be considered must be received by not later than the 24th day of January, 1978.

5. If any person directly affected wishes to express his data, views, or arguments orally or in writing at a public hearing, he must make a written request for a public hearing and submit this request, along with any written comments, to Mr. Wambach at the above stated address prior to the 24th day of January, 1978.

6. If the Director receives requests for a public hearing on the amendment of the foregoing rule from 25 or more of the persons directly affected, a public hearing will be held at a later date. Notification will be given of the date and time of the hearing.

7. Ten percent (10%) of those persons directly affected has been determined to be in excess of 25.

8. The authority of the Department of Fish and Game to make the proposed rule is based upon Sections 26-104, 26-106.3, and 26-202.4, R.C.M. 1947.

Dated this 15th day of December, 1977.

Robert F. Wambach

Robert F. Wambach, Director
Department of Fish and Game

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

In the matter of the amendment of Rule 16-2.14(1)-S1470, Sulfur Oxide Emissions, Rule 16-2.14(1)-S14040, Ambient Air Quality Standards, and Rule 16-2.14(1)-S14050, Testing Required, Facilities.	NOTICE OF CANCELLATION OF PUBLIC HEARING FOR AMENDMENT OF RULES

The Board of Health and Environmental Sciences has cancelled notices of public hearing numbered 16-2-84, 16-2-85, and 16-2-86 at the request of the Department of Health and Environmental Sciences. Those notices had scheduled a public hearing November 4, 1977, on proposed amendments to the following air quality rules: Rule 16-2.14(1)-S1470, Sulfur Oxide Emissions; Rule 16-2.14(1)-S14040, Ambient Air Quality Standards; and Rule 16-2.14(1)-S14050, Testing Required, Facilities.

On December 2, 1977, the Board determined that it would proceed with the rule-making process for revision of Rule 16-2.14(1)-S14040, Ambient Air Quality Standards. Notice of hearing on proposed revision of that rule will be promulgated after the Board selects the date for such hearing.

John D. Bartlett
BOARD CHAIRMAN

Certified to the Secretary of State December 15, 1977

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 18-2.6AI (14)-S6340 relating to outdoor advertising regulations.	))))))	NOTICE OF PROPOSED AMENDMENT OF RULE 18-2.6AI (14)-S6340 relating to outdoor advertising regulations. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons

1. On January 31, 1977, the Department of Highways and the Highway Commission propose to amend Rule 18-2.6AI(14)-S6340 relating to Outdoor Advertising regulations pertaining to secondary roads placed on primary system.

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

"18.2.6AI(14)-S6340 OUTDOOR ADVERTISING REGULATIONS TO APPLY TO RECENTLY DESIGNATED PRIMARY ROUTES (1) The Montana Highway Commission has removed certain highway routes from the Federal Aid Secondary System and placed them on the Federal Aid Primary System. Outdoor advertising signs along the aforementioned routes visible from the primary system are controlled by regulations contained in MAC 18-2.6AI(14)-S6210 through MAC 18-2.6AI(14)-S6330 and the statutory restrictions contained in the Montana Outdoor Advertising Act, Sections 32-4716 through 32-4728, R.C.M. 1947. Permits for the foregoing signs must be secured from the Department pursuant to MAC 18-2.6AI(14)-S6230. Applications for permits must be received by the Department by ~~December 2, 1977,~~ June 2, 1978.

(2) Information regarding the routes which have been placed on the Federal Aid Primary System may be obtained at any of the Department of Highways Field Offices located in Missoula, Butte, Great Falls, Glendive and Billings, and from the Helena Headquarters office."

3. The rule is proposed to be amended for the reason that the Department has determined that various sign owners along the aforementioned routes have not applied for permits, and it is advisable to extend the date for application to allow these owners to conform to Montana's Outdoor Advertising statutes and regulations.

4. Data, views, and arguments relating to the proposed amendments and adoptions may be submitted to the Department of Highways, Sixth and Roberts, Helena, Montana 59601, at any time prior to January 31, 1978.

5. If a person directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make a written request for a public hearing and submit his request along with any written comments he has to the Director of Highways, Sixth and Roberts, Helena, Montana 59601, on or before the 31st day of January, 1978.

6. If ten percent (10%) or twenty-five (25) or more persons directly affected, or the Administrative Code Committee, or the Legislature request a public hearing, a public hearing will be held upon appropriate notice in the Administrative Register.

7. Fifty (50) persons directly affected constitutes ten percent (10%) for purposes of sub-section six (6) of this notice.

8. The authority for the Department and Commission to make the proposed rule changes is based upon Section 32-4718, R.C.M. 1947.

Director of Highways

Certified to the Secretary of State, December 15, 1977.

BEFORE THE DEPARTMENT OF LABOR
AND INDUSTRY, BOARD OF PERSONNEL
APPEALS OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION OF A RULE ESTABLISHING THE PROCEDURAL STEPS FOR AN EMPLOYER PETITION FOR UNIT DETERMINATION IN ACCORDANCE WITH SECTION 59-1606 (1)(b), R.C.M. 1947.	NOTICE OF PUBLIC HEARING FOR ADOPTION OR RULE (Employer To Petition for Unit Determination)

TO: All Interested Persons

1. On January 17, 1978, at 1:30 p.m., a public hearing will be held in the Conference Room, Commissioner of Higher Education Office, 33 South Last Chance Gulch, Helena, Montana, to consider the adoption of a rule establishing the procedural steps for an employer to petition for a unit determination in accordance with section 59-1606 (1)(b), R.C.M. 1947.

2. The proposed rule is an amendment to the rule this Board noticed in ARM Notice No. 24-3-8-24, and does not replace or modify any section currently found in the Administrative Rules of Montana.

3. The proposed rule provides as follows:

EMPLOYER PETITION FOR NEW UNIT DETERMINATION

(1) A Petition for new unit determination may be filed with the Board by an employer alleging that one or more labor organizations has presented to it a claim to be recognized as the exclusive representative in an appropriate unit.

(2) The original petition shall be signed by petitioner or its authorized representative.

(3) The original petition shall be filed with the Board.

(4) The Petition shall contain:

(a) A statement naming all parties making a claim to the employer to be recognized as the exclusive representative and bargaining agent and a concise statement of how that demand for recognition took place.

(b) If there is a recognized or certified representative the petition shall contain a statement by the employer of what criteria it bases its doubt that the incumbent, exclusive representative does not have the majority support of the members of the bargaining unit in question.

(c) A description of the unit the bargaining representative is demanding to represent. Such description shall include:

(i) The approximate number of employees in the

unit, and

(ii) an enumeration, by job title, of the unit's inclusions and exclusions.

(d) A brief description, including expiration dates, of all contracts covering employees in the proposed unit.

(e) Any other relevant facts.

(5) If after investigating the matters alleged in the petition, this Board finds that there has been a sufficient demand for recognition made of the employer, and where applicable that there are sufficient, objective criteria for the employer to in good faith doubt the certified or recognized bargaining representative's majority status, then this Board shall serve a copy of the petition on all parties named as claiming to be the exclusive representative and bargaining agent.

(6) The refusal to serve a petition is appealable to the full Board if written exception to the refusal is filed with this Board within 20 days after the date of the notification of the refusual to serve the petition.

(7) The same right of intervention shall exist for an employer Petition for Unit Determination as exists for other unit determination petitions.

4. On October 19, 1977, this Board took testimony concerning a proposed employer petition for unit determination. Due to the testimony presented to the hearing examiner on that date, the Board has amended its proposed rule, and desires to take testimony concerning the amendments.

5. Interested persons may present their data, views, or arguments whether orally or in writing, at the hearing. Presentation of written material to the board in advance of the hearing would be appreciated. Written material may be presented to the board for consideration up to and including January 27, 1978. All testimony presented at the October 19, 1977, hearing will be considered by the board and need not be resubmitted.

6. The members of the Board of Personnel Appeals shall preside over and conduct the hearing.

7. The authority of the board to promulgate the rule is based on section 59-1613 (4), R.C.M. 1947.

Brent Cromley

BRENT CROMLEY, Chairman
BOARD OF PERSONNEL APPEALS

Certified to the Secretary of State on December 15, 1977.

BEFORE THE DEPARTMENT OF LABOR
AND INDUSTRY, BOARD OF PERSONNEL APPEALS
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION OF A NEW RULE SPECIFYING THE PROCEDURE TO FILE A PETITION FOR UNIT CLARIFICATION	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULE (Unit Clarification)

TO: All Interested Persons

1. On January 17, 1978, at 1:30 p.m., a public hearing will be held in the Conference Room, Commissioner of Higher Education Office, 33 Last Chance Gulch, Helena, Montana, to consider the adoption of a rule establishing the procedure for filing a petition for unit clarification.

2. The proposed rule is an amendment to the rule this Board noticed in ARM Notice No. 24-3-8-22. The proposed rule will replace ARM 24-3.8(10)-S8080.

3. The proposed rule provides as follows:

PETITION FOR CLARIFICATION OF BARGAINING UNIT

(1) A Petition for Clarification of Bargaining Unit may be filed only by a bargaining representative of the unit in question or by a public employer and only if:

(a) there is no question concerning representation;

(b) the parties to the agreement are not engaged in negotiations or are not soon scheduled to enter into negotiations; and

(c) a petition for clarification has not been filed with the Board concerning substantially the same unit within the past 12 months.

(2) A copy of any such petition must be simultaneously served upon the bargaining representative if filed by a public employer and upon the employer if filed by a bargaining representative, with proof of service being filed with this Board.

(3) A petition for Clarification of an existing bargaining unit shall contain the following:

(a) the name and address of the bargaining representative involved;

(b) the name and address of the public employer involved;

(c) the identification and description of the existing bargaining unit;

(d) a description of the proposed clarification of the unit;

(e) the job classification(s) of employees as to whom the clarification issue is raised, and the number of employees in each such classification;

(f) a statement setting forth the reasons why petitioner desires clarification of the unit;

(g) a statement that no other employee organization is certified to represent any of the employees who would be directly affected by the proposed clarification;
(h) a brief and concise statement of any other relevant facts; and
(i) the name, affiliation, if any, and address of petitioner.

4. The party on whom the petition was served shall have twenty days to file a response with this Board.

5. This Board shall then set the matter for hearing. Upon completion of the hearing this Board may:
(a) grant the petitioned for clarification in whole or in part,
(b) deny the petitioned for clarification in whole or in part, or
(c) determine that the matter could be best disposed of by conducting an election among the employees involved.

4. On October 19, 1977, this Board took testimony concerning a proposed rule for Petition for Unit Clarification. Due to the testimony presented to the hearing examiner on that date, the Board has amended its proposed rule, and desires to take testimony concerning the amendments to the proposed rule.

5. Interested persons may present their data, views, or arguments whether orally or in writing, at the hearing. Presentation of written material to the board in advance of the hearing would be appreciated. Written material may be presented to the board for consideration up to and including January 27, 1978. All testimony presented on October 19, 1977, hearing will be considered by the board and need not be resubmitted.

6. The members of the Board of Personnel Appeals shall preside over and conduct the hearing.

7. The authority of the board to promulgate the rule is based on section 59-1613 (4), R.C.M. 1947.

Brent Cromley
BRENT CROMLEY, Chairman
BOARD OF PERSONNEL APPEALS

Certified to the Secretary of State on December 15, 1977.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
DIVISION OF WORKERS' COMPENSATION

In the Matter of the Proposed Amendments to ARM 24-3.18(1)-O1800, Division Organization, and ARM 24-3.18(6)-S1820, Functions of the Division; and the proposed adoption of ARM 24-3.18B(1)-S1800, Functions of the Division in Relation to the Crime Victims Compensation Act, ARM 24-3.18B(2)-S1810, Reporting, Compensation Payments, Medical Information, and ARM 24-3.18B(3)-S1830, Informal Hearing Procedures.	NOTICE OF PROPOSED AMENDMENTS AND ADOPTIONS No hearing Contemplated

TO: ALL INTERESTED PERSONS

1. On January 23, 1978, the Division of Workers' Compensation of the Montana Department of Labor and Industry proposes to make the above stated amendments and adoptions.

2. The rules are adopted pursuant to the implementation of the administration of the Crime Victims Compensation Act. A change is required in the rules relating to the division's organization and the division's functions to illustrate that the division has been granted another administrative task to perform, and new rules have been mandated by the Legislature to be adopted in order to implement a newly created legislative act.

3. Rule 24-3.18(1)-O1800 DIVISION ORGANIZATION is proposed to be amended as follows:

"24-3.18(1)-O1800 DIVISION ORGANIZATION (1) The division of workers' compensation of the department of labor and industry adopts and incorporates the organizational structure of the division as it has been established in chapter 1 of this title. For the purposes of the code, all of the rules administered by the division will be listed under chapters 18, ~~and~~ 18A~~,~~, and 18B. The chapters will be listed as follows: chapter 18, rules relating to workers' compensation; chapter 18A, rules relating to safety and health; chapter 18AI, safety rules relating to boilers; chapter 18AII, safety rules relating to mines~~,~~; chapter 18B, rules relating to crime victims compensation."

4. Rule 24-3.18(6)-S1820 FUNCTIONS OF THE DIVISION is proposed to be amended as follows:

"24-3.18(6)-S1820 FUNCTIONS OF THE DIVISION (1) The functions of the division have been established in chapter 1 of this title.

(2) The rules administered by the division for the purpose of the Montana administrative code are listed in the following chapters: chapter 18, rules relating to workers' compensation; chapter 18A, rules relating to safety and health; chapter 18AI, safety rules relating to boilers; chapter 18AII, safety rules relating to mines~~,~~; chapter 18B, rules relating to crime victims compensation."

5. Rule 24-3.18B(1)-S1800 FUNCTIONS OF THE DIVISION IN RELATION TO THE CRIME VICTIMS COMPENSATION ACT is proposed to be adopted and and will read as follows:

"24-3.18B(1)-S1800 FUNCTIONS OF THE DIVISION IN RELATION TO THE CRIME VICTIMS COMPENSATION ACT. (1) The division of workers' compensation, through the crime victims unit, administers the crime victims compensation act, Title 71, Chapter 26, Revised Codes of Montana, 1947."

6. Rule 24-3.18B(2)-S1810 REPORTING, COMPENSATION PAYMENTS, MEDICAL INFORMATION is proposed to be adopted and will read as follows:

"24-3.18B(2)-S1810 REPORTING, COMPENSATION PAYMENTS, MEDICAL INFORMATION. (1) CLAIM REPORTING. The victim shall submit a claim for benefits under the crime victims compensation act through the submission of DWC-MIS form 81, victim's claim form, to the division of workers' compensation. This report relates to detailed information concerning the victim, including information regarding the injury, medical needs, employer, and other benefit sources. Law enforcement agencies shall, upon request, submit DWC-MIS form 82, law enforcement officer's report to the division. This form contains detailed information concerning the law enforcement officer's report of injury and knowledge concerning the criminal activity that led to the claimant's injuries. Employers of victims who have submitted claims shall, upon request, submit DWC-MIS form 83, verification of employment and salary, to the division. This form contains detailed information concerning the claimant's loss of wages and benefit entitlements from the employer. Physicians who have rendered medical services to a victim who is seeking benefits shall submit to the division DWC-MIS form 84, attending physician's first report and bill for initial treatment. This form contains detailed information regarding treatment rendered to a victim, the physician's opinion concerning the victim's ability to work, and medical costs.

(2) COMPENSATION TO BE PAID. Wage compensation shall be paid directly to the claimant every fourteen (14) days unless otherwise directed by the division. The first payment will be processed to coincide with the biweekly payment periods adopted by the division.

(3) MEDICAL COMPENSATION PAYMENTS. Reimbursement for medical expenses will be paid directly to the claimant for reasonable medical services. The amount of reimbursement will be based on the usual and customary rates for the medical services, but the division reserves the right to reduce the medical charges, but not below what would be allowed in workers' compensation cases.

(4) CLAIM AUTHORITY. The division will issue formal orders accepting, denying, adjusting, terminating, or reconsidering claims for compensation.

(5) MEDICAL EVALUATION. The division must be advised of the results of all medical examinations. No reports by examining or attending physicians shall be withheld as confidential.

(6) REQUIRED MEDICAL EVALUATION. Whenever the division requires a claimant to submit to an examination by a physician of the division's choice, in addition to paying for such examination, the division shall reimburse the claimant for necessary and reasonable subsistence and travel costs.

(7) PROTECTION OF PERSONS. The division, at its discretion, may require proper guardianship, conservatorship, or other protective procedures be established in order to protect minors and incapacitated persons

who are beneficiaries or claimants under the crime victims compensation act. The establishment of such means of protection shall be in accordance with chapter 5 of the Uniform Probate Code.

(8) SELECTION OF PHYSICIAN. The injured claimant may select the physician to provide the initial treatment. The attending physician shall be responsible for the type, duration, and frequency of treatment, including hospitalization, nursing service, and medication, subject to recognized professional standards. Prior approval by the division must be obtained before referral of the claimant to a medical specialist for consultation or treatment, except in an emergency. All medical reports for consultation or treatment shall be available to the division upon request. The division reserves the right to suspend compensation pending receipt of medical information.

(9) CHIROPRACTIC SERVICES. Chiropractic services will be allowed and regulated under ARM Rules 24-3.18(26)-S18130 and 24-3.18(26)-S18140."

7. Rule 24-3.18B(2)-S1830 INFORMAL HEARING PROCEDURES is proposed to be adopted and will read as follows:

"24-3.18B(2)-S1830 INFORMAL HEARING PROCEDURES. (1) Under Section 71-2607, Revised Codes of Montana, 1947, the division may hold informal hearings in order to make determinations regarding the compensability of a claim. These hearings are not considered contested case hearings under the Montana Administrative Procedure Act. However, the division must adopt rules regarding its informal hearing procedures. The following subsections set forth the informal hearing procedures to be utilized by the division.

(2) If the division determines that a hearing should be held concerning any matter related to a claim for benefits, a hearing will be ordered. Also, a claimant may request a hearing before the division concerning any matter relating to a claim for benefits. The division will give notice of the time and place for the hearing, and a statement concerning matters to be considered at the hearing. The hearing will be held before a representative appointed by the division, who may or may not be an employee of the division.

(3) The hearing will be held to elicit information concerning a claim that has been submitted for benefits. A claimant may submit evidence concerning any relevant matter regarding his claim, and the Division may submit evidence concerning its position regarding a claim. Parties will have an opportunity to examine and cross-examine witnesses who may have relevant testimony concerning a claimant's claim. The statutory and common law rules of evidence do not apply to hearings held under this rule. The division will make a determination as to whether the hearing proceedings will be transcribed.

(4) The division will make a determination as to whether matters concerning a claimant's claim can be resolved at the hearing through stipulation or agreed settlement. If the division determines that a final decision must be made concerning a contested issue regarding a claimant's claim, the division will issue findings of fact and conclusions of law, which will be considered a final determination by the division concerning the contested matters relating to the claim. However, the division may, in its order, allow a party to request a rehearing. If a party is allowed to request a rehearing, the rehearing must be requested before the division in order to perfect an appeal to the workers' compensation court. If such a rehearing request is required in order to perfect an appeal to the workers' compensation court, the division's final determination for appeal purposes is not considered to be made until

after the rehearing request is acted upon by the division. Appeals to the workers' compensation court under Section 71-2617, R.C.M. 1947, shall be made within thirty (30) days after the division's final determination concerning the contested matters relating to a claimant's claim."

8. Interested persons may submit their data, views, and arguments concerning the proposed amendments and adoption of rules as outlined in this notice to the Division of Workers' Compensation, attention: Norman H. Grosfield, 815 Front Street, Helena, Montana 59601. Written comments to be considered must be received no later than January 20, 1978.

9. If the Division of Workers' Compensation receives a request for a public hearing on the proposed amendments and adoption of the rules outlined before, from more than ten (10) persons directly affected by the proposed amendments and adoption, a public hearing will be held upon appropriate notice.

10. The authority of the Division of Workers' Compensation to make the proposed amendments and adoption of rules is based on Sections 71-2605(1)(a) and 71-2607, R.C.M. 1947.

11. Rationale: The reason the division must adopt rules to implement the new Crime Victims Compensation Act is that all parties will need information concerning the procedures for submission of claims and related reports, as well as the procedures for the payment of benefits in matters relating to medical treatment. Also, the Legislature has required the division to adopt rules concerning its informal hearing procedures, and the division is proposing to set forth specific procedures to be utilized at such hearings.

Dated this 15th day of December, 1977.

DIVISION OF WORKERS' COMPENSATION

Norman H. Grosfield, Administrator

Certified to the Secretary of State December 15, 1977.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF ATHLETICS

IN THE MATTER of the Proposed Adoption of a New Rule Relating to Public Participation in Board decision making functions.	NOTICE OF PROPOSED ADOPTION of a New Rule Relating to Public Participation in Board decision making functions. No Hearing Contemplated.

TO: ALL INTERESTED PERSONS

1. On January 22, 1978, the Board of Athletics proposes to adopt a new rule relating to public participation in Board decision making functions.

2. The rule, as proposed, will incorporate as rules of the Board the rules of the Department of Professional and Occupational Licensing regarding public participation in department decision making, which have been duly adopted and are published in Title 40, Chapter 2, Sub-Chapter 14, of the Montana Administrative Code.

The reason for the adoption is that such action is mandated by Section 82-4228, R.C.M. 1947. That section requires all agencies to adopt rules which specify the means by which the public may participate in decision making functions. Rather than adopt its own set of rules and for the sake of expediency the Board has reviewed and approved the department rules and by this Notice seeks to incorporate them as their own.

3. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Athletics, LaLonde Building, Helena, Montana. Written commments in order to be considered must be received no later than January 20, 1978.

4. If any person directly affected wishes to express his views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to the Board of Athletics, LaLonde Building, Helena, Montana, on or before January 20, 1978.

5. If the Board of Athletics receives requests for a public hearing on the proposed adoption of a new rule from more than twenty-five (25) persons directly affected, a public hearing will be held at a later date. Notification of such hearing will be made by publication in the Administrative Register.

6. The authority of the Board of Athletics to make the proposed adoption of a new rule is based on Section 82-301 R.C.M. 1947.

DATED THIS 15th DAY OF December 1977.

BOARD OF ATHLETICS
CHARLES A. GEORGE
CHAIRMAN

BY: Ed Carney
Ed Carney
Director
Department of Professional
and Occupational Licensing

Certified to the Secretary of State 12-15, 1977.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF COSMETOLOGISTS

IN THE MATTER OF THE PROPOSED) Repeal of the Numbers for Sub-) Chapter (6) and (8) and Repeal) of ARM 40-3.30(6)-S30405 and) ARM 40-3.30(8)-S30408.)	NOTICE OF PROPOSED REPEAL of the numbers for Sub-Chapter (6) and (8) and Repeal of ARM 40-3.30(6)-S30405 and ARM 40-3.30(8)-S30408..

No Hearing Contemplated.

TO: ALL INTERESTED PERSONS

1. On January 22, 1978, the Board of Cosmetologists proposes to repeal numbers for Sub-Chapter (6) and (8) and Repeal of ARM 40-3.30(6)-S30405 and ARM 40-3.30(8)-S30408.

2. On September 23, 1977 the Board of Cosmetologists published notice of a complete revision of its Board rules. As that notice explained, all the existing ruls were repealed and substitute rules adopted. Those proposed changes were adopted and published on Nobember 25, 1977.

The only reason for this notice is that when the above stated revision was made the Board inadvertently neglected to repeal two (2) Sub-Chapter numbers and two (2) rules. The rules to be repealed were taken from the section index, which was not, at that time, up to date, and thus the omission.

3. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to the Board of Cosmetologists, LaLonde Building, Helena, Montana. Written comments in order to be considered must be received no later than January 20, 1978.

4. If any person directly affected wishes to express his views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to the Board of Cosmetologists, LaLonde Building, Helena, Montana, on or before January 20, 1978.

5. If the Board of Cosmetologists receives requests for a public hearing on the repeal from more than twenty-five (25) persons directly affected, a public hearing will be held at a later date. Notification of such hearing will be made by publication in the Administrative Register.

6. The authority of the Board of Cosmetologists to make the proposed repeal is based on Section 66-306, R.C.M., 1947.

DATED THIS 15th DAY OF December, 1977.

BOARD OF COSMETOLOGISTS
JUNE BAKER
CHAIRMAN

BY: Ed Carney
Ed Carney
Director
Department of Professional
and Occupational Licensing

Certified to the Secretary of State 12-15, 1977.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF COSMETOLOGISTS

IN THE MATTER of the Proposed Adoption of a New Rule Relating to Public Participation in Board decision making functions.	NOTICE OF PROPOSED ADOPTION of a New Rule Relating to Public Participation in Board decision making functions. No Hearing Contemplated.

TO ALL INTERESTED PERSONS

1. On January 22, 1978, the Board of Cosmetologists proposes to adopt a new rule relating to public participation in Board decision making functions.

2. The rules proposed,with one exception, will incorporate as rules of the Board the rules of the Department of Professional and Occupational Licensing regarding public participation in department decision making, which have been duly adopted and are published in Title 40, Chapter 2, Sub-Chapter 14, of the Montana Administrative Code. The one exception is in Sub-Section (3)(a) of the Department rules which shall delete the following interlined sentences and substitute the underlined sentence:

> "(3)(a) . . . . .the determination must be approved by a majority vote of the ~~Department Committee~~ Board Committee on public participation. This committee is composed of ~~the Director, Division Administrator, Administrative Assistant and the Staff Attorney~~. the Board and the executive officers of the Montana State Cosmetologists Association."

This proposed incorporation by reference is with the understanding that wherever the words "department" or "director" appear in the Department Rules, that such will mean Board in the Board of Cosmetologists Rules.

The reason for the adoption is that such action is mandated by Section 82-4228, R.C.M. 1947. That section requires all agencies to adopt rules which specify the means by which the public may participate in decision making functions. Rather than adopt its own set of rules and for the sake of expediency the Board has reviewed and approved the department rules and by this Notice seeks to incorporate them as their own.

3. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Cosmetologists, LaLonde Building, Helena, Montana.

Written commments in order to be considered must be received no later than January 20, 1978.

4. If any person directly affected wishes to express his views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to the Board of Cosmetologists, LaLonde Building, Helena, Montana, on or before January 20, 1978.

5. If the Board of Cosmetologists receives requests for a public hearing on the proposed adoption of a new rule from more than twenty-five (25) persons directly affected, a public hearing will be held at a later date. Notification of such hearing will be made by publication in the Administrative Register.

6. The authority of the Board of Cosmetologists to make the proposed adoption of a new rule is based on Section 66-806.

DATED THIS 15th DAY OF December, 1977.

BOARD OF COSMETOLOGISTS
JUNE BAKER
CHAIRMAN

BY: Ed Carney
Ed Carney
Director
Department of Professional
and Occupational Licensing

Certified to the Secretary of State 12-15, 1977.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF PUBLIC ACCOUNTANTS

IN THE MATTER OF THE PROPOSED AMENDMENT OF ARM 40-3.94(6)-S94090 Annual Licenses to Practice.	NOTICE OF PROPOSED AMENDMENT of ARM 40-3.94(6)-S94090 Annual Licenses to Practice.
	No Hearing Contemplated.

TO: ALL INTERESTED PERSONS

1. On January 22, 1978, the Board of Public Accountants proposes to amend ARM 40-3.94(6)-S94090, Annual License to Practice.

2. The amendment, as proposed, will replace existing sub-sections (2) and (3) with the following language:

> "Providing however, that any licensee who does not wish to pay the renewal fee for the intervening three (3) years must become inactive for any year or years he choses not to pay. In order to become inactive under Section 66-1833 he must be retired from practice or any other employment. The Board will also require that his certificate and/or license be returned to the Board. At such time as he wishes to become active, he must pay the renewal fee for the year in which he reactivates, and his certificate or license will be returned.

The Board heretofore has had difficulty in determining and administering the provision in Section 66-1833, R.C.M. 1947 and especially that part which purports to allow a three (3) year grace period for renewing. Therefore, since that section also provides for an inactive status, the Board has determined that the grace period provision can only be properly administered under that section by considering the three (3) year grace period option to mean inactive status.

The reason for the proposed amendment is that the Board believes that an employed, or self-employed person derives benefit in one form or another from having his license and/or certificate in his possession. Since the Board believes that he should not be entitled to any such benefits without payment of the renewal fee, the Board believes his certificate, and/or license should be returned to prevent him from so doing.

3. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Public Accountants, LaLonde Building, Helena, Montana. Written comments in order to be considered must be received no later than January 20, 1978.

4. If any person directly affected wishes to express his views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to the Board of Public Accountants, LaLonde Building, Helena, Montana, on or before January 20, 1978.

5. If the Board of Public Accountants receives requests for a public hearing on the proposed adoption of a new rule from more than twenty-five (25) persons directly affected, a public hearing will be held at a later date. Notification of such hearing will be made by publication in the Administrative Register.

6. The authority of the Board of Public Accountants to make the proposed adoption of a new rule is based on Section 66-1815, R.C.M. 1947.

DATED THIS 15th DAY OF December 1977.

BOARD OF PUBLIC ACCOUNTANTS
BOYD TAYLOR
CHAIRMAN

BY: Ed Carney
Ed Carney
Director
Department of Professional and
Occupational Licensing

Certified to Secretary of State 12-15 -, 1977.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS

IN THE MATTER of the Proposed Adoption of a New Rule Relating to Public Participation in Board decision making functions.	NOTICE OF PROPOSED ADOPTION of a New Rule Relating to Public Participation in Board decision making functions. No Hearing Contemplated.

TO: ALL INTERESTED PERSONS

1. On January 22, 1978, the Board of Radiologic Technologists proposes to adopt a new rule relating to public participation in Board decision making functions.

2. The rule, as proposed, will incorporate as rules of the Board the rules of the Department of Professional and Occupational Licensing regarding public participation in department decision making, which have been duly adopted and are published in Title 40, Chapter 2, Sub-Chapter 14, of the Montana Administrative Code.

The reason for the adoption is that such action is mandated by Section 82-4228, R.C.M. 1947. That section requires all agencies to adopt rules which specify the means by which the public may participate in decision making functions. Rather than adopt its own set of rules and for the sake of expediency the Board has reviewed and approved the department rules and by this Notice seeks to incorporate them as their own.

3. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Radiologic Technologists, LaLonde Building, Helena, Montana. Written commments in order to be considered must be received no later than January 20, 1978.

4. If any person directly affected wishes to express his views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to the Board of Radiologic Technologists, LaLonde Building, Helena, Montana, on or before January 20, 1978.

5. If the Board of Radiologic Technologists receives requests for a public hearing on the proposed adoption of a new rule from more than twenty-five (25) persons directly affected, a public hearing will be held at a later date. Notification of such hearing will be made by publication in the Administrative Register.

6. The authority of the Board of Radiologic Technologists to make the proposed adoption of a new rule is based on Section 66-3704, R.C.M. 1947.

DATED THIS 15th DAY OF December 1977.

BOARD OF RADIOLOGIC TECHNOLOGISTS
REYNOLD BENEDETTI
CHAIRMAN

BY: _____
Ed Carney
Director
Department of professional
and Occupational Licensing

Certified to the Secretary of State 12-15, 1977.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF REAL ESTATE

IN THE MATTER OF THE PROPOSED Adoption of New Rules Regarding the Code of Ethics.

NOTICE OF PUBLIC HEARING on the Proposed Adoption of New Rules regarding the Code of Ethics.

TO: ALL INTERESTED PERSONS

1. On January 14, 1978 at 10:00 o'clock a.m. in Bozeman, Montana, at the Holiday Inn, Room 107, a public hearing will be held to receive testimony in the matter of the proposed adoption of new rules regarding the Code of Ethics.

2. The Board published the notice of proposed adoption of a Code of Ethics on July 25, 1977. A public hearing was held on that proposed adoption on August 19, 1977. As a result of that hearing and after reviewing all statements and testimony received, the Board has revised the Code of Ethics from its original proposed form. Since the Board feels that the revision significantly changed the original proposal, this Notice offers opportunity for another public hearing to receive any further comment on the revised proposal.

3. The Code of Ethics, in its revised form, is proposed to read as follows:

"

RULE NUMBER ONE

Violation of the following rules may be considered by the Board in determining whether or not the licensee has violated Section 66-1937(19), R.C.M. 1947 as amended, "Demonstrating his unworthiness or incompetency to act as a Broker or Salesman."

A violation of these rules may be considered by the Board in determining whether a violation of Section 66-1937(17) R.C.M. 1947 as amended, "Intentionally violating a rule adopted by the Board in the interest of the public and in conformity with this act."

RULE NUMBER TWO

Actions demonstrating unworthiness or incompetency shall include, but not be limited to the following:

a) Licensees shall be apprised of the applicable laws and regulations affecting the transaction.

b) The Licensee shall endeavor to ascertain all pertinent facts concerning every property for which he accepts the agency, so that he may fullfill his obligation to avoid error, exaggeration, misrepresentation, or concealment of pertinent facts.

c) The Licensee will not engage in activities that constitute the practice of law and should recommend

that the merchantibility of the title be determined and legal counsel be obtained when the interest of either party requires it.

d) Representation by a licensee to any lender, guaranteeing agency or other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon.

e) The licensee or agency in advertising shall be especially careful to present a true picture and shall not advertise without disclosing his name.

f) The licensee, for the protection of all parties with whom he deals shall see that financial obligations and committments regarding all real estate transactions are in writing.

g) The licensee shall not undertake to make a formal real estate appraisal that is outside the field of his experience.

h) A licensee cooperating with the exclusive listing licensee shall not obtain the cooperation of a subsequent licensee without the written consent of the listing licensee.

i) The licensee shall not fail to submit all written offers to an owner when such offers are received prior to the seller accepting an offer in writing and until the broker has knowledge of said acceptance.

j) The licensee shall inform any seller at the time an offer is presented that he will be expected to pay certain closing costs such as discount points and the approximate amount of said costs.

k) Lending a broker's license to a salesman, or permitting a salesman to operate as a broker, or failure of a broker to properly supervise the activities of his licensees.

l) Failure to disclose to a buyer a material fact regarding the condition of a parcel of real estate of which a licensee has knowledge. "

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written statements may be presented to the Board prior to the date of hearing and will be made a part of the record for the Board's review.

5. The Board of Real Estate or its designee shall preside over, and conduct the hearing.

6. The authority of the Board of Real Estate to make the proposed adoption is based on Section 66-1927, R.C.M.1947.

DATED THIS 15th DAY OF December, 1977.

BOARD OF REAL ESTATE
ROBERT T. CUMMINS
CHAIRMAN

BY: Ed Carney
Ed Carney,
Director
Department of Professional and
Occupational Licensing

Certified to Secretary of State 12-15, 1977

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF REAL ESTATE

IN THE MATTER OF THE PROPOSED AMENDMENT of MAC 40-3.98(6)-S98040, Renewal-Inactive List-Register.	NOTICE OF PROPOSED AMENDMENT of MAC 40-3.98(6)-S98040, Renewal-Inactive List-Register.
	No Hearing Contemplated

TO: ALL INTERESTED PERSONS

1. On January 22, 1978, the Board of Real Estate proposes to amend MAC 40-3.98(6)-S98040, Renewal-Inactive List- Register.

2. The amendment as proposed will add the following provision as sub-section (2) to the existing rule:

> "(2) Effective December 4, 1976 the Board of Real Estate, through the rule amendment process, deleted from its rules the status of the Non-Resident Real Estate Salesmen. Those Non-Resident Salesmen Licenses issued prior to that date and presently in existence will be re-issued as Montana Real Estate Salesmen licenses upon application and payment of fees and will be retained as inactive licenses in the State of Montana Board of Real Estate office unless the salesperson moves to Montana and obtains a Montana sponsoring broker or unless that person, when he is in Montana, is under the sponsorship and supervision of a Montana resident broker."

3. The reason for the proposed amendment stems from the December 4, 1976 deletion of the Non-Resident Real Estate Salesmens status. After that date certain persons directly affected by that deletion petitioned the Board to reconsider its action. The Board, by Notice dated August 1, 1977 offered those persons an opportunity for hearing on their petition. A hearing was held on September 30, 1977, at which no persons appeared to present evidence in support of their petition. Having reviewed the issues raised in the petition and the recommendations of the Administrator of the Board of Real Estate along with two (2) written statements submitted, the Board determined that the above proposed amendment would properly serve the interests of the petitioners and discharge the statutory obligations of the Board.

While the Board realizes that an opportunity for hearing must be granted in this notice, it takes the position that a hearing is not necessary. That is to say the Board

has granted an opportunity for hearing at the time the deletion of the Non-Resident Salesmen status was originally proposed and another opportunity when the Board received the above mentioned petitions for amendment. Thus the Board feels that the issues involved in this proposed notice along with the Boards' previous action have been given adequate opportuni to be aired.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Real Estate, LaLonde Building, Helena, Montana. Written comments in order to be considered must be received no later than January 20, 1978.

5. If any person directly affected wishes to express his views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to the Board of Real Estate, LaLonde Building, Helena, Montana, on or before January 20, 1978.

6. If the Board of Real Estate receives requests for a public hearing on the proposed amendment from more than twenty-five (25) persons directly affected, the Board will consider holding a public hearing at a later date. Notificati of any such hearing will be made by publication in the Adminis trative Register.

7. The authority of the Board of Real Estate to make the proposed amendment is based on Section 66-1927.

DATED THIS 15th DAY OF December, 1977.

BOARD OF REAL ESTATE
ROBERT T. CUMMINS
CHAIRMAN

BY: Ed Carney
Ed Carney
Director
Department of Professional
and Occupational Licensing

Certified to the Secretary of State 12-15, 1977.

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

In the matter of the amendment of rule MAR 46-2.10(14)-S11150 pertaining to eligibility requirements for AFDC.	)))))	NOTICE OF PUBLIC HEARING FOR AMENDMENT OF RULE PERTAINING TO ELIGIBILITY REQUIREMENTS FOR AFDC.

TO: All Interested Persons

1. On January 12, 1978, at 10:00 a.m. a public hearing will be held in the Auditorium of the State Department of Social and Rehabilitation Services, 111 Sanders Street, Helena, Montana, to consider the amendment of rule MAR 46-2.10(14)-S11150, pertaining to eligibility requirements for AFDC, to be enacted no sooner than January 20, 1978, and to be effective on January 26, 1978. Interested persons may submit their data, views or arguments, orally or in writing, at this hearing. Written data, views or arguments may be submitted to Joan Uda, P.O. Box 4210, Helena, Montana, 59601, any time before January 6, 1978.

2. The Department intends to amend rule MAR 46-2.10(14)-S11150(2)(f)(ac), (ad), and (ae) as follows:

(ac) A father unemployed because of a lawful strike may be eligible for AFDC/UF payments if he meets all other eligibility requirements for AFDC/UF, including registering for employment.

(ad) A father unemployed because of conduct or circumstances which result or would result in disqualification for unemployment compensation under state law is disqualified for AFDC/UF assistance payments, except where such disqualification for unemployment compensation is a result of being unemployed due to a lawful strike.

(ae) A fulltime student is not eligible for AFDC/UF payments since he is not considered available to accept fulltime employment.

3. The rationale for amending the rule is that the current regulation on the unemployed father fails to specify the option selected by the Department, as provided for in CFR 45 233.100(a)(2), as to whether or not AFDC/UF benefits are denied an unemployed father who disqualifies himself for unemployment compensation benefits by reason of conduct. This amendment conforms the rule to the corresponding provision in the state plan for Title IV A, AFDC.

4. Joan Uda, P.O. Box 4210, Helena, Montana, 59601, has been designated by the Director of the Department of Social and Rehabilitation Services to preside over and conduct the hearing.

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5. The authority of the Department of Social and Rehabilitation Services to amend this rule is based on Section 71-503, R.C.M. 1947. The implementing authority is Section 71-501, R.C.M. 1947.

Director, Social and Rehabilitation Services

Certified to the Secretary of State December 14, 1977.

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

In the matter of the amendment of rule MAR 46-2.10(18)-S11465, pertaining to temporary prohibition of certain provider fee increases related to medical assistance.	NOTICE OF PROPOSED AMENDMENT OF RULE PERTAINING TO MEDICAL ASSISTANCE. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons

1. On January 26, 1978, the Department of Social and Rehabilitation Services proposes to amend rule MAR 46-2.10(18)-S11465 which pertains to temporary prohibition of certain provider fee increases related to medical assistance.

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

(1) From the effective date of this rule until July 1, ~~1978~~ 1979, no fee increases to Medicaid providers are allowed, except as provided in subsection (2) of this section.

* * *

3. The rationale for amending the rule is that Montana's Medicaid program is facing an impending financial crisis which, if not averted, will seriously affect the health and safety of Montana's Medicaid recipients. If the Medicaid program does not reduce its anticipated expenditures, a severe cutback of both eligibility maximums and benefits under the Medicaid program will have to be imposed.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Dick Weber, P.O. Box 4210, Helena, Montana, 59601, no later than January 20, 1978.

5. The authority of the Department of Social and Rehabilitation Services to amend this rule is based on Section 71-1511, R.C.M. 1947. The implementing authority is Section 71-1517, R.C.M. 1947.

Director, Social and Rehabilitation Services

Certified to the Secretary of State December 14, 1977.

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

In the matter of the adoption of a rule pertaining to limitation on construction of new Medicaid beds.	))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE PERTAINING TO MEDICAID.

TO: All Interested Persons

1. On January 13, 1978, at 10:00 a.m., a public hearing will be held in the Auditorium of the SRS Building, 111 Sanders Street, Helena, Montana, to consider the adoption of a rule which limits construction of new Medicaid beds.

2. The proposed rule does not replace or modify any section currently found in the Montana Administrative Code.

3. The proposed rule provides as follows:

LIMITATION ON CONSTRUCTION OF NEW MEDICAID BEDS

(1) New Beds.

(a) The Department shall not enter into contracts with providers for skilled nursing and intermediate care services to be provided in utilizing beds for skilled nursing and intermediate care patients which are constructed after the effective date of this rule.

(i) A bed is considered "constructed" prior to the effective date of this rule if, on the effective date, ground has been broken for construction of a new facility or an addition to an existing facility, or significant alterations of an existing facility have been made to allow for one or more additional beds.

(ii) Obtaining a certificate of need, development of plans or blueprints, obtaining financing, or entry into contracts for services or materials do not constitute "ground breaking" for purposes of this rule.

(b) If the Department is prohibited from entering into a contract for skilled nursing and intermediate care services because of subsection (a) of this section, the Department may reimburse a facility for reasonable costs incurred in obtaining a certificate of need or in developing plans or blueprints, or reasonable costs arising from cancellation of contracts for construction services or materials, if the costs would have been reimburseable but for the effect of subsection (a), and the provider, by reason of subsection (a), opts not to proceed to construct the beds.

(2) Exemption. State or county facilities which are operated primarily for the benefit of the indigent are exempt from the requirements of this rule.

4. The Montana Medicaid Program is currently facing a

fiscal crisis. In addition, the State of Montana as a whole has an excess of nursing home beds. The intent of this rule is to require maximum utilization of existing beds, and so avoid the increased costs associated with construction of new beds.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may be submitted to Richard A. Weber, Office of Legal Affairs, P.O. Box 4210, Helena, Montana 59601, any time before January 12, 1977.

6. Richard A. Weber, P.O. Box 4210, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed rule is based on section 71-1511, R.C.M. 1947. The implementing authority for this rule is section 71-1517, R.C.M. 1947.

Director, Department of Social
and Rehabilitation Services

Certified to the Secretary of State December 14, 1977.

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

In the matter of the adoption of a rule pertaining to limitation on Medicaid occupancy rate.) NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE PERTAINING TO MEDICAID.

TO: All Interested Persons

1. On January 16, 1978, at 10:00 a.m., a public hearing will be held in the Auditorium of the SRS Building, 111 Sanders Street, Helena, Montana, to consider the adoption of a rule which sets a limitation on the Medicaid occupancy rate.

2. The proposed rule does not replace or modify any section currently found in the Montana Administrative Code.

3. The proposed rule provides as follows:

LIMITATION ON MEDICAID OCCUPANCY RATE

(1) Medicaid Occupancy Rate.

(a) The Medicaid occupancy rate is a percentage determined by dividing the number of Medicaid patients in a facility by the total number of patient beds in the facility.

(b) The Medicaid occupancy rate in any facility may not exceed at any time the Medicaid occupancy rate of the facility on the effective date of this rule, except as provided in subsection (c) of this section.

(c) Exceptions:

(i) Facilities which were not in operation prior to July 1, 1977, or facilities with less than 80% total occupancy, may increase their Medicaid occupancy rate to 52.5%.

(ii) Portions of facilities which were not in operation prior to July 1, 1977, may increase their Medicaid occupancy rate to the greater of 52.5% or the Medicaid occupancy rate on the effective date of this rule of the portion of the facility in operation prior to July 1, 1977.

(iii) In the event an eligible recipient will be denied necessary Medicaid services in a local facility because of occupancy limitations in the local facility, then the Department shall assure the provision of those services in an unlimited facility within a reasonable distance of the recipient's home. If the provision of services cannot be so assured, then the Department may, on a case-by-case basis, allow a facility to exceed the limits prescribed herein to provide the necessary care.

(2) Exemption. State or county facilities which are operated primarily for the benefit of the indigent are exempt from the requirements of this rule.

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4. The intent of the proposed rule is to assure that skilled or intermediate nursing care is provided by facilities only to those persons in need of such care. Utilization Review has indicated that this is not the case, and that facilities in the state are providing skilled or intermediate care to Medicaid eligible individuals who are not in need of such care. By freezing Medicaid occupancy levels, the Department intends to require all facilities to arrange or allow alternative types of care for such persons before providing services to other Medicaid eligible persons.

5. Interested persons may submit their data, views or arguments, either orally or in writing, at this hearing. Written data, views or arguments may be submitted to Richard Weber, Office of Legal Affairs, P.O. Box 4210, Helena, Montana 59601, any time before January 15, 1977.

6. Richard Weber, P.O. Box 4210, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed rule is based on section 71-1511, R.C.M. 1947. The implementing authority for this rule is section 71-1517, R.C.M. 1947.

Director, Department of Social
and Rehabilitation Services

Certified to the Secretary of State December 14, 1977.

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

In the matter of the amendment of Rule 46-2.10(18)-S11440 pertaining to elective surgery.	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE PERTAINING TO MEDICAL ASSISTANCE, SERVICES PROVIDED, AMOUNT, DURATION.

TO: All Interested Persons

1. On January 18, 1978, at 10:00 a.m. a public hearing will be held in the Auditorium of the State Department of Social and Rehabilitation Services, 111 Sanders Street, Helena, Montana, to consider the amendment of rule 46-2.10(18)-S11440, pertaining to elective surgery, to be effective on January 26, 1978.

2. The proposed amendment adds on to present rule 46-2.10(18)-S11440 found in the Administrative Rules of Montana. The proposed amendment would narrowly define "elective surgery" in order to be able to reimburse for surgery which is necessary to maintain health or life.

3. The Department intends to amend rule 46-2.10(18)-S11440(1)(b)(ii)(aa), (ab), and (ac) as follows:

(b) There is no limitation on the number or frequency of physician and surgeon services, except:

(i) That inpatient psychiatric * * *

(ii) No payment will be made for elective surgery. Payment will not be made for hospital or other costs related to elective surgery.

(aa) Elective surgery is defined, for this purpose, as any surgery performed in an inpatient or outpatient hospital basis or in a free standing ambulatory surgical center which is not considered emergency or lifesaving and which is subject to the choice or decision of the patient and the physician. These are procedures which may be deferred or postponed for an indefinite period without causing undue hardship, pain or prolonged poor health to the patient.

(ab) The following is a list of surgery which will be considered to be elective. This list is not intended to be inclusive and other similar operations will also be considered elective: Most plastic and reconstructive surgery including orthopedics, tonsillectomy and adenoidectomy, vein ligation and stripping, dental surgery in hospital, intestinal by-pass procedures, hemorrhoidectomy, most gall bladder procedures, most hernias, most types of urinary bladder repair, circumcision, anterior or posterior vaginal wall repair, hysterectomy and uterine

repair procedures, plastic operations on the ovary, laminectomy and/or spinal fusion.

(ac) Exception: Any surgery performed that is included in the above list or any other surgery normally considered to be elective by the medical community will be subject to review and possible non-payment unless prior authorization is obtained or the need is fully justified. Prior authorization is not mandatory, but all operations not so authorized may be subject to retroactive denial. Authorization may be obtained through the Medical Assistance Bureau.

Exceptions will be only upon a showing that due to unusual circumstances the operation is necessary for the patient's health.

3. The rationale for amending the rule is that the Medicaid program is experiencing severe financial difficulties. In an effort to cut costs the department has been forced to remove one of the optional medical programs. An attempt has been made to narrowly define "elective surgery" in order to be able to reimburse for surgery which is necessary to maintain health or life.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may be submitted to Walter Perry, P.O. Box 4210, Helena, Montana, 59601, any time before January 17, 1978.

5. Walter Perry, P.O. Box 4210, Helena, Montana, 59601, has been designated by the Director of the Department of Social and Rehabilitation Services to preside over and conduct the hearing.

6. The authority of the Department of Social and Rehabilitation Services to amend this rule is based on Sections 71-210 and 71-1512, R.C.M. 1947. The implementing authority is Sections 71-1512 and 7-1517, R.C.M. 1947.

Director, Social and Rehabilitation Services

Certified to the Secretary of State December 14, 1977.

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

In the matter of the amendment of Rule 46-210(18)-S11440 pertaining to prescription splitting.	) NOTICE OF PROPOSED)AMENDMENT OF RULE PERTAINING) TO MEDICAL ASSISTANCE,) SERVICES PROVIDED, AMOUNT,) DURATION. NO PUBLIC) HEARING CONTEMPLATED.

TO: All Interested Persons

1. On January 26, 1978, the Department of Social and Rehabilitation Services proposes to amend rule 46-2.10(18)-S11440 which pertains to medical assistance, services provided, amount, and duration.

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

> (ag) Each prescription shall be dispensed in a quantity ordered by a physician.
>
> Prescriptions for chronic conditions for which a physician has not ordered a specific quantity shall be dispensed in quantities of 100 or a minimum of one month's supply of medication.
>
> Prescriptions for acute conditions for which a physician has not ordered a specific quantity shall be dispensed in sufficient quantities to cover the period of time for which the condition is being treated.

3. The rationale for amending this rule is that the Medicaid program is undergoing a financial crisis. This rule is offered to assure that Medicaid patients receive their medication in convenient amounts and to insure against excessive prescription splitting by pharmacists.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Walter Perry, P.O. Box 4210, Helena, Montana, 59601, no later than January 20, 1978.

5. The authority of the Department of Social and Rehabilitation Services to amend this rule is based on Sections 71-210 and 71-1511, R.C.M. 1947. The implementing authority is Section 71-1512, R.C.M. 1947.

Director, Social and Rehabilitation Services

Certified to the Secretary of State December 14, 1977.

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

In the matter of the amendment of rule 46-2.10(14)-S11150 pertaining to eligibility requirements for AFDC.	))))	NOTICE OF PUBLIC HEARING FOR AMENDMENT OF RULE PERTAINING TO ELIGIBILITY REQUIREMENTS FOR AFDC.

TO: All Interested Persons

1. On January 19, 1978, at 10:00 a.m. a public hearing will be held in the Auditorium of the State Department of Social and Rehabilitation Services, 111 Sanders Street, Helena, Montana, to consider the amendment of rule 46-2.10(14)-S11150, pertaining to eligibility requirements for AFDC, to be effective on January 26, 1978.

2. The proposed amendment changes present rule 46-2.10 (14)-S11150 found in the Administrative Rules of Montana. The proposed amendment would change the terminology only. The change is being made in order to clarify the term "essential person."

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

> (5) The spouse of a caretaker relative may be included in the grant as ~~an essential person~~ recipient if ~~such spouse~~ the caretaker relative is physically or mentally incapacitated.

4. The rationale is that the amendment is a change in language only. The term "essential person" is technically a misnomer for this situation. The change is being made in order to make the state rules conform with the state plan submitted by the Department of Health, Education and Welfare. The change in terminology will have no effect on the coverage of caretaker relatives.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may be submitted to Walter Perry, P.O. Box 4210, Helena, Montana, 59601, any time before January 18, 1978.

6. Walter Perry, P.O. Box 4210, Helena, Montana, 59601, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendment is based on Section 71-210, R.C.M. 1947. The implementing authority is Section 71-503, R.C.M. 1947.

SOCIAL AND
REHABILITATION SERVICES

Director, Social and Rehabilitation Services

Certified to the Secretary of State December 14, 1977.

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

In the matter of the adoption of eleven rules pertaining to reimbursement for skilled nursing and intermediate care services.	))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF ELEVEN RULES PERTAINING TO SKILLED NURSING AND INTERMEDIATE CARE SERVICES.

TO: All Interested Persons

1. On January 20, 1978, at 10:00 a.m. a public hearing will be held in the Auditorium of the SRS Building, 111 Sanders Street, Helena, Montana, to consider the adoption of eleven rules which pertain to reimbursement for skilled nursing and intermediate care services.

2. The proposed rules replace MAC 46-2.10(18)-S11450, currently found on page 46-94.7G of the Administrative Rules of Montana.

3. The proposed rules provide as follows:

#1 "REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, PURPOSE Reasonable cost related reimbursement for skilled nursing and intermediate care facility services is mandated by Section 249 of Public Law 92-603, the 1972 amendment to the Social Security Act.

The purpose of the following rules is to meet the requirements of Section 249 of Public Law 92-603 and 45 C.F.R. 250, while treating the eligible recipient, the provider of services, and the Department fairly and equitably. The rules prescribe rates of payment reasonably adequate to reimburse in full the actual allowable costs of skilled care and intermediate care that are economically and efficiently operated.

In addition, the system of reimbursement described in these rules is intended to facilitate a transition from the current method of reimbursement to a more comprehensive system of reimbursement by providing the data required to implement such a system. A more comprehensive system is currently being developed by the Department in cooperation with an advisory committee representing the nursing home industry.

The following method of reimbursement shall be effective March 1, 1978, for all skilled nursing and intermediate care facilities electing to participate in the Montana Medicaid Program."

#2 "REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, PROSPECTIVE RATES (1) Reimbursement of the costs of skilled nursing and intermediate care services shall be by means of a prospective rate. The dif-

ference between the prospective rate for a rate period and the provider's actual cost for the same period shall constitute a profit or loss to that provider for that period.

(2) The initial prospective rate shall be effective from March 1, 1978 to July 1, 1979, but shall be adjusted quarterly for inflation and occupancy changes during that period.

(3) The prospective rate of reimbursement for a provider shall be based upon the historic operating costs and the historic property costs of the provider, reported in cost reports filed prior to November 1, 1977, to the extent those costs are allowable under Rule #5 and the applicable provisions of Provider Reimbursement Manual, Health Insurance Manual 15, Part I, 1967, as updated, published by the U.S. DHEW, SSA, hereinafter referred to as HIM 15.

(4) The reported allowable historic operating costs shall be adjusted for inflation to December 31, 1977, by reference to the Consumer Price Index for All Items (CPI) published monthly by the Bureau of Labor Statistics, U.S. Department of Labor in accordance with the provisions of Rule #4(2)(a)(i).

(5) The allowable historic operating cost of the provider shall also be adjusted for the actual effect of increases in the minimum wage on the salaries paid by the provider in accordance with the provisions of Rule #4(2)(a)(iii).

(6) A management incentive, based upon a percentage of the difference between the provider's allowable historic operating cost as adjusted for inflation and the statewide average historic operating cost as adjusted for inflation, shall be added to or deducted from the provider's allowable historic operating cost for purposes of setting the provider's prospective rate in accordance with the provisions of Rule #4(2)(a)(ii).

(7) The prospective per diem rate for the provider shall be based upon the actual occupancy for the historical cost reporting period and will be adjusted quarterly to reflect increases of more than 3 % in occupancy in accordance with the provisions of Rule #4(2)(d).

(8) The operating cost portion of the provider's prospective rate shall be adjusted quarterly for inflation by reference to the CPI for All Items in accordance with the provisions of Rule #4(2)(c)(i).

(9) In addition, an adjustment for average actual inflation in the Montana nursing home industry shall be made to each provider's prospective rate for the rate period beginning July 1, 1979, and annually thereafter, in accordance with the provisions of Rule #4(2)(c)(ii).

(10) The provider's historic per diem property cost shall be added to the above per diem operating costs in

accordance with the provisions of Rule #4(2)(b) to reach a prospective per diem rate.

(11) In no case will the prospective rate exceed the upper limits prescribed in 45 C.F.R. 250.30(b)(6) which are hereby incorporated and made a part of this rule by reference.

(12) There shall be no adjustment of the determined rate and recovery or payment of overpayments or underpayments unless the overpayment or underpayment results from erroneous or unallowable cost data submitted by the provider or computation errors by the Department in determining the facility rate. The statewide average will not be changed, as a result of overpayments or underpayments.

(13) In order to provide interested members of the public the opportunity to review and comment on the proposed rates before they become effective, a preliminary schedule of initial prospective rates and rates adjusted quarterly for inflation will be available upon request to the Department prior to the effective date of such rates."

#3 "REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, PARTICIPATION REQUIREMENTS (1) The skilled nursing and intermediate care facilities electing to participate in the Medicaid program must meet the following basic requirements to receive payments for services:

(a) Maintain a current license under the rules of the State Department of Health and Environmental Sciences for category of care being provided.

(b) Maintain a current certification for Medicaid under the rules of the Department of Social and Rehabilitation Services for the category of care being provided.

(c) Maintain a current agreement with the Department of Social and Rehabilitation Services to provide the care for which payment is being made.

(d) Have a licensed Nursing Home Administrator or such other qualified supervisor for the facility as statutes or regulations may require.

(e) Accept, as payment in full for operating and property costs, the amounts paid in accordance with the reimbursement method set forth in these rules."

#4 "REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, RATE DETERMINATION (1) Prospective rates for each facility are established on the basis of costs reported by each facility, adjusted for non-allowable costs as defined in Rule #5, and adjusted for inflation. A management incentive shall be determined by reference to the statewide average of all provider costs, and added to or deducted from the reported costs. Reimbursement shall not, however, exceed the average of customary charges to private patients receiving similar nursing services

calculated for the quarter in which a rate is set or adjusted, except that a state or county facility charging nominally may be reimbursed for its actual, reasonable costs.

(2) Reimbursement Formula: Base per diem operating costs allowable pursuant to Rule #5 as adjusted for inflation plus per diem property cost equals reimbursement rate.

(a) Base per diem operating cost is the adjusted historical operating cost plus a management incentive plus a minimum wage adjustment.

(i) Adjusted Historical Operating Costs - Historical operating costs for use in setting a provider's Base Per Diem Operating Cost will be determined from cost reports on file at the Montana Department of Social and Rehabilitation Services on November 1, 1977, for the last period in which a final rate was offered by the Department and accepted by the provider. These costs will be adjusted based on the definitions of allowable cost contained in Rule #5.

(aa) The total allowable historical operating cost will be divided by the total days of care provided during the period covered by the cost report to determine a combined per diem rate.

(ab) The per diem rate will be adjusted for inflation occurring between the end of the cost reporting period and January, 1978, using the All Items Consumer Price Index (published monthly by the Bureau of Labor Statistics, 911 Walnut Street, Kansas City, Missouri 64106). The adjustment shall be made by increasing the historical operating cost by a percentage equal to the percentage change in the monthly Consumer Price Index for All Items from the final month of the last reporting period in which a final rate was accepted to January, 1978.

(ii) Management Incentive

(aa) The Statewide Average Operating Cost is the mean of per diem operating costs for all participating providers allowable under the Manual of Reimbursement for Nursing Home Cost, May, 1974, as reported in cost reports on file at the Montana Department of Social and Rehabilitation Services on November 1, 1977, reduced by private pay limitations where applicable. Such costs are adjusted to December, 1977, using the CPI adjustment described in Rule #4(2)(a)(i)(ab) and converted to a per diem figure using actual occupancy during the historical reporting period. The Department has determined the Statewide Average Operating Cost to be $18.45.

(ab) If the Adjusted Historical Operating Cost incurred by the provider is less than the Statewide Average Operating Cost, adjusted for inflation then an incentive factor equal to 25% of the difference between the individual provider's adjusted historical cost and the adjusted

statewide average cost will be added to the individual provider's adjusted historical operating cost, and the total amount will be the Base Operating Cost for that provider.

(ac) If the adjusted historical cost incurred by the provider exceeds the statewide average cost, then 25% of the difference between the adjusted historical operating cost and the statewide average cost will be deducted from the provider's adjusted historical cost to reach the base prospective rate.

(ad) The only prerequisite for receipt of the 25% management incentive described above is that there be no documented patient care deficiencies as defined by Title 19 surveys.

Example: Statewide average cost = $20/day; provider's adjusted historical cost = $16/day; incentive factor = $1.00 (($20 - $16) x .25); base prospective rate = $17 ($16 + $1). If the actual cost of the facility remains at $16/day, the $1 shall constitute a profit to the provider.

(iii) Minimum Wage Adjustment -- An adjustment for inflation shall be made to the historical operating cost of facilities affected by the minimum wage increase which becomes effective January 1, 1978. The adjustment shall reflect the individual facility's anticipated percentage increase in salaries and wages of employees necessary to bring those employees subject to the minimum wage requirement up to the minimum wage and necessary to maintain a reasonable differential in all employee's salaries to the extent the required increase exceeds the inflation adjustment provided for in Rule #4(2)(a)(i)(ab).

(b) Property Costs -- Property costs reimbursement will be calculated using historical property costs reported in cost reports on file with the Montana Department of Social and Rehabilitation Services on November 1, 1977, as allowed in Rule #5.

(i) Property costs are interest, depreciation, property taxes, comprehensive property insurance and lease costs to the extent allowable under Rule #5. Adjustments will be made for equipment acquisitions or capital improvements put into service subsequent to the historical cost reporting period but prior to March 1, 1978. A return on owners' net equity for proprietary facilities as defined and applied in Chapter 12 of HIM 15, which is hereby incorporated and made a part of this rule by reference, will be added to this amount. These costs will be converted to a per diem figure using actual occupancy in the base reporting period.

(ii) The prospective rate shall be adjusted quarterly for property costs of less than $1000 associated with equipment acquisition and capital improvements after March 1, 1978. No quarterly adjustment shall be made for such costs in excess of $1000 without approval of the Depart-

ment prior to the incurment of the cost. Approval shall be requested at least one calendar quarter in advance of the incurment of the cost on forms provided by the Department. The Department may make exception to this subsection for assets placed into service after March 1, 1978, but contracted for prior to that date. Requests for exception shall be submitted prior to April 1, 1978.

(iii) No adjustment for increased interest, depreciation or lease costs due to sale or lease of a facility during a rate period shall be made without approval by the Department prior to the sale or lease.

(iv) In no case will an adjustment be made for increased costs as a result of a sale and leaseback between unrelated parties or a transfer between related parties as defined in Chapter 10 of HIM 15, which is hereby incorporated and made a part of this rule by reference.

(c) Inflation Adjustments:

(i) Each provider's prospective rate shall be adjusted quarterly using the Consumer Price Index (CPI) for All Items. The provider's base per diem operating cost shall be adjusted by a factor equal to the ratio of the monthly CPI for the last month of the next previous quarter and the month immediately preceding that quarter. The initial adjustment shall be made for rates payable in the quarter beginning April 1, 1978, using the CPI for December, 1977, and October, 1977.

The provider shall be notified of the prospective rate adjusted for inflation 60 days prior to the quarter in which it becomes effective. A schedule of rates for all providers shall be available prior to the effective date of the rates upon request to the Chief, Medical Assistance Bureau, Montana Department of Social and Rehabilitation Services, Box 4210, Helena, Montana 59601.

(ii) In addition to the Quarterly Inflation Adjustment, for purposes of determining the base prospective rate for the rate period beginning July 1, 1979, the base per diem operating cost shall be adjusted based on costs reported in the reporting period ending December 31, 1978.

(d) Occupancy Adjustment -- Actual occupancy for the historical cost reporting period will be used to set prospective rates. Adjustments to the prospective rate will be made quarterly if actual occupancy during any quarter increases by more than 3%. The new rate will be effective in the second quarter following the change in occupancy.

(e) The prospective rate shall be limited to the average per diem charges to private patients receiving similar services. Within 30 days after rate notification, the provider shall notify the Department of its anticipated schedule of charges to private patients. The prospective rate shall then be adjusted to reflect the pri-

vate pay limitation where applicable. For purposes of comparison, the provider shall classify private patients according to the Department's criteria found in ARM 46-2.10(18)-S11441, S11442 and S11443. If, upon review of the patient census reports for the quarter or upon audit, it is determined that the provider's projected charges to private patients were erroneous, recovery or payment proceedings will be undertaken immediately in accordance with the provisions of Rule #8.

(f) Prospective Rate Formula -- The above prospective rate determination principles can be expressed in the following formula: R = C + .25(T-C) + B + P + I, where R = prospective per diem rate effective March 1, 1978; C = individual facility historical per diem operating costs determined by reference to allowable costs as defined in Rule #5 adjusted to January, 1978; T = target operating cost set at average of individual facility per diem costs determined by reference to previously allowed costs; B = per diem property costs; P = return on owner's net equity; and I = minimum wage adjustment. (NOTE: The individual facility operating costs plus the management incentive plus inflation and minimum wage adjustments (C + .25(T-C) + I) shall be adjusted quarterly for CPI change beginning April 1, 1978."

#5 "REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, ALLOWABLE COSTS (1) For purposes of determining the Statewide Average Operating Cost defined in Rule #4(2)(a)(ii)(aa), the Department shall utilize those costs included in reports on file with the Montana Department of Social and Rehabilitation Services on November 1, 1977, which have been allowed in the last reporting period in which a final rate was offered by the Department and accepted by the provider. In the event that a final rate was offered without a field audit of all costs reported, then allowable costs shall be determined by reference to the Manual of Nursing Home Cost Reimbursement, May, 1974, and HIM 15.

(2) For purposes of determining allowable costs for individual facilities to be utilized in setting the individual facility's prospective rate, the principles governing allowable cost contained herein shall be applied.

(a) As a prerequisite to allowability all items of cost must be supported by source documentation which clearly identifies the item or service purchased and the cost incurred.

(b) The general principles of reasonableness, necessity and prudent buyer as set forth in paragraphs 2100, 2102 and 2103 of HIM 15, which are hereby incorporated and made a part of this rule by reference, are applicable in making the determination of allowable costs.

(c) Costs to related organizations shall be governed by the provisions of Chapter 10 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(d) Costs of routine services: Allowable costs shall include standard items of expense included in the per diem rate which providers incur in the provision of routine services to the extent such expenses are reasonable and necessary. Routine services means the regular room, dietary and nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Examples of expenses that are allowable costs for routine services are:

(i) All general services including but not limited to administration of oxygen and related medications, handfeeding, incontinency care, tray service, and enemas;

(ii) Items furnished routinely and relatively uniformly to all patients without charge, such as patient gowns, water pitchers, basins and bed pans;

(iii) Items stocked at nursing stations or on the floor in gross supply and distributed or used individually in small quantities without charge: such as alcohol, applicators, cotton balls, bandaids, antacids, aspirin (and other non-legend drugs ordinarily kept on hand), suppositories, and tongue depressors;

(iv) Items which are used by individual patients but which are usable and expected to be available, such as ice bags, bed rails, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment;

(v) Special dietary supplements used for tube feeding or oral feeding such as elemental high nitrogen diet, even if written as a prescription item by a physician (because these supplements have been classified by the Food and Drug Administration as a food rather than a drug);

(vi) Laundry services other than for personal clothing which is not laundered at the facility will be allowed. Nominal cost of items laundered for patients at the facility will be allowed.

(e) Owner's Compensation:

(i) Owners compensation is limited to the fair market value of services rendered by the owner in connection with patient care. The fair market value of services shall be determined by reference to Sections 2120 et seq. of HIM-13-2, Audits and Reimbursement Manual for Part A of Title XVIII and Chapter 9 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(ii) Types of owners compensation:

(aa) Salary amounts paid for managerial, administrative, professional and other services.

(ab) Amounts paid by the institution for the personal benefit of the owner.

(ac) The costs of assets and services which the owner

receives from the institution.

(ad) Deferred compensation.

(ae) Supplies and services for the personal use of the owner.

(af) Special merchandise ordered from wholesalers for the owner's personal use.

(ag) Wages of a domestic or other employee who works in the home of the owner.

(ah) Personal use of a car owned by business.

(ai) Personal insurance premium paid for the owner.

(aj) Owner occupies a personal residence as a portion of the physical plant.

(ak) Other types of renumeration that may be identified.

(f) Costs of telephone, television and radio services are governed by paragraphs 2106 through 2106.2 of HIM 15, Part I, which are hereby incorporated and made a part of this rule by reference.

(g) Costs of taxes are governed by paragraphs 2122 through 2122.5 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(h) Life insurance premiums are governed by paragraph 2130 of HIM 15, which is hereby incorporated and made a part of this rule by reference.

(i) Start-up costs are governed by paragraphs 2132 through 2132.6 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(j) Franchise fees are governed by paragraphs 2133 through 2133.10 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(k) Organization costs are governed by paragraphs 2134 through 2134.11 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(l) Advertising costs are governed by paragraphs 2136 through 2136.2 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(m) Home office costs are governed by paragraphs 2150 through 2153 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(n) Losses are governed by paragraphs 2160 through 2160.5 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(o) Insurance costs are governed by paragraphs 2161 through 2162.13 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(p) Post-termination costs are governed by paragraphs 2176 through 2176.2 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(q) Items of cost shall be expensed, capitalized and depreciated in accordance with paragraphs 100 through 108.2 and 118 of HIM 15, which are hereby incorporated and made a

part of this rule by reference. Depreciation shall be calculated using the straight line method, as defined in paragraph 116.1 of HIM 15, which is hereby incorporated and made a part of this rule by reference.

The disposal of assets on which there is a gain or loss on sale which must be allocated to the period from July 1, 1974, to February 28, 1978, shall be governed by the provisions of Chapter 1, HIM 15, which are hereby incorporated and made a part of this rule by reference. July 1, 1974, is the starting date of the program for purposes of applying the above provision.

(r) Depreciation paid by the Department from March 1, 1978, shall be recoverable by the Department upon sale of the facility and/or equipment at a price in excess of the provider's basis for depreciation at the time of sale. The amount of depreciation recoverable is the amount, allocated to periods beginning March 1, 1978, by which the sale price exceeds the seller's original basis for depreciation plus capital improvements less depreciation paid by the Department, or the amount of depreciation actually paid, whichever is the lesser. Such amount constitutes a debt due the State as of the date of sale and may, at the option of the Department, be recovered in lump sum from the seller, or by means of a reduction in asset basis in such amount for purposes of future rate determinations.

(s) Lease costs shall be reasonable and therefore allowable to the extent they do not exceed the historical statewide average of per bed lease costs in all leased facilities in the state, or to the extent they have been allowed to the provider by the Department in the last reporting period in which a final rate has been offered by the Department and accepted by the provider.

(t) Interest expenses shall be governed by paragraphs 200 through 232 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(u) Purchase discount allowances and refunds are governed by paragraphs 800 through 810.2 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(v) Grants, gifts and endowments are governed by paragraphs 600 through 614 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(w) Bad debts, charity and courtesy allowances are deductions from revenue and shall not be allowable as costs.

(x) Revenues received for services or items provided to employees and guests are recoveries of cost and shall be deducted from the related cost.

(y) Dues, membership fees or subscriptions to organizations unrelated to the provider's professional or business activities are not related to patient care and are not allowable costs.

(z) Charges for services of a chaplain are not an allowable expense.

(aa) Fees for professional services (e.g., legal accounting or consulting services) are allowable to the extent they are identified to specific services, and the hourly rate charged is reasonable in amount. In lieu of compensation on the basis of an hourly rate, the provider may compensate for professional services on the basis of a retainer agreement which specifies in detail the services to be performed. Documentation that such services were in fact performed shall be provided by the provider. No cost in excess of the agreed-upon retainer fee shall be allowed.

(ba) Attorney fees incurred in the course of administrative or judicial proceedings involving the Department of Social and Rehabilitation Services are allowable only when awarded by a hearings officer, the Board of Social and Rehabilitation Appeals or a court of competent jurisdiction.

(ca) Entertainment expenses for non-employees are not allowable. (Examples of entertainment expenses are business luncheons, bar bills, etc.)

(da) Employee benefits:

(i) Employee benefits are defined as amounts paid to or on behalf of an employee, in addition to direct salary or wages, and from which the employee or his beneficiary derives a personal benefit before or after the employee's retirement or death.

(ii) All employer contributions which are required by State or federal law, including FICA, WCI, FUI, SUI, PERS and contributions to a State insurance plan are allowable employee benefits. In addition, employee benefits which are uniformly applicable to all employees and do not exceed 6% of the gross salary or wages actually paid to the employee are allowable. A bona fide employee benefit must directly benefit the individual employee, and shall not directly benefit the owner or owner-administrator of the facility.

(iii) Costs of activities or facilities which are available to employees as a group, such as staff parties, condominiums, swimming pools or other recreational activities, are not allowable. Cash bonuses are considered employee benefits, and are therefore subject to the 6% limitation.

(iv) For purposes of this subsection, an employee is one from whose salary or wages the employer is required to withhold FICA.

(ea) Paid vacation and sick leave shall not be considered employee benefits, but shall be allowable only to the extent that the facility has in effect a written policy which is uniformly applicable to all employees, and the paid vacation and sick leave is reasonable in amount.

Any paid vacation or sick leave policy not exceeding the standards applied to State employees is reasonable. The 6% limitation stated in (da)(ii) shall not apply to paid vacation and sick leave.

(fa) An amount not to exceed $2200 per fiscal year shall be considered as a reasonable and allowable cost of meeting the transportation needs of the facility.

(ga) The costs of travel by an owner, administrator or full-time professional staff member in excess of 25 miles shall be allowable to the extent they are directly related to patient care, and do not exceed the rate of reimbursement for travel by State employees. Travel of less than 25 miles shall be considered a transportation cost of the provider subject to the provisions of (fa) above."

#6 "REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, CLOSE OUT COST REPORTS (1) A cost report detailing costs incurred by a provider from the close of the provider's last fiscal year to February 28, 1978, shall be filed with the Department no later than June 1, 1978.

(2) The close out cost report may, with the prior approval of the Department, detail costs incurred over a period not to exceed 14 months prior to February 28, 1978. Such an extended close out cost report shall be in lieu of the provider's normal year end cost report and the short period cost report for the period from year end to February 28, 1978.

(3) Audits shall be performed, adjustments made and final settlements reached in accordance with the provisions of the Manual of Reimbursement for Nursing Home Care, May, 1974, and HIM 15 (1967), except that the Department shall have 180 days from the receipt of the cost report to offer a final rate.

(4) The costs allowed shall have no effect on the prospective rate."

#7 "REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, COST REPORTING The procedures and forms for maintaining cost information and reporting are as follows:

(1) Generally accepted accounting methods shall be employed in all record keeping and cost finding by a provider.

(2) The accrual method of accounting shall be employed except in government institutions operating on a cash method.

(3) Cost finding means the process of recasting the data derived from the accounts ordinarily kept by a provider to ascertain costs of the various types of services

rendered. It is the determination of these costs by the allocation of direct costs and proration of indirect costs. In preparing cost reports, all providers shall utilize the step down method of cost finding described at 20 C.F.R. 405.453(d)(1) which is hereby incorporated and made a part of this rule by reference.

(4) Uniform Chart of Accounts. The American Health Care Association Chart of Accounts adopted July 1, 1975, is the system to be used to maintain facility cost data for cost reporting and auditing. The use of the uniform chart of accounts becomes mandatory for participating facilities for the cost report period beginning January 1, 1978.

(5) Uniform Financial and Statistical Report. Facility costs are reported on an annual basis on the Financial and Statistical Report Form provided by the Department. These reports shall be complete and accurate; incomplete reports or reports containing inconsistent data will be returned to the facility for correction.

(a) Cost Reporting Period -- Facility costs are reported annually for the period of January 1 through December 31.

(b) Filing Period -- Cost reports must be filed within 90 days after the closing date of the reporting period.

(c) Rate Period -- Rates are promulgated annually for the period of July 1 through June 30.

(d) Penalty - Late Filing -- In the event a provider does not file within 90 days of the closing date of the reporting period, for the first month the report is overdue any increase in rate will be effective 90 days after the month in which the cost statement was received. The prospective rate shall be reduced by 5% for each additional month the report is overdue. Unavoidable delays may be reported with a full explanation and request for extension of time limits.

(6) Payroll and Census Reports. Current facility statistics on payroll and census are necessary to evaluate economic trends and cost implications for prospective rate setting. Payroll report and the census report for each month individually are to be submitted within 30 days after the close of each calendar quarter on forms provided by the Department. In addition to data related to Medicaid patients, the patient census reports shall include data relating to private patients, including but not limited to the classification and actual charges to private pay patients. Failure to submit these reports on a timely basis will be cause for suspension of payment. Reports are to be submitted to the Chief, Medical Assistance Bureau, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana.

(7) Maintenance of Records. Records of financial

and statistical information submitted to support and verify cost reports must be maintained by the provider for four years after the date a cost report is filed.

(a) Each facility will maintain, as a minimum, a General Ledger and the following supporting ledgers and journals: revenue, accounts receivable, cash receipts, accounts payable, cash disbursements, and payroll, patient census records identifying the level of care of all patients individually, all records pertaining to private pay patients and patient trust funds.

(b) All business records of any related organization, as defined in Chapter 10 of HIM 15, 1977, or parent or subsidiary corporation shall also be available at the facility for audit by the Department or its designated representative upon reasonable notice to the provider. Personal financial records of the owner of a facility or related organization shall also be made available at the facility for audit by the Department or its designated representative upon reasonable notice given by the Department. All contracts entered into by a provider, or related organization, person or parent, or subsidiary corporation, with any third party for the provision of services or goods, the cost of which has been or will be submitted as an allowable cost for purposes of rate setting shall contain a provision requiring the third party to provide access to all business records of that third party for purposes of review or audit by the Department upon reasonable notice given by the Department. Such contractual provision shall designate free access to records as a part of the consideration of the contract and shall provide for specific enforcement by the Department as a third party beneficiary of that provision of the contract. No items of cost incurred pursuant to a written or oral contract without such provision shall be allowable for purposes of rate setting.

(c) Cost information as developed by the provider must be current, accurate and in sufficient detail to support payments made for services rendered to beneficiaries. This includes all ledgers, books, records and original evidences of cost (purchase requisitions, purchase orders, vouchers, invoices, requisitions for materials, inventories, labor time cards, payrolls, bases for apportioning costs, etc.) which pertain to the determination of reasonable cost, capable of being audited.

(d) All of the above records and documents shall be available at the facility, subject at all reasonable times to inspection, review or audit by the Department and the U.S. Department of Health, Education and Welfare personnel, or any designated representative of the Department. The facility will make all records available as may be necessary for purposes of Legislative post-audit or analysis. Upon refusal of the facility to allow access to the

above materials costs reimbursed on the basis of unsupported data shall be recovered by the Department. In addition, the Department may at its option terminate any contracts between the Department and provider."

#8 "REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, OVERPAYMENT AND UNDERPAYMENT (1) Overpayment and Underpayment on Initial Prospective Rate.

(a) For most facilities the initial prospective rate will be based on a cost report that has received only a desk review. In situations where the Department finds during field audit that the initial prospective rate was based on an erroneous cost report resulting in an overpayment, the Department will notify the provider of the overpayment.

(b) In the event of an overpayment the Department will, within 30 days after the day the Department notifies the provider that an overpayment exists, adjust the provider's prospective rate and arrange to recover the overpayment by set-off against amounts paid under the adjusted prospective rate or by repayments by the provider.

(c) If an arrangement for repayment cannot be worked out within 30 days after notification of the provider the Department will make deductions from prospective rate payments with full recovery to be completed within 120 days from date of the initial contact. Recovery will be undertaken even though the provider disputes in whole or in part the Department's determination of the overpayment, unless a formal request for a hearing is filed by the provider within 30 days of notification.

(d) Errors in cost report data identified by the provider may be corrected and given consideration for rate adjustment if submitted within 30 days after rate notification. Adjustments will also be made for computational errors in rate determination review by the Department.

(e) In the event an underpayment has occurred, the Department will reimburse the provider within 30 days of the Department's determination of error and adjust the prospective rate accordingly."

#9 "REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, NEW FACILITIES (1) New facilities participating for the first time in the program will be given an interim prospective rate based upon the average prospective rate of facilities currently in the program. This interim rate may be increased upon submission by the new facility of an income and expense summary (profit and loss statement) for six months or more and census data consisting of total patient days by level of care.

(2) After a minimum of six months of operation, but

prior to the earlier of the end of the fiscal year or the completion of a twelve-month period of operation, a cost report shall be submitted by the facility. A new prospective rate based on the audited cost report will be determined within 90 days.

(3) This rule shall not apply to an individual who is a new provider by reason of his purchase or lease of a facility which is currently participating in the program. Such a new provider will receive the prospective rate set for the previous provider."

#10 "REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, AUDITS, RATE REVIEW (1) Department audit staff will perform a desk audit of cost statements prior to rate setting and will conduct on-site audits of facility records. Where appropriate, audit procedures defined in the Provider Reimbursement Manual, Health Insurance Manual 18 shall be adopted by the Department but the Department shall not be confined to these guidelines and may utilize other methods.

(a) Desk Review. Desk review of cost statements will determine the adjustments to be applied to reported costs for rate determination. Incomplete reports, or inconsistency in reported costs will cause the return of the statement to the facility for correction.

(b) Field Audits. On-site audits of facility detail records will be made to assure validity of reports costs and statistical information.

(c) Exit Conferences. On conclusion of on-site audit, the auditor shall write a summary of his findings and recommendations. This summary shall be mailed to the provider no later than 10 days after the completion of the on-site audit. Within 10 days of receipt of the written findings or recommendations the provider may request an exit conference. Such conference shall be held no later than 30 days after receipt of request, and in all cases shall be held prior to the effective date of a new prospective rate based on the audit.

(d) Prospective Rate Review Conferences. Prospective rate review conferences with agency staff may be requested by the provider within 30 days after rate notification. The request for prospective rate review shall identify all items for consideration at the administrative conference by specific reference to the appropriate section of the cost statement. The request for review shall identify the provider representatives who will be present.

The rate review conference, if timely requested, shall be held no later than 30 days from the receipt of request."

#11 "REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, FAIR HEARING PROCEDURES (1) In the event the provider does not agree with the rates recommended by the Department, the following fair hearing procedures will apply:

(a) The written request for a fair hearing shall be addressed to the Department of Social and Rehabilitation Services, Hearings Officer, Box 4210, Helena, Montana 59601.

(b) The request shall be signed by the provider or his designee.

(c) The fair hearing request shall be filed not later than the 60th calendar day following the date of the rate notification, or within 30 days of the rate review conference. If it is filed later, justification for the delay must be given to the hearings officer who, for good cause, may waive the time limit.

(d) The fair hearing request shall identify the individual settlement items and amount in disagreement, give the reasons for the disagreement, and furnish substantiating materials and information.

(e) The hearings officer will fix a time and place for the prehearing conference, and will mail notices thereof to the provider and other parties not less than ten days prior to the conference date. The notice will state the purpose of the prehearing conference and the issues to be resolved, stipulated to, or excluded. The hearings officer may waive the prehearing conference.

(f) The hearings officer will fix a time and place for the hearing, and will mail notices thereof to the provider and other parties not less than ten days prior to the hearing date.

(g) The hearings officer will reduce his decision to writing based upon evidence and other material presented at the hearing.

(h) In the event the provider or Department disagrees with the hearings officer's decision, a Notice of Appeals may be submitted to the Board of Social and Rehabilitation Appeals within ten days of the hearings officer's decision. The Notice of Appeals shall set forth the specific grounds for appeal.

(i) All evidence in the record and offers of proof shall be transmitted to the Appeals Board by the hearings officer. The decision of the Board shall be based solely on the record transmitted by the hearings officer. A legal brief or a legal argument may be presented personally or through a representative of the provider to the Board.

(j) The Board shall reduce its decision to writing and mail copies to the providers within ten days of completion of the hearing. The provider shall be notified of its right to judicial review under the provisions of Section 82-4216, R.C.M. 1947.

(k) Requests for hearing or appeals to the Board of Social and Rehabilitation Appeals without a basis in law or fact, or which are otherwise frivolous as determined by the hearings officer or Board, are an abuse of the Medicaid program and may result in termination of the provider from participation in the Medicaid program."

4. The purpose of the proposed rules is to meet the requirements of Section 249 of Public Law 92-603 and 45 C.F.R. 250 while treating the eligible recipient, the provider of services and the taxpayers of the State of Montana fairly and equitably. The rules are intended to prescribe rates of payment reasonably adequate to reimburse in full the actual allowable cost of skilled and intermediate care facilities that are economically and efficiently operated. In addition, the rules are intended to facilitate a transition from the current method of reimbursement to a more comprehensive system of reimbursement by providing the data required to implement such a system. A more comprehensive system is currently being developed by the Department in cooperation with an advisory committee representing the nursing home industry.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may be submitted to Richard A. Weber, P.O. Box 4210, Helena, Montana 59601, any time before January 19, 1978.

6. Stephen Brown, 1400 Eleventh Avenue, Helena, Montana 59601, 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 71-1511, R.C.M. 1947. The implementing authority for the proposed rules is based on section 71-1517, R.C.M. 1947.

Director, Social and Rehabilitation Services

Certified to the Secretary of State December 14, 1977.

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

In the matter of the amendment of Rule 46-2.6(2)-S674 pertaining to definition of family day care homes and Rule 46-2.6(2)-S6100 pertaining to day care licensing services, eligibility requirements.	NOTICE OF PROPOSED AMENDMENT OF A RULE PERTAINING TO DEFINITIONS AND STANDARDS AND A RULE PERTAINING TO DAY CARE HOME LICENSING SERVICES, ELIGIBILITY REQUIREMENTS. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons

1. On January 26, 1978, the Department of Social and Rehabilitation Services proposes to amend rule 46-2.6(2)-S674 which pertains to definitions and standards and rule 46-2.6(2)-S6100 which pertains to day care home licensing services, eligibility requirements.

2. Rule 46-2.6(2)-S674 as proposed to be amended provides as follows:

(2) "Family Day Care Home": a ~~family~~ home that ~~receives from one to~~ provides care for no more than six (6) children ~~including the operator's own children up to 14 years of age of the same or separate families, or who request to be licensed as such, for care during the day (night), or part of the day (night) but less than 24 hours, for five or more consecutive weeks. Such a home must meet the standards for day care homes.~~ at a time and for no more than two (2) children under 2 years of age -- including the provider's own children who are less than 6 years of age.

3. Rule 46-2.6(2)-S6100 as proposed to be amended provides as follows:

(3) A day care home may not provide care for more than 6 children (no more than 2 children under 2 years of age) including the day care mother's children under ~~14~~ 6 years of age.

4. The rationale for amending these rules is twofold; the first is to make the state regulations comply with the Federal Social Service Regulations, in particular 45 C.F.R. 228.42. Secondly, it is hoped that the change will help avoid a hardship which occurred under the prior rules. Under the prior rules, a home operator's children who were under 14 were counted towards the maximum number of children allowed, whether or not they were actually in day care.

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5. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Walter Perry, P.O. Box 4210, Helena, Montana, 59601, no later than January 20, 1978.

6. The authority of the Department of Social and Rehabilitation Services to amend this rule is based on Section 10-806, R.C.M. 1947. The implementing authority is Section 10-801 and Section 10-806, R.C.M. 1947.

Director, Social and Rehabilitation Services

Certified to the Secretary of State December 14, 1977.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of a rule requiring Indian studies training for certified personnel teaching on or near an Indian reservation.	NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE requiring Indian studies training for certified personnel teaching on or near an Indian reservation.

TO: All interested parties

1. On February 4, 1978 at 10:00 a.m., a public hearing will be held in the conference room of the Commissioner of Higher Education's office building at 33 South Last Chance Gulch, Helena, Montana, to consider the adoption of a rule requiring Indian studies training for certified personnel teaching on or near an Indian reservation.

2. The proposed rule does not replace or modify any section currently found in the Montana Administrative Code.

3. The rule, as proposed for adoption, provides as follows:

(1) DEFINITIONS.

(a) Indian. For the purpose of the Indian Studies Law, "Indian" is defined as: "any individual who [1] is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the state in which they reside, or who is a descendent, in the first or second degree, or any such member; [2] is considered by the Secretary of the Interior to be an Indian for any purpose; [3] is an Eskimo or Aleut or other Alaska Native; or [4] is determined to be an Indian under regulations promulgated by the Commissioner of Education, after consultation with the National Advisory Council on Indian Education, which regulations shall further define the term "Indian" (from Title IV, Indian Education Act."

(b) American Indian Studies. "American Indian Studies" is defined as instruction pertaining to the history, traditions, customs, values, beliefs, ethics, and contemporary affairs of American Indians, particularly Indian tribal groups in Montana.

(2) APPLICABILITY. The mandate of Section 75-6131 applies to certified personnel in the following situations:

(a) School districts that lie wholly or partially within the confines of an Indian reservation. All schools in such districts are affected, provided the district has an enrollment of at least ten Indian children or the enrollment is comprised of at least 50 percent Indian children;

(b) School districts that adjoin (i.e., share a common border with) an Indian reservation. In such districts, only those schools that enroll at least ten Indian children or have an enrollment comprised of at least 50 percent Indian children are affected.

(3) FULFILLING THE REQUIREMENT.

(a) Inservice training developed by the Superintendent of Public Instruction and implemented by the local board of trustees consisting of no less than 30 instructional contact hours and approximately two hours of additional study for each contact hour, containing the curriculum defined in the Indian Studies Law;

(b) Inservice training developed by a local board of trustees containing the curriculum defined in the Indian Studies Law and consisting of no less than 30 instructional contact hours and approximately two hours additional study for each contact hour, subject to the approval of the Superintendent of Public Instruction.

(c) A formal course or combination of courses consisting of a minimum of 6 college quarter credits containing the curriculum requirements defined in the Indian Studies Law.

(d) A combination of inservice training and/or college courses consistent with curriculum defined in the Indian Studies Law and subject to approval by the Superintendent of Public Instruction.

(e) Inservice training and college courses intended to fulfill the Indian Studies requirement shall contain, but not be limited to, the following:

(i) Cross-cultural awareness with emphasis on such issues as the definition of culture, social and personal value systems, the development of attitude, and the nature of prejudice;

(ii) General overview of Native American history and culture;

(iii) Specific orientation to the history, traditions, beliefs, customs, and contemporary affairs of Montana Indian tribes;

(iv) Classroom techniques for teachers of Indian children.

(f) Inservice training and college courses intended to fulfill the Indian Studies requirement shall be developed with the advice and assistance f Indian people.

(4) RECORDING THE FULFILLMENT OF REQUIREMENT. Completion of the Indian Studies requirement shall be recorded through one of the following:

(a) A transcript from a college or university which indicates completion of requirements for teacher candidates in Native American Studies;

(b) A letter or certificate from the board of trustees of the school district to the participant certifying completion of an inservice training program developed by the Superintendent of Public Instruction and offered in conjunction with the local board of trustees;

(c) A letter or certificate from the board of trustees of the school district to the participant certifying completion of a locally-developed, state-approved inservice

training program. Districts sponsoring inservice training shall submit lists of participants to the Division of Teacher Education and Certification in the Office of Public Instruction where permanent records are maintained.

(5) MONITORING. For monitoring purposes, compliance with the Indian Studies requirement shall be recorded in the fall trustees' report.

(6) GRACE PERIOD. A grace period shall be allowed for certified personnel who have not previously been required to comply with the Indian Studies requirement prior to their employment in an affected school district.

(a) Such grace period shall be of a six (6) month duration commencing with the first date for which compensation is paid.

(b) The school district shall submit evidence of completion of the Indian Studies requirement to the Office of Public Instruction at the end of said grace period.

4. The Board is proposing these rules because the 1972 Montana Constitution and subsequent statutes and legislative resolutions have made it clear that special measures must be taken to foster an understanding of Montana Indian culture. A comprehensive Indian Culture Master Plan was adopted in 1975 by the Board of Public Education and the Board of Regents acting jointly as the State Board of Education. These rules are substantially the same measures recommended in that plan.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may be submitted to Earl J. Barlow, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59601 at any time prior to February 13, 1978. Written data, views, or arguments received by the Board after February 13, 1978 or post mark dated after February 13, 1978 may not be considered in the adoption of the rules.

6. Earl J. Barlow, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59601 has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rule is based on sections 75-5616(a) and 75-6131, R.C.M. 1947, and on HJR 60, 43rd Legislature (1974).

Earl J. Barlow

CHAIRMAN
BOARD OF PUBLIC EDUCATION

Certified to the Secretary of State December 15, 1977.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed adoption of Rules to implement) Title 59, Chapter 10, R.C.M.) 1947.)	NOTICE OF THE ADOPTION OF RULES (ANNUAL VACATION LEAVE)

TO: All interested persons

1. On August 25, 1977, the Department of Administration published notice of a proposed adoption of rules providing annual vacation leave to State employees at pages 176-183 of the Montana Administrative Register, issue number 8.

2. The agency has amended the rules with the following changes:

2-2.14(14)-S14090 (Rule I). DEFINITIONS. The definitions (a) through (h) remain the same as noticed; definition (g) has one more sentence added at the end of the definition to read: A bona fide transfer which does not involve a break in service will be administered through the State Pay Plan Rules and other personnel rules as though the change in employment occurred within the same agency.

One more definition has been added also to read as follows:

(i) "Vacation leave credits mean that amount of time that is accrued or credited to an employee's vacation leave account at the end of each pay period, whether bi-weekly or monthly, and using a prescribed formula to arrive at the number of credit earned."

2-2.14(14)-S14100 (Rule II). CALCULATING ANNUAL LEAVE CREDITS.

(1) Full-time employees (including full-time seasonal employees) earn vacation leave credits from the first full pay period of employment. The eligibility period for entitlement to vacation leave begins from the date of employment. The rest of subsection (1) and subsection (2) remain the same as noticed.

~~(3) Vacation leave credits shall be earned in accordance with the following schedule:~~

~~1) From one (1) full pay period through ten (10) years of employment at the rate of fifteen (15) working days for each yee of service;~~

~~2) After ten (10) years through fifteen (15) years of employment at the rate of eighteen (18) working days for each year of service;~~

~~3) After fifteen (15) years through twenty (20) years of employment at the rate of twenty-one (21) working days for each year of service;~~

~~4) After twenty (20) years of employment at the rate of twenty-four (24) working days for each year of service.~~

(3) Vacation leave credits shall be earned at a yearly rate calculated in accordance with the following schedule:

Years of employment	Working days credit
1 full pay period through 10 years	15
10 years through 15 years	18
15 years through 20 years	21
20 years on	24

Subsection (4) remains the same.

Subsection (5) remains the same as noticed, except the second paragraph has been revised as follows:

No. of Years of employment	80 hrs. in pay status per pay period	Less than 80 hrs. in pay status per pay period
0-10 yrs.	~~4.62~~	~~.058~~ x no. hrs.
10-15 yrs.	~~5.54~~	~~.069~~ x no. hrs.
15-20 yrs.	~~6.46~~	~~.081~~ x no. hrs.
20 on	~~7.38~~	~~.092~~ x no. hrs.

No. of Years of employment	80 hrs. in pay status per pay period	Less than 80 hrs. in pay status per pay period
0-10 yrs.	4.616	.05770 x no. hrs.
10-15 yrs.	5.539	.06924 x no. hrs.
15-20 yrs.	6.462	.08077 x no. hrs.
20 on	7.385	.09231 x no. hrs.

(6) Such leave credits for bi-weekly employees are to be rounded to ~~two~~ three digits beyond the decimal point and carried in the employee's account in that configuration.

2-2.14(14)-S14110 (Rule III). PERMANENT PART-TIME EMPLOYEES. Remains the same as noticed.

2-2.14(14)-S14120 (Rule IV). ACCELERATED EARNING SCHEDULES. Remains the same as noticed, except after the second sentence, two sentences were added to read as follows:

For calculating vacation leave credits two thousand eighty (2080) hours (52 weeks x 40 hours) shall equal one (1) year. Therefore, if an employee has prior service on a part-time basis or a seasonal position that lasts for less than one full year, the time will be converted to hours and divided by 2080 hours to equal one year for earning vacation leave credits at the accelerated rate. It will be the responsibility of the employee to acquire documentation of any previous employment time or military service time to be counted towards the accelerated schedule. Also, military service time shall be honored for computing employment time to earn ~~annual~~ vacation leave credits at the accelerated rate, if the employee was employed by the State immediately prior to serving with the armed forces and returned to State service within 90 days after discharge.

The rest of the rule remains the same.

2-2.14(14)-S14130 (Rule V). Remains the same as noticed.

2-2.14(14)-S14140 (Rule VI). Remains the same as noticed.

2-2.14(14)-S14150 (Rule VII). RATE OF COMPENSATION. The first sentence remains the same. The second sentence has been deleted: ~~**Absence while in a pay status (such as annual leave) during the workday is considered hours worked for the purpose of calculating compensatory or overtime payments.**~~

2-2.14(14)-S14160 (Rule VIII). ABSENCES. The first subsection will remain the same and a second subsection has been added to read as follows: (2) Vacation leave time taken off shall be recorded to the nearest one-half hour when fractions of hours are used.

Rules IX through XIII remain the same as noticed.

2-2.14(14)-S14220 (Rule XIV). LUMP SUM PAYMENT UPON TERMINATION. This rule remains the same except the third sentence will be deleted. ~~**An employee shall not be credited with vacation leave for which he/she has previously been compensated.**~~

2-2.14(14)-S14230 (Rule XV). EMPLOYEE LEAVE RECORD. This remains the same as noticed, except the last sentence will become a separate subsection and will have a sentence added to this subsection.

2-2.14(14)-S14240. CLOSING. (1) This rule shall be utilize unless it conflicts with negotiated labor contracts, which shall take precedence to the extent applicable.

(2) Examples of the forms mentioned follow. Also, the examples on the forms were changed to reflect the changes made in 2-2.14(14)-S14100.

(3) A public hearing on the proposed rules was held September 7, 1977, at 7:30 p.m. in the Department of Highways Auditorium. Oral comments were received at the hearing and written comments were received both before and after the hearing.

A comment from an agency was received which indicated that the definition of transfer was not complete enough. They felt there may be cases where an employee may be ill for more than five working days and not yet be eligible for sick leave. This probably would not apply to a transfer problem, but in any event, the employee would probably be in an authorized leave of absence status and therefore would not be in jeopardy of having a break in service. We feel that the words "non-pay status or unauthorized leave of absence" would cover those employees who do not have vacation or sick leave credits or who simply quit their jobs and want to receive a lump sum payment. One suggestion was received from an agency which would help to clarify the meaning of transfer. This suggestion was incorporated in the final rules.

Another comment suggested that we define "vacation leave credits" since that term is used frequently in the rules. This definition was added in the final rules.

A written comment indicated that there is some discrepancy among State agencies as to when a State employee begins to earn vacation leave benefits. In 36 Opinions of the Attorney General, No. 14, the State vacation statute was construed as follows: "Any other construction would ignore the plain language of the statute and render meaningless its directive that employment be continuous 'from the first full pay period of employment.' Therefore, the eligibility period for entitlement to annual vacation leave pay commences from the date of employment." Therefore, Rule II(1) has a sentence added after the phrase "from the first full pay period of employment" to clarify the date as to when an employee begins to earn vacation.

At the public hearing, it was pointed out that the statutes had been amended somewhat during the last legislative session regarding vacation leave. Therefore, the rules have been amended to comply with the statutes.

A written comment regarding the accelerated earning schedule was received about the possible discriminatory effect of granting military service time to be counted in earning vacation leave at the accelerated rate. This agency also felt that alternative forms of service, such as Peace Corps or VISTA, should be given the same status for employees who served in an alternative service. However, legislation was passed during the last session to specifically grant to employees who served in the armed forces the right to use that service time towards earning vacation at the accelerated rate. It was suggested that the word "immediately" be inserted in the fourth sentence in this section to clarify the interpretation of the sentence and this has been added.

Another comment regarding this same section was received. The agency felt there was a conflict between the 5-day limit for break in service and being able to use previous employment for earning vacation at the accelerated rate. However, in 33 Opinions of the Attorney General, No. 4, it states that employees may use previous state, county, or city employment to accrue annual leave and regardless of "whether their employment with the agency or department was continuous for the ten year period." We would interpret this to mean then that an employee can use all previous state, county or city employment for purposes of earning vacation at the accelerated schedule. However, if that employee has a break in service as defined by the statutes and this Rule, the employee would again have to work the qualifying six months to be eligible to take vacation leave.

Two questions were received regarding the accelerated earning schedule as pertains to part-time and seasonal employees. That is, whether a part-time employee, or a long-term seasonal employee who works ten months per year

is entitled to a full year's credit for applying towards earning vacation at the accelerated schedule. The question is a valid one and language in Section 59-1001, R.C.M., 1947, implies that an employee must accumulate 2080 hours to be eligible for one year's credit of vacation. Therefore, the rules have been amended to require that a part-time or seasonal employee work for 2080 hours to qualify for one year of service to earn vacation at the accelerated rate.

Another comment was received regarding Rule XIV, in which the agency objected to an employee being able to continue to accrue vacation and sick leave credits and to receive any applicable holiday pay while the employee is "riding out" his/her vacation upon termination, as opposed to an employee who takes a lump sum payment and whose accrual of benefits would cease on the last day of work. However, as long as the employee is in a pay status, i.e., vacation leave, he/she is legally entitled to receive all benefits due that employee. An employee who elects to take a lump sum payment upon termination would no longer be in a pay status and thus would not earn any more benefits. Therefore, this section will remain the same.

A written comment was received pertaining to the rules which allow temporary employees to take vacation leave during the following years they are employed, if they worked the qualifying six months in one season or year. However, the Personnel Division's interpretation of the statutes is that once an employee has worked his/her qualifying, continuous six months of service, that employee is eligible to use vacation leave if the employee returns year after year or season after season and as long as he/she does not have a break in service. Therefore, these rules will remain the same.

The Department of Highways stated that they maintain vacation and sick leave credit records through the use of their data processing system and that they did not want to revert to manual recordkeeping. The Personnel Division certainly does not want to dictate to an agency that they can no longer use their computer for keeping track of fringe benefits for their many employees. This would be poor management, to say the least. What we intended to do with our rules was to provide a basic formula that all agencies could use and that would not prove too cumbersome to those agencies that do not have a computer to track all fringe benefits. Possibly, all fringe benefits can be recorded by a computer at some time in the future and if this happens we can amend the rules accordingly.

A written comment received from an individual concerned the form used to request annual leave. The individual objected to an employee having to tell the State where he/she was going on vacation. The Personnel Division did not mean to

imply with this example that the employee had to inform the State as to the whereabouts of his vacation. Therefore, the words "to go to Spokane" will be taken out of the example.

Jack C. Crosser, Director

Certified to the Secretary of State December 13, 1977

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed adoption of Rules to implement Title 59, Chapter 10, R.C.M. 1947	)))	NOTICE OF THE ADOPTION OF RULES (SICK LEAVE)

TO: All interested persons

1. On August 25, 1977, the Department of Administration published notice of a proposed adoption of rules providing sick leave to State employees at pages 168-175 of the Montana Administrative Register, issue number 8.

2. The agency has amended the rules with the following changes:

2-2.14(20)-S14250 (Section 3) DEFINITIONS. The definitions (a) through (h) remain the same as noticed; definition (g) has one more sentence added at the end of the definition to read as follows: A bona fide transfer which does not involve a break in service will be administered through the State Pay Plan Rules and other personnel rules as though the change in employment occurred within the same agency.

One more definition has been added also to read as follows:

(i) "Sick leave credits mean that amount of time that is accrued or credited to an employee's sick leave account at the end of each pay period, whether bi-weekly or monthly, and using a prescribed formula to arrive at the number of credits earned."

2-2.14(20)-S14260 (Section 4) EXPANDED SICK LEAVE DEFINITION. Sick leave is the necessary absence from duty caused when an employee has suffered illness, injury, ~~pregnancy related~~ or other medical disability, including pregnancy-related disability, exposure to a contagious disease that requires quarantine, or the necessary absence from duty to receive a medical, dental or eye examination or treatment, or for a death or to attend a funeral. The rest remains the same as noticed.

2-2.14(20)-S14270 (Section 5) USE OF SICK LEAVE. This remains the same as noticed except for the sixth sentence which will read as follows: Improper absences should be charged to annual leave ~~(with the employee's approval)~~ or to available compensatory time (with the employee's approval) or leave without pay.

2-2.14(20)-S14280 (Section 6) CALCULATING SICK LEAVE CREDITS. (1) Full-time employees (including full-time seasonal and full-time temporary employees) earn sick leave credits from the first full pay period of employment. The eligibility period for entitlement to sick leave begins from the date of employment. The rest remains the same as noticed except for the last sentence which will read: Sick leave credits shall be earned at ~~a~~ the rate ~~not exceeding~~ of twelve (12) working days for each year of service. Section 7 was mistakenly numbered; this will become subsection (2) of rule 2-2.14(20)-S14280.

Sub-section (a) Monthly Pay Periods. The first sentence remains the same; the second sentence reads as follows: If the employee is in a pay status less than a full month, he/she accrues .04715 sick leave credits for each hour in a pay status.

(b) Bi-Weekly Pay Period. If the employee is in a pay status eighty (80) hours or more in a pay period, he/she accrues 3.692 hours sick leave credits per pay period. If the employee is in a pay status less than eighty (80) hours, he/she accrues .04615 sick leave credits for each hour in a pay status. Such leave credits for bi-weekly employees are to be rounded to ~~two~~ three digits beyond the decimal point (3.692) and carried in the employee's account in that configuration.

The second section 7 will become rule 2-2.14(20)-S14290 and will remain the same as noticed except the example which will read: Example: Sick Leave Credits = .04615 x Hours worked.

2-2.14(20)-S14300 (Section 8) will remain the same as noticed.

2-2.14(20)-S14310 (Section 9) will remain the same as noticed.

2-2.14(20)-S14320 (Section 10) will remain the same as noticed.

2-2.14(20)-S14330 (Section 11) will remain the same as noticed.

2-2.14(20)-S14340 (Section 12) will remain the same as noticed.

2-2.14(20)-S14350 (Section 13) ABSENCES. The first subsection will remain the same; a second subsection has been added to read as follows: (2) Sick leave time taken off shall be recorded to the nearest one-half hour when fractions of hours are used.

2-2.14(20)-S14360 (Section 14) MEDICAL, DENTAL AND EYE EXAMINATIONS. Will remain the same; two sentences are added to read: When a supervisor or designated authority desires substantiation of these appointments, they should request that the employee bring back a physician's statement when the employee returns to work. However, there is a time limit of five (5) working days after the employee returns to work in which the supervisor or designated authority may request such physician's statement.

2-2.14(20)-S14370 (Section 15) MATERNITY. Sick leave may be charged for absences due to pregnancy, including childbirth, miscarriage, abortion, and prenatal and postnatal care, with no restrictions as to the amount of earned sick leave credits

that may be approved for use, subject to medical certification, if such certification is requested by the ~~employee~~ supervisor or designated authority.

Sections 16 through 24 will remain the same as noticed, except section 24 will have one sentence added to read as follows: (2) Examples of forms mentioned follow. Also, the examples on the forms were changed to reflect the changes made in 2-2.14(20)-S14280 above.

3. A public hearing on the proposed rules was held September 7, 1977, at 7:30 p.m. at the Department of Highways Auditorium. There were no oral comments received at the public hearing, but written comments were received both before and after the hearing.

A suggestion was received from an agency which would help to clarify the definition of "Transfer." This suggestion was incorporated in the final rules.

A written comment also suggested that we define "sick leave credits" since that term is frequently referred to in the Rules. That definition was added in the final rules.

A written comment was received that suggested the first sentence in Section 4 be rearranged for clarity. Therefore, the sentence was rewritten to be more easily read in the final rules.

Another written comment pointed out that Section 5 allows improper use of sick leave to be deducted from available compensatory time without the employee's permission. Since compensatory time should be taken at a time mutually agreeable to the employer and employee, the employee should also give his/her consent when sick leave is charged against available compensatory time. This has been changed in the final rules. The word "available" was also added before the words compensatory time to clarify this sentence as well.

A written comment was received that stated Section 5 should include a statement concerning the requirements for a medical certificate. However, since these requirements are stated in two other places in the rules, this addition would seem to be redundant. This section will remain the same with the exception of the change noted above.

A written comment indicated that there is some discrepancy among State agencies as to when a State employee begins to earn sick leave benefits. In 36 Opinions of the Attorney General, No. 14, the State vacation statute which contains identical language as the sick leave statutes was construed as follows: "Any other construction would ignore the plain language of the statute and render meaningless its directive that employment be continuous 'from the first full pay period of employment.' Therefore, the eligibility period for entitlement to annual vacation leave pay commences from the date of employment." This interpretation should also apply to the same language used

in the sick leave rule. Therefore, the final rules reflect this addition.

A written comment also referred to Section 6, the fourth sentence, which pointed out that the wording did not correspond exactly with the statutes. Therefore, the sentence will have the words "not exceeding" removed in the final rules.

Written comment was received that Section 14 should also contain a consistent requirement for medical certification to avoid possible abuse. Two sentences were added to reflect this suggestion.

Two written suggestions were received to define immediate family as it pertains to sick leave use. However, the Personnel Division feels that the state of Montana should not define for an employee who his/her family is comprised of or which person an employee feels kinship for. An employee should realize that sick leave should be guarded for periods of real need, but at the same time he/she should be able to use sick leave in case of medical emergency in the family, and leave the decision to the employee as to who he considers "family."

Another written comment suggested that we limit emergency sick leave to five working days per year for each illness in the immediate family and not more than five working days for each death in the employee's immediate family. Again, the Personnel Division feels that as long as the use of sick leave is for bona fide reasons, i.e., illness, death or to attend a funeral, injury, disability, or for medical examinations and as long as management is satisfied that the request is justified, the employee should not be limited to a certain number of days per year. Here again, the employee must realize that once his/her sick leave is used up, then other types of leave (such as vacation, available compensatory time or leave without pay) must be used. Also, limiting sick leave to ten days for other than personal illness penalizes the employee who has never abused his/her sick leave.

Another letter was received from an employee who was opposed to requesting a physician's statement even when the employee is sick for only one day; the letter also suggested that three or five days should pass before the statement be requested, or until a pattern of being sick every month was established. However, the reason for not putting a limit on this is to prevent potential abuse of sick leave. If a supervisor has reason to suspect that the employee who calls in sick is, in fact, playing golf for example, then the supervisor should immediately request a physician's statement and not wait until the employee is gone for three to five days. For the most part, supervisors will probably not request a physician's statement if the employee is only ill for one or two days and the supervisor has no reason to believe the employee is abusing his/her sick leave.

A written comment was received pertaining to the rules which allow temporary employees to take sick leave during the following years they are employed, if they worked the qualifying three months in one season or year. However, the Personnel Division's interpretation of the statutes is that once an employee has worked his/her qualifying, continuous three months of service, that employee is eligible to use sick leave if the employee returns year after year or season after season and as long as he/she does not have a break in service. Therfore, thse rules will remain the same.

Jack C. Crosser, Director

Certified to the Secretary of State December 13, 1977

BEFORE THE STATE LIBRARY COMMISSION
OF THE STATE OF MONTANA

In the matter of rules of procedure before the State Library Commission and public participation guidelines	)))))	NOTICE OF THE ADOPTION AND AMENDMENT OF PROCEDURAL RULES

TO: All interested persons

1. On October 24, 1977, the State Library Commission published notice of proposed amendment of ARM 10-3.10(2)-P1010 and proposed adoption of ARM 10-3.10(2)-P1011 and 10-3.10(2)-P1014 dealing with incorporation of model rules, hearings on grant application denials, and public participation guidelines, at pages 612 through 614 of the Montana Register, issue no. 10.

2. Mr. David Cogley, staff attorney, Montana Legislative Council, filed written comments in opposition to so much of the new rule for informal hearings on grant application denials as appeared to contravene requirements of sections 82-4209 through 82-4214, R.C.M. 1947. He assumed, as had the Commission at the time of giving notice, that the "hearing" required under 20 U.S.C. sec. 355c of the Library Services and Construction Act is a contested case under Montana law. A contested case is a determination of the "rights, duties, or privileges" of a party, and there is no indication in federal regulations or court interpretations that an application for LSCA funds creates any rights, duties or privileges in the applicant. The Commission therefore inclines to believe that the hearing required by federal law is not a contested case and overrules so much of Mr. Cogley's objections as are based upon the contrary premise. However, a rejected applicant who demands a formal contested case hearing will be entitled to one under the rule as adopted.

The proposed rules are also being renumbered, by consent of the Secretary of State in accordance with the new simplified numbering system. Specifically:

A. Rule 10.3-10(2)-P1010, proposed to be amended at p. 612, will now be numbered 10.10.010 INCORPORATION OF MODEL RULES, and amended as proposed.

B. The new rules proposed at pp. 612-613 to be numbered 10.3-10(2)-P1011 will now be numbered 10.10.011 HEARINGS OF GRANT APPLICATION DENIALS and adopted with one change: rather than take official notice of the staff position paper in paragraph (5), this phrase will read "the Commission will then receive this position paper into evidence."

C. The new rule proposed at pp. 613-614 to be numbered 10-3.10(2)-P1014 will now be numbered 10.10.014 GUIDELINES FOR PUBLIC PARTICIPATION, and adopted as proposed.

STATE LIBRARY COMMISSION
William P. Conklin, Chairman

By: _____
Alma S. Jacobs
State Librarian

12-12/23/77

BEFORE THE STATE LIBRARY COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption, amendment, and repeal of policies and rules for public libraries and state library programs (ARM Title 10, Chapter 10)	)))))	NOTICE OF THE ADOPTION, AMENDMENT, AND REPEAL OF RULES

TO: All Interested Persons

1. On October 24, 1977, the State Library Commission published notice of the proposed adoption, amendment, and repeal of substantive rules in chapter 10, title 10 of the Administrative Rules of Montana, at pages 615 through 627 of the Montana Administrative Register, issue no. 10.

2. A public hearing was held before the Commission December 9 1977. No comments or testimony were received. The Commission has adopted the rules as proposed, except that Glacier County has been added to the Pathfinder Federation area, and with the approval of the Secretary of State, the Commission will renumber its rules under the new simplified section numbering system. Specifically:

A. The new rule proposed at p. 615 to be numbered 10-3.10(3)-S1015 will now be numbered 10.10.015 STATEMENT OF PHILOSOPHY AND OBJECTIVES, and adopted as proposed.

B. The rules proposed at p. 616 to set out the content of the Montana Public Library Standards are adopted and numbered in the manner appended to this notice.

D. The new rule proposed at p. 616 to be numbered 10-3.10(6)-S1031 will now be numbered 10.10.031 USE OF FEDERAL AND STATE FUNDS TO SUPPORT LIBRARY FEDERATIONS, and adopted as proposed.

E. The new rule proposed at p. 617 to be numbered 10-3.10(6)-S1032 will now be numbered 10.10.032 DESCRIPTION OF FEDERATION AREAS AND HEADQUARTERS, and adopted as proposed, with the addition of Glacier County to the Pathfinder Federation area.

G. The new rule proposed at p. 618 to be numbered 10-3.10(6)-S1041 will now be numbered 10.10.041 PRIORITIES FOR GRANTS: POPULATIONS OF LOW INCOME OR LIMITED ENGLISH-SPEAKING ABILITY, and adopted as proposed.

H. The new rule proposed at p. 619 to be numbered 10-3.10(6)-S1045 will now be numbered 10.10.045 ADVISORY SERVICES, and adopte as proposed.

I. Rule 10-3.10(6)-S1050, proposed to be amended at p. 619, will now be numbered 10.10.050 APPLICATIONS FOR GRANTS, and amende as proposed.

J. The new rule proposed at p. 620 to be numbered 10-3.10(10) S1055 will now be numbered 10.10.055 LOAN SERVICES, and adopted as proposed.

K. Rule 10-3.10(10)-S1060, proposed to be amended at p. 621, will now be numbered 10.10.060 ACCESS TO CIRCULATION RECORDS, and amended as proposed.

L. The new rule proposed at p. 622 to be numbered 10-3.10(10) S1065 will now be numbered 10.10.065 ACQUISITION AND SELECTION

OF MATERIALS, and adopted as proposed.

M. Rule 10-3.10(10)-S1080, proposed to be amended at p. 624, will now be numbered 10.10.080 CHARGES FOR LOST OR DAMAGED BOOKS, and amended as proposed.

N. The new rule proposed at p. 625 to be numbered 10-3.10(10)-S1085 will now be numbered 10.10.085 PHOTOCOPY SERVICE, and adopted as proposed.

O. Rule 10-3.10(14)-S1090, proposed to be amended at p. 625, will now be numbered 10.10.090 GRADUATE SCHOLARSHIP PROGRAM, and amended as proposed.

P. The new rule proposed at p. 625 to be numbered 10-3.10(18)-S10010 will now be numbered 10.10.110 POLICIES AND GUIDELINES FOR DEPOSITORY LIBRARIES, and adopted as proposed.

Q. Rules 10-3.10(10)-S1070 and 10-3.10(18)-S10000, which have not been amended by this action, will be renumbered 10.10.070 PROCEDURES FOR CHALLENGING MATERIAL and 10.10.100 DEPOSITORY PROCEDURES FOR STATE DOCUMENTS when replacement pages are next distributed.

3. The reasons for adopting and amending these rules are to eliminate detailed grant-in-aid criteria now spelled out by statute, to designate library federation regions by rule, to publish Commission policies in certain areas of operation of the State Library, and to adopt new guidelines for depository libraries for state documents.

4. The amendments and new rules are effective January 1, 1978.

STATE LIBRARY COMMISSION
WILLIAM P. CONKLIN, CHAIRMAN

By: _____
Alma S. Jacobs
State Librarian

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

In the matter of the adoption of amendments to rule ARM 16-2.14(2)-S14100 concerning licensing of refuse disposal areas	NOTICE OF THE AMENDMENT OF RULE ARM 16-2.14(2)-S14100

TO: All Interested Persons

1. On September 23, 1977, the Department of Health and Environmental Sciences published notice of proposed amendments to rule ARM 16-2.14(2)-S14100 concerning licensing of refuse disposal areas at page 405 of the 1977 Montana Administrative Register, issue number 9.

2. The agency has amended the rule with the following changes. The general arrangement of the material in the rule has been changed, but the substance is the same as noticed in MAR, issue no. 9. All substantive changes have been identified by interlining or underlining; changes in arrangement but not substance are not identified.

ARM 16-2.14(2)-S14100 ~~REFUSE-DISPOSAL-AREA,-LICENSING~~ SOLID WASTE MANAGEMENT (1) Purpose. The purpose of this rule is to provide uniform standards for the storage, treatment, recycling, recovery, and disposal of solid wastes, including hazardous wastes, and for the transport of hazardous wastes. This rule is adopted pursuant to Section 69-4001 et seq., R.C.M. 1947.

(2) Definitions. As used in this rule, the following terms shall have the meanings or interpretations shown below:

(a) "Act" means the Montana Solid Waste Management Act, Sections 69-4001 through 69-4010, R.C.M. 1947.

(b) "EPA" means the United States Environmental Protection Agency.

(c) "Department" means the department of health and environmental sciences, provided for in Title 82A, Chapter 6.

(d) "Board" means the board of health and environmental sciences provided for in Section 82A-605, R.C.M. 1947.

~~(e)--"Marketable-hazardous-waste"-means-any-hazardous waste-which-has-an-intrinsic-economic-value-as-demonstrated by-its-sale-to-another-person-for-resource-recovery-or-use in-a-beneficial-manner.~~

(e) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity whether organized for profit or not.

(f) "Waste" means useless, unwanted, or discarded materials in any physical form, i.e., solid, semisolid, liquid, or gaseous. The term is not intended to apply to by-products or materials which have economic value and may be used by the person producing the material or sold to another person for resource recovery or use in a beneficial manner.

(g) "Solid waste" means all putrescible and nonputrescible wastes including but not limited to garbage; rubbish,

refuse; hazardous wastes; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood by-products and inert materials. "Solid waste" does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable wood by-products.

(h) "Hazardous waste" or "hazardous solid waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form which may cause or contribute to an increase in mortality or an increase in serious illness, taking into account the toxicity of the waste, its persistence and degradability in nature, its potential for assimilation or concentration in tissue, and other factors that may otherwise cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms. Hazardous wastes include but are not limited to those which are toxic, radioactive, corrosive, flammable, irritants, strong sensitizers, or which generate pressure through decomposition, heat or other means, excluding wood chips and wood used for manufacturing or fuel purposes. The specific wastes which are "hazardous wastes" are those solid wastes classified by EPA's rules (40 CFR 250.1) as hazardous wastes.

(i) "Household refuse" means all solid waste that normally originates in a residential environment. Minor amounts of hazardous wastes are contemplated to be within the scope of this term.

(j) "Solid waste management system" means a system which controls the storage, treatment, recycling, recovery, or disposal of solid waste. Such a system may be composed of one or more solid waste management facilities. This term includes both hazardous and non-hazardous solid waste management systems.

(k) "Hazardous waste management" or "hazardous solid waste management" means the management of the storage, transport, treatment, recycling, recovery, or disposal of hazardous wastes.

(l) "Resource recovery" means the recovery of material or energy from solid waste.

(m) "Resource recovery system" means a solid waste management system which provides for the collection, separation, recycling, or recovery of solid wastes, including disposal of nonrecoverable waste residues.

(n) "Resource recovery facility" means a facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(o) "Facility" means a manufacturing, processing or

assembly establishment; a transportation terminal; or a treatment, storage or disposal unit operated by a person at one site.

(p) "Generation" means the act or process of producing waste materials.

(q) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or onto the land so that the solid waste or hazardous waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(r) "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years.

(s) "Refuse container(s)" means a portable facility used for the temporary storage of solid waste. Containers are emptied periodically and the solid waste is then taken to a disposal or resource recovery facility.

(t) "Transport" means the movement of wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(u) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize the waste or so as to render it non-hazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume.

(v) "Manifest" means the form used for identifying the quantity, composition, origin, routing, and destination of hazardous solid waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

(w) "Leachate" means contaminated water which is produced when rain or other water passes through solid waste in solid waste disposal sites, picking up various mineral, organic and other contaminants.

(3) Licensing. Except as provided in section 69-4008, R.C.M. 1947, each person who operates a solid waste management system or transports hazardous waste must possess a valid license issued by the department.

(a) Solid waste management systems.

(i) Non-hazardous solid waste management systems. Any person wishing to establish a non-hazardous solid waste management system shall first submit an application for a license to the department. The department shall furnish application forms to interested persons. Such forms shall require at least the following information:

(A) name and business address of applicant;

(B) legal and general description of the proposed location(s);

(C) total acreage of proposed site;

(D) population size and centers to be served by the proposed site;
(E) pertinent water quality information;
(F) geological and soil information;
(G) present uses of adjacent lands;
(H) zoning information;
(I) maps, drawings, etc., if necessary;
(J) name of individual operator; and
(K) proposed operation and maintenance plan.

(ii) Hazardous solid waste management systems. Not later than ninety (90) days after the promulgation by EPA of rules identifying hazardous wastes (40 CFR 250.1), any person who operates a hazardous waste management system shall file notification with the department stating the location and general description of the hazardous waste management facility(ies) and the hazardous wastes handled at such facility(ies).

Effective six (6) months after the EPA adopts rules applicable to hazardous waste management systems (40 CFR 250.4), any person who operates such a system must have a hazardous solid waste management system license from the department and must comply with applicable EPA requirements.

The department shall supply the necessary application forms to interested persons.

(b) Hazardous waste transporters. Not later than ninety (90) days after the promulgation by EPA of rules identifying hazardous wastes, any person who transports hazardous wastes within Montana shall file notification with the department stating the location and general description of the transport activity and the hazardous wastes involved.

Effective six (6) months after the EPA adopts rules applicable to the transport of hazardous wastes (40 CFR 250.3), any person who transports hazardous wastes must have from the department a hazardous waste transporter's license. The department shall furnish the license application forms to interested persons. The applicant must comply with labeling, placarding, manifest and other applicable requirements adopted by the EPA.

(c) Processing of license applications.

(i) Solid waste management systems licenses. The department will review each submitted application to insure that it is completed. If additional information is required, the department will notify the applicant in writing and will postpone processing the application until the additional information requested is received and the application is complete. If the requested additional information is not received within 90 days after the applicant has been notified, a new application must be submitted.

Within fifteen days after receipt of the completed application, the department shall notify in writing the local health officer in the county where the proposed solid waste management system will be located. The department shall review the

completed application and other relevant information and make a proposed decision based on the applicant's apparent ability to comply with the Act and this rule.

A public notice will then be prepared by the department to explain its proposed decision. It shall be circulated in the following manner: one copy to the applicant, and three copies shall be mailed to the public health officer along with instructions that they be posted at the nearest post office and two other public buildings serving the geographical area of the proposed system. At least one news release shall be prepared and sent by the department to an area newspaper.

The purpose of the public notice is to inform the public and seek their views on the proposed license. The notice shall state the name and address of the applicant and the proposed location(s) of the solid waste management facilities; and the department's proposed decision. The public shall be informed that it has thirty (30) days from the date of the public notice to submit written comments to the department concerning the license application. Interested persons may obtain copies of the completed application and the department's proposed decision, upon request, by enclosing the copying costs.

After the comment period has expired, the department will make its final decision and then notify in writing the local health officer, the applicant and any other interested persons who have requested to be notified. If the department decides to issue the license, the local health officer has up to fifteen (15) days within which to validate the license with his signature. If he refuses to validate the license, he must notify the department, the applicant and any other interested persons in writing. His decision must be based only on whether the application complies with the Act and this rule.

(ii) Hazardous waste transporter's licenses. The department will review the application to determine if it is complete. If it is not, the department will request the missing information from the applicant who will have ninety (90) days to submit the additional information. If the information is not received by then, a new application must be submitted.

Once a completed application has been received, the department will issue a license if the applicant complies with all EPA requirements, the Act and this rule. The applicant may also have to satisfy the U.S. Department of Transportation and Montana Public Service Commission requirements. No validation by a local health officer is required for these licenses.

(d) Appeals. If the department's final decision is to deny the license application or to revoke an existing license to operate a solid waste management system or a license to transport hazardous waste, the applicant (or licensee) and the local health officer have an opportunity to appeal the decision to the board. The department shall inform them of this right in the letter of denial or revocation. An appeal, if one is sought, must be filed with the board within thirty (30) days

after the notice of denial or revocation of license is received.

If the department issues a license but the local health officer refuses to validate it, the applicant or any person aggrieved by the local health officer's decision may appeal to the board. An appeal must be filed within thirty (30) days after receipt of written notice of the decision.

The Act does not provide the public with the right of appeal to the board from a decision made by the department and the local health officer to issue a license.

(e) Duration of license. Solid waste management system licenses and hazardous waste transport licenses, once issued, remain in effect until surrendered by the licensee or until revoked by the department in accordance with section 69-4006, R.C.M. 1947. Licenses are not transferable to other persons or locations.

(f) Conditional licenses. The department may issue a conditional license for solid waste management systems already in existence or under construction on the effective date of this rule. Such a license if granted will be valid for up to one year. Only when the department determines that the conditional licensee has shown good cause for an extension will one be granted. Conditional licenses are to be granted only if the applicant demonstrates steps are being taken to bring the system into compliance. The local health officer must validate all conditional licenses before they are effective.

(4) Waste classifications. Solid wastes are classified into groups based on physical and chemical characteristics which determine the degree of care required in handling and disposal and the potential of the wastes for causing environmental degradation or public health hazards. Solid wastes are categorized into three groups:

(a) Group I wastes. This group includes and is limited to those solid wastes classified or identified by the EPA as hazardous wastes in 40 CFR 250.1. Examples may or may not include the following:

(i) municipal and domestic wastes such as septic tank pumpings, raw sewage sludge, chemical toilet wastes, infectious medical wastes, and incinerator ashes; and

(ii) commercial and industrial wastes such as sludges from air and water pollution control equipment, ashes and dusts from incinerators and air pollution control devices, caustics, acids, waste chemicals, paint sludges, spent cleaning fluids and solvents, petroleum wastes, discarded chemical containers, chemical fertilizers, pesticides, and discarded unrinsed pesticide containers.

(b) Group II wastes. This group includes decomposable wastes and mixed solid wastes containing decomposable material, but excludes hazardous wastes. Examples include, but are not limited to, the following:

(i) municipal and domestic wastes such as garbage and putrescible organic materials, paper, cardboard, cloth, glass,

metal, plastics, street sweepings, yard and garden wastes, digested sewage treatment sludges, water treatment sludges, ashes, dead animals, offal, discarded appliances, abandoned automobiles, and hospital and medical facility wastes, provided that infectious medical wastes have been sterilized or safely contained to prevent the danger of disease; and

(ii) commerical and industrial wastes such as packaging materials, liquid or solid industrial process wastes which are chemically or biologically decomposable, crop residues, manure, chemical fertilizers and emptied pesticide containers which have been triple rinsed or processed by methods approved by the department.

(c) Group III wastes. This group includes wood wastes and non-water soluble, essentially inert solids. Examples include, but are not limited to, the following:

(i) inert solid waste such as brick, dirt, rock and concrete;

(ii) wood materials, brush, lumber, and vehicle tires; and

(iii) industrial mineral wastes which are essentially inert and non-water soluble and do not contain hazardous waste constituents.

(5) Solid waste disposal site classifications. Disposal sites are classified according to their respective abilities to safely handle various types of solid waste. Systems of acceptable disposal may entail containment of waste with assured protection against leachate migration or may take advantage of natural treatment processes such as evaporation, chemical and microbiological degradation, filtration, adsorption and attenuation. Solid waste management facilities may involve ponds, pits, lagoons, land spreading areas, impoundments, or landfills. Although sites are broadly classified as to the solid waste groups they may accept, specific restrictions may be placed by the department on individual disposal sites or disposal areas. As an example, many Class II landfills may not be acceptable sites for the disposal of Group II liquids or sludges. Such restrictions, if any are warranted, shall be specified on the solid waste management system license.

There are three types of disposal sites, Class I, Class II, and Class III.

(a) Class I sites. Generally, sites licensed as a Class I site may accept solid waste from Groups I, II and III. Such a site usually is able to accept all kinds of solid waste.

(b) Class II sites. Generally, sites licensed to operate as Class II solid waste management system sites are capable of receiving Group II and Group III wastes but not Group I, or hazardous, wastes. Household refuse, although it may contain some Group I solid waste, may be disposed at Class II sites.

(c) Class III sites. Sites licensed as Class III sites may accept only Group III wastes which, as noted above, are primarily inert wastes.

(6) Standards for classification of solid waste disposal sites.

(a) General requirements. There are a number of requirements with which all three site classifications must comply. In addition, there are other requirements that are applicable only to specific classifications. The general requirements that all sites must meet include:

(i) A sufficient acreage of suitable land shall be available for the solid waste disposal area;

(ii) where public use or year round access is contemplated, access roads and bridges must be capable of supporting loaded vehicles during all types of weather;

(iii) sites may not be located in a 100 year floodplain;

(iv) sites may be located only in areas which will prevent the pollution of ground and surface waters and public or private water supply systems;

(v) drainage structures must be installed where necessary to prevent surface runoff from entering disposal area;

(vi) where underlying geological formations contain rock fractures or fissures which may lead to pollution of the ground water or areas in which springs exist that are hydraulically connected to the proposed site, only Class III sites may be approved; and

(vii) sites shall be located to allow for reclamation and reuse of the land.

(b) Special requirements.

(i) Class I sites. Sites licensed and operated as Class I sites must confine solid waste and leachate to the disposal site. If there is a potential for leachate migration, it must be demonstrated to the satisfaction of the department that leachate will only migrate to underlying formations which have no hydraulic continuity with any state waters.

(ii) Class II sites. Adequate separation of Group II wastes from underlying or adjacent water must be provided. The extent of the separation required shall be established on a case-by-case basis, considering terrain and the type of underlying soil formations.

(iii) Class III sites. While such sites cannot be located on the banks of or in a live or intermittent stream, they may be approved for water saturated areas, such as marshes or deep gravel pits which contain exposed groundwater.

(c) Soil and hydrogeological requirements. The following table shall be used in evaluating the natural site characteristics of proposed solid waste disposal systems and in classifying disposal sites. However, disposal site locations unable to meet these criteria may still be used, providing that the operational and maintenance plan contains sufficient information to demonstrate that surface and groundwaters will be protected to the same degree as those sites able to meet the criteria of the following table. The plan must contain detailed descriptions of the waste treatment procedures,

impermeable liners, leachate control systems or other engineered systems which may be utilized in the disposal system. Where the requirements regarding permeability and depth to water table cannot be met, the department may require that the disposal facility include provisions for monitoring leachate and groundwater. This monitoring will be required for all Class I disposal sites unable to meet the restrictions.

	C L A S S		
Criteria	I	II	III
Soil Type	OH, CH, CL, SC, GC	MH, OL, ML, SM, GM	GW, GP, SW, SP
Permeability (vertical and lateral)			
Cm per sec	$K < 10^{-6}$	$K = 10^{-6}$ to 10^{-3}	$K > 10^{-3}$
Feet per year	K < 1	K = 1 to 1035	K > 1035
Water Table	~~200 feet~~ 100 feet	10 to 20 feet minimum	Not Applicable

OH - organic clays of medium to high plasticity, organic silts.
CH - inorganic clays of high plasticity, fat clays.
CL - inorganic clays of low to medium plasticity, gravelly clays, sandy clays, silty clays, lean clays.
SC - clayey sands, sand clay mixtures.
GC - clayey gravels, gravel-sand-clay mixtures.
MH - inorganic silts, micaceous or diatomaceous, fine sandy or silty soils, elastic silts.
ML - inorganic silts and very fine sands rock flour, silty or clayey fine sands or clayey silts with slight plasticity.
OL - organic silts, and organic silt clays of low plasticity.
SM - silty sands, sand silt mixtures.
GM - silty gravels, gravel-sand-silt mixtures.
GW - well graded gravels or gravel-sand mixtures, little or no fines.
GP - poorly graded gravels or gravel-sand mixtures, little or no fines.
SW - well graded sands or gravelly sands, little or no fines.
SP - poorly graded sands or gravelly sands, little or no fines.

(7) Operation and maintenance. Any person who maintains or operates a solid waste management system shall maintain and operate such system in conformance with the requirements of this section, the plan of operation and maintenance approved by the department, all local zoning, system planning, building, and protective covenant provisions, and any other legal requirements that may be in effect. Each proposed solid waste

management system will be evaluated on a case-by-case basis, taking into consideration the physical characteristics of the disposal site(s), the types and amounts of wastes, and the operation and maintenance plan for that system. The follow ing criteria shall apply to the review of a proposed system for the disposal of solid waste:

(a) Operation and maintenance plan requirements. The operation and maintenance plan shall include:

(i) if for use by the public, what days and times the facility(ies) will be open;

(ii) how access and traffic will be restricted or controlled;

(iii) proposed equipment the system will utilize;

(iv) general description of the proposed solid waste management system;

(v) maintenance schedule concerning solid waste handling and disposal;

(vi) provision for litter control, if applicable;

(vii) types of waste the proposed facility(ies) will accept; and

(viii) plan for reclamation of the disposal site and the land's ultimate use.

(b) General operational and maintenance requirements.

(i) Open burning at all sites is prohibited unless a permit has been obtained from the department.

(ii) Dumping of solid waste shall be confined to areas within the disposal site that can be effectively maintained and operated in accordance with this rule. This shall be controlled by supervision, fencing, signs or similar means approved by the department.

(iii) Effective means shall be taken to control litter at solid waste storage and disposal facilities;

(iv) Flies and other insects, as well as rodents, shall be effectively controlled;

(v) Salvaging of materials at all sites is expressly prohibited unless the licensee demonstrates to the department's satisfaction that it can be done properly.

(c) Specific operational and maintenance requirements.

(i) Class I solid waste disposal sites. Due to the hazardous nature of the waste that may be processed at these sites, strict supervision is required when such sites are open. Sites shall be fenced to prevent unauthorized access.

All Class I sites using landfilling methods shall cover Group I wastes with a minimum of twelve (12) inches of suitable earth cover material after each operating day and at least four (4) feet of earth cover material within one week after the final deposit of solid waste. These steps must be taken unless the department is satisfied that the licensee has shown good cause for not covering.

Where other solid waste management methods are proposed to dispose of Group I wastes, the operation and maintenance

plan must demonstrate to the department's satisfaction that such disposal methods pose no danger to man and the environment. Group II wastes disposed at Class I sites shall satisfy all Class II disposal requirements.

(ii) Class II solid waste disposal sites. All Class II sites using landfilling methods shall compact and cover solid waste with a layer of at least six (6) inches of approved earth cover material at the end of each operating day and at least two (2) feet of approved earth cover material within one week after the final deposit of solid waste at any portion of the site. These steps must be taken unless the department is satisfied that the licensee has shown good cause for not covering.

EPA's 1972 publication, "Sanitary Landfill Design and Operation", (#SW-65ts) shall be used as the general landfill design and operation manual for purposes of this rule. The department may develop or adopt guidelines for other solid waste disposal methods and procedures. Semisolids should be mixed with other solid waste to prevent localized leaching; or separate, specialized disposal areas should be developed. Sites shall be fenced to prevent unauthorized access and shall be supervised when open.

Where refuse containers are utilized as part of a management system for Group II solid wastes, all containers shall be maintained and kept in a sanitary manner and emptied at least once a week.

(iii) Class III solid waste disposal sites. Although these sites are not required to be covered by earth materials daily, they shall be covered periodically.

(iv) Resource recovery and solid waste treatment facilities. Resource recovery and solid waste treatment facilities and components thereof shall be designed, constructed, maintained, and operated so as to control litter, insects and rodents, odor, aesthetics, residues, waste water treatment, and air pollutants.

(8) Transportation. Solid waste must be transported in such a manner so as to prevent its discharge, dumping, spilling, or leaking from the transport vehicle.

(9) Hazardous wastes.

(a) Generation of hazardous wastes.

(i) No person may consign hazardous wastes or solid wastes with a hazardous waste constituent to another person without the disclosure to that person and the department of the hazardous nature of the solid waste.

(ii) The department may require the submission of reports from persons who generate hazardous wastes, regarding the types, quantities, composition and disposition of such wastes.

(A) Not later than ninety (90) days after the promulgation by EPA of rules identifying hazardous wastes, any person who generates hazardous wastes shall file notification with

the department stating the location and general description of the waste generating facility and the hazardous wastes produced at such facility.

(B) The department may require persons who generate hazardous wastes to maintain pertinent records, including copies of waste manifests, for specified periods of time.

(iii) Beginning six (6) months after the EPA adopts rules applicable to the generation of hazardous wastes, no person who generates hazardous wastes may place such wastes in containers except as allowed under EPA rules (40 CFR 250.2), or may consign a shipment of hazardous wastes to another person without initiating a waste manifest.

(b) Transport of hazardous wastes.

(i) The department may require the maintenance of records, including copies of waste manifests, and the submission of reports from persons who transport hazardous wastes.

(ii) Transporters of hazardous wastes are required to obtain licenses issued by the department as provided in subsection (3) of this rule.

(c) Hazardous waste management systems.

(i) The department may require the maintenance of records, including copies of waste manifests, and the submission of reports from persons who store, treat, or dispose of hazardous wastes. Permanent records must be maintained by the operator of a hazardous waste disposal facility, identifying the location of each disposal area and the wastes or waste types disposed. Such disposal records shall be made available to the new facility owner or operator if the facility is sold or leased to another person.

(ii) No hazardous waste management system may store, treat, or dispose of hazardous wastes in a manner which is inconsistent with methods approved by the department.

(iii) All hazardous waste management systems are required to have licenses issued by the department as provided in subsection (3) of this rule.

(iv) Hazardous wastes found in household refuse may be disposed of at Class II disposal sites, without written authorization from the department.

(v) For areas not served by licensed Class I disposal sites, the department may, upon a showing of good cause, authorize the disposal of hazardous wastes at Class II disposal sites if no health hazard or no danger to the environment would be presented.

(10) Inspections; Enforcement of Act and Rules.

(a) Inspections.

(i) The department has authority under Section 69-4007(2), R.C.M. 1947, to conduct inspections of solid waste management systems at reasonable hours upon presentation of appropriate credentials.

(b) Enforcement.

(i) If after an inspection the department determines

that violation of the Act or this rule is occurring, it shall notify the licensee of the nature of the violation.

(ii) Depending on the severity of the violation(s), the department may seek a compliance schedule from the applicant or initiate proceedings to revoke the license. The department may also, through the attorney general or appropriate county attorney, seek to enjoin the licensee, or collect a criminal penalty.

(iii) The department may seek a civil penalty from persons who store, treat, transport or dispose of hazardous waste in violation of this rule or Chapter 40, Title 69, R.C.M. 1947.

(11) Integration with the Montana Water Pollution Control Act. Point source discharges of pollutants into state waters, including but not limited to industrial wastewater effluents, or industrial waste as defined in Section 69-4802(2), R.C.M. 1947, are governed by permit rules established pursuant to Section 69-4801, et seq., R.C.M. 1947.

3. The proposed rule for the "Montana Solid Waste Management Act" was subjected to a lengthy public review period from June 1, 1977 to November 28, 1977. However, the following discussion directs itself to comments received and action taken on those comments for the proposed rule that was submitted to a public hearing on October 26, 1977.

The majority of comments received came from representatives of industry, primarily the petroleum industry and the agricultural community. The overriding concern of these groups was directed toward the sections of the proposed rule dealing with hazardous waste classification and categorization of Class I disposal sites.

The proposed rule defined Group I wastes as those wastes identified by EPA as hazardous wastes. The rule further listed numerous examples of Group I wastes. From comments received, it became apparent that there was concern that the state's definition of hazardous wastes as covered by Group I wastes would exceed future EPA designations. This section of the rule has been clarified to assure that Group I wastes are limited specifically to those wastes which will be classified by EPA as hazardous wastes. The examples of possible hazardous wastes have been retained to assist those involved in waste management to be prepared for what EPA will most likely identify as hazardous wastes.

During the public review period, concern was expressed that the criteria for sanitary landfills would apply to other methods of waste disposal specific to certain industries, i.e., biological land farming of oily wastes. Clarification has been made in the criteria table section to assure that individual disposal plans will be evaluated on the merits of proposed procedures. Further, clarification has been made of the requirements for access, security and supervision of

Class I disposal sites so that the specific requirements for year-round access and site supervision will apply only to sites open to the public. Finally, a modification was made of the requirement for daily cover so that it applies only to landfill operations and not to other methods of disposal such as land farming.

In response to comments received, the criteria for classification section of the rule has been modified. This section, pertaining to permeability and water table criteria, has been modified in order to clarify its intended use in classifying disposal sites. Specifically, a segment has been added that allows sites with less distance to groundwater or greater permeability than shown on the table to still be approved if the applicant can demonstrate that water quality will not be impaired. This addition assures that the tabulated values in the section will not be taken as specific standards but rather as guidelines to be of assistance in determining appropriate sites.

Numerous requests were made asking for a clarification in that portion of the definition section of the rule which could have an undue impact upon agricultural activities. Specifically, some commentors expressed the fear that agricultural wastes may be defined as hazardous waste material. Also, the request was made that usable agricultural by-products be exempt from the rule and that an exemption be granted to those agricultural enterprises that are required to comply with wastewater management standards. The department rejected the request that a specific exemption be granted for agricultural by-products because: 1) the definition of waste was modified to include such material; 2) Group I and II waste classifications now do not single out agricultural waste; and 3) a section has been added to the rule to assure coordination with the state water discharge permit system.

The definition section of the rule has been expanded to include definitions from its companion law, the "Montana Solid Waste Management Act." In response to the above-mentioned request for clarification, a definition of waste has been added which specifically excludes by-products or materials that may be sold or used in a beneficial manner. Also, a new section has been added to the rule to provide for integration with the Montana Water Pollution Control Act. This section assures that certain point source discharges of pollutants into state waters are governed by permit rules established in Section 69-4801, et seq., R.C.M. 1947.

Two commentors representing local government waste management operations requested modifications that would apply to their special local situations. Action was not taken on these requests because such action would have been detrimental to many other waste management systems statewide. Further, investigation has shown that these special requests can be adequately fulfilled at the local level with existing law and

this rule.

One commentor requested that provisions be included in the rule for confidentiality of information. This request was not acted upon because it was determined that the Act provided no authority for promulgation of such a rule.

The request also was made that the sections of the rule regarding licensing and record keeping/reporting requirements be made more specific. Word changes have been made and all portions of the rule that pertain to licensing have been consolidated in order to make these provisions readily understandable. Additionally, the enforcement section was rewritten for clarification purposes.

A. C. KNIGHT, M.D., Director

Certified to the Secretary of State December 12, 1977

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

In the matter of the adoption of Rule 16-2.14(10)-S14321, requiring approval of plans for public water and sewer systems, and the repeal of Rule 16-2.14 (10)-S14320, plans for sewer systems	))))))	NOTICE OF ADOPTION OF RULE 16-2.14(10)-S14321 AND REPEAL OF RULE 16-2.14(10)-S14320

TO: All Interested Persons

1. On August 25, 1977, the Board published notice of a proposed adoption of rule 16-2.14(10)-S14321, concerning approval of plans for public water and sewer systems, and the proposed repeal of rule 16-2.14(10)-S14320, concerning plans for sewer systems, at page 235 of the 1977 Montana Administrative Register, issue number 8.

2. The Board has repealed rule 16-2.14(10)-S14320 and adopted rule 16-2.14(10)-S14321 with the following changes:

16-2.14(10)-S14321 PLANS FOR PUBLIC WATER AND SEWER SYSTEMS (1) Before a person commences construction of a new public water or sewer system or major alteration or extension of an existing public water or sewer system, an engineering report along with necessary plans and specifications for the public water or sewer system shall be submitted to the department for review and approval. For sewer lines, detailed plans and profiles shall be provided.

(2) Upon receipt of plans and specifications, the department shall notify the person within sixty (60) days if the material is satisfactory, and if not, what additional information is required.

(3) If additional information is needed, no further processing will be made until all requested information is received.

(4) The comprehensive engineering report on proposed water or sewer systems shall be typewritten on letter-sized paper and the sheets firmly bound together. If the plans are solely for the extension of the existing system, only such information as is necessary for the comprehension of the plans shall be required in the report. The comprehensive report and plans and specifications for a proposed water system shall be prepared in accordance with the format and criteria set forth in the Recommended Standards for Water Works prepared by the Great Lakes Upper Mississippi River Board of State Sanitary Engineers in 1974, or subsequent editions. The comprehensive report and plans and specifications for sewage systems shall be prepared in accordance with the format and criteria set forth in the 1971 Revised Version of the Recommended Standards for Sewage Works or subsequent editions.

(5) Small water systems for domestic supply without provisions for fire fighting or irrigation flows may use an

alternate design for small water systems as set forth in "The Design of Small Water Systems" by Joseph A. Salvato, Jr., P.E., produced by the Health Education Service of the State of New York in 1958.

(6) To the extent practicable, a person shall avoid locating part or all of the new or expanded facility at a site which:

(a) is subject to a significant risk from earthquakes, floods, fires, or other disasters which could cause a breakdown of the public water system or a portion thereof; or

(b) except for intake structures and source wells, is within the flood plain of a 100-year flood. Water wells located in the 100-year flood plain shall have the casing extended at least four feet above the maximum highest flood elevation.

3. A public hearing was held on December 2, 1977, in the Governor's Reception Room, Capitol Building, at 9:30 a.m. The above amended version of the proposed rule 16-2.14(10)-S14321 was adopted and rule 16-2.14(10)-S14320 was repealed the same day, December 2, 1977.

Intradepartmental comment generated the amendment specifically requiring detailed plans be submitted for sewer lines. Another comment questioned the need for a comprehensive engineering report for small extensions or modifications of water or sewer systems. Subsection (4) was amended accordingly. A final comment suggested a minimum well casing extension of two feet instead of four feet in (6)(b), but since five feet is the minimum in the Recommended Standards referenced in (4) of the rule, the four foot standard was considered reasonable and was retained. No adverse comment was received concerning the proposed repeal of rule 16-2.14(10)-S14320.

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

In the matter of the repeal of Rule 16-2.14(10)-S14350, concerning investigation of groundwater supplies, and the repeal of Rule 16-2.14(10)-S14360, concerning investigation of surface water supplies	NOTICE OF THE REPEAL OF RULE 16-2.14(10)-S14350 AND RULE 16-2.14(10)-S14360

TO: All Interested Persons

1. On August 25, 1977, the Board published notice of the proposed repeal of two rules, 16-2.14(10)-S14350 concerning

investigation of groundwater supplies, and 16-2.14(10)-S14360 concerning investigation of surface water supplies, at page 237 of the 1977 Montana Administrative Register, issue number 8.

2. The Board has repealed rules 16-2.14(10)-S14350 and 16-2.14(10)-S14360.

3. A public hearing on the proposed repeals was originally scheduled for September 30, 1977, but was postponed until December 2, 1977, and held on that date in the Governor's Reception Room, Capitol Building, at 9:30 a.m. No public comment was received concerning either proposed repeal.

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

In the matter of the adoption of Rule 16-2.14(10)-S14381, governing public water supplies	)))	NOTICE OF ADOPTION OF RULE 16-2.14(10)-S14381

TO: All Interested Persons

1. On August 25, 1977, the Board published notice of the proposed adoption of rule 16-2.14(10)-S14381, setting standards for public water supply systems, at page 223 of the 1977 Montana Administrative Register, issue number 8.

2. The Board has adopted the rule with the following changes from the version printed in the above notice:

16-2.14(10)-S14381 PUBLIC WATER SUPPLIES

(1) Purpose. The purpose of this rule is to assure the safety of public water supplies with respect to bacteriological, chemical, and radiological quality and to further efficient processing through control tests, laboratory checks, operating records, and reports of public water supply systems.

(2) Definitions. In this rule, the following terms shall have the meanings or interpretations indicated below and shall be used in conjunction with and supplemental to those definitions contained in Section 69-4902.

(a) "Act" means Title 69, Chapter 49, R.C.M. 1947.

(b) "Approved laboratory" means a laboratory certified and approved by the department to analyze water samples to determine their compliance with maximum allowable levels.

(c) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(d) "Dose equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the

International Commission on Radiological Units and Measurements (ICRU).

(e) "EPA" means the United States Environmental Protection Agency.

(f) "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

(g) "Gross beta particle activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

(h) "Man-made beta particle and photon emitters" means all radionuclides emitting beta particles and/or photons listed in Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure, NBS Handbook 69, except the daughter products of thorium-232, uranium-235, and uranium-~~239~~ 238.

(i) "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to the free flowing outlet of the ultimate user of a public water system, except in the case of turbidity where the maximum permissible level is measured at the point of entry to the distribution system. Contaminants added to the water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from this definition.

(j) "Person" means an individual, corporation, company, association, partnership, state, municipality, or federal agency.

(k) "Picocurie (pCi)" means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

(l) "Public water supply" or "public water system" means a system for the delivery to the public of piped water for human consumption, if such a system serves at least ten (10) families or regularly serves at least 25 persons daily at least 60 days out of the calendar year.

(i) "Community water system" means any public water system which serves at least ten service connections used by year-round residents or regularly serves at least 25 year-round residents.

(ii) "Non-community water system" means any public water system which is not a community water system.

(m) "Rem" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A "millirem (mrem)" is 1,1000 of a rem.

(n) "SDWA" means Safe Drinking Water Act (Pub.L. 93-523).

(o) "Sanitary survey" means an onsite review ~~for the purpose of evaluating the adequacy for producing and distributing safe drinking water~~ of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy for producing and distributing safe drinking water.

(p) "Satisfactory bacteriological sample" means less than one coliform found per 100 ml sample or less than one portion positive for coliform organisms when five portions are examined.

(q) "Standard sample" means the aliquot of finished drinking water that is examined for the presence of coliform bacteria.

(r) "State" means the agency of the state government which has jurisdiction over public water systems. During any period when a state does not have primary enforcement responsibility pursuant to section 1413 of the SDWA, the term "state" means the Regional Administrator, U.S. Environmental Protection Agency.

(s) "Supplier of water" means any person who owns or operates a public water system.

(3) Standards of chemical and radiological quality. All analyses to determine compliance shall be done in an approved laboratory according to methods ~~established by "Standard Methods for the Examination of Water and Wastewater," latest edition, or "Methods for Chemical Analysis of Water and Wastes", EPA, or approved equivalents.~~ approved by the Department and EPA. Analyses shall be made on treated water as furnished to the consumer. The following shall be the maximum ~~allowable~~ contaminant levels for chemical and radiological quality.

(a) Maximum ~~allowable~~ contaminant levels for inorganic chemicals.

Constituent	Level, milligrams per liter
Arsenic	0.05
Barium	1.
Cadmium	0.010
Chromium	0.05
Lead	0.05
Mercury	0.002
Nitrate (as N)	10.
Selenium	0.01
Silver	0.05
Fluoride	~~0.05~~ 2.4

(b) Maximum ~~allowable~~ contaminant levels for organic chemicals in surface waters and those groundwaters where they may be present.

	Level, milligrams per liter
(i) Chlorinated hydrocarbons:	
Endrin (1,2,3,4,10,10-hexachloro-6, 7-epoxy-1,4,4a,5,6,7,8,8a-oxtahydro-1, 4-endo, endo-5, 8-dimethano naphthalene).	0.0002
Lindane (1,2,3,4,5,6-hexachlorocyclo-hexane, gamma isomer).	0.004
Methoxychlor (1,1,1-Trichloro-2,2-bis [p-methoxphenyl] ethane).	0.1
Toxaphene ($C_{10}H_{10}Cl_8$-Technical chlorinated camphene, 67-69 percent chlorine).	0.005

(ii) Chlorophenoxys:

2,4-D (2,4-Dichlorophenoxyacetic acid).	0.1
2,4,5-TP Silves (2,4,5-Trichlorophenoxy-propionic acid).	0.01

(c) Maximum ~~allowable~~ contaminant levels for turbidity. This standard shall apply only to systems which use surface water in whole or in part. The maximum ~~allowable~~ contaminant levels for turbidity in drinking water, measured at a representative entry point(s) to the distribution system are:

(i) One turbidity unit (TU), as determined by a monthly average except that a level not exceeding five ~~or fewer~~ turbidity units may be allowed if the supplier of water can demonstrate to the department that the higher turbidity does not do any of the following:

(A) interfere with disinfection;

(B) prevent maintenance of an effective disinfectant agent throughout the distribution system; or

(C) interfere with microbiological determinations.

(ii) Five turbidity units based on an average for two consecutive days.

(iii) If results of turbidity analyses indicate the maximum contaminant level has been exceeded, a second sample shall be taken within one hour. The repeat sample, and not the initial one, shall be used in calculating the monthly average.

(d) Maximum ~~allowable~~ contaminant levels for radiological contaminants.

Constituent	Level p Ci per liter
Combined radium-226 and radium-228	5
Gross alpha particle activity (including radium-226 but excluding radon and uranium)	15
Tritium	20,000
Strontium-90	8
Gross beta radioactivity	50

The average annual concentration of beta particle and photon radioactivity from man-made radionuclides in drinking water shall not produce an annual dose equivalent to the total body or any internal organ greater than 4 millirem/year.

(3) Verification of excessive chemical level. When the results of a chemical analysis indicate that the level of any constituent except nitrate exceeds the maximum ~~allowable~~ contaminant level at least three additional samples shall be collected within one month of notification to the department to determine if the water served to the public exceeds the maximum ~~allowable~~ contaminant level. When the maximum contaminant level for nitrate is exceeded, an additional sample will be collected within 24 hours. The mean of the two samples will determine if the maximum contaminant level is exceeded.

(f) Water supply reporting and notification — community public water supply. Any community public water supply

~~facility~~ system which:

(i) violates maximum ~~allowable~~ contaminant levels,

(ii) fails to use prescribed treatment techniques,

(iii) is granted a variance,

(iv) fails to comply with a variance schedule, or

(v) fails to perform monitoring or use applicable testing procedures

is required to issue a notice to its ~~customers~~ users with the next water bill or by written notice if water bill is issued quarterly or not issued at all, and repeated at no less than quarterly intervals until corrected, and shall notify the department within 48 hours of such non-compliance.

In the case of a failure to comply with a maximum contaminant level ~~which is not corrected promptly~~ after discovery, the supplier of water must give other general public notice, in a manner approved by the department. This notice may consist of newspaper advertisement, press release, or other appropriate means in a manner and form approved by the department.

(g) Water supply reporting and notification — non-community public water supply system. Any non-community public water supply system which:

(i) violates maximum ~~allowable~~ contaminant levels,

(ii) fails to use prescribed treatment techniques,

(iii) is granted a variance,

(iv) fails to comply with a variance schedule, or

(v) fails to perform monitoring or use applicable testing procedures

is required to give conspicuous notice of same to the consumers served by the system in a form approved by the department.

Any notice given in compliance with this rule shall inform the consumers of the appropriate item and shall not use unduly technical language or unduly small print in a form approved by the department.

In the event of an imminent threat to public health, the department may require any measure necessary to protect public health.

(4) Control tests. These tests permit the operator of the system to judge variations in water quality, to identify objectionable water characteristics, and to detect the presence of foreign substances which may adversely affect the potability of the water. These control tests shall be performed, recorded and reported in accordance with procedures approved by the department.

Tests for chlorine residual in the distribution system shall be made at selected points and changed regularly so as to cover the system completely at least each week.

A minimum of two tests daily shall be made for systems employing full time chlorination, one at the point of application and one in the distribution system.

(a) Surface supplies. Operators of water treatment

plants utilizing in their operation coagulation, settling, softening, or filtration shall perform at least daily, unless otherwise specified, the following chemical control tests on the filtered water, list them on a report form approved by the department, and submit monthly to the department:

Chlorine residual
Alkalinity--Phenolphthalein (P)
Alkalinity--Total
pH value
Hardness (where softening is utilized)
Turbidity
Stability to calcium carbonate (weekly)

Operators of water supplies utilizing disinfection with or without sedimentaiton shall perform at least daily the following chemical control tests on the treated water, list them on a report form approved by the department and submit monthly to the department.

Chlorine residual
pH value
Turbidity

(b) Ground water supplies. A chlorine residual test (where chlorination is practiced) is required for water systems utilizing disinfection. It should be listed as indicated on forms approved by the department and submitted to the department monthly.

(c) Special tests. Special tests may be required for water supplies exceeding amounts specified below:

Constituent	Maximum amount
Iron	0.3 mg/l
Manganese	0.05 mg/l
Chloride	250 mg/l
Sulphate	250 mg/l
Total Dissolved Solids	500 mg/l

(d) Determining necessity of full time chlorination. Full time chlorination is mandatory where the source of water is from lakes, reservoirs, streams or springs. Full time chlorination of the water in a ground water supply system must be employed whenever the record of bacteriological tests of the system does not indicate a safe water under the criteria listed in subsections (5)(a) and (5)(b) of this rule. Full time chlorination is also mandatory for any new well in a system where the initial bacteriological tests of the well do not show a safe record with the department for three consecutive samples taken on different days after completion and testing of the well.

(e) Fluoridation. Where fluoridation is practiced, laboratory analysis shall be made at least three times daily of the water before and after fluoridation to assure an average fluoride content of not over 1.5 ppm in the finished water, using a control range from 0.7 ppm lower limits to 1.5 ppm upper limit. Proper records of the analyses shall be kept on

file and a copy forwarded to the department monthly. One sample of treated water shall be submitted monthly to the department for analysis for fluoride content.

(5) Laboratory checks. In order to insure the safety of water delivered to the consumers, it is essential that there be a record of laboratory examinations of the water sufficient to show it is safe with respect to both bacteriological quality and other maximum ~~allowable~~ contaminant levels.

(a) Water samples for bacteriological quality. The minimum number of samples to be collected from a public water supply and submitted for examination shall be in accordance with the following table:

Population served:	Minimum number of samples per month
25 to 1,000	1
1,001 to 2,500	2
2,501 to 3,300	3
3,301 to 4,100	4
4,101 to 4,900	5
4,901 to 5,800	6
5,801 to 6,700	7
6,701 to 7,600	8
7,601 to 8,500	9
8,501 to 9,400	10
9,401 to 10,300	11
10,301 to 11,100	12
11,101 to 12,000	13
12,001 to 12,900	14
12,901 to 13,700	15
13,701 to 14,600	16
14,601 to 15,500	17
15,501 to 16,300	18
16,301 to 17,200	19
17,201 to 18,100	20
18,101 to 18,900	21
18,901 to 19,800	22
19,801 to 20,700	23
20,701 to 21,500	24
21,501 to 22,300	25
22,301 to 23,200	26
23,201 to 24,000	27
24,001 to 24,900	28
24,901 to 25,000	29
25,001 to 28,000	30
28,001 to 33,000	35
33,001 to 37,000	40
37,001 to 41,000	45
41,001 to 46,000	50
46,001 to 50,000	55
50,001 to 54,000	60
54,001 to 59,000	65

59,001 to 64,000	70
64,001 to 70,000	75
70,001 to 76,000	80
76,001 to 83,000	85
83,001 to 90,000	90
90,001 to 96,000	95
96,001 to 111,000	100

(i) Based on a history of no coliform bacterial contamination for at least one year prior to a request for less frequent sampling and on a sanitary survey by the department or its authorized representative showing the water system to be supplied solely by a protected ground water source and free of sanitary defects, a community water system serving 25 to 500 persons, with written permission from the department, may reduce the sampling frequency as follows:

25 to 100	1 sample per quarter
101 to 500	2 samples per quarter

(ii) The supplier of water is responsible for the proper collection and submission of ~~these~~ samples for microbiological, inorganic, organic, and radiological analysis to an approved laboratory, or to the state laboratory at the times designated by the department. Department personnel, where their programs allow, may assist in the collection, submission and analysis of the samples. Where less than four samples are taken monthly, the sampling points shall be rotated so as to cover all of the system every three months except where only a quarterly sample is required.

(iii) The supplier of water for a non-community water system shall sample for coliform bacteria in each calendar quarter during which the system provides water to the public. Such sampling shall begin June 24, 1979. If the department, on the basis of a sanitary survey or sampling, determines that ~~some other frequency is more appropriate, that frequency shall be the frequency required under this rule.~~ additional sampling is necessary, it shall require more frequent sampling. Such frequency ~~shall~~ may be confirmed or changed on the basis of subsequent surveys.

(b) Maximum ~~allowable~~ micro-biological contaminant levels. The maximum ~~allowable~~ microbiological contaminant levels shall be as follows:

(i) When the membrane filter technique is used:

(A) 4 per 100 ml in more than one sample when less than 20 samples are examined per month; or

(B) 4 per 100 ml in more than 5% of the samples when 20 or more samples are examined per month;

(C) 1 per 100 ml as the arithmetic mean of all validated samples examined per month.

(ii) When the 10 ml fermentation tube method is used, coliform bacteria shall not be present in any of the following:

(A) More than ~~1%~~ 10% of the portions in any month;

(B) 3 or more portions in more than one sample when less than 20 samples are examined per month;

(C) 3 or more portions in more than 5% of the samples when 20 or more samples are examiner per month.

(iii) When coliform bacteria are found, daily samples from the same sampling point shall be collected and submitted promptly and sampling continued until the results obtained from at least two consecutive samples are shown to be satisfactory bacteriological samples.

(c) Special samples. Under special conditions, additional samples may be required from time to time by the department. Such samples may be to determine adequacy of disinfection following line installation, replacement, or repair. Samples may also be required for determination of adequacy of source, storage, treatment or distribution of water to the public. These special samples shall not be used to determine compliance with bacteriological requirements.

(d) Water samples for chemical and radiological quality. ~~Every new source of supply, both surface and ground, added to a public water system shall be analyzed for chemical and radiological content by an approved laboratory and the results submitted to the department before being connected to the system.~~

(i) Water as served to ~~the~~ consumers, which may be a mixture from several sources, shall be analyzed for inorganic chemicals every three years for community ground water supplies and annually for community surface water supplies ~~for chemical content~~. Surface water supplies shall be sampled every three years for organic chemical content.

(ii) Water as served to the consumer from community systems shall be analyzed initially by June 24, ~~1979~~ 1980, and every four years thereafter for radiological content by analyzing four consecutive quarterly samples or a composite of four consecutive quarterly samples for gross alpha and radium-226 and radium-228.

(iii) Analysis for man-made beta and photon emitters shall be required for community systems using surface water sources and serving more than 100,000 persons and such other water systems as required by the department.

(iv) ~~Nitrates shall be determined for non-community systems annually.~~ A test for nitrates shall be made initially for all non-community water supplies by June 24, 1979, and shall be repeated at least annually for those water supplies indicating a nitrate content at the initial test. More frequent testing shall be required for those supplies where the nitrate content approaches or exceeds the maximum contaminant level.

(v) Systems which exclusively purchase water from other systems shall be considered extensions of the original system and shall not be required to perform chemical or radiological analyses to determine compliance with maximum ~~allowable~~ contaminant levels unless specifically required by the department

due to known or potential problems.

(vi) Every new source of supply, both surface and ground, added to a community water supply shall be analyzed for chemical and radiological content. All new sources of water supply for non-community water shall be analyzed for nitrates and those chemicals listed in subsection (vii).

(vii) The scope of the analysis for community water supplies shall include all parameters indicated in subsection (3) and in the following list. Surface water samples shall be collected during that portion of the year when pesticides are commonly in use in the area.

Calcium	Manganese
Magnesium	Sulfate
Sodium	Dissolved Solids
Potassium	Total Hardness
Chloride	Alkalinity Phenolphthalein (P)
Iron	
pH value	Alkalinity Total

Department personnel, where their programs allow, may assist in the collection, submission, and analysis of the samples.

(e) Filing of records. The records of all laboratory checks and control tests shall be kept on file for a period of ten years by the supplier of water and shall be available for inspection by the department or its authorized representative. The records must indicate when, where, and by whom the tests were made and such other information as set in 40 CFR 141.33.

(f) Laboratory fees.

(i) Fees for analysis made by the department laboratories are as follows:

Standard microbiological analyses (total coliform)	$4 per test
~~Standard inorganic analyses including metals--common cations and anions~~	~~$72 per test~~
~~Organic analyses (pesticides)~~	~~$45 per test~~
~~Radiological analyses~~	~~$60 per test~~
Chemical analyses (complete)	$45 per test
Nitrate test for non-community supplies, when done separately	$2 per test

The department shall bill only for the work actually performed by the state laboratories.

(ii) Annual billing will be made for the period July 1 through June 30 immediately following the year for which services were rendered. The supplier of water may have water samples analyzed by any laboratory certified by the department for microbiological determinations or chemical analyses provided that ~~at least 10%~~ a portion of the samples ~~for bacteriological examination are~~ is tested by the department laboratory as follows: When less than ten samples are tested in any month, one sample per year must be tested by the department laboratory. When between 10 and 100 samples are required each

month, one sample per month must be tested by the department and if more than 100 samples are required per month, two samples must be tested by the department each month.

~~(iii)--Charges for chemical analyses performed on less than an annual basis will be prorated as an annual charge over the time period between analyses.~~

(6) Operating records and reports. Accurate and adequate records must be maintained at all water plants and for all water systems. Complete records shall be made available upon request to ~~managers, engineers, attorneys and others concerned with the needs and obligations to consumers,~~ the department.

(a) Preparation of records. A daily record must be kept of the control tests required in subsection (4). The bacteriological checks required in subsection (5) are to be listed on the dates sampled. The records on report forms approved by the department should be prepared in duplicate by the person in charge of a water supply. The original shall be forwarded to the department no later than the tenth day of the following month.

(b) Surface waters. Operators of water treatment plants utilizing conventional coagulation, settling, softening, or filtration shall keep a daily record of the operations performed in the treatment process together with observations, costs and occurrences related to the operation of the plant, in addition to the control tests and laboratory checks previously described.

(c) Ground water systems. Operators of ground water systems shall keep a daily record of all well operations and maintenance of the system, in addition to the control tests and laboratory checks required for ground water supplies.

(d) Systems which purchase water. Operators of community systems which purchase water shall keep a monthly record of the operation and maintenance of the system in addition to required laboratory checks.

(7) The supplier of water for community systems shall designate no later than thirty days after the effective date of this rule, a person or persons who shall be responsible for contact and communications with the department in matters relating to system alteration and construction, monitoring and sampling, maintenance, operation, record keeping, and reporting. The supplier of water for non-community systems shall designate and notify the department ~~by June 24, 1979. The supplier of water shall notify the department~~ of his designee no later than thirty days after the designation. Any change in assigned responsibilities or designated persons shall be promptly reported to the department.

(8) Variances. The owner of a water system may request a variance "A" or "B" from the standards of turbidity, chemical, or radiological quality or control tests. Such variances may be issued, provided no ~~great~~ unreasonable risk to health ~~risk~~ is imposed on the users of the system, upon the following

grounds:

(a) The department may authorize a variance "A" from a maximum contaminant level or treatment technique when:

(i) The raw water sources which are reasonably available to the system cannot meet the maximum contaminant levels specified in these regulations despite application of the best technology, treatment techniques, or other means which the department finds are generally available (taking costs into consideration);

(ii) The concentration of the contaminant, or contaminants, for which the maximum contaminant level is exceeded by granting such variance, will not result in unreasonable risk to health; and

(iii) Within one year of the date the variance is granted, a schedule for compliance, or increments of compliance, is issued and the owner of the supply agrees to implement such schedule.

(b) The department may issue a variance "B" to any public water supply system from any requirement respecting a maximum contaminant level or treatment technique, or from both upon finding that:

(i) due to compelling factors, which may include economic factors, the public water system is unable to comply with such contaminant level or treatment technique;

(ii) the public water system was in operation on the effective date of such contaminant level or treatment technique regulation;

(iii) the granting of the variance will not result in unreasonable risk to health, and

(iv) within one year of the date the variance is granted, a schedule for compliance, or increments of compliance, is issued and the supplier of water agrees to implement such schedule.

(c) Procedure for variance. Action to consider a variance from the requirements contained in this rule may be initiated ~~by the department or~~ by the supplier of water through a formal request submitted to the department. Before a variance "A" proposed to be granted by the department may take effect, the department shall provide notice and opportunity for public hearing on the proposal. The conditions for issuing the variance must be no less stringent than conditions under which variances may be granted under the provisions of the SDWA. No public hearing shall be required for a variance "B".

Notice of a proposed variance must be published in a newspaper of general circulation in the geographical area affected, and shall include the following:

(i) Statement of opportunity available to any interested member of the public to request a public hearing within 15 days after the above notice is published.

(ii) Address and phone number of the Water Quality Bureau. If a request for public hearing is made and granted, notice of

the hearing date must be published in the same newspaper at least 15 days prior to the hearing.

If the department denies a request for a variance, the applicant has the right to a hearing before the Board of Health and Environmental Sciences. If a hearing is desired, the applicant must request it in writing, sent to the Water Quality Bureau, Capitol Station, Helena, Montana, 59601, within 15 days after receiving notice that the request for a variance was denied. Such a hearing will be subject to the rules for contested cases, as set out in the Montana Administrative Procedure Act.

The above procedures shall apply to prescription of a compliance schedule for conforming to the requirements of these rules. In no case shall a variance "B" schedule extend beyond January 1, 1981, unless the public water supply system has entered into an enforceable agreement to become part of a regional water system, in which case the variance "B" may be extended for two additional years. In the case of a schedule prescribed for a variance "B" with respect to a contaminant level or treatment technique prescribed by the revised National Primary Drinking Water regulations, the schedule may extend for seven years or nine years in the case of a regional system.

3. A public hearing was held September 30, 1977, in the Governor's Reception Room, Capitol Building. Since the Board wanted the Department to draw up alternatives to the fee schedule in the proposed rule, in response to public comment on that schedule, the hearing was continued until December 2, 1977, and held at the same location at 9:30 a.m. All those who commented through the September 30th meeting were sent copies of the proposed revisions of the rule generated by those comments, including the proposed alternative fee schedules. Additional public comment was received in the interim and at the December 2, 1977 hearing. The revised rule was adopted at the end of the hearing.

Public comment was extensive. The most important comments follow.

Several comments were received concerning the fee schedule for lab tests done by the state laboratory, requesting that they be lowered for small operators. The Board requested the Department to consider reducing the costs of the tests, the alternatives to be presented to them at the December 2nd Board hearing.

Response: The department suggested three alternatives. The first would charge supplies actual costs of the tests. The second charged actual costs to supplies serving over 500 people plus $5 for each microbiological test, and reduced the charge to supplies serving under 500 people. The third alternative charged actual cost of microbiological tests but subsidized the cost of chemical analyses with federal funds available to the department. The Board adopted the third alternative.

One commenter felt that the requirement in subsection (4) that tests for chlorine residual in chlorinated systems be taken daily was unwarranted and that better information would be provided if several samples were taken throughout a system on the same day.

Response: The daily test requirement was retained, since without daily monitoring, systems could run out of chlorine and become contaminated, particularly over weekends.

The requirement that at least 10% of the bacteriological tests be done by the state laboratory, if an independent certified lab was available, was questioned.

Response: The requirement that some of the tests be done by the state lab was considered valuable as a cross-check on the work done by private labs and on the individual doing them. However, the number of tests to be done at the state lab was reduced substantially.

The requirement that cost records be kept concerning treatment of surface water systems was questioned.

Response: The requirement was kept in order to provide the department with data useful in helping communities choose the treatment system they want, and to determine, when communities request an exemption from a maximum contaminant level or treatment technique using excessive cost as a consideration, whether the estimated costs are excessive in fact.

There was expressed concern that the requirement that records kept by a supplier concerning the water system be open to "managers, engineers, attorneys, and others concerned with needs and obligations to consumers" was an invitaion to practically anyone to inspect the records, was an unnecessary burden, and would render the supplier open to harrassment.

Response: The rule was amended to eliminate the above phrase and require only that the records be open to the department.

Objection was made to adoption of a stricter standard, in that more frequent testing is required, than the EPA has adopted.

Response: The U.S. Public Health Service in 1967 adopted drinking water standards requiring all supplies serving under 2000 people to take a minimum of two samples per month (EPA allows as little as one per quarter if the supply has no history of coliform contamination). Montana has to date been using the Public Health Service standards as guidelines and has also required two samples per month. The proposed rule took a middle ground and required those supplies serving at least 1001 people to take two samples per month, but substantially reduced the sampling requirement for smaller suppliers. The sampling requirement was adopted as proposed because it was felt that adopting the lesser EPA standards would be a retrogression not in the public interest, and that concessions to smaller suppliers had already been made.

It was contended that a small supplier able to show a test within the past two years which was free from bacteriological contamination should qualify for a reduced sampling schedule.

Response: The requirement of a one-year history was justified by actual experience with mobile home parks which could produce a good sample one month and a bad one the next. A single sample over a long period offers no proof that the supply is consistently safe. In addition, testimony from the department indicated that certification from non-state sources, such as local sanitarians, that a system had been uncontaminated for a year would extablish the needed history. Nothing in the rule precludes such a history from being compiled prior to the effective date of the rule.

The requirement that daily records of tests be kept on the premises for ten years was contested as unnecessary.

Response: EPA Interim Primary Drinking Water Regulations require records of chemical analyses be kept on or near the premises at least ten years. The state, in order to be granted primary responsibility for enforcing drinking water standards, must adopt rules at least as strict as those in effect at the federal level.

Mobile home park owners objected to the requirement that consumers be notified every time a violation occurred, even if it were remedied immediately, was only slight, or was not the operator's fault. They were concerned about damage to their reputations as a result of such notification, under circumstances when such notice would come after any health threat was dissipated.

Response: EPA regulations require such notice, and state standards must be at least as strict as theirs.

Mobile home park owners suggested that all appropriate means of notice be published in the rule, to avoid hassle in having to obtain approval from Helena.

Response: The proposed language was not expanded because the department intended to, on its own initiative, inform each supplier what amounted to proper notice.

Mobile home park owners also objected that the rotating sampling system set out in subsection (5)(a)(ii) would potentially pick up old contamination several tests in succession simply because the contamination was moving through the system. The commenters preferred sampling take place at one location to determine if contamination is continuing.

Response: Both the department and the Board felt that it was technically possible for a contaminated system to be flushed out in several hours, and that a rotating system to test the entire system was more protective of public health.

The former language of (5)(a)(iii) was also criticized as indicating more frequent sampling might be required "under the rule" but failing to state what that frequency would be.

Response: The language was amended to leave discretion

with the department to require the number of samples it finds necessary in individual cases.

The EPA pointed out that federal minimum standards required the following:

(a) any of the violations in subsection (3)(f) must be reported to the state;

(b) failure to comply with a maximum contaminant level requires public notice, whether or not the failure is promptly corrected;

(c) public notification is required if a supplier fails to use applicable testing procedures;

(d) the rule should specifically require radium-226 and -228 initial analysis to be completed by June 24, 1980.

Response: The rule was amended accordingly, so that the state could qualify for primacy.

JOHN W. BARTLETT, Chairman

Certified to the Secretary of State December 15, 1977

HEALTH AND ENVIRONMENTAL SCIENCES

REASON FOR ADOPTING EMERGENCY RULE 16-2.22(2)-S2262

The purpose of this emergency rule is to help avoid a cutback in services to Medicaid-eligible patients needing nursing home care. The Department of Social and Rehabilitation Services is presently facing financial problems which, if not averted, mean that Medicaid funding may run short. Approximately 54% of the Medicaid budget is allocated for nursing home care. Nearly 70% of all nursing home beds in the state of Montana are financed by Medicaid. The continuing upsurge in the use of nursing home beds bears a large share of the responsibility for the spiraling costs of Medicaid.

Certificate of need legislation, administered by the Department of Health and Environmental Sciences, is particularly concerned with controlling the costs of medical care. In addition, while some health planning districts in Montana have a surplus of long-term care beds, and others a deficit, the state, taken as a whole, does not appear to need more long-term care beds through 1983.

Therefore, since the need for nursing home beds within the near future can be met by existing vacant beds and those already approved for construction, it is in the public interest to halt approval of new applications for construction of nursing home long-term care beds for the next 120 days.

16-2.22(2)-S2262 CERTIFICATE OF NEED, NURSING HOME BEDS

No application for approval of construction of any new long-term care beds will be approved which is made during the 120 days following the effective date of this rule. For purposes of this rule, replacement beds are not considered new beds. (History: Section 69-5212, R.C.M. 1947; EMERG, Eff. 11/14/77.)

DEPARTMENT OF JUSTICE

BEFORE THE DEPARTMENT OF JUSTICE

In the matter of amendment of Rules 1-1.6(1)-600 through 1-1.6(2)-P6240 and the repeal of Rules 1-1.6(2)-P6250 through 1-1.6(2)-P6320	NOTICE OF REVISION OF THE MODEL RULES

TO: ALL INTERESTED PERSONS:

1. On September 23, 1977, the Department of Justice published notice of the proposed revision of the Model Rules of Administrative Practice at page 429 of the Montana Administrative Register.

2. The Department has revised and repealed in part the rules with minor editorial changes but substantially as proposed.

3. Comments were received from Roger Tippy, Attorney at Law, and jointly from John Hollow of the Administrative Code Committee and Joan Meyer of the Legislative Council. The suggestions for changes and revisions contained in these two sets of comments were substantially adopted.

MIKE GREELY
Attorney General

Certified to the Secretary of State December 15, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY

Amendment of Rule 24-3.10(26)-S10460, WAGES

1. The Employment Security Division, who published Notice No. 24-3-10-50 of a proposed amendment to ARM 24-3.10(26)-S10460 on the definition of wages on July 25, 1977 at page 93, Montana Administrative Register; 1977 issue 7.

2. The division heretofore amended this rule to place the definition of "wages" in one section. Sick pay is not wages according to law, so this has been deleted. Gratuities, equipment, and board and room (with some increase in board and room allowances), have been moved from other sections. Other payments are included to clarify when such payments will or will not be considered wages.

One comment was received by the Employment Security Division objecting to the substance of the proposed rule; however, the division, finding no merit or legal basis for said objection, finds no cause to change wording of said proposed rule.

3. The amendment of this rule has been adopted as proposed and becomes effective December 24, 1977.

Adoption of Rule 24-3.10(10)-S10100, DISQUALIFICATION UPON SEPARATION

1. The Employment Security Division, who published Notice No. 24-3-10-54 of a proposed new rule ARM 24-3.10(10)-S10100 regarding disqualification upon separation on October 24, 1977 at pages 647 and 648, Montana Administrative Register; 1977 issue 10.

2. Although this rule was previously repealed because the chargeback provision was no longer in use, the division heretofore adopted this rule as the rule would be in order in cases where a claimant was separated under disqualifying circumstances and obtained very short-term employment before filing his claim.

No testimony or comments were received.

3. The adoption of this rule has been adopted as proposed and becomes effective December 24, 1977.

Adoption of Rule 24-3.10(26)-S10465, DEFINITION OF INDEPENDENT CONTRACTOR

1. The Employment Security Division, who published Notice No. 24-3-10-55 of a proposed new rule ARM 24-3.10(26)-S10465 regarding the definition of an independent contractor on October 24, 1977 at pages 649 and 650, Montana Administrative Register; 1977 issue 10.

2. The division heretofore adopted this rule to more clearly define an independent contractor.

No testimony or comments were received.

3. The adoption of this rule has been adopted as proposed and becomes effective December 24, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY

Repealing of Rule 24-3.10(30)-S10470, BOARD AND ROOM

1. The Employment Security Division who published Notice No. 24-3-10-56 repealing rule 24-3.10(30)-S10470 pertaining to Board and Room on October 24, 1977 at page 651, Montana Administrative Register; 1977 issue 10.

2. The division heretofore repeals this rule because the matter is sufficiently covered in the amendment of rule 24-3.10(26)-S10470 covering the definition of wages.

No testimony or comments were received.

3. The repealed rule as proposed becomes effective December 24, 1977.

Amendment of Rule 24-3.10(34)-S10570, COPIES OF STATUTES AND REGULATIONS

1. The Employment Security Division, who published Notice No. 24-3-10-57 of a proposed amendment to ARM 24-3.10(34)-S10570 pertaining to copies of statutes and regulations on October 24, 1977 at pages 652 and 653, Montana Administrative Register; 1977 issue 10.

2. The division heretofore amended this rule to include the Dillon local office which was inadvertently omitted when the rule was adopted effective January 2, 1977.

No testimony or comments were received.

3. The amendment to this rule has been adopted as proposed and becomes effective December 24, 1977.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of ARM Rules 32-2.6C(1)-S600 and 32-2.6C (1)-S610 relating to fee charges at the department's animal diagnostic laboratory.	NOTICE (32-2-24) OF THE AMENDMENT OF RULES 32-2.6C(1)-S600 AND 32-2.6C(1)-S610

TO: ALL INTERESTED PERSONS:

1. On October 24, 1977, the Department of Livestock published notice of proposed amendments to rules 32-2.6C(1)-S600 and 32-2.6C(1)-S610, concerning fee charges at the department's animal diagnostic laboratory at pages 654-658 of the 1977 Montana Administrative Register, issue number 10.

2. The agency has amended rule 32-2.6C(1)-S600 as proposed. Rule 32-2.6C(1)-S610 has been amended with the following change:

32-2.6C(1)-S610 Procedures for which fees will be charged.

(1)-(2) Same as proposed rule.

(3) Test or procedures involving food quality, herd quality, or performance testing, not mentioned in subsections (1) and (2) of this rule, which are not required by any provision of Title 32 of this code may be subject to fee charges at the discretion of the Board of Livestock. Such fees shall not exceed ~~$10.00~~ 50.00 per speciman.

(4)-(5)-(6) Same as proposed rule.

3. The Board of Livestock has amended these rules to bring the laboratory fee structure in line with current capabilities and costs. No comments or requests for a public hearing were received in this matter. The additional change made to paragraph 3 of rule 32-2.6C(1)-S610 of raising the "catch-all" fee from $10 to $50 was made after the Board determined that the costs of procedures covered by that paragraph could greatly exceed $10.

Robert G. Barthelmess

ROBERT G. BARTHELMESS, Chairman
BOARD OF LIVESTOCK

Certified to the Secretary of State December 15, 1977.

BEFORE THE BOARD OF
OIL AND GAS CONSERVATION
STATE OF MONTANA

In the matter of the adoption of rules relating to Seismic Exploration activities	))))	NOTICE OF ADOPTION OF RULES 36-3.18(18)-S18390, 36-3.18(18)-S18400, and 36-3.18(18)-S18410

TO: All Interested Parties

1. On September 23, 1977, the Board of Oil and Gas Conservation published Notice No. 36-3-18-10 of proposed adoption of rules ARM 36-3.18(18)-S18390, S18400, and S18410 all relating to Seismic Exploration activities at page 477, Montana Administrative Register; 1977 Issue No. 1.

2. The Board of Oil and Gas Conservation adopted the rules as follows:

Sub-Chapter 18

Seismic Exploration Activities

36-3.18(18)-S18390 NOTIFICATION (1) The County Clerk and Recorder of the county in which a permit for geophysical activity is issued shall immediately forward notice of the issuance of such permit to the Board of Oil and Gas Conservation.

(2) The Board shall notify the County Clerk and Recorder of the County if the person, firm, or corporation which has obtained a permit is not in compliance with any applicable requirement for engaging in geophysical activity within the State.

(3) If the Board of Oil and Gas Conservation determines that a person, firm, or corporation has violated any provisions of this act, the Board shall take necessary action to assure compliance.

(4) Before commencing geophysical activity, the person, firm, or corporation shall notify the surface user as to the approximate time schedule of the planned activity and upon request the following information shall also be furnished:

(a) The name and permanent address of the geophysical exploration firm, along with the name and address of the firm's designated agent for the State if different from that of the firm's;

(b) Evidence of a valid permit to engage in geophysical exploration;

(c) Name and address of the company insuring the geophysical firm;

(d) The number of the bond required in §69-3304,

R.C.M. 1947, to be filed with the Secretary of State;
(e) A description of the surface areas where the planned geophysical activity will take place;
(f) Anticipated need, if any, to obtain water from the surface user during planned geophysical activity.

36-3.18(18)-S18400 SURFACE LIMITATIONS No seismic shot hole shall be drilled closer than 1320 feet (1/4 mile) to any building, structure, water well, or spring; nor closer than 660 feet (1/8 mile) to any reservoir dam without written permission of the surface owner.

36-3.18(18)-S18410 PLUGGING AND ABANDONMENT Unless otherwise agreed to between the surface owner and the Company, firm, corporation, or individual responsible for the drilling for seismic shot holes, all such holes shall be plugged and abandoned as set forth below:
(1) The seismic company responsible for the plugging and abandonment of seismic shot holes shall notify the Board, in writing, at its Billings office of its intent to plug and abandon, including the date and time such activities are expected to commence, the location by Section, Township and Range of the holes to be plugged and the name and telephone number of the person in charge of the plugging operations. A copy of this notice shall be sent to the surface owner at the same time.
(2) All seismic shot holes shall be plugged as soon after being utilized as reasonably practicable; however, in no event shall they remain unplugged for a period of more than ~~six (6) months~~ 120 days after being drilled and shot.
(3)(a) Except as hereinafter set forth all seismic shot holes shall be plugged by returning to the hole as many of the drill cuttings as practicable and filling the remainder of the hole with bentonite mud having a minimum density that is 4% greater than fresh water (8.67 #/Gal.). A mechanical bridge plug shall then be set at a depth sufficient to permit placement of a cement plug at least one foot in length such that the top of the plug is at least four (4) feet below the surface of the ground. The remainder of the hole shall be filled with

native surface material.

(b) Seismic holes that penetrate artesian water deposits shall be plugged by displacing the hole with a cement slurry to a level not higher than four feet below the surface of the ground level. The cement slurry will be of sufficient density to contain the waters to their native strata. The remainder of the hole shall be filled with native surface material.

(c) Seismic shot holes that tend to crater or slough at the surface after being shot shall be plugged as set forth in 3(a) or 3(b) insofar as those procedures are reasonably possible. However, deviations from those procedures are permissible as circumstances may dictate, provided the procedures are designed to accomplish the primary objective of containing waters penetrated by the hole to their native strata and restoring the surface as near as practicable to its original condition.

(4) The surface area around each seismic shot hole shall be restored to its original condition insofar as such restoration is practicable and all stakes, markers, cables, ropes, wires, primacord, cement or mud sacks, and any other debris or material not native to the area shall be removed from the drill site and deposited in a convenient sanitary landfill.

(5) A seismic shot hole may be left unplugged at the request of the surface owner for conversion to a fresh water well provided the surface owner ~~obtains written permission from the Water Resources Division of the Department of Natural Resources and Conservation and~~ executes a Release furnished by the Board of Oil and Gas Conservation relieving the party otherwise responsible for the plugging and abandonment of the hole from any liability for damages that may thereafter result from the hole remaining unplugged.

3. A public hearing on the proposed rules was held November 3, 1977, at 9:00 a.m. in Sidney, Montana. The Board has adopted the rules to provide for notification procedures, surface drilling limitations and plugging and abandonment procedures related to seismic exploration activities. As originally proposed, paragraph (1) of Section 36-3.18(18)-S18410 provided: The seismic company responsible for the plugging and abandonment of seismic shot holes shall notify the Board at its Billings office of its intent to plug and abandon, including the date and time such activities are expected to commence,

the location of the hole to be plugged and the name and telephone number of the person in charge of the plugging operations. The requirement that the notice be in writing was added to avoid disputes as to whether or not the required notice had in fact been given. The designation of the location of seismic shot holes by Section, Township and Range was to make it clear that the exact location of each shot hole need not be provided since that could be obtained from the person in charge of the plugging operations. The exact location of seismic shot holes are a matter of some confidentiality in the business and the Board felt there was no compelling reason to require disclosure of this information. The requirement that a copy of this notice be sent to the surface owner was added to assure that the surface owner would be aware of the presence of seismic crews on his land.

Paragraph (2) of the same section originally provided a maximum period of six months for plugging seismic shot holes. This was shortened to 120 days because the Board felt that this was adequate time to compensate seismic crews for any difficulties encountered because of adverse winter weather.

Paragraph (5) was amended by deleting all reference to the requirement of a permit from the Water Resources Division of the Department of Natural Resources and Conservation. The Board recognizes the authority of the Water Resources Division in this area but felt it was inadvisable to attempt to incorporate the rules of that Division into those of the Board.

4. These rules will become effective on December 24, 1977.

Richard A. Campbell by DC
CHAIRMAN

Certified to the Secretary of State December 15, 1977.

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

In the matter of the amendment of rule 38-2.2(1)-P200 pertaining to the Model Procedural Rules and the proposed adoption of new rules regarding rules of practice and procedure for all Commission contested cases.)	NOTICE OF AMENDMENT OF MODEL PROCEDURAL RULES AND THE ADOPTION OF RULES OF PRACTICE AND PROCEDURE FOR ALL COMMISSION CONTESTED CASES.

TO: All Interested Persons:

1. On September 23, 1977, the Department of Public Service Regulation published notice of a proposed amendment of Model Procedural Rules and the adoption of rules concerning practice and procedure for all Commission contested cases at page 486 of the 1977 Montana Administrative Register, issue number 9.

2. The agency has amended the rule as proposed.

38-2.2(1)-P200 MODEL PROCEDURAL RULES (1) The Department of Public Service Regulation has herein adopted and incorporated the Attorney General's Model Procedural Rules ~~1~~ 1-1.6(2)-P650 through ~~13~~ 1-1.6(2)-P6010 concerning rule making, and ~~20~~ 1-1.6(2)-P6170 through ~~30~~ 1-1.6(2)-P6200 concerning declaratory rulings, by reference to such rules.

3. The agency has adopted the following additional rules concerning rules of practice and procedure for all Commission contested cases with the following changes: (Text of rule with matter stricken, interlined and new matter added, then underlined)

Sub-Chapter ~~1~~ 2

General Provisions

38-2.2(2)-P210 PROCEDURE GOVERNED (1) These rules govern practice and procedure in contested cases before the Public Service Commission of the State of Montana, in accordance with applicable laws of the State of Montana. Rules governing specialized proceedings will control in the event of a conflict with these rules.

38-2.2(2)-P220 NATURE OF PROCEEDINGS (1) The proceedings before the Commission are investigative on the part of the Commission, although they may be conducted in the form of adversary proceedings.

38-2.2(2)-P230 PUBLIC RECORDS; COPIES (1) All pleadings, petitions, applications, motions, communications, exhibits, or other documents shall become matters of public record as of the day and time of their filing, except as may be ordered by the Commission pursuant to R.C.M. 1947, Sec. 70-111. The Commission Secretary, within reasonable limits of time and general expediency, shall permit interested parties and members of the public to examine any such public record.

(2) Copies of the contents of such public records may be

made for any interested party at a cost to that party. Government agencies and non-profit organizations will be charged $.15 per page. Others will be charged $.15 per page if they perform any necessary research and present the material to be copied to the staff. If staff research assistance is required, the charge will be $.30 per page.

38-2.2(2)-P240 FEES (1) All application fees or other charges required by law shall be paid to the Commission at the time the application is filed with the Commission. Tariff fees are due ~~by the~~ no later than the 15th day of the month following the month of the filing. Fees for the issuance of certificates shall be due upon notice from the Commission.

38-2.2(2)-P250 WAIVER OF RULES (1) As good cause appears and as justice may require, the Commission or any hearing examiner may waive the application of any rule, except where precluded by statute.

38-2.2(2)-P260 CONSTRUCTION AND AMENDMENT (1) These rules, and any rules incorporated herein by reference, shall be so construed by the Commissioners or any hearing examiner as to secure just and speedy determination of the issues. Amendments to these rules may be made periodically by the Commission under its general rule making authority.

38-2.2(2)-P270 DOCKET (1) The Secretary shall maintain a dockets of all proceedings, and each new proceeding shall be assigned an appropriate docket number. The docket number will be assigned ~~after preliminary review, and assignment of a docket number constitutes acceptance of the document for filing~~ upon receipt. No document will be accepted, however, without payment of required fees and submission of required copies by the filing party.

38-2.2(2)-P280 CALENDAR OF HEARINGS AND COMMISSION'S AGENDA (1) The Secretary of the Commission shall maintain a docket of all proceedings pending before the Commission. The Secretary shall also maintain a hearing calendar of all proceedings that are to receive a hearing. Both the docket and the hearing calendar are accessible to the public.

(2) The Commission will post matters to be considered at their business meetings (agenda meetings) as soon as practicable prior to each meeting. The Commission will post each agenda notice at the Commission offices, 1227 11th Avenue, Helena, Montana.

38-2.2(2)-P290 TITLE AND DOCKET NUMBER (1) All documents filed with the Commission shall show the caption for the proceeding, the docket number and the title of the document. Documents initiating new proceedings shall leave a space for the docket number.

38-2.2(2)-P2000 OFFICE DAYS AND HOURS (1) The principal office of the Commission is located at 1227 11th Avenue, Helena, Montana 59601. The office of the Commission has regular hours from 8:00 a.m. to 5:00 p.m., Monday through Friday, holidays excepted.

38-2.2(2)-P2010 IDENTIFICATION OF COMMUNICATIONS (1) Communications should contain the name and address of the communicator and an appropriate reference to Commission files, if any there be, pertaining to the subject of the communication.

38-2.2(2)-P2020 EXTENSIONS OF TIME (1) In the discretion of the Commissioners or a hearing examiner, for good cause shown, any time limit prescribed by Commission ruling or by these rules may be extended. All requests for extensions shall be made before the expiration of the period originally prescribed or as previously extended.

38-2.2(2)-P2030 COMPUTATION OF TIME (1) Unless specifically dictated by the Revised Codes of Montana:

(a) The time within which an act is to be done as provided in any rule or order promulgated by the Commission, when expressed in days, shall be computed by excluding the first day and including the last, except that if the last day be Saturday, Sunday, or a legal holiday, the act may be done on the next succeeding regular business day.

(b) When a document is required to be filed or served on a particular day, the postmarking of the document on or before that day will satisfy this rule.

38-2.2(2)-P2040 PRACTICE BEFORE THE COMMISSION (1) Any person may appear at hearings before the Commission in his own behalf, by attorney authorized to practice in this State, or by an agent thereunto authorized in writing, or by a Class B Interstate Commerce Commission practioner.

(2) An attorney from another jurisdiction may appear at hearings before the Commission upon a showing that he or she has been specially admitted to practice in Montana for purpose of the pending matter. Such non-resident attorney must associate a licensed Montana attorney in the proceeding. (See R.C.M. 1947, Sec. 93-2005, and Application of A.S.A.R.C.O., 164 M. 139, 520 P. 2d 103 (1973).

~~(c)--Nothing-in-this-Rule-shall-be-interpreted-in-such-a way-as-to-permit-the-unauthorized-practice-of-law;-nor-shall this-Rule-in-any-way-be-construed-to-restrict-or-limit-the right-of-any-person-to-conduct-his-own-business-with-or-before the-Commission.~~

38-2.2(2)-P2050 REJECTION OF DOCUMENTS (1) Documents which are not in substantial compliance with Commission rules, Commission orders, or applicable statutes may be rejected, even if previously assigned a docket number. If rejected, such

papers will be returned with an indication of the deficiencies therein, within thirty (30) days of their receipt. ~~Tendered documents which have been rejected shall not be entered on the Commission's docket.~~ Acceptance of a document for filing is not a determination that the document complies with all requirements of the Commission and is not a waiver of such requirements.

38-2.2(2)-P2060 TRANSCRIPTS (1) Transcripts may be requested by any party, or their preparation may be directed by the Commission. Any party, other than the Commission or its Staff, who requests and receives transcripts shall pay the specified costs therefor.

Sub-Chapter ~~2~~ 6

Definitions

38-2.2(6)-P2070 DEFINITIONS (1) The definitions contained in R.C.M. 1947, Sections 8-101, 8-201, 70-103, 72-114, and 72-115 shall be applicable to all rules and regulations of the Commission, and unless otherwise defined the following terms shall have the following meanings:

(a) "Public Utility or Utility" means and includes any business which the Commission is authorized to supervise, control and regulate.

(b) "Commission" means the Public Service Commission of the State of Montana.

(c) "Commissioners" mean the duly elected Public Service Commissioners.

(d) "Commission Staff" means all persons employed or retained by the Commission.

(e) "Hearing" means any public meeting in a contested case on any matter that is noticed for "hearing" by the Commission in accordance with applicable statutes at which an opportunity shall be given to all interested persons to present such written and/or oral testimony as the Commission shall deem relevant and material to the issues.

(f) "Examiner" means a Commissioner or a member of the Commission Staff, or other representative duly designated by the Commission to take evidence and propose an appropriate order or decision.

(g) "Petition" means a request for relief filed with the Commission pertaining to enforcement or alteration of any act, policy, order, or directive of the Commission. ~~or of any person over whom the Commission has jurisdiction.~~

(h) "Application" means a request to the Commission for the issuance of a certificate and/or authority to perform a service as a public utility or for the purpose of setting, increasing or lowering rates to be charged for such services.

(i) "Complaint" means a request for relief regarding any-

thing done or omitted to be done by the Commission or any person over whom it has jurisdiction in violation of any law, rule, regulation or order administered or promulgated by the Commission, pertaining to matters over which it has jurisdiction.

(j) "Motion" means a request for relief filed with the Commission.

(k) "Pleading" means any application, petition, complaint, answer, protest, motion ~~and~~ or other formal written statements filed with the Commission in any formal proceeding.

(l) "Document" means any other written submission at a formal proceeding which is not a pleading. This includes items such as reports, exhibits and studies.

(m) "Person" means any individual, partnership, corporation, association, governmental subdivision, or other identifiable public or private organization of any character ~~which~~ who appears before the Commission for any purpose, but who is not a party to the proceeding.

(n) "Party" means an individual, partnership, corporation, governmental body, or other identifiable group or organization, with the exception of the Commission Staff, who initiates a Commission proceeding by filing a complaint, application, protest or a petition with the Commission; or who is named as a defendant or respondent; or who is named or admitted by the Commissioners to a formal proceeding and whose legal rights, duties and privileges will be determined by the Commissioners' decision. The Commission staff shall have the full rights and responsibilities of parties under these rules, but shall not be bound by the rule governing contact between parties and Commission.

(o) "Tariff filing" means the submission of a document to the Commission by a ~~motor carrier~~ public utility seeking to increase or decrease rates currently in effect, or seeking to establish rates where none currently exist; or seeking to establish, cancel or amend rules in a tariff.

Sub-Chapter ~~3~~ 10

Parties

38-2.2(10)-P2080 PARTIES (1) Parties to proceedings before the Commission are known as applicants, petitioners, complainants, defendants, respondents, intervenors and protestants, identified as follows:

(a) "Applicant" means any party who files an application with the Commission requesting; (1) the issuance of a certificate and for authority to perform a service as a public utility, or (2) requesting authority to set, increase or lower rates to be charged for such services.

(b) "Petitioner" means any party who files a petition with the Commission requesting relief as pertains to enforcement or alteration of any act, policy, order or directive of the Commission ~~or as pertains to any person over whom the Com-~~

~~mission has jurisdiction~~.

(c) "Complainant" means any party who complains of anything done or omitted to be done by the Commission or any person over whom it has jurisdiction in violation of any law, rule, regulation or order administered or promulgated by the Commission, pertaining to matters over which it has jurisdiction.

(d) "Defendant" means any party subject to the laws, rules, regulations and orders administered by the Commission against whom any complaint is filed.

(e) "Respondent" means any party subject to the jurisdiction of the Commission to whom the Commission issues notice instituting a proceeding or investigation or inquiry of the Commission; and any party in interest or person ordered before any pending roceeding of the Commission.

(f) "Intervenor" means any party permitted by the Commission to intervene in any proceeding.

(g) "Protestant" means any party who objects on the grounds of public or private interest to the approval, determination, consent, certification or authorization of any application or petition which the Commission may have under consideration.

Sub-Chapter ~~4~~ 14

Pleadings

38-2.2(14)-P2090 PLEADINGS (1) Pleadings shall be in writing, shall state their purpose and shall be signed by the party seeking authorization or relief from the Commission, or by his attorney or authorized ~~agent~~ representative. When no printed form is provided by the Commission, the form to be followed in the filing of pleadings will vary to the extent necessary to provide for the legal rights, duties or privileges therein.

38-2.2(14)-P2100 APPLICATIONS AND PETITIONS--CONTENTS (1) All applications or petitions shall include at least the following:

(a) A clear and concise statement of the authorization or other relief sought. The statement shall cite the statutory provisions under which the authority or other relief is sought.

(b) The exact legal name and post office address of each party seeking the authorization or relief, the address or principal place of business of such party, and the name and post office address of ~~each~~ such party's attorney, if any.

(c) A concise and explicit statement of the facts which said party is prepared to prove by competent evidence and upon which the Commission is expected to rely in granting authorization or relief.

(d) Said petition or applications may also include other pertinent and relevant data and there may be attached to said

petition exhibits, illustrations and sworn testimony.

(e) Nothing in this rule shall be construed as applying to tariff filings ~~by motor carriers~~.

38-2.2(14)-P2110 FORM AND SIZE (1) All documents and pleadings shall be typed or printed on paper 8-1/2 inches wide and 11 inches long, and exhibits annexed thereto ordinarily shall be folded to the same size. The impression shall be on one side of the paper only and shall be doubled spaced. Footnotes and quotations may be single-spaced. Documents shall be fastened only on the left side. Reproductions may be by any process providing that all copies are clear and permanently legible. ~~All documents and pleadings shall have a cover sheet identifying the document or pleading contained therein.~~

38-2.2(14)-P2120 TITLE AND DOCKET NUMBER (1) All documents and pleadings filed with the Commission shall indicate on the cover sheet of each document and pleading the caption for the proceeding, the docket number and the title of the document. Documents and pleadings initiating new proceedings shall leave a space for the docket number.

~~SIGNATURE--(1)--The original of every pleading or document shall be signed by the party filing the same.--An attorney for the filing party may sign on behalf of the filing party.~~

38-2.2(14)-P2130 SERVICE (1) An initial pleading which begins a proceeding shall be filed with the Commission.

(2) All subsequent pleadings must be served either personally or by first class mail on all identified parties by the pleading party, and a certificate of service shall be attached to said pleading.

(3) All pleadings shall be served on parties before or concurrently with their filing with the Commission.

38-2.2(14)-P2140 CONSTRUCTION (1) All pleadings and documents shall be liberally construed and errors or defects therein which do not mislead or affect the substantial rights of the parties involved shall be disregarded.

38-2.2(14)-P2150 AMENDMENTS (1) Any pleading or document may be amended prior to notice of the hearing. After notice of a hearing is issued, motion for leave to amend any pleading or document may be filed with the Commission and may be authorized in the discretion of the Commission or the hearing examiner. Any amendments filed shall contain a certificate of service upon all known interested parties. Post-notice amendments to any pleading or document shall not unduly broaden the scope of the issues originally filed with the Commission, unless the Commission shall in its discretion allow such amendments. If a post-notice amendment is approved, the Commission shall afford the parties notice of the approval and adequate

opportunity to prepare for hearing.

38-2.2(14)-P2160 RESPONSIVE PLEADINGS (1) Any responsive pleadings such as an answer or reply shall comply with the above rules relating to pleadings generally. An answer, if made, must be filed within 20 days, and a reply, if made, must be filed within 10 days, after the service of the pleading against which it is directed, unless otherwise provided in these rules or ordered by the Commission: PROVIDED, this rule shall not apply to proceedings brought on the Commission's own motion for violation of the laws, rules or regulations governing ~~public service companies~~ public utilities. Whenever the Commission believes the public interest requires expedited procedure it may shorten the time required for any answer or reply.

38-2.2(14)-P2170 COPIES (1) The filing party shall provide the Commission with an original plus ~~eight~~ six conformed copies of all pleadings and documents. Each such filing shall include a certificate that a copy of all filed material has been mailed to each party of record. Additional copies may be requested by the staff.

Sub-Chapter 5 18

Motions

38-2.2(18)-P2180 MOTIONS (1) Prior to the commencement of any hearing all motions must be made in writing to the Commission, or designated hearing examiner. Motions may be made orally during a hearing and, if the Commission, or a hearing examiner requires, shall be submitted to the Commission in writing. A motion may contain any matter relevant to the clarification of the proceeding before the Commission. Motions filed with the Commission will be promptly disposed of by the Commission at the Commission's or examiner's discretion. All motions shall comply in every manner and respect with the requirements for pleadings under these Rules.

Sub-Chapter 6 22

Notice

38-2.2(22)-P2190 NOTICE (1) The Commission shall give written notice, where required by statute, by first class mail of a hearing at least twenty days in advance thereof to the petitioner, to other parties of record, ~~to parties known to be interested in the proceeding~~, to parties required by statute to be notified and to such other additional persons as the Commission shall direct. The Commission shall give notice to the

general public by means of legal publication in a newspaper having general circulation in the area affected by the filed pleadings or documents.

(2) Notice of motor carrier tariff establishments, revisions or changes shall be given pursuant to Section 8-104.5, R.C.M. 1947.

(3) Notice of motor carrier applications for a certificate of public convenience and necessity shall be given pursuant to Section 8-111, R.C.M. 1947.

38-2.2(22)-P2200 CONTENTS OF NOTICE (1) The notice shall contain the time, date, place and nature of the hearing. The notice shall also contain the Docket Number, the date of service of the notice, a statement of the legal authority and jurisdiction under which the hearing is to be held; a reference to the particular section of the statutes and rules involved; and a short and plain statement of the matters asserted and issues involved. Notices of all hearings shall be served upon the Montana Consumer Counsel.

38-2.2(22)-P2210 DEFAULT ORDERS (1) The Commission may, in its discretion, issue a notice which complies with the foregoing rule, and which affords interested persons an opportunity to request a hearing within a specified time.

(2) If no hearing is requested within the specified time, the Commission ~~shall~~ may enter a default order which sets forth the material facts before the Commission upon which its action is based.

Sub-Chapter ~~7~~ 26

Filing of Complaints

38-2.2(26)-P2220 WHO MAY COMPLAIN (1) Complaints may be made by the Commission on its own motion or by any person, ~~corporation, or municipal corporation~~ having a legal interest in the subject matter, or any public utility concerned. Any public utility, or other person~~, or corporation~~ likewise may complain of anything done or omitted to be done by the Commission or any person over whom the Commission has jurisdiction in violation of any law, rule, regulation or order administered or promulgated by the Commission, pertaining to matters over which the Commission has jurisdiction.

38-2.2(26)-P2230 CONTENTS (1) Complaints under this rule shall set forth in numbered paragraphs:

(a) The full name, post office address and telephone number of each complainant and his attorney or representative, if any.

(b) The full name, post office address and telephone number of each defendant against whom complaint is made.

(c) A clear, concise statement of the acts or things done or omitted to be done by any public utility, or the respects in which any rule, regulation, or charge fixed by or for any public utility is in violation of any provision of law or of any order or rule of the Commission, or the respect in which any rate, charge, schedule, classification, rule, regulation, or practice is unjust and unreasonable.

(d) The particular relief desired.

38-2.2(26)-P2240 COPIES (1) An original plus ~~eight~~ six conformed copies of a complaint or amendment thereto shall be presented to the Commission for filing.

38-2.2(26)-P2250 PROCEDURE UPON RECEIPT OF COMPLAINT (1) The Commission as regards a complaint issued by the Commission, or upon receipt of a formal written complaint which is in substantial compliance with these procedural rules and which appears to state a cause of action within the Commission's jurisdiction, shall cause a copy thereof to be served upon each defendant, accompanied by a notice from the Commission calling upon each defendant to satisfy the complaint, or to answer the same in writing, within such reasonable time as may be specified by the Commission in such notice. Service in all hearings, investigations, and proceedings pending before the Commission shall be made personally or by first class mail.

38-2.2(26)-P2260 AMENDMENTS TO COMPLAINTS (1) Amendments to complaints shall comply with all requirements of a complaint as heretofore enumerated. The amendment may, in the discretion of the Commission, be allowed.

38-2.2(26)-P2270 STATEMENT OF SATISFACTION OF COMPLAINT (1) If the defendant desires to satisfy the complaint, he shall submit to the Commission and to the Complainant within the time allowed for satisfaction or answer a statement of satisfaction consisting of a recitation of the relief which he is willing to give. Complainant must, in writing, accept or reject Defendant's statement of satisfaction within fifteen days from the date the statement of satisfaction was postmarked or from the date complainant actually received defendant's statement of satisfaction (if personally served). Upon acceptance of this offer by the complainant with the approval of the Commission, no further proceeding need be taken.

38-2.2(26)-P2280 ANSWERS (1) Time

(a) Within twenty days of the date of service of the complaint by the Commission, the defendant or defendants shall answer the complaint. The Commission may require the filing of an answer within a ~~shorter~~ different time.

(b) Requests for an enlargement of time to answer a complaint shall be directed to the Commission, in writing, and a copy provided to the complainant. The request shall indicate

complainant's acquiescence to said extension of time or the measures taken by the defendant in his unsuccessful effort to obtain such acquiescence. The Commission shall notify the parties of its ruling.

(c) If an amendment to a complaint is filed before receipt of the answer, the defendant's time to answer the complaint shall be twenty days from the date of service of the amendment, unless otherwise directed by the Commission. Amendments to a complaint made subsequent to the filing of an answer need not be answered by the defendant.

(2) Contents. The answer must admit or deny each material allegation of the complaint or allege insufficient information on which to admit or deny the same. It shall set forth any new matter relied upon as a defense and shall be so drawn as to fully advise the complainant and the Commission of the particular grounds of defense. The filing of an answer will not be deemed an admission of the sufficiency of the complaint and shall be without prejudice to the rights of a defendant to thereafter file a motion to dismiss the complaint for failure to state a cause of action. In rate complaints against a utility, all averments will be deemed denied and the matter will be of issue if the utility files no answer.

Sub-Chapter ~~8~~ 30

Interventions

38-2.2(30)-P2290 CONTENTS OF PETITION (1) Any person interested in and directly affected by the subject matter of any hearing or investigation pending before the Commission may petition to become a party thereto. Intervenors shall have the right to call and examine witnesses, cross-examine opposing witnesses, and be heard on all matters relative to the issues involved. The petition to intervene shall be filed with the Commission and shall contain the docket number and title of the proceeding, and all such contents required for pleadings set forth in these rules. The petition shall also indicate whether general or special intervention is sought.

(2) In the discretion of the Commission or Hearing Examiner persons desiring to testify at a Commission hearing may be allowed to do so without filing a petition to intervene. Such persons may also be allowed to cross-examine witnesses.

38-2.2(30)-P2300 SERVICE OF PETITIONS (1) Petitions to intervene shall be served upon all identified parties and shall contain a written Certificate of Service.

38-2.2(30)-P2310 GENERAL INTERVENTION (1) Any person, other than the original parties to the proceeding, who shall desire to appear and participate in any proceeding before the Commission, and who does not desire to broaden the issues of

the original proceeding, may petition in writing for leave to intervene in the proceeding. Such a petition shall be filed no later than the intervention deadline established in a procedural order, if one is entered. If no procedural order is entered, the petition shall be filed no later than one week prior to the commencement of hearing. No such petition or motion shall be filed after these times, except for good cause shown. The petition or motion to intervene must disclose the name and address of the party intervening; the name and address of his attorney, if any; a clear and concise statement of the direct and substantial interest of the petitioner in the proceeding; his position in regard to the matter in controversy; and a statement of the relief desired.

38-2.2(30)-P2320 SPECIAL INTERVENTION (1) Any person, other than the original parties to the proceeding, who shall desire to appear and participate in any proceeding before the Commission, and who desires to broaden issues of the original proceeding, shall petition in writing for leave to intervene in the proceeding, which petition shall be filed with the Commission and copies thereof shall be mailed to the original parties to the proceeding at least fifteen days prior to the date of the hearing. The petition must disclose the name and address of the party intervening; the name and address of his attorney, if any; a clear and concise statement of the direct and substantial interest of the petitioner in the proceeding; and his position in regard to the matter in controversy. There shall be attached to said petition a complaint or answer, as the case may be, setting forth clearly and concisely the facts supporting the relief sought.

38-2.2(30)-P2330 DISPOSITION OF PETITIONS AND MOTIONS TO INTERVENE (1) Petitions and motions to intervene not already allowed shall be considered first at all hearings, or may be acted upon prior to hearing, and an opportunity shall be afforded the original parties to be heard thereon. If it appears, after consideration, that the petition or motion discloses a substantial interest in the subject matter of the hearing, ~~or~~ that participation of the petitioner ~~may~~ will be in the public interest, or that the granting of the petition would not unduly broaden the issues in the proceeding, the Commission may grant the same, which may be done by order or oral ruling at the time of the hearing. Thereafter, such petitioner shall become a party to the proceeding and shall be known as an "intervenor" with the same rights and responsibilities as other parties to the proceeding. Whenever it appears, during the course of a proceeding, that an intervenor has no substantial interest in the proceeding, and that the public interest will not be served by his intervention therein, the Commission may dismiss him from the proceeding; provided, however, that a party whose intervention has been allowed shall not be dismissed from a proceeding except upon notice and a reasonable

opportunity to be heard.

38-2.2(30)-P2340 LIMITATION ON INTERVENTION (1) When two or more intervenors have substantially similar interests and positions, the Commission or presiding officer may, in order to expedite the hearing, limit the number of parties who will be permitted to cross-examine, make and argue motions, or object on behalf of such intervenors.

Sub-Chapter 9 34

Prehearing Conferences

38-2.2(34)-P2350 GENERAL (1) The Commission may, in any proceeding, on its own motion or upon petition by any party, with reasonable notice, request all interested parties to attend one or more prehearing conferences for the purpose of determining the feasibility of settlement or of formulating the issues in the proceeding and to determine other matters to aid in its disposition. A commissioner, hearing examiner or designated staff member shall preside at such conference. The purposes of the conference may include: scheduling of discovery, and fixing of hearing dates; simplification of issues; the necessity or desirability of amendments to the pleadings; the possibility of obtaining admissions of fact and documents which will avoid unnecessary proof; limitations on the number and consolidation of the examination of witnesses; the procedure at the hearing; the distribution of written testimony and exhibits to the parties prior to the hearing; and such other matters as may aid in the disposition of the proceeding, or settlement thereof.

38-2.2(34)-P2360 PROCEDURAL ORDERS (1) Following a prehearing conference the Commission may issue a procedural order which fixes any dates which are pertinent to the disposition of the case, and which sets out the procedures to be followed by the parties. Subsequent orders modifying the original procedural order may also be issued.

(2) The procedural order may include a description of the matters discussed at and the actions taken pursuant to the prehearing conference. A proposed form of notice for the hearing may be attached to the order. If objections to the proposed notice are not received within a specified time, it shall be deemed to be approved by the parties.

(3) If a procedural order is entered which specifies either procedures or times for the disposition of a case, such as the timing of discovery and data requests, which are different from the procedures and times set forth in these rules, the procedural order shall control.

38-2.2(34)-P2370 RECESSING HEARING FOR CONFERENCE (1)

In any proceeding the presiding officer may, in his discretion, call the parties together for a conference prior to the taking of testimony, or may recess the hearing for such a conference. The presiding officer ~~shall~~ may state on the record the results of such conference.

Sub-Chapter ~~10~~ 38

Voluntary Settlement

38-2.2(38)-P2380 VOLUNTARY SETTLEMENT (1) Where the matter in controversy affects only the parties involved, and the period for intervention is closed, ~~and has no direct or substantial impact upon the general public, such~~ the parties to the proceedings may, with the approval of the Commission, enter into a voluntary settlement of the subject matter of the proceeding or any issues contained therein prior or subsequent to the formal hearings. In furtherance of a voluntary settlement, the Commission may, in its discretion, invite the parties to confer with it or with an examiner designated by it. Such conferences shall be informal and without prejudice to the rights of the parties, and no statement, admission, or offer of settlement made at such informal conference shall be admissible in evidence in any formal hearing before the Commission, unless the same were contained in a procedural order.

Sub-Chapter ~~11~~ 42

Discovery Procedures

38-2.2(42)-P2390 DISCOVERY (1) Techniques of prehearing discovery permitted in state civil actions~~, such as interrogatories and depositions, may be employed, subject however to Commission approval. Parties seeking such discovery must be able to demonstrate, upon motion to the Commission, the reasonableness, appropriateness, and necessity of the information requested. Upon experiencing any difficulties in obtaining discovery, the parties should seek relief from the Commission or in any manner otherwise provided by law.~~ may be employed in Commission contested cases, and for this purpose the Commission adopts Rules 26, 28 through 37 (excepting Rule 37(b)(1) and 37(b)(2)(d) of the Montana Rules of Civil Procedure in effect on the date of the adoption of this rule, and any subsequent amendments thereto. In applying the rules of Civil Procedure to Commission proceedings, all references to "court" shall be considered to refer to the Commission; references to the subpoena power shall be considered references to M.A.C. Rules Nos. 38-2.2(42)-P2400 through 38-2.2(42)-P2430; references to "trial" shall be considered references to hearing; references to "plain-

tiff" shall be considered references to a party; and references to "clerk of court" shall be considered references to the staff member designated to keep the official record in Commission contested cases.

(2) Nothing in (1) of this rule shall be construed to limit the free use of data requests among the parties. The exchange of information among parties pursuant to data requests is the primary method of discovery in proceedings before the Commission.

~~DEPOSITIONS--(1)--The Commission shall have the right to take or direct the taking of the testimony of any witnesses by deposition and for that purpose the attendance of witnesses and the production of books, documents, papers, and accounts may be enforced in the same manner as in the case of hearing before the Commission.~~

~~(2)--Request That Deposition be Taken.--Any party to a proceeding may request that the Commission allow Movant to take by deposition the testimony of any witness.--Such motion shall conform to the rules with respect to pleadings and shall be filed with the Commission not later than twenty days prior to the date of the hearing.--The motion shall set forth the facts the movant seeks to establish by the requested deposition and his reasons for desiring to perpetuate such testimony.--The petitioner shall give notice by serving a copy of the motion upon each party to the proceeding as required by the service portion of these rules.--If the party requesting the deposition desires written interrogatories, such interrogatories shall be included with the motion.~~

~~(a)--If the Commission deems the motion meritorious, it may make an order designating or describing the persons whose depositions may be taken, specifying the subject matter of the examination, setting forth the time and place of such deposition, and whether it shall be by written or oral examination. All costs incidental thereto shall be paid by the party desiring such deposition.~~

~~INTERROGATORIES--(1)--Any party may serve upon any adverse party written interrogatories to be answered by the party served, if served twenty (20) days prior to hearing, without leave of the Commission.--No interrogatories may be served upon any adverse party within twenty (20) days prior to hearing on a matter unless written permission to serve said interrogatories is obtained from the Commission or the hearing examiner to preside at said hearing.--Objection to answering any interrogatories must be filed in writing with the Commission. Interrogatories must be answered separately and fully in writing under oath except where objections are entered.--Written objections, if any, should be filed within ten (10) days after service of any interrogatories.--Answers to interrogatories shall be submitted within fifteen (15) days after service or upon such time as is set by the Commission upon notice of~~

~~objections by any other party. Copies of answers to interrogatories shall be filed with the Commission at the same time as said answers are submitted to the party that propounded them.~~

38-2.2(42)-P2400 SUBPOENAS FOR WITNESSES AND DOCUMENTS (1) Any party requiring the attendance of a witness from any place in the state to any designated place of hearing for the purpose of taking testimony of such witness in a proceeding before the Commission, and any party requiring the production of books, way bills, papers, accounts, and other documents concerning material testimony or information shall make written application to the Commission Secretary requesting that a subpoena issue to compel attendance of such witnesses, or production of specific books, way bills, papers, accounts, or other documents. Such written application must set forth reasons supporting the issuance of the subpoena for the attendance of the witness or the production of specific books, papers, and other documents, as the case may be.

38-2.2(42)-P2410 WHO MAY ISSUE (1) Subpoenas shall be signed and issued by the hearing examiner, a Commissioner or the Commission Secretary. The name and address of the witness shall be inserted in the original subpoena and a copy of the return shall be filed with the Secretary of the Commission. Subpoenas shall show at whose instance the subpoena is issued.

38-2.2(42)-P2420 ENFORCEMENT (1) The Commission by its counsel or the party seeking the subpoena may seek enforcement of the same by applying to a Judge of any District Court of the State of Montana, for an order upon any witness who shall fail to obey a subpoena to show cause why such subpoena should not be enforced.

38-2.2(42)-P2430 ATTENDANCE OF WITNESSES -- FEE (1) All subpoenas shall extend to all parts of the state, and may be served by any person authorized to serve process of courts of record or by any person of full age designated for that purpose by the Commission. The person executing any such process and any witness shall receive the fees in the amount and in the manner as provided in civil cases in the district courts of this state.

(2) Whenever a subpoena is issued at the instance of a complainant, respondent or other party to any proceeding before the Commission, the cost of service thereof and the fee of the witness shall be borne by the party at whose request the subpoena is issued.

Sub-Chapter ~~12~~ 46

Presiding Officer

38-2.2(46)-P2440 DESIGNATION (1) When evidence is to be taken in a proceeding before the Commission, any commissioner or any examiner designated by the Commission, may preside at the hearing.

38-2.2(46)-P2450 POWERS AND DUTIES OF PRESIDING OFFICER (1) A presiding officer shall have the duty to conduct full, fair and impartial hearings; to take appropriate action to avoid unnecessary delay in the disposition of proceedings, and to maintain order; and he shall possess all powers necessary to that end, including the following:

(a) To administer oaths and affirmations;

(b) To order subpoenas issued and to provide for other methods of discovery.

(c) To receive evidence and rule upon all objections and motions which do not involve final determination of proceedings.

(d) To take such other action as may be necessary and appropriate to the discharge of his duties, consistent with the statutory authority or other authorities under which the Commission functions and with the rules, regulations, and policies of the Commission.

38-2.2(46)-P2460 DISQUALIFICATION OF EXAMINERS (1) An examiner designated by the Commission to preside at a hearing may, upon written request and approval of the Commission, disqualify himself from presiding therein.

(2) Whenever any party shall deem the hearing examiner for any reason to be disqualified to preside, or to continue to preside, in a particular proceeding, such party may file with the Secretary of the Commission a motion to disqualify and remove by affidavit setting forth the alleged grounds for disqualification. A copy of the motion shall be served by the Commission on the examiner whose removal is sought and the examiner shall have ten days from such service within which to reply. If the examiner does not disqualify himself within ten days, then the Commission shall promptly determine the matter, and shall make its decision a part of the record in the case.

Sub-Chapter ~~13~~ 50

Hearings

38-2.2(50)-P2470 GENERAL PROVISIONS (1) The time and place of holding hearings will be set by the Commission and notice thereof served upon all parties not less than twenty days in advance of the hearing date, unless the Commission finds that an emergency exists requiring the hearing to be held upon less notice. An effort will be made to set all hearings sufficiently in advance so that all parties will have a reasonable time to prepare their cases, and so that continuances will be reduced to a minimum. All hearings will be open to the

public.

38-2.2(50)-P2480 RIGHTS AND RESPONSIBILITIES OF PARTIES (1) At any hearing, all parties shall be entitled to enter an appearance, introduce evidence, examine and cross-examine witnesses, make arguments, and generally participate in the conduct of the proceeding.

(2) All parties shall also comply with the requirements of any procedural order entered by the Commission or by a presiding officer in a particular case. Examples of such requirements, although not exclusive, include the answering of discovery and data requests, and the prefiling of testimony.

38-2.2(50)-P2490 APPEARANCES (1) General. Parties shall enter their appearances at the beginning of the hearing by giving their names and addresses in writing to the reporter who will include the same in the record of hearing. The presiding officer conducting the hearing may, in addition, require appearances to be stated orally, so that the identity and interest of all parties present will be known to those at the hearing. Any further notice, pleading, or order in the matter which is required to be served upon parties to the proceeding may be served upon the attorney or representative of a party so represented and such service shall be effective as service upon the party.

(2) Termination of Party Status. Notwithstanding any other provision of these rules pertaining to party status, and unless specifically authorized by order of the Commission for good cause shown, no person shall be a party to any proceeding in which such person has failed to enter a written appearance and an oral appearance on request of the presiding officer at any hearing in the matter as prescribed in paragraph ~~(a)~~ (1). The party status of any person failing to enter a written appearance and an oral appearance on request of the presiding officer terminates ~~as a matter of law~~ at the close of the period of taking such appearances. ~~Any subsequent participation in the proceedings, other than as a witness, by persons who have failed to enter appearances as above prescribed will be treated under the rules pertaining to intervention hereinafter.~~ unless otherwise ordered by the Commission.

38-2.2(50)-P2500 CONTACT BETWEEN PARTIES AND COMMISSION (1) The Commission declares its policy to be that after the giving of notice on a complaint, petition or application in a contested formal proceeding, or after notice of a tariff filing has been given and prior to the issuance of a final order thereon, no parties to the proceeding, or their counsel, shall discuss the merits of such matter or proceeding with the Commissioners, or with the Examiner involved, unless reasonable notice is given to all parties who have appeared therein, to enable such parties to be present at the conference.

(2) When, after notice and prior to the issuance of a

final order, letters from parties are directed to the Commission, or any member of its staff, regarding a formal proceeding, copies of such letters shall be mailed to all parties of record and proof of such service furnished to the Commission.

38-2.2(50)-P2510 NOTICE (1) Following the entry of appearances, all notices, pleadings and orders thereafter served shall be served upon such attorneys, representatives, or parties of record as defined in these rules entering an appearance, and such service shall be considered valid service for all purposes upon the party represented.

38-2.2(50)-P2520 CONTINUANCE (1) Any party who desires a continuance shall, immediately upon receipt of notice of the hearing, or as soon thereafter as facts requiring such continuance come to his knowledge, notify the Commission of said desire, stating in detail the reasons why such continuance is necessary. The Commission in passing upon a request for a continuance shall consider whether such request was ~~promptly~~ timely made, and whether it is supported by good cause. The Commission may grant such a continuance and may at any time order a continuance upon its own motion.

38-2.2(50)-P2530 FAILURE TO APPEAR (1) At the time and place set for hearing, if an applicant, petitioner, or complainant fails to appear without having obtained a continuance in the manner specified above, the Commission may dismiss the petition, application, or complaint with or without prejudice or may, upon good cause shown, recess such hearing for a further period to be set by the Commission to enable said applicant, petitioner, or complainant to attend.

38-2.2(50)-P2540 TRANSCRIPTS (1) A full and complete record of all proceedings before the Commission or ~~presiding officer~~ hearing examiner in any hearing and all testimony shall be taken down by a reporter appointed by the Commission.

(2) Suggested corrections to the transcript of record must be offered by a party within ten days after the transcript is filed in the proceeding except for good cause shown, and such suggestion shall be in writing and served upon each party or his attorney, the official reporter, and the presiding officer.

(a) If no objection is made to the proposed corrections, the presiding officer, unless otherwise directed by the Commission, may, in his discretion, direct that the corrections be made and the manner of making them.

(b) Objections shall be made in writing within ten days from the filing of the suggestions. The Commission or examiner shall, with or without hearing, determine what changes, if any, shall be made in the record.

38-2.2(50)-P2550 CONDUCT AT HEARINGS (1) All parties to

hearings, their counsel, and spectators shall conduct themselves in a respectful manner. Demonstrations of any kind at hearings shall not be permitted. Any disregard by parties, attorneys, or other persons of the rulings of the presiding officer on matters of order and procedure may be noted on the record, and where deemed necessary, be made the subject of a report to the Commission. In the event that parties or attorneys conduct themselves in a disrespectful, disorderly or contumacious manner at any hearing, the presiding officer may submit immediately to the Commission his report thereon, together with a recommendation.

(2) The presiding officer may, at his discretion, recess or continue any hearing in case the conduct of witnesses, spectators, or other persons interferes with the proper and orderly holding of such hearing or for any other cause or circumstance which may prevent the proper conduct of such hearing.

38-2.2(50)-P2560 CONSOLIDATED HEARINGS (1) The Commission, upon its own motion, or upon motion by any party, may order two or more proceedings involving similar questions of law or fact to be consolidated for hearing where rights of the parties or the public interest will not be prejudiced by such procedure.

Sub-Chapter ~~14~~ 54

Rules of Evidence

38-2.2(54)-P2570 GENERAL (1) In the conduct of its hearings, the Commission is bound to follow the common law and statutory rules of evidence, R.C.M. 1947, Sec. 82-4210(1). The Montana Rules of Evidence, as adopted by the Montana Supreme Court, shall be applied in all contested cases.

38-2.2(54)-P2580 TESTIMONY UNDER OATH (1) All testimony to be considered by the Commission in its hearings, except matters ~~judicially~~ officially noticed or entered by stipulation, shall be taken under oath or affirmation.

38-2.2(54)-P2590 STIPULATION AS TO FACTS (1) The parties to any proceeding or investigation before the Commission may, by stipulation in writing filed with the Commission or entered in the record, agree upon the facts or any portion thereof involved in the controversy, which stipulation shall be binding upon the parties thereto and may be regarded and used by the Commission as evidence at the hearing. It is desirable that the facts be thus agreed upon wherever practical. The Commission may, however, require proof by evidence of the facts stipulated to, notwithstanding the stipulation of the parties.

38-2.2(54)-P2600 PREPARED TESTIMONY (1) At the direc-

tion of the presiding officer, the parties shall submit copies of prepared testimony and accompanying exhibits to be presented at any hearing to all other parties within time limits prescribed by the Commission.

(2) ~~With the approval of the~~ In the discretion of the presiding officer, a witness prefiled testimony may (a) be read into the record ~~pre-filed testimony~~ on direct examination~~.~~, (b) be copied into the record without reading, or (c) be identified and offered as an exhibit. Before any pre-filed testimony is ~~so~~ copied in, unless excused by the presiding officer, the witness shall deliver copies thereof to the presiding officer, the reporter, and counsel for all parties. ~~Admissibility shall be subject to the rules governing oral testimony. If the presiding officer deems that substantial savings in time will result without prejudice to any party, prepared testimony may be copied into the record without reading. At the direction of the Commission, the parties shall submit copies of prepared testimony and accompanying exhibits to be presented at any hearing to all other parties within time limits prescribed by the Commission.~~

38-2.2(54)-P2610 EXHIBITS (1) Size of Exhibits. ~~Except by special permission of the presiding officer, no specially prepared~~ Whenever possible, exhibits offered as evidence shall be~~,~~ ~~of greater size,~~ when folded, ~~than~~ 8-1/2 inches by 11 inches.

(2) Marking Exhibits. All exhibits shall be marked as ordered by the presiding officer. Parties shall arrange in advance with the court reporter the manner of identifying their exhibits.

(3) Designation of Part of Document as Evidence. When relevant and material matter offered in evidence by any party is embraced in a book, paper, or document containing other matter not material or relevant, the party offering the same must plainly designate the matter so offered. If other matter is in such volume as would necessarily encumber the record, such book, paper, or document will not be received in evidence, but may be marked for identification, and, if properly authenticated, the relevant or material matter may be read into the record, or, if the presiding officer so directs, a true copy of such matter in proper form shall be received as an exhibit, and like copies delivered by the party offering the same to all other parties or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the book, paper, or documents, and to offer in evidence in like manner other portions thereof if found to be material and relevant.

(4) Abstracts of Documents. When documents are numerous, such as freight bills or bills of lading, and it is desired to offer in evidence more than a limited number of such documents as typical of the others, an abstract in an orderly manner of relevant data of such documents shall be prepared and offered as an exhibit, giving other parties to the proceeding reason-

able opportunity to examine both the abstract and the document.

(5) Copies of Exhibits. When exhibits are offered in evidence, the original and two copies shall be furnished to the reporter, and the party offering exhibits should also be prepared to furnish a copy to each commissioner or examiner sitting, each party, and the staff, unless such copies have previously been furnished or the presiding officer directs otherwise. Whenever practicable, the parties should interchange copies of exhibits before or at the commencement of the hearing.

(6) Exhibits for Rate Cases. In rate or other proceedings involving detailed and complicated accounting exhibits, the Commission may require the applicant, respondent, any other party, or the Commission staff, to file and serve copies thereof within a specified time in advance of the hearing in order to enable parties and protestants to study the same and prepare cross-examination with reference thereto. Data attempting to justify proposed tariff changes may be requested in a suspension order.

38-2.2(54)-P2620 ADDITIONAL EVIDENCE (1) At the hearing, the presiding officer may require the production of further evidence upon any issue. Upon agreement of the parties, he may authorize the filing of specific documentary evidence as a part of the record within a fixed time after submission, reserving exhibit numbers therefor.

38-2.2(54)-P2630 OBJECTIONS (1) Any evidence offered in whatever form shall be subject to appropriate and timely objection. When objection is made to the admissibility of evidence, such evidence may be received subject to later ruling by the Commission. The Commission, in its discretion, either with or without objection, may exclude inadmissible, incompetent, cumulative, or irrelevant evidence, or order the presentation of such evidence discontinued. Parties objecting to the introduction of evidence shall briefly state the grounds of objection at the time such evidence is offered. The evidence to be admitted at hearing shall be material and relevant to the issue.

38-2.2(54)-P2640 OFFERS OF PROOF (1) An offer of proof for the record shall consist of a statement of the substance of the evidence to which objection has been sustained. The offer shall become a part of the record, but only for purpose of judicial review.

Sub-Chapter ~~15~~ 60

Proposed Findings and Conclusions; Briefs

38-2.2(60)-P2650 PROPOSED FINDINGS AND CONCLUSIONS OF PARTIES (1) Notice. The Presiding Officer may require all

parties of record to file proposed findings of fact and conclusions of law at the close of testimony in the proceeding. The presiding officer shall immediately fix the time in which such proposed findings and conclusions shall be filed. No decision, report or recommended order shall be made until after the expiration of the time so fixed.

(2) Contents. Each proposed finding of fact and conclusion of law shall be clearly and concisely stated and numbered. Each statement shall show specifically the testimony by appropriate transcript reference which supports that proposed finding of fact, if a transcript ~~is available~~ has been prepared.

(3) Copies Required. An original and ~~eight~~ six copies accompanied by a certificate of service shall be filed with the Commission and one copy shall be filed with each attorney of record or each party.

(4) Enlargement of Time. Any party may petition the presiding officer for an enlargement of time in which to file proposed findings of fact and conclusions of law. Such petition shall state the reasons why the enlargement is required.

(5) Failure to File - Dismissal. The Commission may dismiss any proceeding where the party who initiated such proceeding fails to comply with this rule and the failure of any other party may be deemed a waiver of the right to participate further.

38-2.2(60)-P2660 BRIEFS AND ORAL ARGUMENT: RIGHT TO FILE OR ARGUE (1) A party shall have the right to file a brief or present oral argument in any hearing before the Commission. The Presiding Officer may require the filing of briefs or the presentation of oral argument or both by the parties. Requests for filing of briefs or oral argument shall be made before or at the close of the hearing and may be made in writing or orally on the record.

38-2.2(60)-P2670 TIME (1) Briefs. Unless otherwise ordered by the presiding officer, when briefs are to be filed in any proceeding, the applicant or complainant shall have twenty (20) days after close of hearing, or twenty (20) days after the date the complete transcript of the hearings is filed with the Commission if a transcript is prepared, in which to file its brief. Unless otherwise ordered, any other party shall have twenty (20) days thereafter to file its brief. Reply briefs may be filed ten days thereafter. The Secretary of the Commission shall notify all parties of the date of the filing of the transcript.

(2) Enlargement. Petition for enlargement of time to file a brief must be filed prior to that time as set out in (a) above, and must set forth good cause for the granting of the enlargement.

(3) Oral Argument. Unless otherwise ordered by the presiding officer the time allowed for oral argument shall be as follows: (1) For an applicant or complainant, sixty (60)

minutes, which may be divided between the original argument and reply argument, but no more than fifteen (15) minutes shall be allowed for reply argument and (2) For other parties forty-five (45) minutes each.

38-2.2(60)-P2680 FILING AND SERVICE OF BRIEFS (1) All briefs shall be filed with the Secretary of the Commission and must be accompanied by a written certificate of service showing service on each opposing counsel, party or parties. An original and ~~eight~~ six copies shall be filed with the Commission.

38-2.2(60)-P2690 BRIEFS, CONTENTS (1) Briefs shall be concise, and shall, when a transcript is prepared, include transcript citations for each statement of fact. Briefs exceeding twenty pages excluding appendices shall contain a subject index with page references and a list of authorities if any cited.

Sub-Chapter ~~16~~ 64

Commission Decisions and Orders, Exceptions, Rehearings and Reconsideration

38-2.2(64)-P2700 COMMISSION DECISIONS AND ORDERS (1) An order or decision in writing by the Commission will issue in every proceeding. The order or decision shall contain separately stated findings of fact and conclusions of law. One copy of the order shall be served on each party. Additional copies may be requested, and will be provided at a charge to be fixed by the Commission.

(2) The Commission may adopt a presiding officer's (or examiner's) proposed decision. If a proposed decision is adopted in its entirety, the Commission decision shall so state on the signature page. Where the only changes between the Commission decisions and the Presiding Officer's or Examiner's decision are those to correct grammar or typographical errors, the Commission order or decision shall so state on the signature page.

(3) The Commission may issue a decision which makes reference to the proposed decision and indicates disagreements with the presiding officer or examiner, and the Commission may make further or modified findings and conclusions based on the record.

38-2.2(64)-P2710 ISSUANCE OF PRESIDING OFFICER OR EXAMINER PROPOSED DECISION (1) Issuance. A hearing examiner may issue a proposed decision. The decision shall be served on all parties to the proceeding. The proposed order shall contain separately stated findings of fact and conclusions of law. If a transcript of a hearing is prepared, a proposed order need not be issued.

(2) Proposed Order-Final-When. If all parties stipulate

and the commission does not disapprove of said stipulation, then a prepared order or decision may be considered a final order or decision of the commission.

38-2.2(64)-P2720 EXCEPTIONS TO PROPOSED ORDERS (1) Briefs. Briefs on exceptions may be filed by any party within twenty days after the proposed order is filed. Briefs opposing exceptions may be filed within ten days thereafter. Enlargement of time may be granted for good cause shown with leave of a presiding officer or commissioner.

(2) Contents. Briefs on exceptions and replies must specifically set forth the precise portions of the proposed decision to which the exception is taken, the reason for the exception, authorities on which the party relies, and specific citations to the transcript, if prepared. Parties are cautioned that vague assertions as to what the record shows or doesn't show, without citation to the precise portion of the record, may be accorded little attention.

(3) Copies. An original and ~~eight~~ six copies of each brief on exceptions and reply shall be filed with the Commission, and be accompanied by a certificate of service showing proof of service of copies of same on each attorney or party or parties.

38-2.2(64)-P2730 ORAL ARGUMENT TO COMMISSION AFTER PROPOSED DECISION (1) Any party may petition the Commission for oral argument after the issuance of a proposed decision. Such request may be included in a brief on exceptions or reply but must be filed no later than the last day to file replies.

38-2.2(64)-P2740 REHEARINGS ~~REOPENING-PROCEEDINGS~~ (1) Application to Rehear Reopen. Before issuance of a Commission decision, or after the issuance of a proposed decision, a party to a proceeding may file with the Commission an application to set aside submission and reopen the proceeding for the taking of additional evidence.

(2) Allegations. Such application shall specify the facts claimed to constitute grounds in justification thereof, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing, and shall contain a brief statement of proposed additional evidence and an explanation as to why such evidence was not previously adduced.

(3) Suggestions in Opposition. Within ten (10) days following the service of any petition to reopen, any other party may file suggestions in opposition thereto and in default thereof shall be deemed to have waived any objection thereto.

(4) Commission May Reopen Rehear, When. The Commission on its own motion may reopen any proceeding after final submission when it has reason to believe that conditions of fact or law have so changed as to require, or that the public interest requires the reopening of such proceeding. The Commission may limit the reopened hearing to matters alleged in the

petition and proof thereof.

38-2.2(64)-P2750 RECONSIDERATION (1) Motion for Reconsideration. Within ten (10) days after an order or decision has been made by the Commission, ~~and before the effective date of such order or decision,~~ any party may apply for a reconsideration in respect to any matter determined therein. Such motion shall set forth specifically the ground or grounds on which the movant considers said order or decision to be unlawful, unjust or unreasonable.

(2) Effect of Filing. Motion for such a reconsideration shall not excuse any corporation or person or public utility from complying with or obeying any order or decision or any requirement of an order or decision of the Commission, or operate in any manner to stay or postpone the enforcement thereof except as the Commission may by order direct as provided by law.

(3) Modification of Original Order. If, after such motion for reconsideration is filed, the Commission is of the opinion that the original order or decision is in any respect unjust or unwarranted, or should be changed, the Commission may abrogate, change or modify the same.

(4) Brief Required. A motion for reconsideration shall not be well taken unless accompanied by a supporting brief.

(5) Denial. A motion for reconsideration shall be deemed denied when it has not been acted upon within ten days of its filing.

(6) When Order Final For Purpose of Appeal. A Commission order is final for purpose of appeal upon the entry of a ruling on a motion for reconsideration, or upon the passage of ten days following the filing of such a motion, whichever event occurs first. If no motion to reconsider is filed, the order is final and appealable within thirty days of its service.

38-2.2(64)-P2760 APPEALS (1) Appeals of a Commission decision are as provided by law.

4. A public hearing on the proposed adoption of rules for all Commission contested cases was held October 18, 1977, at 10:00 a.m., in the Senate Chamber, State Capitol, at which time oral comments were received. Written comments were received by the department from the date of notice until October 28, 1977.

Representatives of General Telephone, Mountain Bell, and Montana Power felt that the rules should provide some means of protecting proprietary matters. This matter is taken care of under the recommended modification of the discovery rules, by means of protective orders. In addition, amendment of the Public Records rule restating the Commission's power under Sec. 70-111 to keep materials confidential for a period of time meets this problem.

Mountain Bell suggested that there was no apparent need for a "preliminary review" of documents prior to the assignment

of a docket number, because these rules allow for rejection of such documents through review subsequent to assignment of a docket number. The Commission agrees, as these rules allow subsequent rejection.

Gene Carroll and Terry Whiteside, both Class B Interstate Commerce Commission Practitioners, and several non-practitioner supporters of their position, including Viggo Anderson of the Montana Grain Growers Association, expressed concern over this agency overly restricting representation before the Commission. A Class "B" practitioner before the I.C.C., prior to designation as such, must have passed a competency test over matters under the Commission's jurisdiction. In view of this public safeguard, it seems reasonable that representation by these practitioners should be allowed before the Commission.

Northwestern Telephone Systems, Inc., and M.D.U. testified that the multiplicity of proceeding and pleading definitions outlined in the sub-chapter on Definition serve no valid purpose. However, after reviewing the relevant section, it is believed that the distinctions are not ambiguous and serve a legitimate purpose in distinguishing among the different types of actions before the Commission. Accordingly, the proceeding and pleading distinctions are adopted substantially as proposed.

The definition of "party" in sub-chapter 6 affords the Commission staff the rights and responsibilities of a "party," while exempting them from the prohibition of ex parte communications with the Commission. Mountain Bell's comments suggest that this raises due process problems. Existing case law, however, suggests that such treatment is permissible and not violative of due process standards. Further, the limited number of Commission staff prevents the "separation of functions" enjoyed by many federal agencies.

At the suggestion of Montana-Dakota Utilities, the rule on "Signature" requiring a party or his attorney to sign documents and pleading has been deleted as it was duplicative of the rule on "Pleadings" set out on page 6 of the proposed rules.

In conformity with the suggestion of the Presiding Officer, the number of copies of pleadings or documents required has been reduced from the proposed "eight" to six in an effort to relieve the expenses incurred by parties before the Commission.

Language requiring notice to "parties known to be interested in the proceeding" has been deleted at the suggestion of M.D.U. and P. P. & L. The M.A.P.A. requires only publication in a newspaper of general circulation in the area affected by the filed pleadings or documents. To require notice to "parties known to be interested," because of the ambiguity in defining such, could result in reversible error because of the remote interest of a tangential party.

Concern was expressed by M.D.U. that the rule on special intervention, which would permit a party to broaden the issues in a proceeding, might unduly complicate a contested case. Modification of the standard for disposition of special intervention petitions solves this legitimate concern. Disallow-

ance of petitions that would "unduly broaden" the issues in a proceeding is an effective safeguard.

Most participating parties complained that the proposed discovery rules were unduly complicated and confusing. Parties felt they would be unable to determine what procedure governed. At the suggestion of several parties, the Commission, in place of its original proposal, adopts the discovery provisions of the Rules of Civil Procedure. These rules provide a comprehensive set of discovery procedures and are familiar to the great majority of practitioners before the Commission. Also, this approach is consistent with the Attorney General's proposed amendments to the Model Procedural Rules.

Subsection 2 of this rule concerning data requests is intended to foster cooperation among the parties through the use of informal data requests.

P.P. & L., Consumer Counsel and Montana Power saw a need to clarify the time within which an appeal must be taken when a motion for reconsideration has been filed. Subsection (6) of the Reconsideration rule is intended to meet this problem.

GORDON E. BOLLINGER, Chairman

Certified to the Secretary of State December 15, 1977.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF OSTEOPATHIC PHYSICIANS

Adoption of Rule 40-3.70(2)-P7015 CITIZEN PARTICIPATION RULES-INCORPORATION BY REFERENCE

1. The Board of Osteopathic Physicians published Notice No. 40-3-74-2 of a proposed adoption of new rules relating to public participation in board decision making on October 24, 1977, at page 659, MAR 1977, Issue No. 10.

2. The adoption incorporates as rules of the Board, the rules of the Department of Professional and Occupational Licensing regarding public participation in department decision making, which have been duly adopted and published in Title 40, Chapter 2, Sub-Chapter 14 of the Administrative Rules of Montana.

The reason for the adoption is that such action is mandated by Section 82-4228, R.C.M. 1947. That section requires all agencies to adopt rules which specify the means by which the public may participate in decision making functions. Rather than adopt its own set of rules and for the sake of expediency, the board has reviewed and approved the department rules, and has incorporated them as their own.

3. No requests for hearing made or comments received.

4. The adoption of the rule has been made exactly as proposed.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of the general provisions and format instructions for rulemaking under the Montana Administrative Procedure Act	))))	NOTICE OF ADOPTION OF NEW RULES AND AMENDMENT OF RULES (GENERAL PROVISIONS)

TO: All Interested Persons:

1. On October 24, 1977, the Secretary of State's office published notice of proposed adoption of new rules and amendment of rules in Chapter 2, Title I, concerning the general provisions and format instructions for rulemaking under the Montana Administrative Procedure Act, at pages 660 through 688, of the Montana Administrative Register, issue number 10.

2. An informal hearing was held on November 17, 1977. No formal comments were received. The Secretary of State's office will renumber its rules in this chapter under the new simplified section numbering system. Specifically:

(a) Rule 1-1.2(1)-P200, proposed to be amended at p. 661, will now be numbered 1.2.000 PREFACE, and amended as proposed.

(b) Rule 1-1.2(6)-P2040, proposed to be amended at p. 688, will now be transferred to Rule 1.2.003 TITLE NUMBER ASSIGNMENT, and amended as proposed.

(c) Rule 1-1.2(2)-P210, proposed to be amended at p. 661, will now be numbered 1.2.010 BREAKDOWN OF THE CODE, and amended as proposed.

(d) Rule 1-1.2(2)-P220, proposed to be amended at p. 664, will now be numbered 1.2.020 RULE TYPES, AND THEIR LOCATION, and amended as proposed with the following change:

(1)(b) Procedural rules are of various types including but not limited to the following. (The remainder of the paragraph has not been changed.)

(e) Rule 1-1.2(2)-P230 proposed to be amended at p. 665, will now be numbered 1.2.030 CODE NUMBERING OF RULES, and amended as proposed with the following change:

(7) This numbering system has been widely criticized as cumbersome and excessive. After the statutes are recodified in 1979, the Administrative Rules will be recodified, too, and rules will then have shorter, simpler numbers. ~~Probably, a~~ A three-part identifier will be used (title, chapter, section), so that rule 2-2.6BI-S6040 would become rule 2.8.040, for example. ~~However, for the sake of consistency, it will be necessary to follow the old system until recodification of the rules is authorized.~~ If an agency is redoing a complete title or a chapter with more than 50 pages in their portion, and they do not cite extensively to section numbers in other chapters, they may, with permission from the Secretary of State's office, begin the new simplified numbering system by following the steps listed below:

SIMPLIFICATION OF RULE SECTION NUMBERS; e.g. 4-2.22(18)-S22220

I. Eliminate the "-2" or "-3" immediately following the title so that title and chapter are separated by a decimal point: 4.22(18)-S22220

II. Eliminate the sub-chapter and the parenthesis around it: 4.22-S22220

III. Eliminate the hyphen and insert a decimal point in its place: 4.22.S22220

IV. Eliminate the "O", "P", or "S" in front of the final set of digits: 4.22.22220

V. Shorten the final set of digits by eliminating the first number or numbers which represent the chapter, and then make a three-digit number. If only two digits remain after taking away the chapter numbers, insert a zero in front of these digits. Example: 4-2.22(2)-S2280 becomes 4.22.080. If three digits remain, add 100. Example: 22.080 becomes 22.180. 4.22.320

VI. Go back to the chapter number and shorten it to no more than three numbers and letters. Use the numbers skipped over in the old skipping-by-fours method and then use letters as needed. Example: make chapter 14BII into chapter 17, or 17A, or 17B.

Note: A department's organizational rule would always be (title).1.000 (4.1.000) and its basic procedural rule would be (title).2.000 (4.2.000).

Option: Under the section renumbering system just outlined, the sub-chapters lose all significance. If an agency needs to preserve distinctions between its sub-chapters for policy reasons, it may do so by starting each sub-chapter as a different set of hundreds. For example:

CHAPTER 22
HOSPITAL & MEDICAL FACILITIES

OLD	NEW
16-2.22(1)-S2200	16.22.000
-S2210	16.22.010
-S2220	16.22.020
-S2221	16.22.021
-S2222	16.22.022
-S2223	16.22.023
-S2230	16.22.030
SUB-CHAPTER 2 Construction Bureau	
-S2240	16.22.100
-S2250	16.22.110
-S2260	16.22.120
-S2261	16.22.130

SUB-CHAPTER 6
Emergency Medical Services Bureau
-S2270 16.22.200

Annual review is an excellent time for agencies to change over to this new numbering system.

(f) Rule 1-1.2(2)-P240, proposed to be amended at p. 669, will now be numbered 1.2.040 MODEL RULES: LOCATION AND INCORPORATION BY REFERENCE, and amended as proposed with the following change:

(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 section/rule under Chapter 2, that ~~"The Department of ---------- has herein adopted and incorporated the Attorney General's Model Procedural Rules -------- through -------- by reference to such rules as stated in ARM Title 1, Chapter 6, of this Code."~~ "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."

(g) Rule 1-1.2(2)-P250 proposed to be amended at p. 669, will now be numbered 1.2.050 SECTION HISTORY NOTES and amended as proposed with the following changes:

(1)(a) a citation to the authority under which the section was adopted and session law or R.C.M. section being implemented.

(2)(a) the simplified history of the initial rule consisting of the statutory authority citation, the session law or R.C.M. section being implemented if it is different from the authority citation and the effective date.

(2)(b) An amendment to either of the above rules after 1/1/78: (History: Sec. 46-208, R.C.M. 1947; IMP Sec. 46-218, R.C.M. 1947, Eff. 12/31/72 (or 3/6/76); AMD, 1978 MAR p. 124, Eff. 1/26/78)

(2)(d) An amendment to the above rule after 1/1/78: (History: Sec. 46-208, R.C.M. 1947; IMP Sec. 46-218, R.C.M. 1947; NEW Eff. 3/6/76; AMD Eff. 1/5/77; AMD, 1978 MAR p. 131, Eff. 2/26/78)

(2)(e) Repealing the rule in (c) after 1/1/78: (History: Sec. 46-208, R.C.M. 1947, IMP Sec. 46-218, R.C.M. 1947; NEW Eff. 3/6/76; AMD Eff. 1/5/77; REP 1978 MAR p. 207, Eff. 3/26/78)

(2)(f) Transfer to the rule (c) after 1/1/78: (History: Sec. 46-208, R.C.M. 1947; IMP Sec. 46-218, R.C.M. 1947; NEW Eff. 3/6/76, as 32-2.6A(26)-S6046; AMD Eff. 1/5/77; TRANS Eff. 3/26/78)

(2)~~(f)~~(g) A new rule adopted after 1/1/78: (History: Sec. 46-208, R.C.M. 1947; IMP Sec. 46-218, R.C.M. 1947; NEW 1978 MAR p. 423, Eff. 5/26/78)

(4) Add after last sentence - The full history would carry forward the simplified history from the old rule including citation of old section number.

(4)(a) When rules are transferred to a different location the section numbers and catchphrases should be listed with a statement placed in their old location "Old numbers are no longer in use due to transfer to (cite location).

(h) Rule 1-1.2(2)-P260 proposed to be amended at p. 671, will now be numbered 1.2.060 CATCHPHRASES, and amended as proposed.

(i) Rule 1-1.2(2)-P270, proposed to be amended at p. 671, will now be numbered 1.2.070 PAGE NUMBERING SYSTEM, and adopted as proposed.

(j) Rule 1-1.2(2)-P280, proposed to be amended at p. 672, will now be numbered 1.2.080 LOCATION OF RULE CHANGES, and amended as proposed.

(k) Rule 1-1.2(2)-P290, proposed to be amended at p. 672, will now be numbered 1.2.090 POSITIONING OF CODE ITEMS, and amended as proposed with the following changes:

(1)(a) The titles followed by sub-title headings and ~~indexes~~ table of contents to all the chapters under the title and each sub-title. Each department's portion of the code shall begin with a title page and chapter ~~index~~ table of contents which begins with the heading "title" followed by the assigned title number. Beneath that will be the name of the department. Beneath that will be the heading "Sub-Title 2". Beneath that will begin the chapter ~~index~~ table of contents containing a listing of all chapters under the sub-title preceded by the chapter number assigned by the department. Following each chapter listing will be the page number on which that chapter begins. Following the last chapter listing under "Sub-Title 2" will be the heading "Sub-Title 3". Then again, all the chapters under "Sub-Title" will be listed followed by the page number on which it begins. Refer to 1.2.030 for numbering of sub-chapters.

(l) Rule 1-1.2(6)-P2000, proposed to be amended at p. 674, will now be numbered 1.2.100 CODE FORMAT - PREPARATION INSTRUCTIONS, and amended as proposed with following changes:

(1)(a) Add - Do not assign section numbers in the notice stage. If the authority section and the implementing section are different, the session law or R.C.M. section being implemented must appear at the end of each rule in the notice. If only one rule is being noticed, the implementing section may appear in the last paragraph that contains the authority section.

(1)(b) The notice should be signed by the head of the department or chairman of the governing board.

(3)(a) Rules are assigned rule/section numbers when published in the rule section of the register.

(m) The new rule proposed at p. 680 to be numbered 1-1.2(6)-P2001 will now be numbered 1.2.101 PROCEDURES FOR FILING OF THE INITIAL RULES, NEW RULES AND RULES AMENDING OR REPEALING PRIOR RULES and adopted as proposed.

(n) The new rule proposed at p. 681 to be numbered 1-1.2(6)-P2002 will now be numbered 1.2.102 PREPARATION OF RULE CHANGES FOR INSERTION IN CODE and adopted as proposed.

(o) The new rule proposed at p. 684 to be numbered 1-1.2(6)-P2003 will now be numbered 1.2.103 INDEXING, CROSS REFERENCE TABLE and adopted as proposed.

(p) The new rule proposed at p. 686 to be numbered 1-1.2(6)-P2004 will now be numbered 1.2.104 ADMINISTRATIVE ORDER and adopted as proposed.

(q) Rule 1-1.2(6)-P2010 proposed to be amended at p. 687, will now be numbered 1.2.110 UPDATING THE CODE--PROCEDURES, and adopted as proposed.

(r) The new rule proposed at p. 687 to be numbered 1-1.2(6)-P2011 will now be numbered 1.2.111 ANNUAL REVIEW OF RULES BY AGENCY and adopted as proposed with the following changes:

(1) As provided in Section 82-4204(6), R.C.M. 1947, each agency shall at least annually review its rules to determine if any new rule should be adopted or any existing rules should be modified or repealed. A schedule will be set up by the Secretary of State's office and each department will be informed when their annual review should be conducted. During the annual review agencies are requested to eliminate decimal point pages where possible, shorten histories as provided in ARM 1-1.2(2)-P250 (1.2.050) and submit updated title table of contents, chapter table of contents, topical index and cross reference tables. Annual review is the ideal time to convert the entire title or chapters of at least fifty pages to the new numbering system. Refer to 1-1.2(2)-P230 (1.2.030)

(s) Rule 1-1.2(6)-P2020, proposed to be amended at p. 688, will now be numbered 1.2.120 MONTANA ADMINISTRATIVE REGISTER, and adopted as proposed.

(t) The new rule proposed at p. 688 to be numbered 1-1.2(6)-P2021 will now be numbered 1.2.121 AGENCY FILING FEES, and adopted as proposed.

(u) Rule 1-1.2(6)-P2030, proposed to be amended at p. 688, will now be numbered 1.2.130 SUBSCRIPTION TO THE CODE--COST, and amended as proposed.

(v) Rule 1-1.1(6)-P2040 has been transferred to 1.2.003 TITLE NUMBER ASSIGNMENTS and amended as proposed.

(w) Rule 1-1.2(6)-P2050, proposed to be amended at p. 688, will now be numbered 1.2.150 HOW TO CITE THE ADMINISTRATIVE RULES OF MONTANA, and amended as proposed.

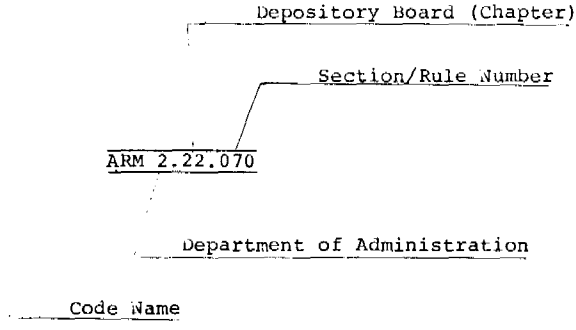
3. The rationale for the proposed revision of the format and general provisions is that the changes are necessary to (a) incorporate amendments to MAPA enacted by Chapter 285, Laws of 1977 (House Bill 77), (b) reflect changes in the Attorney General's Model Rules currently under consideration, (c) implement the legislature's intent that the Administrative Rules of Montana be published in a simpler, more readable, and more easily maintained manner, and (d) set forth policies to facilitate the publication of a revised edition of the entire

administrative code following recodification of the statutory law of Montana anticipated in 1979.

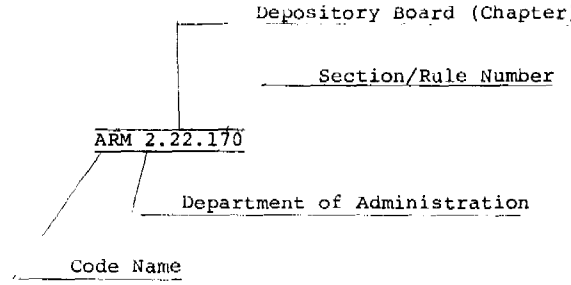
Dated this 15th day of December, 1977.

FRANK MURRAY
Secretary of State

Example 4: Simplified Numbering Method
Old Method: ARM 2-2.22(6)-S2270
New Method: ARM 2.22.070 (If two digits remain after eliminating the chapter number, add a zero in front.)



Example 5: Simplified Numbering Method
Old Method: ARM 2-2.22(6)-S22070
New Method: ARM 2.22.170 (If three digits remain after eliminating the chapter number, add 100.)



BEFORE THE COMMISSIONER OF CAMPAIGN
FINANCES AND PRACTICES OF
THE STATE OF MONTANA

In the matter of the adoption of a proposed rule "I"	NOTICE OF ADOPTION OF AN INTERPRETIVE RULE, ARM 44-3.10(6)-S1041, defining terms as used in §23-47-133, R.C.M. 1947, which requires statements of attribution or responsibility, commonly known as "disclaimers," on election campaign materials.

1. On October 24, 1977, the Commissioner of Campaign Finances and Practices published notice of the proposed adoption of ARM rule "I" which defines and clarifies certain terms used in §23-47-133, R.C.M. 1947. The statute requires that the name and address of the printer and publisher appear on materials which are circulated to the general public and used to influence the outcome of an election. The notice of public hearing and the text of the rule is found on page 708 of the 1977 Montana Administrative Register, issue number 10. A public hearing on the proposed rule was held November 14, 1977.

2. The Commissioner has adopted the rule as proposed, except that the rule is hereby given the ARM code number ARM 44-3.10(6)-S1041. No adverse testimony or comments were received.

3. Section 23-47-133, R.C.M. 1947 provides in very general terms that any poster, pamphlet or other document relating to any candidate or issue at an election must bear on its face the name and address of its printer and publisher, if it is circulated to the general public. The terms, however, are not defined, and are subject to varying interpretation. They have in the past led to a great deal of confusion, question, and expense both to candidates and to the Agency. The rule is "interpretive" in the sense that it attempts merely to explain what the statute requires. It is not necessarily intended to be exclusive or binding upon candidates or other law enforcement officials.

In the matter of the adoption of a proposed rule "J"	NOTICE OF ADOPTION OF AN INTERPRETIVE RULE, ARM 44-3.10(6)-S1042, defining "electioneering" for purposes of §23-47-119, R.C.M. 1947.

1. On October 24, 1977, the Commissioner of Campaign Finances and Practices published notice of the proposed adoption of ARM rule "J" which defines and clarifies the term "electioneering" as used in §23-47-119, R.C.M. 1947. The notice of public hearing and the text of the rule is found on page 709 of the 1977 Montana Administrative Register, issue number 10. A

public hearing on the proposed rule was held November 14, 1977.

2. The Commissioner has adopted the rule as proposed, except that the rule is hereby given the ARM code number ARM 44-3.10(6)-S1042. No adverse testimony or comments were received.

3. Section 23-47-119, R.C.M. 1947, prohibits electioneering within two hundred feet of a polling place, but does not define the term electioneering. Experience has shown that there is a wide range of conduct to which the term might or might not apply. No clarification is provided either in other statutes or in the case law of Montana. The consequent confusion has resulted in much uncertainty for campaigners and law enforcement officials, as well as in election contests. The rule attempts to clarify the term, and is "interpretive" in the sense that it is not necessarily intended to be exclusive nor binding on other law enforcement agencies.

In the matter of the adoption of a proposed rule "H"	NOTICE OF ADOPTION OF A RULE, ARM 44-3.10(6)-S1081, defining "candidate" for purposes of the Campaign Finances and Practices Act of 1975, and the rules adopted pursuant thereto; and requiring the filing of periodic reports by write-in candidates for public office who receive contributions or make expenditures in their campaigns.

1. On October 24, 1977, the Commissioner of Campaign Finances and Practices published notice of the proposed adoption of ARM rule "H" which defines "candidate" for purposes of the Campaign Finances and Practices Act of 1975 and the rules adopted pursuant to it. The notice of public hearing and the text of the rule is found on page 707 of the 1977 Montana Administrative Register, issue number 10. A public hearing on the proposed rule was held November 14, 1977.

2. The Commissioner has adopted the rule as proposed, except that the rule is hereby given the ARM code number ARM 44-3.10(6)-S1081. No adverse testimony or comments were received.

3. The Commissioner is adopting this rule because of the unfairness which occasionally results from the current definition of "candidate," which does not include write-in candidates. While most such candidates do not actively campaign (and they would not be required to report under the proposed rule), some do and they receive contributions and make expenditures to influence the result of an election; yet they are not, as are declared candidates, required to file reports. The public, therefore, has no information concerning the candidate's finances or the magnitude of his campaign. The rule thus furthers the Act's goal of disclosing the source and disposition of funds used to influence elections in Montana.

In the matter of the adoption of a proposed rule "G"	NOTICE OF ADOPTION OF A RULE, ARM 44-3.10(6)-S1086, defining "ballot issue" for purposes of the Campaign Finances and Practices Act of 1975 and the rules adopted pursuant thereto, and providing a method for political committees supporting or opposing such issues to report the source of cash on hand as of the date of certification.

1. On October 24, 1977, the Commissioner of Campaign Finances and Practices published notice of the proposed adoption of ARM rule "G" which specifies that a "ballot issue," as the term is used in the Campaign Finances and Practices Act of 1975 (§§23-4776 et seq., R.C.M. 1947) becomes a ballot issue when and if certification occurs by the proper official that it is qualified for the ballot. It further provides that groups supporting or opposing such issues with cash which they have on hand as of the date of certification shall report the source of such funds as if the most recent contributions made up the balance. The notice of public hearing and the text of the rule is found on page 705 of the 1977 Montana Administrative Register, issue number 10. A public hearing on the proposed rule was held November 14, 1977.

2. The Commissioner has adopted the rule as proposed, except that the rule is hereby given the ARM code number ARM 44-3.10(6)-S1086. No adverse testimony or comments were received.

3. The Campaign Finances and Practices Act specifies that expenditures made to support or oppose a ballot issue are expenditures to influence the result of an election and that committees supporting or opposing them are "political committees." It does not, however, specify when or by what means an issue becomes a "ballot issue," nor at what point funds used to influence it become reportable. The new rule answers both questions and picks the most reasonable and certain method of determination. Under the rule, pre-certification expenses of printing and circulating petitions (for instance) will not be "expenditures." Groups utilizing funds on hand as of the date of certification to support or oppose a ballot issue after its certification must account for them by source, with the most recently received contributions being presumed to make up the balance.

In the matter of the adoption of a proposed rule "K"	NOTICE OF ADOPTION OF A RULE, ARM 44-3.10(10)-S10185 describing the closing report for the reporting of campaign contributions and expenditures required of candidates and political committees under the Campaign Finances and Practices Act of 1975; prescribing the conditions for its filing.

1. On October 24, 1977, the Commissioner of Campaign Finances and Practices published notice of the proposed adoption of ARM rule "K" which specifies the time and conditions for the filing of a closing report of campaign contributions and expenditures by candidates and political committees, under the Campaign Finances and Practices Act of 1975 (§§23-4776 et seq., R.C.M. 1947). The notice of public hearing and the text of the rule is found on page 710 of the 1977 Montana Administrative Register, issue number 10. A public hearing on the proposed rule was held November 14, 1977.

2. The Commissioner has adopted the rule as proposed, except that the rule is hereby given the ARM code number ARM 44-3.10(10)-S10185. No adverse testimony or comments were received.

3. Section 23-4778, R.C.M. 1947, states that candidates and committees shall file a report of contributions and expenditures whenever the books are closed, but does not explain it further. The agency earlier specified, by advisory opinion, that a closing report could be filed when debts and obligations were extinguished and there was a zero balance in the campaign depository. This has proved undesirable in practice, particularly in the case of political committees which maintain an ongoing existence. The rule provides that most candidates and committees maintain a balance in their accounts. The date of the closing report may coincide with the regular post-election report, thus saving paperwork; it also provides that, for committees which wish to retain a balance and remain in existence, the date of the closing report will be the beginning of a new reporting period for purposes of the aggregation of contributions and expenditures. This policy should alleviate many of the accounting problems encountered by (for instance) local party committees. Due to the express language of §23-4778, candidates for statewide office (governor, etc) and committees organized to support a statewide candidate or issue must continue to report until a zero balance obtains.

In the matter of the amendment of rule ARM 44-3.10(6)-S1070	NOTICE OF AMENDMENT OF RULE ARM 44-3.10(6)-S1070, defining "aggregate contribution" for purposes of §23-4795, R.C.M. 1947.

1. On October 24, 1977, the Commissioner of Campaign Finances and Practices published notice of a proposed amendment to rule ARM 44-3.10(6)-S1070, which defines the term "aggregate contribution" for the purposes of §23-4795, R.C.M. The notice appeared on page 690 of the 1977 Montana Administrative Register, issue number 10. No adverse testimony or comments were received.

2. The Commissioner has amended the rule as proposed. The language of the amendment appears in the Montana Administrative Register as noted above. The rule itself appears on page 44-13 of the Montana Administrative Code.

3. The rule, as amended, eliminates the language "candidate and his or her immediate family," pursuant to 1977 amendments of §23-4795, R.C.M. 1947. Under the rule and statute as amended, a candidate will not be limited in what he can contribute or expend from his personal funds; but members of his family will be treated as "individuals" and subject to the contribution limitations contained in §23-4795(1), R.C.M. 1947. Other minor changes are made for style, grammar, and clarity.

In the matter of the amendment of rule ARM 44-3.10(6)-S1080, ARM 44-3.10(6)-S1090, and ARM 44-3.10(10)-S10300	NOTICE OF AMENDMENT OF RULES ARM 44-3.10(6)-S1080, ARM 44-3.10(6)-S1090, and ARM 44-3.10(10)-S10300; respectively defining "expenditure," "political committee," and "earmarked contribution," as those terms are used in the Campaign Practices Act and the Commissioner's rules.

1. On October 24, 1977, the Commissioner of Campaign Finances and Practices published notice of a proposed amendment to rules ARM 44-3.10(6)-S1080, ARM 44-3.10(6)-S1090, and ARM 44-3.10(10)-S10300; respectively defining "expenditure," "political committee," and "earmarked contribution," as those terms are used in the Campaign Practices Act, §§23-4776 et seq., R.C.M. 1947. The notice appeared on pages 697 and 698 of the 1977 Montana Administrative Register, issue number 10. A public hearing on the proposed amendments was held November 14, 1977.

2. The Commissioner has amended the rules as proposed. The language of the amendments appears in the Montana Administrative Register as noted above. The rules themselves appear

on pages 44-13, 44-14, and 44-24 respectively of the Administrative Rules of Montana. No adverse testimony or comments were received.

3. The amendments are largely made for style, grammar, and clarity in accordance with the Commissioner's annual review of rules. They also provide that expenses incurred in supporting or opposing an issue before it is certified are not "expenditures," as defined; that money received for such purposes is not "earmarked contributions;" and that a group involved in the circulating of petitions or similar activity before an issue is certified will not become a "political committee" by reason of such disbursements. These latter changes are intended to amend the affected rules to agree with new rule "G" (see page 705 of the 1977 Montana Administrative Register, issue number 10), which provides that an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification has been completed.

In the matter of the amendment of rule ARM 44-3.10 (10)-S10120	NOTICE OF AMENDMENT OF RULE ARM 44-3.10(10)-S10120, describing, in general, the manner of filing periodic reports pursuant to the Campaign Finances and Practices Act of 1975, as amended.

1. On October 24, 1977, the Commissioner published notice of a proposed amendment to rule ARM 44-3.10(10)-S10120, describing, in general, the manner of filing periodic reports pursuant to the Campaign Finances and Practices Act of 1975, as amended. The notice appeared on pages 699 and 700 of the 1977 Montana Administrative Register, issue number 10. A public hearing on the proposed amendment was held November 14, 1977.

2. The Commissioner has amended the rule as proposed. The language of the amendment appears in the Montana Administrative Register as noted above. The rule itself appears on page 44-16 of the Administrative Rules of Montana. No adverse testimony or comments were received.

3. The Commissioner is making this amendment under the authority of §23-4778(7), which directs that the Commissioner shall adopt rules which shall permit committees which support or oppose more than one candidate, including political party committees, to file copies of one comprehensive report. State political party committees have reported in this manner under the present version of the rule, and the Commissioner's policy of allowing multi-candidate committees (qualified under 2 U.S.C. §441(a)(4)) to do the same has been in operation for more than a year with good results. The amendment, thus, does not effect a substantial change in policy, but merely codifies

existing policy, and enables the Commissioner to give a quick and firm answer to the many questions received in this area.

In the matter of the amendment of rule ARM 44-3.10 (10)-S10130	NOTICE OF AMENDMENT OF RULE ARM 44-3.10(10)-S10130, describing the statement of organization filed by political committees and prescribing a time for its filing.

1. On October 24, 1977, the Commissioner of Campaign Finances and Practices published notice of a proposed amendment to rule ARM 44-3.10(10)-S10130, which describes the statement of candidate filed by candidates for public office and the statement of organization filed by political committees. The notice appeared on page 691 of the 1977 Montana Administrative Register, issue number 10.

2. The Commissioner has amended the rule as proposed. The language of the amendment appears in the Montana Administrative Register as noted above. The rule itself appears on page 44-17 of the Montana Administrative Code. No adverse testimony or comments were received.

3. Subsection (2) of the rule is amended because of certain definitional problems between the rule as presently written and the statute (§23-4781 [1], R.C.M. 1947). The rule, as now written, and §23-4781(1) require a political committee to file a statement of organization prior to receiving a contribution or making an expenditure; yet by statutory definition, a group does not become a "political committee" unless and until it does make an expenditure. This creates a logical contradiction. Furthermore, as the rule is currently written, it cannot practically be applied to incidental political committees, which do not receive "contributions" in the normal sense or which continually receive dues or subscriptions in the normal course of their business. It is expected that the amendment, requiring a statement within five days (analogous to the statement of a candidate) will prove more administratively feasible.

Subsection (2)(a) is amended because it is no longer applicable. The subsection was an implementing rule which was promulgated to effect the provisions of the Campaign Finances and Practices Act of 1975.

In the matter of the amendment of rule ARM 44-3.10 (10)-S10160	NOTICE OF AMENDMENT OF RULE ARM 44-3.10(10)-S10160, prescribing the schedule for the filing of reports of campaign contributions and expenditures by political committees influencing elections on more than one level.

1. On October 24, 1977, the Commissioner published notice of a proposed amendment to rule ARM 44-3.10(10)-S10160, prescribing the schedule for the filing of reports of campaign contributions and expenditures by political committees influencing elections on more than one level. The notice appeared on page 701 of the 1977 Montana Administrative Register, issue number 10. A public hearing on the proposed amendment was held November 14, 1977.

2. The Commissioner has amended the rule as proposed. The language of the amendment appears in the Montana Administrative Register as noted above. The rule itself appears on pages 44-18 and 44-19 of the Administrative Rules of Montana. No adverse testimony or comments were received.

3. The Commissioner is making this amendment because of the confusion and hardship which has resulted under our present policy. Currently, any political committee which expends funds to support or oppose a statewide candidate or ballot issue is required to report on the "statewide" schedule of §23-4778(3), R.C.M. 1947. This requires at least two extra reports in a year, and makes aggregation of total contributions and expenditures by such committees difficult because their books cannot be closed unless they show a zero balance. This is inconvenient in the case of committees having a continuing existence. The amendment will eliminate both inconveniences.

In the matter of the amendment of rule ARM 44-3.10 (10)-S10170	NOTICE OF AMENDMENT OF RULE ARM 44-3.10(10)-S10170, prescribing the requirements for the filing of periodic reports of campaign contributions and expenditures by incidental political committees.

1. On October 24, 1977, the Commissioner of Campaign Finances and Practices published notice of a proposed amendment to rule ARM 44-3.10(10)-S10170, prescribing the requirements for the filing of periodic reports of campaign contributions and expenditures by incidental political committees. The notice appeared on pages 692 and 693 of the 1977 Montana Administrative Register, issue number 10.

2. The Commissioner has amended the rule as proposed. The language of the amendment appears in the Montana Administrative Register as noted above. The rule itself appears on page 44-19 of the Administrative Rules of Montana. No adverse testimony or comments were received.

3. The amendment specifies that incidental political committees shall file periodic reports only for those periods in which they make an expenditure. The present version of the rule, which includes the word "contributions," does not apply well to incidental committees, which are typically ongoing organizations such as labor organizations, corporations, or unincorporated associations which only occasionally expend funds to influence an election, and which do not receive "contributions" in the normal sense or which continually receive dues, etc. in the normal course of their business. The amendment works no substantive change in the policy of the Commissioner, but is undertaken pursuant to the annual review of the rules mandated by §82-4204(6), R.C.M. 1947.

In the matter of the amendment of rule ARM 44-3.10 (10)-S10180	NOTICE OF AMENDMENT OF RULE ARM 44-3.10(10)-S10180, prescribing a procedure for the filing of an initial report of campaign contributions and expenditures by candidates and political committees.

1. On October 24, 1977, the Commissioner of Campaign Finances and Practices published notice of a proposed amendment to rule ARM 44-3.10 (10)-S10180, prescribing a procedure for the filing of an initial report of campaign contributions and expenditures by candidates and political committees. The notice appeared on pages 693 and 694 of the 1977 Montana Administrative Register, issue number 10.

2. The Commissioner has amended the rule as proposed. The language of the amendment appears in the Montana Administrative Register as noted above. The rule itself appears on page 44-20 of the Administrative Rules of Montana. No adverse testimony or comments were received.

3. The stricken material applied to the special situation prevailing after the passage of the Campaign Finances and Practices Act of 1975, §§23-4776 et seq., R.C.M. 1947, and provided directions for the filing of an initial report under the Act. The special situation which gave rise to subsection (2) of the rule no longer obtains. Thus the stricken material is proposed to be deleted as obsolete. The amendment is undertaken pursuant to the Commissioner's annual review of its rules mandated by §82-4204(6), R.C.M. 1947, and works no substantial change in our present policy, nor in the present reports required of candidates and political committees.

In the matter of the amendment of rule ARM 44-3.10 (10)-S10190	NOTICE OF AMENDMENT OF RULE ARM 44-3.10(10)-S10190, prescribing the closing date of books for the filing of reports of cam paign contributions and expenditures by candidates for public office and political committees.

1. On October 24, 1977, the Commissioner of Campaign Finances and Practices published notice of a proposed amendment to rule ARM 44-3.10(10)-S10190, prescibing the closing date of books for the filing of reports of campaign contributions and expenditures by candidates for public office and political committees. The notice appeared on page 702 of the 1977 Montana Administrative Register, issue number 10. A public hearing on the proposed amendment was held November 14, 1977.

2. The Commissioner has amended the rule as proposed. The language of the amendment appears in the Montana Administrative Register as noted above. The rule itself appears on pages 44-20 and 44-20.1 of the Administrative Rules of Montana. No adverse testimony or comments were received.

3. The agency makes this amendment because of the confusion which has resulted from the closing dates not being uniform for each required report and, in addition, so that many, if not most, candidates will be able to clear up all outstanding debts and obligations by the closing date for their post-election report. It is hoped that this amendment, in conjunction with new rule "K" (see page 710 of the 1977 Montana Administrative Register, issue number 10), will enable most candidates and committees to file their closing report on the same date that they are required to file their post-election report; thus, eliminating the need for later reports.

In the matter of the amendment of rule ARM 44-3.10 (10)-S10250	NOTICE OF AMENDMENT OF RULE ARM 44-3.10(10)-S10250, prescribing a uniform method for the reporting of contributions by candidates for public office and political committees.

1. On October 24, 1977, the Commissioner of Campaign Finances and Practices published notice of a proposed amendment to rule ARM 44-3.10(10)-S10250, prescribing a uniform method for the reporting of contributions by candidates for public office and political committees. The notice appeared on page 703 of the 1977 Montana Administrative Register, issue number 10. A public hearing on the proposed amendment was held November 14, 1977.

2. The Commissioner has amended the rule as proposed. The language of the amendment appears in the Montana Administrative Register as noted above. The rule itself appears on pages 44-22 and 44-22.1 of the Administrative Rules of Montana. No adverse testimony or comments were received.

3. The Commissioner makes this amendment to eliminate surplus language in the rule as now written; to incorporate the substantive language of present rule MAC 44-3.10 (10)-S10320, which has been repealed (see page 689 of the 1977 Montana Administrative Register, issue number 10); and to deal with the problems of property owned jointly by a candidate and another. A candidate is not currently limited in what he may contribute to his own campaign, but others (e.g., his spouse) are so limited under §23-4795(1). The Commissioner feels that it is not practical to attempt to limit what either the spouse or candidate may contribute in this situation (assuming, for instance, a joint bank account), but feels that it is in accord with the intent of the legislature to require that such property must have been owned jointly prior to the time that the candidate filed for office.

In the matter of the amendment of rule ARM 44-3.10 (10)-S10260	NOTICE OF AMENDMENT OF RULE ARM 44-3.10(10)-S10260, describing procedures for the reporting by candidates and political committees of in-kind contributions as campaign contributions.

1. On October 24, 1977, the Commissioner of Campaign Finances and Practices published notice of a proposed amendment to rule ARM 44-3.10(10)-S10260, describing procedures for the reporting by candidates and political committee of in-kind contributions as campaign contributions. The notice appeared on pages 694 and 695 of the 1977 Montana Administrative Register, issue number 10.

2. The Commissioner has amended the rule as proposed. The language of the amendment appears in the Montana Administrative Register as noted above. The rule itself appears on page 44-22.1 of the Administrative Rules of Montana. No adverse testimony or comments were received.

3. The rule, as amended, merely omits language which is essentially redundant. The existing rule provided, in substance, that in-kind contributions should be considered as in-kind expenditures and reported as expenditures. This procedure proved impractical and has not been required in practice; thus, the amendment works no substantive change in the Commissioner's policy. In-kind contributions will continue to be considered as expended during the relevant period.

In the matter of the amendment of rule ARM 44-3.10 (10)-S10340	NOTICE OF AMENDMENT OF RULE ARM 44-3.10(10)-S10340, prescribing a uniform method for the reporting of campaign expenditures by candidates for public office and political committees.

1. On October 24, 1977, the Commissioner of Campaign Finances and Practices published notice of a proposed amendment to rule ARM 44-3.10(10)-S10340, prescribing a uniform method for the reporting of campaign expenditures by candidates for public office and political committees. The notice appeared on pages 695 and 696 of the 1977 Montana Administrative Register, issue number 10.

2. The Commissioner has amended the rule as proposed. The language of the amendment appears in the Montana Administrative Register as noted above. The rule itself appears on page 44-25 of the Administrative Rules of Montana. No adverse testimony or comments were received.

3. The amendment is undertaken for reasons of style, grammar, and clarity, and is not intended to effect any substantive change in the present policy of the Commissioner. It merely eliminates redundant language and incorporates the substantive provision of MAC 44-3.10(10)-S10370, which is repealed (see page 689 of the 1977 Montana Administrative Register, issue number 10). The amendment is undertaken as a part of the Commissioner's annual review of rules, pursuant to §82-4204(6), R.C.M. 1947.

In the matter of the repeal of rules ARM 44-3.10(6)-S1050, ARM 44-3.10(10)-S10320, and ARM 44-3.10(10) S10370	NOTICE OF REPEAL OF RULES ARM 44-3.10(6)-S1050, prescribing special campaign reporting provisions of 1976; ARM 44-3.10(10)-S10320, providing a method of determining (for reporting purposes) the date when a contribution is received; and ARM 44-3.10(10)-S10370, prescribing a method (for campaign reporting purposes) of determining the date when an expenditure is made.

1. On October 24, 1977, the Commissioner of Campaign Finances and Practices published notice of the proposed repeal of rules ARM 44-3.10(6)-S1050, prescribing special campaign reporting provisions for 1976; ARM 44-3.10(10)-S10320, providing a method (for reporting purposes) of determining the date when a contribution is made; and ARM 44-3.10(10)-S10370, prescribing a method (for reporting purposes) of determining the

date when an expenditure is made. The notice of repeal appeared on page 689 of the 1977 Montana Administrative Register, issue number 10.

2. The Commissioner has repealed the rules as proposed, found on pages 44-11.1, 44-25, and 44-26.1 respectively, of the Administrative Rules of Montana. No adverse testimony or comments were received.

3. MAC 44-3.10(6)-S1050 is repealed because it is obsolete, dealing with the special situation prevailing immediately after the passage of the Campaign Practices Act of 1975, §§23-4776 et seq., R.C.M. 1947. The special situation no longer obtains. MAC 44-3.10(10)-S10320 is repealed because its substantive provision is incorporated in an amendment of MAC 44-3.10(10)-S10250, "CONTRIBUTIONS, REPORTING" (see page 703 of the 1977 Montana Administrative Register, issue number 10). It is thus unnecessary and surplusage. MAC 44-3.10(10)-S10370 is repealed because its substantive provision is incorporated into an amendment of MAC 44-3.10(10)-S10340, "EXPENDITURES, REPORTING" (see pages 695 and 696 of the 1977 Montana Administrative Register, issue number 10). The repeals are a result of the Commissioner's annual review of rules, mandated by §82-4204(6), R.C.M. 1947, and work no substantive change in the Commissioner's present policy.

JOHN N. HANSON, Commissioner of
Campaign Finances and Practices

Certified to the Secretary of State December 15, 1977.

12-12/23/77

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

In the matter of the amendment of rule MAR 46-2.10(18)-S11440, pertaining to medical assistance.	)	NOTICE OF THE AMENDMENT OF A RULE PERTAINING TO MEDICAL ASSISTANCE, SERVICES PROVIDED, AMOUNT, DURATION.

TO: All Interested Persons

1. On October 24, 1977, the Department of Social and Rehabilitation Services published notice of a proposed adoption of a rule concerning medical assistance, services provided, amount, and duration at page 712 of the 1977 Montana Administrative Register, Issue No. 10.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule to clarify the scope and nature of services provided by the Department in the Medicaid program.

Director, Social and Rehabilitation Services

Certified to the Secretary of State December 14, 1977.

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

In the matter of the adoption of rule MAR 46-2.10(18)-S11465, pertaining to temporary prohibition of certain provider fee increases related to medical assistance.	))))	NOTICE OF THE AMENDMENT OF A RULE PERTAINING TO MEDICAL ASSISTANCE.

TO: All Interested Persons

1. On October 24, 1977, the Department of Social and Rehabilitation Services published notice of a proposed adoption of a rule concerning temporary prohibition of certain provider fee increases related to medical assistance at page 714 of the 1977 Montana Administrative Register, Issue No. 10.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule because Montana's Medicaid program is facing an impending financial crisis which, if not averted, will seriously affect the health and safety of Montana's Medicaid recipients. If the Medicaid program does not reduce its anticipated expenditures, a severe cutback of both eligibility maximums and benefits under the Medicaid program will have to be imposed.

Director, Social and Rehabilitation Services

Certified to the Secretary of State December 14, 1977.

VOLUME 37 OPINION NO. 88

SUBDIVISION AND PLATTING ACT - Transfers of land which do not involve "divisions of land" or "subdivisions," as defined by the Montana Subdivision and Platting Act, do not require a certificate of survey or a plat before being recorded by the Clerk and Recorder.

PUBLIC OFFICERS - Transfers of land which do not involve "divisions of land" or "subdivisions," as defined by the Montana Subdivision and Platting Act, do not require a certificate of survey or a plat before being recorded by the Clerk and Recorder.

SECTION 11-3859, et seq, R.C.M. 1947.

SECTION 16-2902, R.C.M. 1947.

HELD: The transfers of land referred to in your factual situation are not "divisions of land" or "subdivisions" as defined in the Montana Subdivision and Platting Act, and need not meet the requirements of Section 11-3862(3), R.C.M. 1947 before being recorded by the Clerk and Recorder, pursuant to Section 16-2902, R.C.M. 1947.

10 November, 1977

William A. Douglas, Esq.
County Attorney
Lincoln County
Libby, Montana 59923

Dear Mr. Douglas:

You have requested my opinion as to the applicability of the Montana Subdivision and Platting Act, Sections 11-3859, et seq, R.C.M. 1947, to the following factual situation:

Certain deeds filed prior to July 1, 1973, the effective date of the Subdivision and Platting Act, now contain vague legal descriptions. The owners of record under these deeds are now selling their parcels of land as described in these deeds and are demanding that the Clerk and Recorder file the deeds without a certificate of survey or subdivision plat.

Your specific question is whether the Clerk and Recorder must file these deeds when executed subsequent to July 1, 1973 without an accompanying certificate of survey or subdivision plat. The Clerk and Recorder has a statutory duty to record all deeds, regardless of the legal description, upon payment of the proper fees. Section 16-2902, R.C.M. 1947. Therefore, the Clerk and Recorder must perform this duty unless a statutory exception exists. The controlling statute in your situation is Section 11-3862(3), R.C.M. 1947, which states:

> (3) The county clerk and recorder of any county shall not record any instrument which purports to transfer title to or possession of a parcel or tract of land which is required to be surveyed by this act unless the required certificate of survey or subdivision plat has been filed with the clerk and recorder and the instrument of transfer describes the parcel or tract by reference to the filed certificate or plat. (Emphasis supplied)

Therefore, this section of the law does not apply to any and all transfers of land subsequent to July 1, 1973, but only to those transfers of land which are required to be surveyed by the Subdivision and Platting Act. A reading of the Subdivision and Platting Act discloses that surveys are only required for "divisions of land" and "subdivisions." Section 11-3862(1) and (2), R.C.M. 1947. A "division of land" is defined in Section 11-3861(2.1), R.C.M. 1947 as follows:

> "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring, or

> contracting to transfer, title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this act. Provided that where required by this act the land upon which an improvement is situated has been subdivided in compliance with this act, 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 and is not subject to the terms of this act.

A "subdivision" is defined in Section 11-3861(1.2), R.C.M. 1947 as follows:

> "Subdivision" means a division of land, or land so divided, which creates one or more parcels, containing less than twenty (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 shall include any resubdivision; and shall further include any condominium or area, regardless of its size, which provides or will provide multiple space for recreational camping vehicles, or mobile homes. A subdivison shall comprise only those parcels less than twenty (20) acres which have been segregated from the original tract, and the plat thereof shall show all such parcels whether contiguous or not. Provided, however, condominiums constructed on land divided in compliance with this chapter are exempt from the provisions of this chapter.

It is apparent that the transfers of land to which you have referred are neither "divisions of land" nor "subdivisions" as defined by the Subdivision and Platting Act. Therefore, Section 11-3862(3), R.C.M. 1947 does not apply and the clerk and recorder cannot require a certificate of survey or a plat before recording the deeds described in your factual situation, and must adhere to Section 16-2902, R.C.M. 1947.

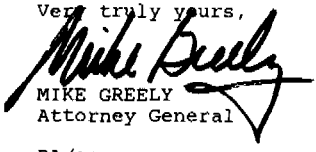
Further support for this conclusion is found in the legislative history of the Subdivision and Platting Act. Section 11-614, R.C.M. 1947, which was repealed by the Subdivision and Platting Act, had previously required a survey when transferring an irregularly shaped tract of land. However,

the requirement was not carried over into the Subdivision and Platting Act when enacted in 1973. Furthermore, an amendment to the Subdivision and Platting Act, which would have required a survey of irregularly shaped tracts of land, was offered and rejected by the 1974 Legislature.

THEREFORE, IT IS MY OPINION:

> The transfers of land referred to in your factual situation are not "divisions of land" or "subdivisions" as defined in the Montana Subdivision and Platting Act, and need not meet the requirements of Section 11-3862(3), R.C.M. 1947 before being recorded by the Clerk and Recorder, pursuant to Section 16-2902, R.C.M. 1947.

Very truly yours,



MIKE GREELY
Attorney General

RA/so

VOLUME 37 OPINION NO. 90

UNEMPLOYMENT COMPENSATION ACT - Applicability On Indian Reservations;

INDIANS - Applicability of Worker's Compensation Act On Indian Reservation;

HELD: The Montana Unemployment Compensation statutes do not apply to Indian businesses conducted within the Blackfeet Indian Reservation.

17 November 1977

John P. Moore
Glacier County Attorney
P.O. Box 997
Cut Bank, Montana 59427

Dear Mr. Moore:

You have requested my opinion on the following question:

> Are the Montana Unemployment Compensation laws applicable to businesses owned and operated by duly enrolled members of the Blackfeet Tribe within the Blackfeet Indian Reservation?

A comprehensive parallel and controlling opinion was issued earlier this year concerning the Montana Worker's Compensation Act. Volume 37, Opinions of the Attorney General, Opinion No. 28 (1977). The cases and rationale supporting my opinion that the Worker's Compensation Act does not apply to Indian businesses conducted within the Reservation apply equally to the question you present. Therefore, I will not repeat the discussion.

Subsequent to issuance of that opinion the United States Supreme Court denied certiorari in a case decided by the Montana Supreme Court involving property located on an Indian reservation. Little Horn State Bank v. Stops, Mont. ___, 555 P.2d 211 (1976), cert denied 97 S.Ct. 2198 (1977). However, even a cursory examination of the facts and holding of that case discloses its inapplicability to either the Worker's Compensation or Unemployment Compensation situation.

In Stops the Indian defendants conceded state court jurisdiction over the civil suit arising from an off-reservation business transaction, Id. at 212. The sole question was whether a state court which had jurisdication and entered a valid judgment could enforce that judgment against the defendants' property located within their reservation. Id. at 212. The court held that it could. Id. at 215. Stops thus clarified the enforcement powers of state courts having jurisdiction. It did not address the state's power to exercise jurisdiction in the first instance and consequently does not affect my earlier opinion.

THEREFORE, IT IS MY OPINION:

> The Montana Unemployment Compensation Statutes do not apply to Indian businesses conducted within the Blackfeet Indian Reservation.

Very truly yours,

MIKE GREELY
Attorney General

MG/BG/ar

VOLUME 37 OPINION NO. 91

LIVESTOCK DEALER ACT - The Livestock Dealer Act does not require the licensing of the National Farmers Organization as a dealer.
LICENSES - The Livestock Dealer Act does not require the licensing of the National Farmers Organization as a dealer.
SECTION 46-2901, et seq, R.C.M. 1947.

HELD: The provisions of the Livestock Dealer Act, Section 46-2901, et seq, R.C.M. 1947, do not require the licensing of the National Farmers Organization as a livestock dealer in order for the National Farmers Organization to lawfully act in the sale of livestock owned by its members.

18 November 1977

Robert G. Barthelmess
Chairman
Board of Livestock
Helena, Montana 59601

Dear Sir:

You have requested my opinion on the following: Do the provisions of the Livestock Dealer Act, Section 46-2901 et seq., R.C.M. 1947, require the licensing of the National Farmers Organization (NFO) as a livestock dealer in order for the NFO to lawfully act in the sale of livestock owned by NFO members?

The NFO is a non-profit corporation which assists agricultural producers in receiving adequate returns on their commodities through collective bargaining. Insofar as this technique is used in Montana for the sale of livestock, the procedure commences when a rancher signs a membership agreement with the NFO. Briefly, this agreement allows the NFO to act as the member's exclusive agent in the marketing of his commodities for a period of three years. This agreement places duties on the NFO to actively locate marketing outlets purchasing the commodities at the best possible price, and provides for an organizational structure to handle the marketing.

Secondly, the livestock of a number of NFO members are blocked together through sales contracts between the NFO and

the members. The contract requires the member to identify the number, kind, grade, weight and approximate delivery date of the livestock to be sold. Ownership of the livestock does not pass to the NFO but remains with the member. The NFO is given the power to negotiate the price paid for the livestock and other terms of sale, subject to a ratifying vote of the members involved in the sale. The agreement gives the NFO injunctive powers against the member and the right to seek specific performance in the event of a breach.

The NFO then, with knowledge of the number and quality of the livestock, attempts to locate a buyer. When a purchaser is found, the livestock are collected, and shipped directly to the purchaser. To serve the convenience of the purchaser, he writes a single check to the NFO trust fund. After authorized deductions to the NFO, the net proceeds are disbursed to each member-producer.

The Montana Livestock Dealer Act, pursuant to Section 49-2602(1), R.C.M. 1947, makes it unlawful for a person to carry on the business of a livestock dealer without a valid and effective license by the Department of Livestock. Therefore, the determinative issue is whether this activity renders the NFO a "livestock dealer," as defined by the Livestock Dealer Act.

Section 46-2901(3) and (4), R.C.M. 1947, defines "livestock dealer" as follows:

> (3) "Livestock dealer" means a person who buys livestock for his own account for purposes of resale or slaughter; or for the account of others; or for or on behalf of any dealer. The term does not include a farmer or rancher who buys or sells livestock in the ordinary course of his farming or ranching operation; and
> (4) "Meat packer" means livestock dealer in this chapter.

Consequently, four circumstances exist under which a person is considered a livestock dealer for purposes of the Livestock Dealer Act:

1) When he buys livestock for himself to be slaughtered or resold;
2) When he buys for the account of another;
3) When he buys for or on behalf of any dealer; and
4) When he is a meat packer.

It is apparent that the first essential act a person must undertake in order for the statute to be effective is to buy livestock. Except in the one sentence exempting farmers and ranchers who "buy and sell" in the ordinary course of their farm ranch operation, the terms "sell," "trade," or the like are not used. This suggests that the legislature did not intend the Act to be triggered by the act of "selling." In construing a statute this office is bound to the same principles of statutory construction used by the courts. As often stated, the office of a court is to ascertain and declare what is in terms and in substance contained therein, not to insert what has been omitted or to omit what has been inserted. Security Bank and Trust Co. v. Connors, ____ Mont. ____, 550 P.2d 1313, 33 St. Rptr. 501 (1976); State ex rel. Nawd's TV v. District Court, 168 Mont. 456, 543 P.2d 1336 (1975).

Further evidence of the legislature's intent to trigger the Livestock Dealer Act on the initial act of "buying," and not "selling," is found in the legislative history of the Act.

The Livestock Dealers' Licensing Act was passed by the 1971 Legislative Assembly to provide additional protection to livestock producers from unscrupulous or insolvent cattle buyers, by requiring all persons fitting the definition of "livestock dealer" to be bonded, maintain a sound financial condition, maintain records and permit state inspection thereof. To insure compliance with the requirements buyers must be licensed by the state, acting through the Department of Livestock. This legislation was requested by the then existing Livestock Commission, (now the Board of Livestock and the Brands-Enforcement Division of the Department of Livestock) with the support of the livestock industry. The bill, as introduced, was based upon draft legislation found in the 1970 Volume of the Council of State Governments' Suggested Legislation. This suggested draft was prepared by the U. S. Department of Agriculture at the urging of the National Association of State Department's of Agriculture, and was designed to supplement and complement the Packers and Stockyards Act of 1921, 7 USC 181, et seq.

Two differences between the suggested legislation and the bill as passed by our legislature indicates legislative intent. First, the Council on State Government's suggested legislation was entitled "Livestock Market Agency and Dealer Licensing," and contained a definition of "livestock market agency" as follows:

> The term "Livestock market agency" means any person who sells livestock for the accounts of others. (Emphasis supplied)

Our act was entitled Livestock Dealer Licensing Act, Section 9 Chapter 414 Laws of 1971. Further, neither the term "livestock market agency" nor its definition is found in the law enacted by Montana. Second, amendments were made by our legislature to the definition of a "livestock dealer" as found in the Council of State Governments' proposal to (1) expand the definition to include a person buying livestock on behalf of a dealer, and (b) to exclude the farmer or rancher who buys or sells livestock in the ordinary course of his farming or ranching operation. The law has since been amended twice, however neither of the amendments were of any significance to the present issue.

Therefore, to come within the definition of a livestock dealer, the NFO must "buy" livestock within one of the circumstances outlined in Section 46-2901(3), R.C.M. 1947. Unless the contrary is shown, words of a statute are presumed to be used in their ordinary and usual sense and with the meaning commonly attributed to them. In re Woodburn's Estate, 128 Mont. 145, 273 P.2d 391 (1954). Black's Law Dictionary, Revised Fourth Edition, defines "buy" as follows:

> To acquire the ownership of property by giving an accepted price or consideration therefor; (Emphasis supplied)

When engaging in the sale of livestock for its members, as previously described, the NFO does not buy livestock under any of the statutory circumstances, nor is it a meat packer. The NFO does not assume ownership of the members' livestock, but rather contracts to find a buyer at a favorable price. This is further evidenced by Art. X, Section 1 of the Membership Agreement, which states:

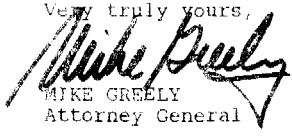
> The NFO shall not become legal owner or engage in business activities but must remain within the framework of a service organization bargaining for its members who have signed marketing contracts. (Emphasis supplied).

Consequently, the NFO is not a livestock dealer within the contemplation of the Livestock Dealers Act.

THEREFORE, IT IS MY OPINION:

The provisions of the Livestock Dealer Act, Section 46-2901, et seq., R.C.M. 1947, do not require the licensing of the National Farmers Organization as a livestock dealer in order for the National Farmers Organization to lawfully act in the sale of livestock owned by its members

Very truly yours,



MIKE GREELY
Attorney General

RA/so

VOLUME 37 OPINION NO. 92

PRISONS - Western Interstate Corrections Compact, Indian Tribes, Contracts For Custody And Care of Prisoners;
INDIANS - Western Interstate Corrections Compact, Contracts For Custody And Care of Prisoners;
SECTIONS - 95-2308 through 95-2312, R.C.M. 1947

HELD: The Department of Institutions has authority to contract with an Indian tribe which is a member of the Western Interstate Corrections Compact for the custody, care, and maintenance of adult Indian prisoners.

21 November 1977

Mr. Lawrence M. Zanto, Director
Department of Institutions
Helena, Montana 59601

Dear Mr. Zanto:

You have requested my opinion on the following question:

> Does the Department of Institutions have authority to contract with an Indian tribe which is a member of the Western Interstate Corrections Compact for the custody, care and maintenance of adult Indian prisoners?

The Cheyenne River Sioux Tribe in South Dakota has developed the Swift Bird Project, an arm of the tribal government, intended to function as a rehabilitation center for adult, male Indians. The object of the project is to contract with state prison authorities to send Indian felons under state sentences to participate in a rehabilitation program administered by Indians according to traditional values.

The tribe proposes to become a party to the Western Interstate Corrections Compact, Sections 95-2308 through 95-2312, R.C.M. 1947. The purpose of the Compact is to provide "programs of sufficiently high quality for the confinement, treatment and rehabilitation of various types of offenders" through common action of the member states. The Compact allows one state to send prisoners to a facility in another state when desirable in order to provide adequate quarters, care, rehabilitation or treatment. This is accomplished by contract between the sending state and the receiving state.

While the Compact defines "state" as one of the United States, or Guam, it also specifically mandates that it be "liberally construed." Further, Section 95-2309 broadly provides:

> Any court or state agency having power to commit or transfer an inmate...to any institution for confinement may commit or transfer such inmate to any institution outside this state if this state has entered into a contract or contracts for the confinement of inmates in said institution pursuant to Section 95-2308, subsection 3 of the Western Interstate Corrections Compact.

Section 95-2310 mandates the courts, departments, agencies and officers of this State to enforce the Compact and to do "all things appropriate to the effectuation of its purposes and intent...."

A narrow reading of the Compact would frustrate its purpose of providing individualized treatment of prisoners, and would undermine the important service offered by the Swift Bird Project. The board remedial purposes of the Compact mandate a broad construction of its provisions. I have previously held that the State may contract with Indian tribes to promote outdoor recreation opportunities (Vol.37, Opinion 21, Opinions of the Attorney General), and convict rehabilitation presents an even more compelling case for state-tribal cooperation.

This construction of the Compact is in harmony with the legislative intent evident in Montana's correctional statutes. Section 80-1419 empowers the Department to contract with Indian tribes for residential and educational services for Indian children. Section 80-1907 empowers the Department to contract with"the federal government, other states, or the commissioners of counties" for the confinement of inmates when state facilities are inadequate. Indian tribal justice systems furlough program, Section 95-2217, et seq.

The obvious intent of these statutes and the Compact, construed together, is to empower the Department to provide the best treatment, rehabilitation and custody possible for prisoners on an individualized basis. It is clearly recognized that these conditions can oftentimes be met only by sending the inmate to a correctional institution out of state. In many instances Indian prisoners may require

specialized treatment which is not available in Montana. We are fortunate to have an innovative project such as Swift Bird with which to cooperate in the rehabilitation of Indian prisoners.

THEREFORE, IT IS MY OPINION:

> The Department of Institutions has authority to contract with an Indian tribe which is a member of the Western Interstate Corrections Compact for the custody, care, and maintenance of adult Indian prisoners.

Very truly yours,

MIKE GREELY
Attorney General

MG/AC/ar

VOLUME 37 OPINION NO. 93

SCHOOLS - Transportation of Pupils;
SCHOOL BUSES - Duty to Display Flashing Lights When Stopped on Highway;

HELD: Senate Bill 332, Chapter 244, Montana Session Laws of 1977, does not alter Section 32-2197, R.C.M. 1947, and red lights on school buses need not be activated when a bus is stopped to load or unload students inside the corporate limits of a city or town. However, it is appropriate to maintain flashing amber lights on such vehicle while stopped to load or unload children as a warning to motorists in the interest of safety.

22 November 1977

Terry F. Brown
Pupil Transportation Safety Consultant
Office of Public Instruction
State Capitol
Helena, Montana 59601

Dear Mr. Brown:

You have requested my opinion on the following question:

> Does passage of Senate Bill 322 by the 1977 Montana Legislature mean that school bus drivers may no longer use flashing red lights when loading or unloading school children within the corporate limits of a Montana city or town.

The Section of Montana law dealt with in Senate Bill 322 was Section 32-2191(b), R.C.M. 1947. Before amendment the section said:

> ...Amber flashing lights shall be actuated by the driver approximately one hundred and fifty (150) feet in cities, and approximately five hundred (500) feet in other areas before the bus is stopped to receive or discharge school children. Red lights shall be actuated by the driver of said school bus whenever such vehicle is stopped on the highway for the purpose of receiving or discharging school children.

The change made by Senate Bill 322 is a minor one. The section now reads:

> ...Amber flashing lights shall be actuated by the driver approximately 500 feet before the bus is stopped to receive or discharge school children on the highway. Red lights shall be actuated by the driver of said school bus whenever such vehicle is stopped on the highway for the purpose of receiving or discharging school children.

The only change made in Section 32-2191(b) by Senate Bill 322 is the removal of that portion which called for amber lights to be "actuated by the driver approximately 150 feet in cities." Brief testimony at a hearing on this matter before the House Highway and Transportation Committee on March 3, 1977, indicates the language was stricken to eliminate a conflict with subsection (a) of the same law.

Subsection (a) of the same section says:

> (a) The driver of a vehicle upon a highway outside the corporate limits of any city or town upon meeting or overtaking from either direction any school bus which has stopped on the highway for the purpose of receiving or discharging any school children shall stop the vehicle before reaching such school bus when there is in operation on said bus a visual flashing red signal....

An inherent conflict in the statute existed prior to the amendment, since subsection (a) confined the duty of an approaching driver to stop at areas outside the corporate limits of any city or town while subsection (b) made provisions for the bus drivers to use red warning lights within cities and towns. While subsection (b) allowed warning lights inside city limits, subsection (a) made it clear that drivers of approaching automobiles within the limits of incorporated cities and towns were not required to obey such signals.

Additionally common sense dictates such a reading of the statute since on heavily traveled streets in many of the state's larger cities traffic from both directions would be halted when school buses were stopped with red lights flashing causing tremendous traffic control problems.

It appears that while drivers may not activate the red lights and certainly drivers of approaching vehicles need not obey such lights inside city limits there is nothing which prevents drivers of school buses from maintaining activated amber lights while stopped inside city limits as a warning to other motorists in the interest of safety of the school children involved.

THEREFORE, IT IS MY OPINION:

Senate Bill 322, Chapter 244, Montana Session Laws of 1977, does not alter Section 32-2197,R.C.M. 1947, and red lights on school buses need not be activated when a bus is stopped to load or unload students inside the corporate limits of a city or town. However, it is appropriate to maintain flashing amber lights on such vehicle while stopped to load or unload children as a warning to motorists in the interest of safety.

Very truly yours,

MIKE GREELY
Attorney General

MG/JMA/ar

VOLUME 37 OPINION NO. 94

AFTERCARE - Hearings, procedures;
DEPARTMENT OF INSTITUTIONS - Aftercare hearings;
JUVENILES - Aftercare hearings;
YOUTH COURT ACT - Application to aftercare hearings;
ATTORNEY GENERAL - Opinion when question decided by district court;
SECTIONS 10-1211, 10-1214, 10-1214(1), 10-1214(2), 80-1414.1, 80-1414.1(6), 80-1416;
MAC SECTIONS 20-2.2(2) - P 240(5), 20-2.2(2) - P 240(1).

HELD: 1. The factors listed in Section 10-1214(2) which provide the circumstances under which a youth may be detained in adult facilities are to be read conjunctively.

2. The department through its aftercare counselors determines that detention is required. A youth may be detained by the department only when detention or care is required to protect the person or property of the youth or others or he may abscond or be removed from the community. The department, however, may not order pre-hearing detention in a jail or other adult facility. A youth may not be detained in these facilities unless the youth court orders such detention as provided in Section 10-1214(2).

15 December 1977

Robert L. Deschamps, III
Missoula County Attorney
Missoula, Montana 59801

Dear Mr. Deschamps:

You have requested my opinion on the following questions pertaining to aftercare procedures:

1. Is detention which occurs on a weekend or holiday counted in determining Section 80-1414.1(6)'s prohibition of detention longer than 72 hours pending a hearing on an alleged aftercare agreement violation?

2. Are the factors listed in Section 10-1214(2) which provide the circumstances under which a youth may be detained in adult facilities to be read conjunctively or disjunctively?

3. Who determines that pre-hearing detention is warranted based on criteria in Section 80-1414.1(6)?

Two titles of the Revised Codes of Montana (1947) must be examined in answering your questions. The Youth Court Act, Sections 10-1201 to 1252 governs the initial disposition of youths alleged to be delinquent, in need of care, or who have committed crimes. Transfer of legal custody of a delinquent youth to the department of institutions is permissible disposition under the Youth Court Act. Section 10-1210(4)(d); Section 10-1222(1)(d). A youth thereafter placed in a state juvenile facility may be released by the department upon signing an aftercare agreement. The release arrangement is similar to parole in that violation of the agreement may be a grounds for returning the youth to the juvenile facility. The department's authority to release the youth, and the provisions governing hearings on alleged violations of aftercare agreements are in Sections 80-1414 to 1419. The Youth Court Act, however, is also relevant because Section 80.1414.1(6) states that the "[p]rocedures for taking into custody and detention of a youth charged with violation of his aftercare agreement shall be as provided in sections 10-1211, and 10-1214, R.C.M. 1947...."

Section 80-1414.1(6) provides in part that "detention pending a hearing on alleged violations may not be for longer than 72 hours unless the time is extended, not to exceed 5 additional days, by the youth court upon stipulation of the youth or the youth's counsel and the state." The Department of Institutions has determined that weekends and holidays do not count, applying Rule 6(a) of the Montana Rules of Civil Procedure [MAC, §20-2.2(2) - P 240(5)]:

> In computing any period of time...
>
> [W]hen the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

The Department based this rule on a youth court decision holding that Rule 6(a) governs computation of the 72 hour

period. In the Matter of _____, a Youth, Order and Opinion dated March 15, 1976, Youth Court of the Fifteenth Judicial District, Roosevelt County, District Judge Alfred B. Coate, presiding. Therefore, your first question is not properly the subject of an Attorney General's opinion. See Section 82-401(6), R.C.M. 1947.

Your second question concerns shelter and detention facilities. Section 80-1414.1(6) provides that Sections 10-1211 and 1214 govern custody and detention procedures. Section 10-1214(1) lists several permissible shelter arrangements. Section 10-1214(2) provides that "[t]he youth may be detained in a jail or other facility for the detention of adults only if: the facilities in subsection (1) are not available or do not provide adequate security; the detention is in an area physically and visually separate and removed from those of adults; it appears to the satisfaction of the court that public safety and protection reasonably require detention; and the court so orders." You question whether these factors are to be read conjunctively or disjunctively. It is a rule of statutory construction that when the legislature uses the word "and," it intends that all requirements must be met. Sutherland, 1A Statutory Construction §21.14 (1972). Cf. State ex rel. Normile v. Cooney, 100 Mont. 391, 398-399, 47 P.2d 637 (1935). It is therefore my opinion that these factors are to be read conjunctively and that a youth may not be detained in adult facilities unless the youth court so orders after finding that the listed criteria are met.

Apparently, some confusion existed about whether Section 10-1214(2), which requires a youth court order prior to detention in adult facilities, should be read literally within the context of aftercare pre-hearing detention. Section 80-1414.1(6) simply provided that the procedures for detention of a youth charged with violation of his aftercare agreement was governed by Section 10-1214. Because the youth court was not specifically mentioned by Section 80-1414, and aftercare violations are within the jurisdiction of the department, the youth court's role was unclear. The legislature's intention to involve the youth court in aftercare detention procedures, however, was clarified by its 1977 amendment to Section 80-1414.1. The amendment left unaffected the 72 hour pre-hearing detention limitation but permits the hearing time to be extended "by the youth court upon stipulation of the youth or the youth's counsel and the state." (Emphasis added). Section 80-1414.1(6), R.C.M. 1947. Therefore, Section 10-1214(2)

should be read literally, and neither the department nor the aftercare hearing referree has the power to determine that a youth shall be detained in a jail or other adult facility pending hearing on an alleged aftercare agreement violation.

Your last question concerns detention determinations. Section 80-1414.1(6) lists two situations justifying detention pending hearing on an alleged aftercare hearing violation:

> ...a youth may not be detained except when his detention or care is required to protect the person or property of the youth or of others; or he may abscond or be removed from the community in which the alleged violation occured.

Section 80-1414.1(6) states that "procedures for taking into custody and detention of youth charged with violation of his aftercare agreement shall be as provided in Sections 10-1211, and 10-1214, R.C.M. 1947...." Your question arises because neither Section 80-1414.1 nor Sections 10-1211 or 10-1214 address the question of who is authorized to determine that pre-hearing detention is warranted, i.e. who determines that the two factors listed in Section 80-1414.1(6) are met. Section 10-1211 is solely concerned with taking a youth into custody (arrest in the adult context) as opposed to any extended care in a restricting facility pending hearing. See Section 10-1203(19). Section 10-1214 specifies permissible places of detention, but does not speak to the initial question of whether detention is authorized.

The factor most indicative of the legislature's intention is its parallel treatment of this type of detention determination under the Youth Court Act. Section 10-1209(4)(c) requires the probation officer in investigating an alleged delinquent youth to "determine, if the youth is in detention or shelter care, whether such detention or shelter care should be continued based upon criteria set forth in 10-1212 [detention is required to protect the person or property of the youth or others; he may abscond; additional criteria not found in the aftercare law, cf. Section 10-1212 and 80-1414.1(6)]. The determination is therefore an administrative rather than a judicial one. In the context of aftercare release, control of the youth is vested in the department of institutions, Section 80-1415, whose aftercare counselors are the administrative counterparts of probation officers under the Youth Court Act. See MAC, Section 20-

2.2(2) - P220. Therefore, it is the department of institutions through its aftercare counselors which determines that detention is warranted based on the criteria set forth in Section 80-1414.1(6).

However, Section 10-1214(2) limits the department's detention powers. A youth may not be detained in a jail or other adult detention facility absent an order by the youth court, as discussed previously.

THEREFORE, IT IS MY OPINION:

1. The factors listed in Section 10-1214(2) which provide the circumstances under which a youth may be detained in adult facilities are to be read conjunctively.

2. The department through its aftercare counselors determines that detention is required. A youth may be detained by the department only when detention or care is required to protect the person or property of the youth or others or he may abscond or be removed from the community. The department, however, may not order pre-hearing detention in a jail or other adult facility. A youth may not be detained in these facilities unless the youth court orders such detention as provided in Section 10-1214(2).

Very truly yours,

MIKE GREELY
Attorney General

BG/so

VOLUME NO. 37 Opinion No. 95

STATE EMPLOYEES - State Attorneys Subject To State Classification And Pay Plan;
ATTORNEYS - When Subject To The State Classification And Pay Plan;
ATTORNEY GENERAL - Supervision of State Attorneys; Section 59-904, R.C.M. 1947.

HELD: Recent exemptions to the state classification and pay plan do not apply to attorneys employed by state agencies who are commissioned as special assistant attorneys general, unless those attorneys are under the immediate supervision or control of the Attorney General.

5 December 1977

Jack Crosser, Director
Department of Administration
Mitchell Building
Helena, Montana 59601

Dear Mr Crosser:

You have requested my opinion regarding the following question:

> Which attorneys employed by the state are exempt from the state classification and pay plan by virtue of the recent amendments to Section 59-904, R.C.M. 1947?

Section 59-904, R.C.M. 1947, as amended by Chapter 488, Laws 1977, provides in pertinent part:

> Officers and Employees Excepted From Provisions of Act. This act does not apply to the following positions in state government: ... (10) Legal services staff and the special assistant attorneys general under the direct control of the Attorney General.

The statute exempts certain state employees from the provisions of the state classification and compensation plan. Clearly, the language of the section is intended to exempt all employees of the Legal Services Division within the

Department of Justice, including assistant attorneys general. The question is, however, who are the special assistant attorneys general under the direct control of the Attorney General?

Article VI, Section 4(4), Montana Constitution provides:

> "The attorney general is the legal officer of the state and shall have the duties and powers provided by law."

The Attorney General is the chief legal officer of this state. State ex rel. Olsen v. Public Service Commission, 129 Mont. 106, 283 P.2d 584; Woodahl v. State Highway Commission, 155 Mont. 32, 465 P.2d 818. In addition, Section 82-401(1) specifies that he has the duty to prosecute or defend all causes to which the state, or any officer thereof, is a party, as well as the authority to intervene in all suits or proceedings which are of concern to the state or the general public. See Woodahl v. Board of Natural Resources, 163 Mont. 193, 516 P.2d 383. Nonetheless, the Supreme Court in Woodahl v. Highway Commission, supra, held that the governor, with his executive powers under the Constitution, coupled with the legislative authorization in Section 82-1301(5) and the legislative authority granted the State Highway Commission, had the power to employ legal counsel.

While that opinion was specifically limited to the precise issue before the Court, it has become the practice, especially since Woodahl v. Board of Natural Resources, supra, that certain agencies employ their own counsel. The Attorney General upon notification issues the agency attorney a commission as special assistant attorney general for the purposes of handling the legal affairs of that particular department. Those special assistants are required to appraise and inform the Attorney General of matters in litigation and other significant legal developments. However, these special assistant attorneys general are not under the direct control of the Attorney General. Consequently, those attorneys so employed are subject to the state classification and pay plan.

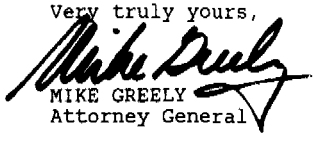
It is a well-established rule of statutory construction that the intent of the legislature must be determined from the plain meaning of the words used. Keller v. Smith, 33 St. Rep. 828, 553 P.2d 1002; Dunphy v. Anaconda Co., 151 Mont. 76, 438 P.2d 66, and cases cited therein. Consequently, in

interpreting the language of the statute, the only attorneys commissioned as special assistant attorneys general exempt from the state classification and pay plan are those directly employed or immediately supervised by the Attorney General. Those attorneys employed by the State who are not immediately responsible to the Attorney General for their employment or supervision are not exempt from state classification and pay plan.

THEREFORE, IT IS MY OPINION:

Recent exemptions to the state classification and pay plan do not apply to attorneys employed by state agencies who are commissioned as special assistant attorneys general, unless those attorneys are under the immediate supervision or control of the Attorney General.

Very truly yours,



MIKE GREELY
Attorney General

MG/McG/ar

VOLUME 37 OPINION NO. 96

HOLIDAYS - Public employees;
HOLIDAYS - "School holidays" and "legal holidays;"
HOLIDAYS - Nonteaching school employees as public employees;
SECTIONS 19-107, 59-1007, 59-1009 and 75-7406, R.C.M. 1947.

HELD: Nonteaching school district employees are public employees and thus entitled to the legal holidays enumerated in Section 19-107, R.C.M. 1947, just as are all other public employees. They are not entitled to the school holidays enumerated in Section 75-7406, R.C.M. 1947.

6 December 1977

David E. Fuller
Commissioner
Department of Labor and Industry
1331 Helena Avenue
Helena, Montana 59601

Dear Mr. Fuller:

You have requested my opinion concerning whether nonteaching school employees are to be given days off on the legal holidays enumerated in Section 19-107, R.C.M. 1947, for public employees or whether they are to be given days off on the school holidays defined in Section 75-7406, R.C.M. 1947.

Holidays to which nonteaching school district employees are entitled present an apparent conflict between "legal holidays," defined in Section 19-107, R.C.M. 1947, and "school holidays" defined in Section 75-7406, R.C.M. 1947, which must be resolved.

Section 75-7406 defines "school holidays" as those enumerated days on which "pupil instruction and pupil instruction related days" shall not be conducted. "Pupil instruction days" defined in Section 75-7405, R.C.M. 1947 include those days on which teachers are attending state teachers conventions, parent-teacher conference days, etc. All of the sections in that chapter were enacted at the same time in Sections 365 to 371 of Chapter 5, Laws of Montana, 1971. The Legislature intended only to deal with school teachers since nonteaching school employees do not attend state teachers conventions nor participate in parent-teacher

conferences. Had the Legislature intended to include non-teaching employees within this Chapter they could have specifically provided for them.

It is signficant that Section 59-1007, R.C.M. 1947 which exempts certain employees from the normal vacation and holiday provisions for state employees only exempts "elected state, county or city officials or schoolteachers." (Emphasis supplied). Bitney v. School District No. 44 et al, _____ Mont. _____, 535 P.2d 1273 (1975) discusses this section but does not affect this opinion. Bitney, supra, dealt with a school superintendent and the question of whether he was a "teacher." In that instance a contract between Bitney and the school district enumerated that he was qualified to teach in the school district and he was allowed certain other benefits allowed other "teachers" in the district. This is not the case with nonteaching school district employees. It is apparent that school teachers and only school teachers were exempted from these provisions because the Legislature was aware that they had certain periods off during the school year which no one else enjoyed. The fact that nonteaching employees were not exempted indicates the Legislature did not intend to exempt them. In this regard the Montana Supreme Court has said, in Softich v. Baker, _____ Mont. _____, _____ P.2d _____, 33 St. Rep. 1111 (1976) that:

> In determining the meaning of a statute, the intent of the legislature is controlling. Section 93-401-16, R.C.M. 1947. Such intent shall first be determined from the plain meaning of the words used, if possible, and if the intent can be so determined the courts may not go further and apply any other means of interpretation. Citations omitted.

The Court has held in Helena Valley Irrigation District v. State Highway Commission, 150 Mont. 192, 433 P.2d 791 (1967) that the "express mention of one matter in a statute excludes other similar matters not mentioned."

Section 59-1009 employs the language, "Any employee of the State of Montana, or any county or city thereof...." This language is found continually in statutes governing state employees and is always interpreted broadly. In the most recent case construing this language, Teamsters v. Cascade County School District No. 1, 162 Mont. 277, 511 P.2d 339, the teamsters working for a school district claimed certain

annual leave under a section of the same chapter, i.e. Section 59-1001, R.C.M. 1947. The Court held the non-teaching employees were employees of a state agency and covered by the statute. This ruling controls the entire chapter. See also Opinion 35, Vol. 36, Opinions of the Attorney General.

Where the Legislature has chosen to exclude school teachers from statutory coverage it has done so expressly. Other employees of a school district are governed by the laws relating to vacations and holidays for state employees. State employees have a right to legal holidays off with pay and when required to work on those days must be given additional compensation.

Nonteaching school district employees are public employees, as the Court has said, and since public employees are entitled to the legal holidays enumerated in Section 59-1009, R.C.M. 1947, then nonteaching school employees are entitled to the same "legal holidays" as other public employees. It is obvious that they are not entitled to "school holidays" in addition to the regular "legal holidays."

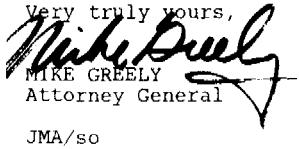
This opinion is intended to clarify apparent ambiguity in Opinion No. 105, Vol. 36, Opinions of the Attorney General. That opinion concerning this specific question is hereby overruled.

Since the middle of a school term is in progress and school districts have formulated contracts for the year based on the previous Attorney General's opinion this opinion cannot take effect until the 1978-79 school year.

THEREFORE, IT IS MY OPINION:

> Nonteaching school district employees are public employees and thus entitled to the legal holidays enumerated in Section 19-107, R.C.M. 1947 just as are all other public employees. They are not entitled to the school holidays enumerated in Section 75-7406, R.C.M. 1947.

Very truly yours,



MIKE GREELY
Attorney General

JMA/so

VOLUME NO. 37 OPINION NO. 97

SCHOOL DISTRICTS AND TRUSTEES - Voter approval unnecessary for lease of school buildings for less than three years; SCHOOL SITE SELECTION - Voter approval unnecessary for lease of school buildings for less than three years. SECTIONS 75-6602, 75-8203, 75-8209, R.C.M. 1947.

HELD: Pursuant to Section 75-8209, R.C.M. 1947, school district trustees may lease a mobile building for a term of three years or less, to be used as a school, and may relocate that building on land already owned by the district without securing voter approval of either the building lease or the site selection. Since no site selection is required in such case, any site selection election actually held does not bind the trustees or prevent them from locating a leased school building on district owned sites rejected by the voters.

6 December 1977

Robert J. Funk
Garfield County Attorney
Jordon, Montana 59337

Dear Mr. Funk:

You have requested my opinion concerning whether the trustees of an elementary school district located in Garfield County must hold a school site selection election pursuant to Section 75-8203, R.C.M. 1947, as a prerequisite to opening a new school.

In your letter of request and subsequent communications, you have provided the following facts. The trustees plan to open a new elementary school and have complied, or will comply, with Section 75-6602, R.C.M. 1947, which sets forth requirements for opening schools. The school building will be a mobile unit leased for three years or less and paid for with funds already budgeted for that purpose. The trustees propose to locate the building on one of two parcels already owned by the district and have already conducted a site selection election at which both sites were submitted to

district voters for approval or rejection. At that election voters were also permitted to vote for or against a third proposition that there be "no new school." The voters, by substantial majorities, voted against both of the two sites and in favor of the "no new school" proposition.

Your specific question is whether the trustees may proceed with the opening of the new school, and if so, whether they may locate the school on either of the sites rejected by district voters.

Section 75-8203, R.C.M. 1947, provides in relevant part:

> Selection of school sites, approval election, and lease of state lands. The trustees of any district shall have the authority to select the sites for school buildings or for other school purposes but such selection shall first be approved by the qualified electors of the district before any contract for the purpose of such site is entered into by the trustees, except the trustees shall have the authority to purchase or otherwise acquire property contiguous to an existing site that is in use for school purposes without a site approval election. Furthermore, the trustees may take an option on a site prior to the site approval election.
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> * * *

The provision is ambiguous in that it is unclear whether it requires an election to be held when trustees propose to locate a new school on land already owned by the district.

Arguably the Section applies only to site selections which involve the purchase of land. However, that ambiguity need not be resolved for the purposes of the present opinion since Section 75-8203 is inapplicable to leases of buildings and lands. Separate provision for leasing has been made in Section 75-8209, R.C.M. 1947, as recently amended by Section 2 of Chapter 424, Laws of 1977. That provision states:

> Authorization to lease buildings or land for school purposes. The trustees of any district may lease buildings or land suitable for school purposes when it is within the best interests of the district to lease such building or land from the county, municipality, another district, or any person. The lease may be for a term of not more than 3 years unless prior approval

> of the qualified electors of the district is obtained in the manner prescribed by law for school elections, in which case the lease may be for a term of not more than 99 years. Whenever the lease is for a period of time that is longer than the current school fiscal year, the lease requirements for the succeeding school fiscal years shall be an obligation of the final budgets for such years.

Section 75-8209 expressly authorizes the leasing of both buildings and land for "school purposes." The term "school purposes" is self-explanatory, comprehending the use of leased buildings as schools. Any lease for longer than three years requires prior approval of district voters and conversely no election is necessary for any lease of three years or less.

There is no tension between Section 75-8209 and Section 75-8203. Both provisions were originally enacted as part of Chapter 5, Laws of 1971. "A fundamental rule of construction is that, if possible, effect shall be given to all parts of a statute. And each part of a statute must be given a reasonable construction which will enable it to be harmonized with other provisions, and give it vitality and make operative all of its provisions." State Board of Equalization v. Cole, 122 Mont. 9, 20, 195 P.2d 989 (1948) (citations ommitted). The two sections are consistent with one another. The plain purpose of Section 75-8203 is to require voter approval of permanent buildings and sites. Section 75-8209 requires similar approval in cases of long term leases. In either situation the effect of the site selection is a long term one, not easily changed. In contrast short term leasing under Section 75-8209 gives district trustees flexibility to meet the district's short-term needs.

In the present case only the building will be leased as the land is owned by the district. Since the district may lease land on a three year or less basis without an election and locate a building thereon, it follows that it may locate such building on land already owned by the district. In either case the duration of the site selection is delimited by the duration of the building lease.

Under Sections 75-6602 and 75-8209 the trustees are vested with discretionary powers concerning the opening, leasing

and siting of school buildings for terms of three years or less. That discretion cannot be delegated to the voters. "Powers involving the exercise of judgment and discretion are in the nature of public trusts and cannot be delegated * * *" Dickey v. Board of Commissioners, 121 Mont. 223, 226, 191 P.2d 315 (1948) and see also State ex rel. Nelson v. Timmons, 57 Mont. 602, 608, 189 P. 871 (1920). Therefore, the election held by the trustees must be treated as "advisory," and is not binding upon the trustees.

THEREFORE, IT IS MY OPINION:

> Pursuant to Section 75-8209, R.C.M. 1947, school district trustees may lease a mobile building for a term of three years or less, to be used as a school, and may locate that building on land already owned by the district without securing voter approval of either the building lease or the site selection. Since no site selection is required in such case, any site selection election actually held does not bind the trustees or prevent them from locating a leased school building on district owned sites rejected by the voters.

Very truly yours,

MIKE GREELY
Attorney General

MG/MMcC/br

VOLUME 37 OPINION NO. 98

SCHOOL DISTRICTS - Special education, state funding;
SCHOOL DISTRICTS - Special education, services for institutionalized children;
EDUCATION - Special education, school districts, state funding;
EDUCATION - Special education, school districts, services for institutionalized children;
SECTIONS 38-1327, 71-1905, 71-1907, 71-2001, 71-2002, 71-2401, 71-2402, 71-2403, 75-6302, 75-6313, 75-6314, 75-6315, 75-6901 et seq., 75-7802 et seq., 83-303, R.C.M. 1947.

HELD: 1. A school district may not establish a special education policy wholly independent of state funding.

2. The special education program established by the Boulder School District is not required to serve children in the Boulder River School and Hospital or residents who are in group homes within the district at its own expense but may do so cooperatively or by contract.

8 December 1977

Mrs. Georgia Rice
Superintendent of Public Instruction
State Capitol
Helena, Montana 59601

Dear Mrs. Rice:

You have requested my opinion on the following questions:

1. May a school district establish a special education program without requesting state funds?

2. If School District No. 7 in Boulder establishes a special education program, must that program serve children in the Boulder River School and Hospital or in group homes within the district who are ex-residents of the Boulder River School and Hospital?

I.

All school districts are required, after September 1, 1977, to establish special education programs (Section 75-7805, R.C.M. 1947) in compliance with guidelines adopted by the Board of Public Education upon recommendation of the Superintendent of Public Instruction (Section 75-7802, R.C.M. 1947).

The establishment of special education programs is initially governed by Section 75-7811, which provides:

> The determination of the children requiring special education and the type of special education needed by these children shall be the responsibility of the trustees, and such determination shall be made in compliance with the procedures estabished in the rules of the superintendent of public instruction. Whenever the trustees of any district intend to establish a special education class or program, they shall apply for approval and funding of the class or program by the superintendent of public instruction.

This section places upon the district trustees the initial burden of determining the need for special education programs, in compliance with rules adopted by the Superintendent of Public Instruction. No program may be operated without approval of the Superintendent. Chapter 539 of the 1977 Session Laws added the language in the second and last sentences of Section 75-7811 which provide that the district "shall apply for approval and funding" and that the program must be approved annually "to be funded as part of the maximum-budget-without-a-vote for special education." (Emphasis added). The addition of these references to funding show prima facie a legislative intent that special education programs must be included as part of the ordinary district budgeting and financing procedures.

A district's maximum budget without a vote is generally determined by the costs allowed by Section 75-6905. The first 80% of that budget is called the "foundation program," and is jointly financed by the county equalization fund (mainly county property tax) and state equalization aid. The remaining 20% of the maximum budget without a vote, or the "permissive levy" is funded jointly by the district mill levy and the state. Any expenditures in excess of the

maximum budget must be funded by a district levy approved by the voters. The maximum budget for special education is separately determined and then added to the district's regular program budget to arrive at a total maximum budget without a vote.

Subsections (20),(21), and (22) of Section 75-6905 provide the general guidelines for establishing that portion of a district's maximum budget without a vote to be allocated to special education. Subsection (20)(c) provides in part:

> The total amount of allowable costs that are approved for the special education budget shall not, under any condition, be less than the maximum-budget-without-a-vote amount for one regular ANB for each special full-time pupil in the school district (Emphasis added).

In other words, the district's per-pupil budget for full-time special education pupils may not be approved by the Superintendent unless it is equal to or greater than the district's per-pupil budget in regular programs. The clear implication of this provision for the present question is that a district must submit a special education budget meeting this minumum for the approval and funding as previously described.

Further limitation upon the district's latitude in budgeting and funding special education is found in Section 75-7813.1, the allowable cost schedule for special education programs. These allowable costs constitute the components of the district's maximum budget for special education pursuant to Section 75-6905. While some of these costs simply "may not exceed" specified limits (See, e.g., Subsection (a)(i)), other costs must be included on a full or prorated basis. See Rules MAC 48-2.18(30)-S18500 and S18510.

The mandate for state, county and district funding for special education is evident in Chapter 69 of Title 75, governing state equalization aid to public schools. Section 75-6901 requires that the state "shall aid in the support of its several school districts" based upon their financial need. The general fund budget of the district "shall be financed" by the state-county foundation program revenues. Section 75-6906 similarly requires that the foundation program "shall be financed" by state and county funds. Section 75-6917 requires that state equalization aid:

> shall be distributed and apportioned to provide an annual minimum operating revenue for the elementary and high schools in each county....(Emphasis supplied).

Section 75-6919 requires that state equalization aid "shall be apportioned" to the school districts. These provisions clearly show a strong state policy toward providing each school district with a level of state funding which will insure the quality and stability of the district's educational programs, including special education. This policy, along with the specific language of Section 75-7811 and the budgetary treatment of special education which have been previously discussed, inescapably lead to the conclusion that a district may not conduct a special education program based solely upon its own financial resources.

II.

Your second question asks whether a special education program established by the Boulder School District must serve children in the Boulder River School and Hospital, or in group homes in Boulder. Section 75-7805 broadly provides that "the board of trustees of every school district must provide or establish and maintain a special education program for every handicapped person...." That same Section further provides that, to the "maximum extent appropriate," children in public institutions must be "educated with children who are not handicapped."

The implication in Section 75-7805 that institutionalized children are entitled to enjoy local school district programs where appropriate is further reflected in other statutes. Section 38-1327 provides that a mental health facility treating children must make special provisions for "[o]pportunities for publicly supported education suitable to the educational needs of the patient." Section 75-7810 provides that when a child in a state supported institution, at the recommendation of institution officials, "attends classes conducted by a school within a local district," then the district or county wherein the child's parents reside "shall pay tuition to the district or county operating the school...." Lastly, Section 75-7806(4) provides that when an agency has responsibility for a handicapped person between the ages of 21 and 25 for whom appropriate services cannot be provided, then the agency may contract with the local school district to provide those services.

Title 71 contains a number of provisions dealing with services for "developmentally disabled" persons who may receive a variety of "protective services" from the Department of Social and Rehabilitative Services (SRS) (Section 71-1905). SRS has responsibility for direct provision of needed services including "education and training" (Section 71-1905), but can arrange with other "persons or agencies" to cooperatively provide services without charge. If this cannot be arranged, SRS may purchase these services (Section 71-1907).

Section 71-2001, et. seq., establishes "community homes" as an "alternative to existing state institutions." Counties and school districts are "authorized" to provide facilities and services "at their own expense," but they are not required to do so. (Section 71-2002). The Developmental Disabilities Act, Section 71-2401, et seq charges SRS with the duty of implementing "community centered" services including "education services" (Section 71-2401) in cooperation with local agencies. (Section 71-2403). These services may be provided directly by the state or by contract or cooperative arrangement with local government units.

None of the statutes discussed above provides a definitive answer to the present question. The special education statutes first discussed imply a right of children to enjoy public education programs where it is appropriate or necessary for them to do so. No clear obligation exists, however, for a school district to provide special education services on demand at their own expense for institutional or group home children. On the other hand, the developmental disability statutes place a burden upon the state to provide necessary services, and allow, but do not require local districts to cooperate in providing those services.

Therefore, a consideration of general school attendance statutes is helpful. Section 75-6302 requires trustees to admit any child to a school in a district when the child, is inter alia, a "resident of the district...." That section further provides:

> The trustees of any district shall have the authority to assign and admit any nonresident child to a school in the district under the tuition provisions of this Title.

Sections 75-6313, 75-6314, and 75-6315 govern the obligation of a school district to pay the tuition of a child attending

school in another district. Section 75-6315 specifically refers to Section 83-303 to determine the residence of a child for school attendance. That section generally establishes the residence of a minor unmarried child as that of his parents.

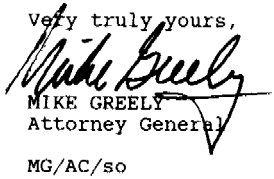
With this as a background, the special education statutes must be read to require a district to provide services at the district's expense only for those children who are resident in that district. Thus, when Section 75-7806 requires establishment of a special education program if there are sufficient numbers of handicapped children "in the district" to justify the program, it means children who are legally resident in the district. While handicapped children have statutory rights to public education opportunities, as discussed above, it would be unreasonable to require the Boulder School District to include all children in the state institution when budgeting for special education. The numbers of institutional or group home children requiring public special education programs would obviously vary from time to time, which would make planning difficult for the district. If institutional or group home children in the district need public special education services, it is the responsibility of the state to work cooperatively with the local district to furnish those services in the best interests of the children involved. This can be done, as reflected in the statutes, by cooperation, contract or other arrangement with the local district.

THEREFORE, IT IS MY OPINION

1. A school district may not establish a special education policy wholly independent of state funding.

2. The special education program established by the Boulder School District is not required to serve children in the Boulder River School and Hospital or residents who are in group homes within the district at its own expense but may do so cooperatively or by contract.

Very truly yours,



MIKE GREELY
Attorney General

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