MONTANA ADMINISTRATIVE REGISTER

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PAGES 379-607

9-9/23/77

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 9

TABLE OF CONTENTS

NOTICE SECTION

RULE SECTION

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the Matter of the Department of Agriculture Adopting NEW Rules for the Rural Development Unit of the Department of Agriculture for the Administrative Rules of Montana.) NOTICE OF PROPOSED ADOPTION of NEW rules for Chapter 28, Rural Development Unit. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons

1. On October 24, 1977, the Department of Agriculture proposes to adopt rules for Chapter 28, Rural **Development** Unit to comply with the Revised Codes of Montana as amended in the Forty-Fifth Legislative Session, House Bill 246.

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

4-2.28(1)-S2810 ASSETS (1) Rural Development loans through the Montana Department of Agriculture will be made from the assets of the former Montana Rural Rehabilitation Corporation. Whereas it is agreed that the word "assets" as used herein includes the basic assets and the income, proceeds and acquisitions there from.

4-2.28(1)-S2820 USAGE (1) The assets may be used for the purpose of aiding in the development of sub-standard income rural families and individuals who live in the state of Montana. Applicants must be unable to provide the needed funds themselves, and unable to acquire them from other sources at reasonable rates and terms. Proposals may be accomplished directly or indirectly from assistance provided from the Rural Development Unit's assets. A loan commmittee shall be maintained within the Department of Agriculture, to evaluate and act upon proposals received.

4-2.28(2)-S2830 OBJECTIVES (1) The primary objective of the Junior Agriculture Loan Program (livestock, agri-business) is to further encourage Montana's rural youth to enter into worthwhile agricultural projects, preserve interest in Montana's agricultural future, provide financing experience and training through personal involvement and accomplishments, improve quality and quantity of Montana agricultural products to reflect greater profits to efficient producers, and allow implementation of additional facilities for production, marketing, processing, and distribution of all agricultural products.

4-2.28(2)-S2840 QUALIFICATIONS (1) Application must be made to the Montana Department of Agriculture. All pertinent forms relating to a project must accompany the application before committee action will be considered.

(2) Each applicant must provide evidence and/or sign

a written statement that they are unable to acquire the needed funds from another source at reasonable rates or terms.

(3) Active membership in the Future Farmers of America, 4-H, Future Homemakers of America or other recognized rural youth organization is required. F.F.A. or F.H.A. members must be in good standing and may not have exceeded three years beyond high school graduation. Active 4-H members are eligible between the ages of nine and twenty-one. Prospective club members must reach their birthday during the 4-H club year. Parents or guardians must be willing to cooperate with the borrower and have ample facilities available for implementation of the project.

(4) Montana Department of Agriculture may make direct loans, if the prospective borrower is unable to obtain a loan as described above from within the community in which they are living.

(5) A three member loan committee must be established in the local community from which an application is received. This committee should be composed of any three of the following: vocational agriculture instructors, county extension agents, home demonstration agents, and others. Other may include agriculture representatives from the following lending institutions: Production Credit Association, Federal Land Bank, Farmers Home Administration, Commercial Banks, or other individuals as approved by the Department. This committee is established to pass upon the eligibility of applicants for loans and to make recommendations concerning the making and servicing of the loan proposal.

4-2.28(2)-S2850 CLOSING REQUIREMENTS (1) A joint bank account must be established at the time the loan funds are disbursed. The applicants cash investment must be deposited in conjunction with the Department of Agriculture's loan check. The project supervisor, or another member of the local loan committee shall be designated to counter-sign checks drawn on this account by the borrower.

(2) All livestock presently owned and those purchased by the borrower must be listed on the Security Agreement provided by the Department. The Department of Agriculture must have one completed and signed copy of the Security Agreement in its loan file.

(3) One signed copy of the Department's Promissory Note must be returned to the Department and included in the loan file.

(4) The borrower is required to file a Financial Statement, as provided by the Department, with the county clerk and recorder's office. Any fee required for filing must be paid by the borrower.

(5) When the Department of Agriculture is taking a lien

on the borrower's registered brand, the borrower must pay the required filing fee to the Montana Department of Livestock.

(a) at such time as the loan is paid in full, the borrower shall pay any fees necessary to release all related liens.

(b) all livestock shall be identified by the borrowers registered brand, or other markings as approved by the Department of Agriculture.

(c) all livestock must be retained by adequate fences, and not allowed to run at large.

(d) all mortgaged property must be kept on the borrowers property, and/or property described within the lease agreement.

(6) The Department may require insurance coverage on all mortgaged property, resulting production, or off-spring.

(7) All mortgaged property to be sold by the borrower, must be sold in the borrowers and the Montana Department of Agriculture's names. Sale receipts shall then be released in accordance with the Loan Agreement.

(8) The borrower shall allow representatives of the Department of Agriculture and the project supervisor to inspect the loan project and facilities upon request. The borrower shall handle the project to the best of his/her ability, and cooperate with the project supervisor's and the Montana Department of Agriculture's recommended practices and procedures.

4-2.28(2)-S2860 LIMITATIONS (1) Interest rates as established by the Director of the Montana Department of Agriculture on July 1 of each year shall not exceed the reasonable market rate per annum. The established interest rate at the onset of a loan shall remain uneffected for the duration of that loan contract.

(2) No loan shall exceed $5,000 for any one individual borrower or $10,000 for any chapter or club. Loans may be re-negotiated providing the borrower does not exceed the maximum loan limits at any time.

(a) several members of a rural family may obtain loans, with each member being eligible for the individual maximum.

(b) chapter or club loans will be allowed only if they do not exceed 30% of the available funds.

(c) priority will be given to individual applicants over club or chapter applications.

(3) Applicants may borrow up to 90% of the total funds required for the proposed project.

(4) Repayment schedules may vary, but must not exceed five years for individuals and ten years for clubs and chapters.

(5) The Department of Agriculture may immediately terminate a loan agreement if the applicant ceases to be a member of a farm youth organization, or is unable to fulfill the terms of the loan agreement. In the event that any mortgaged

property is sold during the program loan period without prior approval by the department the balance of the loan may be immediately due and payable.

4-2.28(6)-S2870 OBJECTIVES (1) Student loans are made to assist members of sub-standard income rural families in financing their formal education at colleges, universities, vocational, and technical schools of higher education. Loans are underwritten, insured or guaranteed by the Federal Department of Health, Education and Welfare. Loan funds must be utilized within the State of Montana, except in such cases where the course of study desired is not offered at a school in Montana.

4-2.28(6)-S2880 LENDER QUALIFICATION (1) Applicants are responsible for accuracy and truthfulness in submitting information for the federally insured student loan program.

(a) all loan funds are to be used only for educational expenses.

(b) repayment schedules must be maintained as originated by the department and the borrower.

(c) any changes in student status, mailing address, phone number, etc. must be reported to the Department of Agriculture.

4-2.28(6)-S2890 ELIGIBILITY (1) Applicants must be attending an eligible institution, or have been accepted for enrollment. Students must carry no less than one half the normal full time workload, as determined by the institution.

(2) Applicants must be a citizen of the United States or be in the United States for more than a temporary purpose with intentions of becoming a permanent citizen.

(3) Applicants who submit an application without completing the income statement may be eligible for a loan, but will not be eligible for federal interest benefits.

(4) The maximum adjusted gross income allowed to remain eligible shall be in **accordance** with the federal standards.

4-2.28(6)-S28000 REQUIREMENTS (1) Each applicant must complete the Federally Insured Student Loan Application as requireed by the U.S. Office of Education and the Montana Department of Agriculture's Student Loan Application. All forms shall be filled out completely and correctly.

(2) Personal interviews are required of all applicants by the department. Applicants are responsible for making arrangements for personal interviews with the authorized loan representative for the department.

(3) Applicants must allow a minimum of six weeks for loan processing.

(a) applicants must have the institution they plan to attend complete the appropriate sections of the application prior to submitting the application to the department.

(b) upon approval by the Department of Agriculture, applications will be submitted to the Office of Education for insurance endorsement.

4-2.28(6)-S28010 DISBURSEMENTS (1) Loan funds are disbursed from the department through the educational institution on a quarterly/semester basis. Before disbursements are made, promisory note and letter of responsibility must be signed by the applicant and returned to the department.

4-2.28(6)-S28020 LIMITATIONS (1) No applicant may receive an excess of $2,500 for an academic year, or more than $7,500 for an undergraduate degree. Graduate students are eligible for up to $5,000 per academic year, but in no case may their total indebtedness exceed $15,000 through this program.

(2) Loan repayment schedules will be established for not less than five years, or more than ten years. A minimum annual payment (interest and principle) of $360 may supersede the five year rule.

(3) All loans shall bear an effective interest rate as established through the Office of Education. Interest benefits are paid for the student, by the Office of Education, until the students repayment period begins.

(4) Borrowers are allowed a nine month grace period, from the date they terminate their education, before the repayment schedule begins. Borrowers must make arrangements to establish their repayment schedule three months prior to the end of the grace period.

4-2.28(10)-S29030 OBJECTIVE (1) Participation loans are made to sub-standard income rural individuals to assist them in securing funds for operating expenses and real estate purchases. The Rural Development Unit may participate in farm and ranch real estate and operating loans with the Farmers Home Administration. Interest rates shall be established each July by the Director of Agriculture, but in no case shall it exceed the reasonable market rate.

4-2.28(10)-S28040 OPERATING REQUIREMENTS (1) Participation of operating loans shall give the Department of Agriculture a first lien position on all collateral listed on the Subordination Agreement.

(a) operating loans will be for a one year maximum time frame.

(b) operating loans may be made for $15,000 or 60% of the value of the mortgaged property, whichever is less.

(c) insurance may be required on subordinated property at the discretion of the Department of Agriculture.

4-2.28(10)-S28050 REAL ESTATE REQUIREMENTS (1) The

Department of Agriculture shall hold the first mortgage position on all real estate participation loans.

(a) real estate loans will be made upon availability of funds, but in no case shall the term exceed a twenty (20) year repayment schedule.

(b) title insurance and fire insurance must be carried on the mortgaged real estate, with the Montana Department of Agriculture listed as the first lien holder.

3. The reason for the adoption of the above new rules is to set guidelines and requirements for the loan programs in the Rural Development Unit, thus enabling the public the opportunity to be advised of the availability of funds, the purpose of the loans, who may apply and how to obtain the necessary forms.

4. Interested persons may submit their data, views, or arguments concerning the proposed adoption to Mr. W. Gordon McOmber, Director, Montana Department of Agriculture, 1300 Cedar Street, Airport Way - Building West, Helena, Montana 59601.

5. If a person directly affected wishes to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a public hearing and submit their request along with any written comments to Mr. W. Gordon McOmber before October 21, 1977.

6. If the Department receives requests for a public hearing on the proposed rules 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. You will be notified of a public hearing.

7. The authority of the Department to adopt the NEW rules is based on House Bill 246 of the Forty-Fifth Legislative Session, signed on March 14, 1977 and made effective July 1, 1977.

W. Gordon McOmber

W. GORDON McOMBER, DIRECTOR

Certified to the Secretary of State, September 14, 1977.

BEFORE THE WHEAT RESEARCH AND
MARKETING COMMITTEE
OF THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the Matter of the Committee Amending a rule in Chapter 42 of the Department rules.	)))))	NOTICE OF PROPOSED AMENDMENT of ARM Rule 4-3.42(2)-P4200 for Clarification purposes. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons

1. On October 24, 1977, the Wheat Research and Marketing Committee proposes to amend rule 4-3.42(2)-P4200 of Chapter 42 for up-dating and clarification purposes.

2. The proposed amendment would make the following changes in the present rule.

4-3.42(2)-P4200 PROCEDURAL RULES (1) ~~The Wheat Research and Marketing Council/Committee herein adopts the Model Procedural Rules with the exceptions, modifications and additions thereto, which ever is applicable as set out in Chapter 2 of this title.~~ The Committee herein adopts and incorporates the Attorney Generals Model Rules as stated in ARM 1-1.6(2)-P640 through ARM 1-1.6(2)-S6320, with any applicable deletions, modifications and changes as set forth in Title 3.

3. The rationale for this rule change is to better clarify the language and set the Chapter in better format to comply with the Administrative Procedures Act.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment to Mr. Robert Brastrup, Administrator, Montana Wheat Research and Marketing Committee, P.O. Box 3024, Great Falls, Montana 59403.

5. 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. Robert Brastrup before October 21, 1977.

6. If the Committee receives requests for a public hearing on the proposed amendment 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. You will be notified of a public hearing.

7. The authority of the Committee to amend these rules is based on Section 3-2909, R.C.M. 1947.

Dana Fitzgerald

DANA FITZGERALD, CHAIRMAN

by: Ellen R. Faddy

Certified to the Secretary of State, September 14, 1977.

BEFORE THE WHEAT RESEARCH AND
MARKETING COMMITTEE
OF THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the Matter of the Committee) Adopting NEW ARM Rules for) 42nd Chapter of the Department) of Agriculture Rules and) Regulations.)	NOTICE OF PROPOSED ADOPTION OF NEW rules for Chapter 42, Sub-Chapter 2, Public Participation Rules. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons

1. On October 24, 1977 the Wheat Research and Marketing Committee proposes to adopt rules for Public Participation under Sub-Chapter 2 of Chapter 42 to comply with the Montana Administrative Procedures Act.

2. The proposed NEW rules would be as follows:

4-3.42(2)-P4210 POLICIES AND OBJECTIVES (1) Public participation is to be allowed to the fullest extent practicable and consistent with the other requirements of state law and the rights and requirements of personal privacy. Greater responsiveness of committee actions to public concerns and priorities and help to better the understanding of programs and committee actions.

4-3.42(2)-P4220 GUIDELINES (1) Covering guidelines of the committee programs that could allow for public participation but may vary in relation to resources available, public response, and the nature of the issues involved. Some of the areas that this rule will pertain to are:

(a) informational materials - The Committee shall provide and make assessable all available policy, programs and/or technical information to enable interested or affected parties to make informed and constructive contributions toward committee decisions. News releases and other publications may be used for this purpose as well as informational discussions and meetings with interested citizen's groups. Special efforts shall be made to summarize complex technical materials for public and media use.

(b) assistance to the public - The Committee will have a procedure for providing technical and informational assistance to public groups for citizen education, committee workshop training, dissemination of information to concerned groups and individuals. Requests for such information shall be promptly handled.

(c) consultation - The Committee shall have a procedure for early consultation and exchange of views with interested persons and organizations on development or revision of plans.

(d) notification - The Committee shall maintain a

current list of interested persons and organizations including anyone who has requested inclusion on such a list for the distribution of information such as that listed in paragraph (a) of this rule. The Committee shall in addition notify any interested persons of any public hearing. Further, internal procedures for receiving and ensuring proper consideration of evidence and information submitted by citizens will be developed.

(e) other measures - The listing of specific means in this section shall not preclude additional techniques for obtaining, encouraging, or assisting public participation.

4-3.42(2)-P4230 AWARDING OF CONTRACTS (1) This allows for citizens to have the opportunity for involvement in the awarding of contracts and this shall be provided by observing the laws regarding awarding contracts by public agencies. These laws require that any significant contracts be submitted to bid and public notice is through the invitation to bid.

4-3.42(2)-P4240 COMMITTEE LIAISON (1) In addition to all other requirements the Committee and the Administrator shall continue to maintain liaison with citizen organizations active in areas concerning committee responsibilities. This liaison will be on formal and informal basis through participation in their meetings and in their organizations.

3. The rationale for these rules is based on the section of law regarding Citizen Participation, Section 82-4228, R.C.M. 1947. The Committee's contact with the general public is so direct that it was felt that these rules would explain certain areas that the public would be able to have in-put in.

4. Interested persons may submit their data, views, or arguments concerning the proposed adoption of NEW rules to Mr. Robert Brastrup, Administrator, Montana Wheat Research and Marketing Committee, P.O. Box 3024, Great Falls, Montana 59403.

5. 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. Robert Brastrup before October 21, 1977.

6. If the Committee receives requests for a public hearing on the proposed adoption 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. You will be notified of a public hearing.

7. The authority of the Committee to adopt these rules is based on Section 3-2909, R.C.M. 1947.

Dana Fitzgerald

DANA FITZGERALD, CHAIRMAN

by: Ellen A. Feaver

Certified to the Secretary of State, September 14, 1977.

BEFORE THE WHEAT RESEARCH AND
MARKETING COMMITTEE
OF THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the Matter of the Committee Adopting NEW rules for the Committee's functions and operations to comply with the Montana Administrative Procedures Act.	))))))	NOTICE OF PROPOSED ADOPTION of NEW rules Under Sub-Chapter 6 & 10 of the 42nd Chapter of the Montana Department of Agriculture NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons

1. On October 24, 1977, the Wheat Research and Marketing Committee proposes to adopt rules for Chapter 42 under Sub-Chapter 6 and 10.

2. The proposed rules are as follows:

Sub-Chapter 6

4-3.42(6)-S4260 APPLICATION FOR GRANTS (1) Grant applications for project funding shall be filed with the Committee on or before the first regular meeting of the Committee held during March of each year. Filing requirements will be satisfied by receipt of the original and nine (9) copies of each application at the Office of the Committee.

4-3.42(6)-S4270 REVIEW AND EVALUATION (1) All applications shall be reviewed and evaluated for project type, funding requested, market need for the project, and whether the project is new or on-going.

4-3.42(6)-S4280 COMMITTEE DETERMINATION (1) At the first meeting of the Committee held annually during March the projects to be funded for the following fiscal period are selected and the amount of grant funding will be determined. Decisions will be based on project priorities set by the Committee for the fiscal period after review and evaluation.

4-3.42(6)-S4290 NOTIFICATION OF AWARDS (1) Grant applicants shall be notified within thirty (30) days after the Committee's March meeting whether or not, their application(s) have been granted. Applicant shall also be notified the amount to be funded for each approved project.

4-3.42(6)-S42000 PERFORMANCE EVALUATION (1) The Committee shall periodically evaluate all outstanding grant agreements for adequate and satisfactory financial control, accounting, and performance by grantee.

4-3.42(6)-S42010 MODIFICATION OR TERMINATION OF GRANTS (1) The Committee may modify or terminate the funding of any grant if a determination is made that the grantee has not complied or cannot comply with a provision of the grant agreement. The Committee shall notify the grantee in writing within thirty (30) days of such determination, the reasons for the determination, and the effective date of the modification or termination.

Sub-Chapter 10

4-3.42(10)-S42020 WHEAT AND BARLEY ASSESSMENT AND REFUNDS (1) Application for assessment refund shall be in writing on forms provided by the Committee.

(a) forms will be furnished upon application to the Wheat Research and Marketing Committee, P.O. Box 3024, Great Falls, Montana 59403.

(b) written application for refund of the wheat or barley assessments must be submitted by the first seller of the wheat or barley or by an individual with the first seller's power of attorney.

(c) refund application forms shall be submitted subsequent to thirty (30) days from the date of first sale and no later than ninety (90) days from the date of the first sale of wheat or barley for which a refund application is filed.

4-3.42(10)-S42030 REQUIREMENTS FOR REPORTS (1) All monthly Grain Merchandiser Report Forms shall be sent out from the Department of Agriculture with an enclosed envelope addressed to the department and these reports shall be completed and returned to the department after being properly signed and sworn to each and every month. These reports shall be filed with the department within twenty (20) days after the close of the business for the month in which the report is being filed. Additional sections of this form may be used to comply with Section 3-227, R.C.M. 1947.

(2) Requests for past due reports shall be handled in the following manner:

(a) first notice shall be a form letter from the Wheat Research and Marketing Division requesting submission of past due reports within ten (10) days of the date of the letter.

(b) second notice shall be a telephone call giving five (5) additional days to submit the past due reports.

(c) third and final notice shall be a visit from a Department of Agriculture inspector to collect the past due reports.

(d) any person failing to produce the past due reports shall be guilty of a misdemeanor and shall be subject to a fine of not less than $25 or more than $500 upon conviction.

4-3.42(10)-S42040 AUDITING OF ALL REPORTS FOR ERRORS (1) Auditing of all reports for errors in bushels of wheat or hundred weights of barley, amount of assessment paid, failure to make payment of assessment on all first purchases of wheat or barley, lack of signature, or lack of notary seal will be handled in the following manner:

(a) a telephone call shall be made to the purchaser to try to correct the error.

(b) a corrected report shall be requested if the error cannot be corrected over the telephone.

(c) a visit by the Department of Agriculture inspector shall be made if the error cannot be corrected over the telephone and if a corrected report cannot be obtained.

(d) any person failing to comply with the request for the corrections will be guilty of a misdemeanor and shall be subject to a fine of not less than $25 or more than $500 upon conviction.

3. The rationale for adopting these NEW rules is to establish guidelines in which the committee may make the public aware of the types of grants available through the Wheat Research and Marketing Committee and how to proceed with an application if a person, firm or organization is interested. Also among this reasoning is the need to establish procedures in which the committee will operate regarding the required reports on wheat and barley. These rules are necessary to the enforcement of various laws of the State of Montana.

4. Interested persons may submit their data, views, or arguments concerning the proposed adoption to Mr. Robert Brastrup, Administrator, Montana Wheat Research and Marketing Committee, P.O. Box 3024, Great Falls, Montana 59403.

5. 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. Robert Brastrup before October 21, 1977.

6. If the Committee receives requests for a public hearing on the proposed rules 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. You will be notified of a public hearing.

7. The authority of the Committee to adopt these rules is based on Section 3-2909, R.C.M. 1947.

Dana Fitzgerald
DANA FITZGERALD, CHAIRMAN

Certified to Secretary of State September 14, 1977.

BEFORE THE DEPARTMENT OF BUSINESS REGULATION
STATE OF MONTANA
MILK CONTROL DIVISION

In the Matter of the Adoption of Rule 8-2.12(6)-S1230, Levying Additional Producer Assessments to Fund a Raw Milk Testing Program and the Amendment of Rule 8-2.12(1)-S1200 Providing for Distributor Collection of Assessments	))))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULE 8-2.12(6)-S1230 (Additional Producer Assessment) and 8-2.12(1)-S1200 (Transactions Involving the Purchase and Resale of Milk within the State)

The notice of proposed adoption of Rule 8-2.12(6)-S1230 published in the Montana Administrative Register on July 25, 1977 (MAC Notice No. 8-2-28), is hereby amended because of a request for a public hearing by the required number of persons designated therein, to read:

1. On November 2, 1977, at 10:00 o'clock a.m., a public hearing will be held in the Capitol Club Room of the Colonial Motor Hotel and Convention Center, 2301 Colonial Drive, Helena, Montana, to consider the adoption of Rule 8-2.12(6)-S1230, levying additional producer assessments to fund a raw milk testing program, and Rule 8-2.12(1)-S1200, providing for collection of assessments by distributors.

2. The proposed new rule would provide as follows:

"8-2.12(6)-S1230 Additional Producer Assessment - For the purpose of securing the necessary funds to conduct a program of testing raw milk, as required by Section 27-430, R.C.M. 1947, an assessment is hereby levied on licensed producers in the amount of two cents ($0.02) per hundredweight on the total volume of all milk subject to the Milk Control Act sold by a producer."

3. Rule 8-2.12(1)-S1200 as proposed to be amended is as follows:

"(3) As an aid to the efficient collection of license fees and assessments, each distributor who purchases milk from producers shall deduct from payments due such producers any license fees and administrative assessments due the Department from such producers. ~~R.C.M. 1947, 27-409,~~ Sections 27-409 and 27-430, R.C.M. 1947, as amended, and shall transmit such fees and assessments to the Department at the time required by law together with a statement of individual producer assessment payments. Assessments under Section 27-430, R.C.M. 1947, shall be separately transmitted and separately accounted on the statements of individual producer assessment payments."

4. The assessment established by the proposed Rule 8-2.12(6)-S1230 results from the enactment of Section 27-430, R.C.M. 1947, by the 45th Legislature (Section 1, Chapter 245, Laws of Montana 1977). The amount of two cents ($0.02) per hundredweight is the figure calculated by the Department to

produce sufficient revenue to fund the program. The amendment to Section 8-2.12(1)-S1200 provides for a method of collection consistent with that already employed for existing producer assessments.

5. Projected budget data demonstrating the necessity for the assessment is available for inspection during regular business hours at the Department of Business Regulation, 805 North Main Street, Helena, Montana 59601. Copies of documents containing this projected budget data are available and may be requested by writing to the Department at the address given above prior to the hearing.

6. Interested persons may submit their data, views or arguments concerning the proposed rule in writing to Kent Kleinkopf, Director, or Ken Kelly, Administrator of the Milk Control Division, Department of Business Regulation, 805 North Main Street, Helena, Montana 59601.

7. James H. McFarland, Esquire, 1721 Eleventh Avenue, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

8. The authority of the Department to adopt the proposed rule and to amend the existing rule is based on Sections 27-413 and 27-430, R.C.M. 1947.

Kent Kleinkopf

Kent Kleinkopf, Director
Department of Business Regulation

By: K. M. Kelly

K. M. Kelly, Administrator
Milk Control Division

Certified to the Secretary of State on August 29, 1977.

BEFORE THE DEPARTMENT OF BUSINESS REGULATION
OF THE STATE OF MONTANA
WEIGHTS AND MEASURES DIVISION

In the Matter of the Readoption of Rule 8-2.10(6)-S1050 and the Amended Readoption of Rule 8-2.10(6)-S1060 Relating to Sampling and Standards for Petroleum Products	))))	NOTICE OF PROPOSED READOPTION AND AMENDMENT OF RULES (Petroleum Products) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On November 1, 1977, the Department of Business Regulation proposes to readopt Rules 8-2.10(6)-S1050 and 8-2.10(6)-S1060 with an amendment to the latter rule, relating to required octane ratings.

2. The proposed readoption of Rule 8-2.10(6)-S1050 would produce no change in the text of that rule as it now appears in the Montana Administrative Code. The proposed amendment to Rule 8-2.10(6)-S1060 would amend footnote c. of Table 1 as follows:

"c. The minimum Antiknock (Octane) Rating Number shall be: ~~86 for regular gasoline and 92 for premium gasoline.~~ 87 for leaded regular gasoline; 85 for unleaded regular gasoline; 91 for leaded premium gasoline; and, 89 for unleaded premium gasoline. The Antiknock Rating Number is one half the sum of Research Octane Number (RON) and Motor Octane Number (MON): (RON + MON) /2. In addition the minimum Motor Octane Number must be ~~82~~ 80."

3. The readoption of these two rules is necessitated by the recently passed Chapter Number 77, Montana Session Laws 1977. That law repealed the statutes giving the Department authority to adopt the rules. That same enactment provided new authority for the adoption of rules, and the existing rules are proposed to be readopted with the noted amendment of Rule 8-2.10(6)-S1060.

The amendments to the permissible octane ratings are designed to respond to the need for varying ratings for unleaded gasoline.

4. Interested parties may submit their data, views or arguments concerning the proposed readoption and amendment in writing to Kent Kleinkopf, Director, Department of Business Regulation, 805 North Main, Helena, Montana 59601. Written comments, in order to be considered, must be received by not later than November 1, 1977.

5. If a person directly affected wishes to express his data, 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 Kent Kleinkopf on or before November 1, 1977.

6. If the Department receives request for a public hearing on the proposed readoption and amendment from more

than ten percent, or 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.

7. The authority of the Department to effect the readoption and amendment of the rules is based on Section 60-235, R.C.M. 1947.

KENT KLEINKOPF, DIRECTOR
DEPARTMENT OF BUSINESS REGULATION

Certified to the Secretary of State September 12, 1977.

Notice No. 8-2-32

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

In the matter of the Amendment of Rule 12-2.26(1)-S2670 Relating to Criteria for Recreation and Park System	))))	NOTICE OF AMENDMENT OF RULE 12-2.26(1)-S2670 NO PUBLIC HEARING CONTEMPLATED

TO ALL INTERESTED PERSONS:

1. On the 27th day of October , 1977, the Department of Fish and Game proposed to amend Rule 12-2.26(1)-S2670 as follows (additions underlined, deletions interlined):

12-2.26(1)-S2670 CRITERIA FOR RECREATION AND PARK SYSTEM

~~(1)--The conglomerate lands administered by the Recreation and Parks Division of the Montana Department of Fish and Game are designated by various terms---state parks, recreation areas, archeological sites, monuments, fishing access sites, etc.--lack of specific criteria for assignment area classifications has produced many inconsistencies in designation.~~

(1) To provide for the orderly and efficient administration of existing components and future acquisitions, classification criteria ~~should be~~ have been established describing the purposes and physical characteristics of the various categories. Such criteria ~~will~~ determines appropriate development and management procedures. They ~~will also be~~ are used as standards for acquisition, designation, and redesignation of park system components and as guides to funding.

(2) The following are categories, criteria, and procedures ~~are suggested~~ for all existing and future areas administered under the parks system:

(a) through (d) same.

(e) State Recreation Roads and Trails

~~(i)--Although no units within these categories have yet been designated, the addition of such units to the state park system is projected.--The Department of Fish and Game believes that the scenic and cultural attributes of certain Montana roads and trails are of high recreational value and warrant formal protection against uncontrolled use and development.~~

~~(ii) Preparation of criteria for state recreational roads and trails is in progress, along with other plans for this potentially valuable expansion of the state park system.~~

(i) Purpose: To control the use and development of certain Montana roads and trails whose scenic and cultural attributes are of high recreational value warranting formal protection.

(ii) Description: Roads or trails along or through high quality recreational resources where recreational opportunities are dispersed. The roads or trails may be under the control of a private person or other governmental agency or subdivision if there is no conflict in uses, such as a highway with relatively little traffic.

(iii) Development and Management. Basic user conveniences, informational signing, and access to adjacent recreational opportunities may be appropriately located along the road or trail. Natural environment and aesthetic qualities should be cautiously protected in designation of state recreation roads and trails.

(f) same.

2. The proposed amendment modifies Rule 12-2.26(1)-S2670 found on page 12-82 of the Montana Administrative Code.

3. 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 25th day of October, 1977.

4. 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 25th day of October, 1977.

5. 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.

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

7. The authority of the Department of Fish and Game to make the proposed rule is based upon Section 26-104.9, R.C.M. 1947.

8. The rationale for this amendment is as follows: When this rule was initially adopted, the development of criteria for recreation and park system components was incomplete. The proposed amendment reflects subsequent development of criteria.

Dated this 14thday of Sept. , 1977.

Robert F. Wambach, Director
Department of Fish and Game

BY: Orville W. Lewis
Associate Director

(i) Purpose: To control the use and development of certain Montana roads and trails whose scenic and cultural attributes are of high recreational value warranting formal protection.

(ii) Description: Roads or trails along or through high quality recreational resources where recreational opportunities are dispersed. The roads or trails may be under the control of a private person or other governmental agency or subdivision if there is no conflict in uses, such as a highway with relatively little traffic.

(iii) Development and Management. Basic user conveniences, informational signing, and access to adjacent recreational opportunities may be appropriately located along the road or trail. Natural environment and aesthetic qualities should be cautiously protected in designation of state recreation roads and trails.

(f) same.

2. The proposed amendment modifies Rule 12-2.26(1)-S2670 found on page 12-82 of the Montana Administrative Code.

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5. 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.

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Dated this 14thday of Sept. , 1977.

Robert F. Wambach, Director
Department of Fish and Game

BY: Orville W. Lewis
Associate Director

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

In the matter of the Amendment of Rule 12-2.2(6)-P260 Relating to List of Department Decision Making	))))	NOTICE OF AMENDMENT OF RULE 12-2.2(6)-P260 NO PUBLIC HEARING CONTEMPLATED

TO ALL INTERESTED PERSONS:

1. On the 27th day of October, 1977, the Department of Fish and Game proposes to amend Rule 12-2.2(6)-P260 as follows (additions underlined, deletions interlined):

12-2.2(6)-P260 LIST OF DEPARTMENT DECISION MAKING

(1) The following is a nonexhaustive list of department decisions thought to be of significant interest to the public:

~~(1)~~(a) same.
~~(2)~~(b) same.
~~(3)~~(c) same.
~~(4)~~(d) same.
~~(5)~~(e) same.
~~(6)~~(f) same.
~~(7)~~(g) same.
~~(8)~~(h) same.

(2) Opportunity for public participation shall be provided by rendering final decisions on these matters ~~only~~ at ~~Fish and Game~~ commission meetings which are open to the public and which have been announced in advance, or by offering the opportunity for written comments or hearing prior to decisions which are made by the department through publication of notice pursuant to the Montana Administrative Procedure Act.

2. The proposed amendment modifies Rule 12-2.2(6)-P260 found on page 12-10.3 of the Montana Administrative Code.

3. The rationale for this amendment is as follows: Chapter 417, Section 16, Laws of Montana, 1977, specified areas of decision making authority to be exercised by the commission and vested the department with authority to make all other decisions delegated to Fish and Game. This presents a situation of bifurcated decision-making at the present time rather than decision making by the commission only.

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 25th day

of October, 1977.

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 25th day of October, 1977.

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 Section 26-104(1), R.C.M. 1947.

Dated this 14th day of Sept. , 1977.

Robert F. Wambach, Director
Department of Fish and Game

BY: Orville W. Lewis
Associate Director

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

In the matter of the Amendment of Rule 12-2.14(6)-S1430 Relating to Nongame Wildlife in Need of Management	))))	NOTICE OF AMENDMENT OF RULE 12-2.14(6)-S1430 NO PUBLIC HEARING CONTEMPLATED

TO ALL INTERESTED PERSONS:

1. On the 27th day of October , 1977, the Department of Fish and Game proposed to amend Rule 12-2.14(6)-S1430 as follows (additions underlined, deletions interlined):

12-2.14(6)-S1430 NONGAME WILDLIFE IN NEED OF MANAGEMENT

(1) The following nongame wildlife species are determined by the ~~Montana Fish and Game Commission~~ department to be nongame wildlife in need of management within the meaning of the Nongame and Endangered Species Conservation Act, 26-1801, et. seq. ~~R.C.M. 1947~~. Management regulations for these species will be issued annually by the ~~Commission~~ department.

(a) Wolverine (Gulo gulo)

(b) Lynx (Rufus canadensis)

2. The proposed amendment modifies Rule 12-2.14(6)-S1430 found on page 12-52 of the Montana Administrative Code.

3. Interested parties may submit their data, views, or arguments concerning 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 25th day of October , 1977.

4. 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 25th day of October , 1977.

5. 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.

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

7. The authority of the Department of Fish and Game to make the proposed rule is based upon Sections 26-104(1) and 26-1807, R.C.M. 1947.

8. The rationale for this amendment is as follows: In order to provide for the necessary management of the lynx (Lynx canadensis), the Department has determined that it is essential that they implement Section 26-1804, R.C.M. 1947. Unheard of fur prices for spotted cats have caused year-round harassment of this animal. The lynx is never found in great supply; therefore, it is important that the taking of these cats be controlled under the current situation.

Dated this 14th day of September , 1977.

Robert F. Wambach, Director
Department of Fish and Game

BY: Orville W. Lewis
Associate Director

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

In the matter of the adoption of amendments to Rule 16-2.14 (2)-S14100 concerning licensing of refuse disposal areas.	NOTICE OF PUBLIC HEARING FOR AMENDMENT OF Rule 16-2.14(2)-S14100 (Refuse Disposal Area--Licensing)

1. On October 26, 1977, at 10:00 a.m., a public hearing will be held in Rooms 142-143 of the Cogswell Building, Capitol Complex, Helena, Montana, to consider amendments to Rule 16-2.13(2)-S14100, the rule concerning licensing of refuse disposal areas.

2. The proposed amendments replace present Rule 16-2.14 (2)-S14100 found in the Administrative Rules of Montana.

3. The proposed rule provides as follows:

"(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 69-4007 et. seq., R.C.M. 1947.

(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 69-4002, R.C.M. 1947.

(a) "Act" means the Montana Solid Waste Management Act.

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

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

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

(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.

(f) "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) License application--solid waste management systems. The license application forms shall be furnished by the department. The application shall include, at a minimum, the following:

(a) name of applicant;

(b) address of applicant;

(c) location of the proposed solid waste management system, including a legal description and general description;

(d) total acreage involved;

(e) population to be served and proximity to population

centers;
(f) pertinent water quality information;
(g) soils and geology information;
(h) an operation and maintenance plan which will include at a minimum, the following;
(i) the days and hours the site will be open for use;
(ii) how access will be controlled;
(iii) the equipment to be used at the solid waste management system;
(iv) a general description of the solid waste management system;
(v) the manner in which traffic will be directed and controlled;
(vi) the maintenance schedule concerning solid waste handling and disposal;
(vii) provisions for litter control (if applicable);
(viii) types of waste to be accepted; and
(ix) proposed use of the land after disposal areas are closed.
(i) a description of the present uses of adjacent land;
(j) applicable zoning information;
(k) maps, drawings, etc. (if applicable); and
(l) the name of the person responsible for the operation and maintenance of a site, and in the case of a proposed Class I site, the individuals' qualifications to dispose of hazardous wastes.
(4) Waste classifications.
(a) Group I wastes include but are not limited to:
(i) wastes classified or identified by EPA as hazardous wastes;
(ii) brines, caustics, acids, industrial process wastes and liquid synthetic organic chemicals;
(iii) oil, petroleum wastes and waste sediments or sludges from petroleum products;
(iv) septic tank pumpings and sludges which have not been de-watered; and
(v) unrinsed empty pesticide containers formerly containing materials meeting the hazardous waste criteria.
(b) Group II wastes include but are not limited to:
(i) all putrescible solid waste;
(ii) combustible organic solid waste, glass, plastics and metals;
(iii) dead animals and offal;
(iv) manure and other agricultural wastes;
(v) infectious wastes from hospitals and medical care facilities, provided that such wastes have been sterilized or adequately containerized to prevent dangers to personnel transporting, handling and disposing of such wastes;
(vi) Group I wastes in amounts normal in household wastes. This exemption shall not be used to circumvent the proper disposal of Group I wastes;

(vii) empty pesticide containers which have been triple rinsed or cleaned by equivalent methods approved by the department; and

(viii) digested sewage sludges and de-watered water treatment sludges.

(c) Group III wastes include but are not limited to:

(i) inert solid waste such as brick, concrete, rock, and dirt;

(ii) wood materials, brush and building demolition wastes; and

(iii) industrial mineral wastes, provided that the producer of the waste can demonstrate that such wastes are chemically inert, are not hazardous wastes, and do not produce hazardous leachates.

(5) Solid waste disposal site classification.

(a) A Class I site may accept Group I, II, and III wastes. Class I sites shall not allow discharge of these materials or their by-products to ground or surface waters. These sites must either confine the wastes to the disposal site with no likelihood that the wastes will escape or they must be situated in a location where the leachate from the wastes can only percolate into underlying formations which have no hydraulic continuity with ground or surface waters.

(b) Class II sites, suitable for receipt of Group II and III wastes, must provide for separation of Group II wastes from underlying or adjacent usable water. The distance of the required separation shall be established on a case-by-case basis, considering terrain, type of underlying soil formations and natural quality of the groundwaters.

(c) Class III sites, suitable for Group III wastes only, may be disposed of in water-saturated areas, such as marshy areas or deep gravel pits which contain exposed groundwater. Class III sites shall not be located on the banks of or in a live or ephemeral stream, or in a floodplain.

(6) Standards for classification of solid waste disposal sites. The following standards shall apply in determining the suitability of a proposed site for the disposal of Class I, II, or III wastes:

(a) Class I and II sites. Maintenance and operation plan, design, and location shall be approved by the department and any other agency or board it feels necessary in order to adequately protect the public health and safety before approval of the site will be granted. The applicant shall supply information relating to the site geology, hydrology, climatology and soil conditions. This information will be reviewed by the department.

(i) Class I site may accept Group I, II, and III type wastes.

(ii) Class II site may accept Group II and III type wastes.

(iii) Proximity to population centers shall be determined on a case-by-case basis by the department.

(b) Class III sites. Operational and maintenance plan, design, and location shall be approved by the department and any other agency or board it feels necessary in order to adequately protect the public health and safety before approval of the site will be granted. The applicant shall supply pertinent information relating to the site necessary to determine if compliance with the Act can be attained.

(i) Class III sites shall receive Group III wastes only.

(ii) Class III sites are to be located to allow for reuse of the land (land reclamation) and to preserve aesthetic values.

(c) In addition to the operational criteria, the following will be used to evaluate the physical characteristics for site classification.

(i) Criteria for classification of sanitary landfill*

Criteria	I	II	III
Soil type	OH, CH, CL, SC, GC	MH, OL, ML, SM, GM	GW, GP, SW, SP
Permeability (feet/year)	K= 1.0346 to .010346	K= 1,034.6 to 1.0346	K= 1,034.6
Water table	200 feet	10 to 20 feet minimum	Not applicable

*Refers to natural soil conditions--leachate collection, storage, and treatment by use of engineered systems will be evaluated on a case-by-case basis by the department.

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) General criteria for site selection. The following general criteria shall apply to the review of a proposed site for the disposal of solid waste:

(a) A sufficient acreage of suitable land shall be available for the solid waste disposal area.

(b) Access roads and bridges shall be capable of supporting loaded trucks during all types of weather.

(c) The solid waste disposal area shall be so located as to prevent the pollution or contamination of any waters of the state.

(i) A department representative will inspect the site to determine if the proposed operation can comply with this rule.

(d) A site shall not be located in proximity to a public or private water supply if the location will pose a pollution threat to the water supply.

(e) The Class I and II disposal sites shall not be subject to flooding by surface water or have a high groundwater table and shall not be located within a 100 year floodplain.

(f) Necessary drainage structures shall be installed so that a natural drainage course does not direct the surface runoff through the solid waste disposal area.

(g) Class I and II disposal sites shall not be located where underlying geological formations contain rock fractures or fissures which might lead to pollution of underground waters.

(h) The Class I and II disposal sites shall not be located in areas where springs exist that are hydraulically connected to the site.

(8) 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.

(a) Class I solid waste disposal site.

(i) The site shall be fenced to prevent unauthorized entry and access.

(ii) The site shall be strictly supervised during open hours.

(iii) Burning of solid waste at a Class I disposal site is prohibited unless a variance in writing is granted by the department.

(iv) Dumping of solid waste shall be confined to an area which can be effectively maintained and operated in accordance with this rule. This shall be controlled by supervision, fencing, signs, or such other means unless an exemption in writing is granted by the department.

(v) Group I waste at a Class I disposal site shall be covered with a minimum of twelve (12) inches of suitable earth cover material after each operating day unless an exemption for good cause shown is granted in writing by the department. Upon completion of the filling operation at a Class I site, a

final compacted layer of at least four (4) feet of suitable earth cover material shall be placed within one (1) week after the final deposit of solid waste at any portion of such disposal area, unless an exemption for good cause shown is granted in writing by the department.

(vi) Where methods other than landfilling are used to dispose of Group I wastes, the operation and maintenance plan must demonstrate to the satisfaction of the department and all other agencies or boards which the department feels necessary that the disposal methods are environmentally sound and will not create a hazard to the public health.

(vii) The disposal of Group II wastes at a Class I site shall meet all criteria for Class II disposal sites.

(b) Class II solid waste disposal sites.

(i) The site shall be fenced to prevent unauthorized entry and access.

(ii) The site shall be supervised during open hours unless a variance is granted in writing by the department.

(iii) Burning of solid waste at a Class II solid waste disposal area is prohibited unless a variance in writing is granted by the department.

(iv) Dumping of solid waste shall be confined to an area which can be effectively maintained and operated in accordance with this rule. This shall be controlled by supervision, fencing, signs, or such other means unless an exemption in writing is granted by the department.

(v) Solid waste at a Class II solid waste disposal site shall be compacted and covered at the end of each day of operation with a compacted layer of at least six (6) inches of earth cover material. Upon completion of the filling operation at the solid waste disposal site, a final compacted cover of at least two (2) feet of a suitable earth material shall be placed within one (1) week after the final deposit of solid waste at any portion of such solid waste disposal site,unless an exemption for good cause shown is granted in writing by the department.

(vi) Effective means shall be taken to control flies, rodents, and other insects or vermin at a solid waste disposal area to the extent that they shall not constitute a nuisance affecting public health.

(vii) Fencing or other suitable means shall be used to confine blowing papers or other solid waste to the solid waste disposal site.

(viii) The salvaging of solid waste at Class II solid waste disposal sites, if permitted by the department, shall be conducted in such a manner that no salvage will be stored at the site.

(ix) Water treatment and waste water treatment sludges should be mixed with other solid waste to prevent localized leaching.

(x) No Group I waste shall be accepted at Class II or Class III disposal sites.

(xi) EPA's publication "Sanitary Landfill Design and Operation (SW-65ts)" shall be used as the general design and operation manual for purposes of this rule.

(c) Class III solid waste disposal sites shall be covered with dirt from time to time or when the department feels necessary to prevent site from being an eyesore.

(d) Container sites.

(i) Effective means shall be taken to control litter at the container sites.

(ii) Containers shall be emptied at a minimum of once per week.

(iii) Containers shall be maintained and kept in a sanitary manner.

(e) 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 the following to the satisfaction of the department:

(i) litter;
(ii) insects and rodents;
(iii) odor;
(iv) aesthetics;
(v) residues;
(vi) waste water treatment; and
(vii) air pollutants.

(9) Transportation. Solid waste must be transported in such a manner so as to prevent its discharge, dumping, spilling, and leaking from the transport vehicle.

(10) Hazardous wastes.

(a) Identification of hazardous wastes. Any solid waste or combination of solid wastes shall be termed a hazardous waste if so classified or identified by the EPA.

(b) 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 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.

(aa) 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.

(ab) 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, may place such

wastes in unlabeled or improperly labeled containers, or may consign a shipment of hazardous wastes to another person without initiating a waste manifest.

(c) Transport of hazardous wastes.

(i) No person may transport hazardous wastes to any solid waste management facility in the state of Montana except to a licensed Class I solid waste disposal facility or a licensed hazardous waste management facility (unless a written disposal permit is obtained from the department).

(ii) The department may require the maintenance of records, including copies of waste manifests, and the submission of reports from persons who transport hazardous wastes.

(iii) 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 transported by such person.

(iv) Effective six (6) months after the EPA adopts rules applicable to the transport of hazardous wastes, any person who transports hazardous wastes must have a valid license from the department and must comply with labeling, placarding and manifest requirements adopted by the EPA.

(d) 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.

(aa) 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.

(ab) 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 unsafe, may be detrimental to the environment, or is inconsistent with methods approved by the department.

(iii) Not later than ninety (90) days after the promulgation by EPA of rules identifying hazardous wastes, any person who stores, treats or disposes of hazardous wastes shall file notification with the department stating the location and general description of the management facility(ies) and the hazardous wastes handled at such facility(ies).

(iv) Effective six (6) months after the EPA adopts rules applicable to hazardous waste storage, treatment and disposal facilities, any person who operates a hazardous waste management facility must have a valid license from the department and must comply with EPA requirements regarding the following:

(aa) testing, monitoring and inspection of waste facilities;

(ab) proper operating methods and practices;
(ac) proper location of new waste management facilities;
(ad) proper construction and engineering methods;
(ae) contingency plans for emergency incidents;
(af) approved maintenance methods and schedules;
(ag) personnel qualifications and training;
(ah) assurance of long-term care and financial responsibility;
(ai) security and control of access to the facility; and
(aj) reporting of emergency incidents and operating problems.

(ll) Nuisances and hazards to public health.

(a) Where the operation of a solid waste management system is conducted in such a manner as to constitute a nuisance or hazard to public health or be in violation of any statute or this rule, the department shall, on receipt of a complaint by any person, inquire into the facts concerning such operation. If it finds that the operation is in contravention of any statute or any section contained in this rule, it shall make and cause to be served personally or by certified mail upon the person operating the solid waste management system a notice in writing stating the manner in which the operation contravenes such statute or section contained in this rule and specifying the particular statute or rule contravened and ordering the person operating such solid waste management system to correct or to cease such operation, depending on the nature of the violation. If the person served as aforesaid does not comply with the requirements of such order within the time specified therein, the department shall forthwith cause a report in writing containing a summary of the facts as disclosed by its inquiry, a recital of all action taken, and its recommendations, if any, to be transmitted to the department legal division for such action as is authorized by law."

4. The foregoing amendments are intended to implement the changes in Title 69, Chapter 40, made by the adoption of Senate Bill 200 by the 1977 legislature. They provide for uniform enforcement of the Senate Bill 200 sanitation and environmental standards for solid waste and hazardous waste management and disposal and for the transport, storage, and treatment of hazardous wastes.

5. Interested persons may present their data, views or arguments, whether orally or in writing, either at the hearing or prior to it by contacting the Solid Waste Management Bureau, 1400-11th Avenue, Helena, Montana 59601 (Telephone: 449-2821).

6. Robert Solomon, Department of Health and Environmental Sciences, Capitol Station, Helena, Montana 59601, has been designated by the director of the Department of Health and Environmental Sciences to preside over and conduct the hearing.

7. The authority of the department to amend the rule is based on section 69-4007, R.C.M. 1947.

D Knight
Department Director

Certified to the Secretary of State September 6, 1977.

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

In the matter of the amendment of rule 16-2.22(6)-S2270, stating requirements for ambulance service licensing.	))))	NOTICE OF PUBLIC HEARING FOR AMENDMENT OF RULE 16-2.22(6)-S2270 (Ambulance Service Licensing)

1. On October 17, 1977, at 1:00 p.m., a public hearing will be held in the Conference Room at 836 Front Street, Helena, Montana, to consider the amendment of rule 16-2.22(6)-S2270, governing the licensing of ambulance services.

2. The proposed amendment excludes from the present definition of "patient" those who need transportation assistance solely because they are habitually confined to wheelchairs.

3. Rule 16-2.22(6)-S2270 is proposed to be amended by adding the following statement to the definition of "patient" in subsection (3): "The term does not include a person who is nonambulatory and who needs transportation assistance solely because that person is confined to a wheelchair as his usual means of mobility."

4. The 1977 legislature amended the statutory definition of "patient" [Section 69-3605(9)] to exclude from its terms those individuals who needed vehicular transportation solely because they were regularly confined to a wheelchair. The purpose was to allow transportation of such individuals without subjecting the transporters to ambulance service licensing requirements. The definition of "patient" in the rule is proposed to be amended to conform to the new statutory language.

5. Interested persons may present their data, views, or arguments, whether orally or in writing, either at the hearing or prior to it to the Emergency Medical Services Bureau, Capitol Station, Helena, Montana, 59601 (phone: 449-3895).

6. The authority of the department to adopt the proposed amendment is based on Section 69-3609, R.C.M. 1947.

A C Knight
Director

Certified to the Secretary of State September 14 1977

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)-S14040, Ambient Air Quality Standards	)))	NOTICE OF PUBLIC HEARING FOR AMENDMENT OF RULE 16-2.14(1)-S14040 (Ambient Air Quality Standards)

1. On November 4, 1977, at 10:00 a.m., a public hearing will be held in the Auditorium (Roberts Street entrance) of the Highway Building, Sixth and Roberts, Helena, Montana, to consider the amendment of rule 16-2.14(1)-S14040.

2. The proposed amendment replaces present rule 16-2.14(1)-S14040 found in the Administrative Rules of Montana. The proposed revision to the existing ambient air quality rule is being proposed to specify the enforceability of the standards. The proposed language in subsection (1) makes it clear that the standards are enforceable standards. Other changes include the addition of a definition of "ambient air", deletion of the sulfation ambient air standard as a standard by transferring it to the testing and monitoring rule to be used as a triggering mechanism for requiring the installation of testing and monitoring, and deletion of the existing one hour ambient standard and the insertion of a three hour ambient standard which is of the same severity as the existing relationship between the 1 hour, 24-hour, and annual ambient air quality standards. All other ambient standards remain the same except that where appropriate, the standards have been converted to micrograms per cubic meter.

3. Rule 16-2.14(1)-S14040 as proposed to be amended is as follows: (matter to be stricken is interlined, new material is underlined.)

16-2.14(1)-S14040 AMBIENT AIR QUALITY STANDARDS

~~(1)--In-accordance-with-section-69-3909,-subsection-12 of-the-Clean-Air-Act-of-Montana,-on-May-7,-1967,-the-board-adopted-the-Ambient-Air-Quality-Standards-shown-below.~~

(1) No person shall cause the ambient air quality standards listed in this rule to be violated. The ambient air quality standards listed are designed to protect people from the adverse effects of air pollution and promote the maximum comfort and enjoyment in the use of property consistent with the economic and social well-being of the people of Montana. These standards are adopted with an adequate margin of safety to protect the health, welfare and comfort of the public and to minimize economic losses.

(2) The adoption of these standards shall not be construed in any manner to allow the significant deterioration of existing air quality as defined by the Clean Air Act Amendments of 1977, Part C, Sections 160 through 169A, and where applicable, Code of Federal Regulations, Prevention of Significant Deterioration, Title 40, Part 52, Section 52.01, et seq., as amended, September 10, 1975, in any portion of the state.

(3) The sampling and analytical techniques used to measure ambient concentrations of air pollution shall be EPA procedures as specified in Title 40, Part 50, Code of Federal Regulations, or equivalent methods, where applicable.

(4) As used in this rule:

(a) "Hour" means the sixty minute period beginning with the first minute of the hour and ending with the sixtieth minute (for example 1 p.m. to 2 p.m., or 7 a.m. to 8 a.m.);

(b) "Day" or "daily" means any consecutive non-overlapping 24-hour period;

(c) "Year" or "annual" means any consecutive non-overlapping twelve-month period;

(d) "Month" means a calendar month;

(e) "Ambient air" means that portion of the atmosphere which is external to the space encompassing and immediately adjacent to the structures and activity area of air pollution sources. However, if the public has access to any portion of the atmosphere excluded by the foregoing sentence, that portion of the atmosphere is ambient air.

~~(2)~~ (5) ~~Until additional pertinent information becomes available with respect to the effects of the substances listed below, the~~ The following air quality criteria shall apply in Montana~~.~~:

Pollutants	Standards (Maximum permissible air pollution concentrations)
(a) Sulfur dioxide[a]	55 ug/m^3* (0.02 ppm**)~~, maximum~~ annual average
	260 ug/m^3 (0.10 ppm), 24-hour average, not to be exceeded ~~over 1 percent of the days~~ more than one day in any 3 month period
	~~0.25 ppm not to be exceeded for more than one hour in any 4 consecutive days~~
	475 ug/m^3 (0.18 ppm), 3 hour average, not to be exceeded more than once in any four consecutive days
~~Reactive sulfur (sulfation[b])~~	~~0.25 milligrams sulfur trioxide per 100 square centimeters per day, maximum annual average~~
	~~0.50 milligram sulfur trioxide per 100 square centimeters per day, maximum for any 1 month period~~

(b) Suspended sulfate[e]	4 ug/m^3, ~~micrograms-per-cubic meter-of-air, maximum allowable~~ annual average 12 ug/m^3, ~~micrograms-per-cubic meter-of-air, not-to-be exceeded-over-1-percent of-the-time~~ 24 hour average, not to be exceeded more than four days per year
(c) Sulfuric acid mist[d]	4 ug/m^3, ~~micrograms-per-cubic meter-of-air, maximum allowable~~ annual average 12 ug/m^3, ~~micrograms-per-cubic meter-of-air, not-to-be exceeded-over-1-percent of-the-time~~ 24 hour average, not to be exceeded more than four days per year 30 ug/m^3, ~~micrograms-per-cubic meter-of-air, hourly-average, not-to-be-exceeded-over-1 percent-of-the-time~~ 1 hour average, not to be exceeded more than once in any four consecutive days
(d) Hydrogen sulfide[e]	42 ug/m^3, (0.03 ppm), 1/2 hour average, not to be exceeded more than twice in any five consecutive days 70 ug/m^3, (0.05 ppm), 1/2 hour average, not to be exceeded over twice a year
(e) Total suspended particulate[f]	75 ug/m^3 ~~micrograms-per-cubic meter-of-air~~, annual geometric mean 200 ug/m^3, ~~micrograms-per-cubic meter-of-air, not-to-be-exceeded-more-than-1-percent of-days-a-year~~ 24 hour average, not to be exceeded more than four days per year
(f) Settled particulate (Dustfall [g])	5 g/m^2 (15 tons per square mile) per month, 3 month average in residential areas 10 g/m^2 (30 tons per square mile) per month, 3 month average in heavy industrial areas

(g)	Lead[h]	5.0 ug/m^3 ~~micrograms per cubic meter of air~~, 30 day average
(h)	Beryllium[i]	0.01 ug/m^3 ~~micrograms per cubic meter of air~~, 30 day average
(i)	Fluorides, total (as HF) in air[j]	~~1 part per billion parts of air, 24 hour average~~ 0.83 ug/m^3 (1 ppb), 24 hour average
(j)	Fluorides (as F) in forage[k] for animal consumption - dry weight basis	~~35 parts per million~~ 35 ug/g (35 ppm)
(k)	Fluorides (gaseous)[l]	~~0.3 micrograms per square centimeter per 28 days~~ 0.3 ug/cm^2 per 28 days

*ug/m^3 is micrograms per cubic meter of air
**ppm is parts per million parts of air

~~a--Sulfur dioxide measured by West-Gaeke or conductometric method.~~

~~b--Sulfation measured by lead peroxide candle.~~

~~c--Suspended sulfate measured by high volume sampler--turbidmetric procedure.~~

~~d--Sulfuric acid mist---Air Pollution Control District, County of Los Angeles, APCB---Sulfuric acid 13-49.~~

~~e--Hydrogen sulfide measured by methylene blue method--acetate tape for screening and monitoring.~~

~~f--Suspended particulate measured by high volume sampler.~~

~~g--Dustfall measured by container open to atmosphere.~~

~~h--Suspended lead measured by high volume sampler--dithizone and/or spectrophotometric procedures.~~

~~i--Suspended beryllium measured by high volume sampler--fluorometric and/or spectrophotometric method.~~

~~j--Total fluoride measured by impingers---Winter Willard distillation procedure (SPADNS color).~~

~~k--Forage cut, dried, ashed and subjected to Winter Willard distillation procedure (SPADNS color).~~

~~l--Gaseous fluorides measured by calcium formate paper technique in board standard shelter---Winter Willard distillation procedure (SPADNS color).~~

~~The ambient air quality standards listed describe a level of air quality designed to protect people from the adverse effects of air pollution, and they are intended further to promote maximum comfort and enjoyment in use of property consistent with economic and social wellbeing of the community.~~

~~Ambient air quality standards are used as a tool in achieving cleaner air, not as a license to permit unnecessary degradation of air quality which would thwart attainment of the long range goal to maintain a reasonable degree of air purity.~~

~~These standards are not intended to represent the ultimate~~

~~in-air-quality-achievement.--It-is-anticipated-that-research and-development-will-gradually-make-possible-cleaner-air-at lower-cost.--As-evidence-accumulates-on-deleterious-effect of-the-contaminant,-present-objectives-will-be-revised-or additional-standards-established.--The-standards-are-designed-to-protect-the-health,-welfare-and-comfort-of-the public-and-to-minimize-economic-losses.~~

~~Because-some-pollutants-combine-chemically-to-form-more harmful-materials-than-the-original-emissions,-ascribing-a single-effect-to-a-single-pollutant-would-be-an-erroneous-over-simplification.--The-standards,-therefore,-apply-to air-containing-a-variety-of-pollutants.--Although-reaching the-goals-will-result-in-benefits,-no-allowance-for-the-time needed-to-achieve-them-was-considered-in-their-selection. They-are-intended-to-apply-to-areas-where-people-live-or where-an-adverse-effect-may-occur.~~

~~The-board,-in-adopting-these-standards,-intends-them-to be-goals-and-guidelines-and-so-interprets-the-legislative-intent-of-the-word-"standards"-in-section-69-3909-of-the-Clean Air-Act-of-Montana.~~

~~(3)--The-sampling-and-analytical-procedures-employed-to measure-ambient-levels-of-contaminants-are-to-be-consistent with-obtaining-accurate-results-which-are-representative-of the-conditions-being-evaluated.--The-sampling-and-analytical-techniques-enumerated-may-be-used-directly-or-employed-as reference-standards-against-which-other-methods-may-be-calibrated.~~

(6) All measurements of ambient air quality shall be corrected to a reference temperature of 25°C and to a reference pressure of 760 millimeters of mercury.

4. Interested persons may present their data, views or arguments, whether orally or in writing, either at the hearing or prior to it by contacting the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59601 (phone: 449-3454).

5. The authority of the board to make the proposed amendment is based on Section 69-3909(1), R.C.M. 1947.

John W. Bartlett
Board Chairman

Certified to the Secretary of State September 14, 1977

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)-S14050 Testing Required, Facilities	NOTICE OF PUBLIC HEARING FOR AMENDMENT OF RULE 16-2.14(1)-S14050 (Testing Required, Facilities).

1. On November 4, 1977, at 10:00 a.m., a public hearing will be held in the Auditorium (Roberts Street entrance) of the Highway Building, Sixth and Roberts Streets, Helena, Montana, to consider the amendment of Rule 16-2.14(1)-S14050.

2. The proposed amendment replaces present Rule 16-2.14 (1)-S14050 found in the Administrative Rules of Montana. It is proposed that the existing rule concerning testing of air pollution sources be amended to clarify the department's authority to require the installation and maintenance of continuous testing and monitoring programs. The proposed amendments to this rule clearly set forth a procedure that must be followed before such a monitoring program may be imposed. The procedures provide for the appeal of the department's decision to the Board of Health and Environmental Sciences by any person who is jointly or severally adversely affected by the department's decision to require or not require, to modify or to discontinue a testing or monitoring program as authorized by the rule. In determining whether a testing or monitoring rule should be imposed, the department, and the Board on appeal, are required to consider all relevant information relating to a determination of whether an applicable emission or ambient air quality standard is being or may be exceeded and the cost of the testing and monitoring program. If established, the testing and monitoring program must specifically outline the basis of the determination for the program, a description of the stacks or emission sources to be monitored, a description of the area and sources to be monitored, a description of the data to be collected, a description of the time period over which the testing and monitoring will be conducted, and the data-reporting format and frequency.

3. Rule 16-2.14(1)-S14050 as proposed to be amended is as follows (matter to be stricken is interlined, new material is underlined):

16-2.14(1)-S14050 TESTING ~~REQUIRED, FACILITIES~~ AND MONITORING

(1) The department, subject to the appeal procedures and requirements of this rule, may require ~~Any~~ any person ~~or persons~~ responsible for the emission of air contaminants into the outdoor atmosphere ~~shall upon written request of the director provide the facilities and necessary equipment including instruments and sensing devices and shall conduct tests using methods approved by the director.~~ to implement a testing and monitoring program which may include, but not be limited to, providing the facilities, necessary equipment, instruments,

monitoring, sensing and calibration devices needed to implement the program. All testing and monitoring shall be conducted pursuant to methods, procedures and at locations approved by the department. ~~Such tests~~ The testing and monitoring shall include~~,~~ but not be limited to~~,~~ a determination of the nature, extent, quantity, dispersion and degree of air contaminants which are or may be emitted ~~as a result of such operation at all sampling points designated by the director and the data shall be recorded in a permanent log at least once each hour, if applicable.~~ from a source and a determination of the ambient concentrations of such air contaminants that are or may be emitted. All data collected shall be recorded and reported in a format and at intervals approved by the department. The data recorded shall include, but not be limited to, process information , fuel use, hours of operation, emission rates, and testing and monitoring data. ~~These~~ The data shall be maintained for a period of not less than ~~one year~~ two years and shall be available for review by the department. ~~Such testing and sampling facilities may be either permanent or temporary at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction or safe practice.~~ The equipment, facilities, instruments, monitoring and sensing devices used in the program shall, at all times, be properly maintained and operated according to quality assurance procedures approved by the department. The department may, on its own initiative or upon petition by any person required to test and monitor pursuant to this rule, modify or discontinue a required monitoring program.

(2) Source emission tests shall be conducted under such operating conditions as the department may specify based on a consideration of such factors as the operating history of the facility and safety requirements.

(3) The owner or operator of a source shall provide the department with at least thirty (30) days notice of a specific test to afford the department an opportunity to have an observer present, unless a shorter notice period is agreed upon by the department and the owner or operator of the source.

(4) In determining whether to require the installation of testing and monitoring programs as authorized by this rule, the department, after consultation with person responsible for the operation of the affected source of facility, and the Board on appeal, shall make a decision based on a consideration of the following factors:

(a) Whether there is reasonably available information or data which indicates that an applicable emission or ambient standard is being or will be exceeded;

(b) The cost of the testing and monitoring program;

(c) Whether any reasonable alternatives exist for determining whether an applicable emission or ambient air quality standard is being or will be exceeded;

(d) Any other relevant factor pertaining to the determina-

tion of whether an applicable emission or ambient standard is being or will be exceeded.

(5) After consulting with the person responsible for the operation of the affected facility or source, and after considering the factors described in subsection (4) of this rule, the department shall advise the person and any other person who has expressed an interest in the matter in writing of its determination as to the need for a testing and monitoring program. The determination shall include, as a minimum:

(a) A discussion of the basis of the determination, including a listing of the emission or ambient standards the department believes are or will be violated if a testing and monitoring program is determined to be necessary;

(b) Notice of the appeal provisions specified in subsection (6) of this rule;

(c) A listing of the stacks or emission sources to be monitored if source testing is required;

(d) A description of the area and sources to be monitored if ambient monitoring is required;

(e) A description of the data to be collected;

(f) A description of the time period over which the testing and monitoring will be conducted;

(g) The data reporting format and frequency; and

(h) A description of the data and information to be included in each report.

(6) Any person who is jointly or severally adversely affected by the department's decision to require or not to require or to modify or discontinue the installation of testing and monitoring programs as described in subsections (1) through (3) of this rule, may within thirty (30) days after the department renders its decision, upon affidavit setting forth the grounds therefor , request a hearing before the Board. A hearing shall be held under the provisions of the Montana Administrative Procedure Act.

(7) The determination made by the department pursuant to subsection (5) of this rule shall not become final until the period for appeal as provided in subsection (6) has expired. If an appeal is made to the Board, the determination of the department is stayed pending issuance of a final order by the Board as provided in the Montana Administrative Procedure Act.

(8) Any testing and monitoring program implemented pursuant to this rule shall specify the pollutant or pollutants to be tested and monitored.

(9) The following sulfation rate measurement test may be used as one indicator for requiring the installation of a testing and monitoring program. Whenever the sulfation rate measurement data indicates that ground level concentrations of reactive sulfur exceed 0.25 milligrams sulfur trioxide per 100 square centimeters per day, annual average, or 0.50 milligrams sulfur trioxide per 100 square centimeters per day, 30-day average, the need for a testing and monitoring program for

relevant sulfur compounds shall be evaluated by the department.

4. Interested persons may present their data, views or arguments, whether orally or in writing, either at the hearing or prior to it by contacting the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59601 (phone:449-3454).

5. The authority of the board to make the proposed amendment is based on Section 69-3909(1), R.C.M. 1947.

John W. Bartlett
Board Chairman

Certified to the Secretary of State September 14, 1977

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	)))	NOTICE OF PUBLIC HEARING FOR AMENDMENT OF RULE 16-2.14(1)-S1470 (Sulfur Oxide Emissions)

1. On November 4, 1977, at 10:00 a.m., a public hearing will be held in the Auditorium (Roberts Street entrance) of the Highway Building, Sixth and Roberts, Helena, Montana, to consider the amendment of rule 16-2.14(1)-S1470.

2. The proposed amendment replaces present rule 16-2.14(1)-S1470 found in the Administrative Rules of Montana. It is proposed that the existing sulfur oxide emissions rule be amended to clarify the enforceability of the rule. Specifically, the proposed amendments clarify the method that will be used to determine compliance with the one pound per million BTU fired limitation imposed for sulfur in fuel. A 0.1 pound per million BTU fired, maximum daily average, standard deviation has been proposed for the facilities covered by the existing provisions of subsection (1)(a) of the rule. A special subsection (4) has been added to deal only with petroleum refineries. The same method of determining compliance with the provisions of the rule has been proposed. In addition, specific provisions have been added in subsection (4)(c) requiring petroleum refineries to maintain the records necessary to determine compliance with the rule.

3. Rule 16-2.14(1)-S1470 as proposed to be amended is as follows:

16-2.14(1)-S1470 SULFUR OXIDE EMISSIONS

(1) ~~Regulation of~~ Sulfur in Fuel.

(a) ~~Commencing July 1, 1970, no person shall burn liquid or solid fuels containing sulfur in excess of two pounds of sulfur per million Btu fired.~~ No person shall burn, except as specified in subsection (1)(b), in any combustion unit:

(i) liquid or solid fuels containing sulfur in excess of one pound of sulfur per million BTU fired, maximum daily average, with a maximum allowable deviation of one-tenth pound of sulfur per million BTU (1 ± 0.1); or

(ii) gaseous fuels containing sulfur compounds in excess of 50 grains per 100 cubic feet gaseous fuel, calculated as hydrogen sulfide at standard conditions.

(b) ~~Commencing July 1, 1971, no person shall burn liquid or solid fuels containing sulfur in excess of 1.5 pounds of sulfur per million Btu fired.~~ The department may allow a person to burn liquid or solid fuels containing sulfur in excess of the sulfur content specified in subsection (1)(a)(i) provided it can be shown that the facility burning the fuel is fired at a rate of one million BTU per hour or less.

(c) ~~Commencing July 1, 1972, no person shall burn liquid or solid fuels containing sulfur in excess of one pound of sulfur per million Btu fired.~~ The department shall, unless

it determines that an applicable ambient or emission standard is or will be violated, allow a person, after giving notice to the Department:

(i) to burn higher sulfur content liquid or solid fuels if such fuel is mixed with one or more lower sulfur content fuels which result in a mixture entering the combustion unit which does not exceed the value stated in subsection (1)(a)(i); and

(ii) To burn fuel of any sulfur content if a sulfur dioxide control process is utilized to remove sulfur dioxide from the gases emitted and provided that the emission of sulfur in pounds per hour will be equivalent to or less than the emissions which would result from burning fuel which meets the sulfur in fuel limits specified in subsection (1)(a).

~~(d)--Commencing-July-1,-1971,-no-person-shall-burn-any gaseous-fuel-containing-sulfur-compounds-in-excess-of-50 grains-per-100-cubic-feet-of-gaseous-fuel,-calculated-as hydrogen-sulfide-at-standard-conditions.--The-provisions-of section-(4)-shall-not-apply-to:~~

~~(i)--The-burning-of-sulfur,-hydrogen-sulfide,-acid sludge-or-other-sulfur-compounds-in-the-manufacturing-of sulfur-or-sulfur-compounds;~~

~~(ii)--The-incinerating-of-waste-gases-provided-that-the gross-heating-value-of-such-gases-is-less-than-300-Btu's-per cubic-foot-at-standard-conditions-and-the-fuel-used-to-incinerate-such-waste-gases-does-not-contain-sulfur-or-sulfur compounds-in-excess-of-the-amount-specified-in-this-rule;~~

~~(iii)--The-use-of-fuels-where-the-gaseous-products-of combustion-are-used-as-raw-materials-for-other-processes;~~

~~(iv)--Small-refineries-(under-10,000-barrels-per-day crude-oil-charge)-provided-that-they-meet-other-provisions of-this-rule.~~

(d) The provisions of subsection (1)(a) do not apply to:

(i) the burning of sulfur, hydrogen sulfide, acid sludge or other sulfur compounds in the manufacturing of sulfur or sulfur compounds;

(ii) the incineration of waste gases provided that the gross heating value of such gases is less than 300 BTU per cubic foot at standard conditions and the fuel used to incinerate such waste gases does not contain sulfur or sulfur compounds in excess of the amount specified in this rule;

(iii) the use of fuels where the gaseous products of combustion are used as raw materials for other processes; and

(iv) petroleum refineries, except as provided in subsection (4) of this rule.

~~(e)--Exceptions:~~

~~(i)--A-permit-may-be-granted-by-the-director-to-burn fuels-containing-sulfur-in-excess-of-the-sulfur-contents indicated--in-section-(1)-provided-it-can-be-shown-that-the facility-burning-the-fuel-is-fired-at-a-rate-of-one-million Btu-per-hour-or-less;~~

~~(ii)--For-purpose-of-section-(1),-a-higher-sulfur-containing-fuel-may,-upon-application-to-the-director,-be-utilized-in-subsections-(a),-(b)-or-(c)-if-such-fuel-is-mixed-with-one-or-more-lower-sulfur-containing-fuels-which-results-in-a-mixture,-the-equivalent-sulfur-content-of-which-is-not-in-excess-of-the-stated-values-when-fired.~~

~~(iii)--The-requirements-of-subsections-(a),-(b)-or-(c)-of-section-(1)-shall-also-be-deemed-to-have-been-satisfied-if,-upon-application-to-the-director,-a-sulfur-dioxide-control-process-is-applied-to-remove-the-sulfur-dioxide-from-the-gases-emitted-by-burning-of-fuel-of-any-sulfur-content-which-results-in-an-emission-of-sulfur-in-pounds-per-hour-not-in-excess-of-the-pounds-per-hour-of-sulfur-that-would-have-been-emitted-by-burning-fuel-of-the-sulfur-content-indicated-without-such-a-cleaning-device.~~

~~(f)~~ (e) Definition:

~~"Btu"~~ "BTU" means British thermal unit which is the heat required to raise the temperature of one pound of water through one Fahrenheit degree.

(2) Primary Non-Ferrous Smelters.

(The language in the present rule will not be changed.)

(3) Kraft Pulp Mills.

(The language in the present rule will not be changed.)

(4) Petroleum Refineries.

(a) No person shall burn in any fuel burning equipment, as defined in MAC 16-2.14(1)-S1410, in any petroleum refinery solid, liquid or gaseous fuels such that the aggregate sulfur content of all fuels burned exceeds one pound of sulfur per million BTU fired, maximum daily average, with a maximum allowable deviation of one-tenth pound of sulfur per million BTU (1 ± 0.1), except as restricted in subsection (4)(b).

(b) Refineries processing 10,000 barrels per day or more of crude oil shall not burn fuel gas, the sulfur content of which exceeds that described in subsection (1)(a)(ii) of this rule.

(c) Each petroleum refinery shall:

(i) install and operate fuel flow rate instruments and recorders to determine the total fuel fired daily in the refinery; and

(ii) provide analyses of the sulfur content and heating value of all fuels burned daily using recognized methods approved by the department; and

(iii) maintain fuel flow rate, heating value and sulfur content data for a period of not less than two years and submit such data to the department upon request.

(d) Subsection (1)(c)(ii) of this rule may be utilized to achieve compliance with the requirements of this section.

(Figure I in the present rule on page 16-60 of the Administrative Rules of Montana will not be changed.)

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

or prior to it by contacting the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59601 (phone: 449-3454).

5. The authority of the board to make the proposed amendment is based on Section 69-3909(1), R.C.M. 1947.

John W Bartlett
Board Chairman

Certified to the Secretary of State September 14, 1977

DEPARTMENT OF JUSTICE

BEFORE THE DEPARTMENT OF JUSTICE

In the matter of the amendment of Rules 1-1.6(1)-0600 through 1-1.6(2)-P6240 and the repeal of Rules 1-1.6(2)-P6250 through 1-1.6(2)-P6320	)))))	NOTICE OF PROPOSED REVISION OF THE MODEL RULES NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On November 10, 1977, the Department of Justice proposes to amend rules 1-1.6(1)-0600 through 1-1.6(2)P6240 and repeal rules 1-1.6(2)-P6250 through 1-1.6(2)-P6320, the Model Rules of Administrative Practice and describing agency organization.

2. The rules proposed to be repealed are on page 1-60 through 1-62 of the Administrative Rules of Montana.

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

SUB-CHAPTER 1

PROCEDURAL RULE REQUIRED BY R.C.M. CHAPTER IMPLEMENTING ARTICLE II, SECTION 8 OF THE 1972 CONSTITUTION - RIGHT OF PARTICIPATION.

1-1.6(1)-P600-INTRODUCTION.

(1) All section numbers refer to the Revised Codes of Montana, 1947. Section 82-4228(5) directs each agency to adopt procedural rules to facilitate public participation in agency actions that are of significant interest to the public. "Agency" is defined by section 82-4227(1). Note that exceptions to the term "agency" are fewer under this section than the Montana Administrative Procedure Act, section 82-4202(1). "Agency action" is defined by section 82-4227(3); exceptions are listed in section 82-4228(4).

1-1.6(1)-P610-Model Rule 1-NOTICE OF AGENCY ACTION THAT IS OF SIGNIFICANT INTEREST TO THE PUBLIC.

(1) In accordance with sections 82-4226 through 82-4229, prior to making a final decision that is of significant interest to the public, the agency shall either:

(a) prepare and distribute an environmental impact statement as required by the Montana Environmental Policy Act,

(b) conduct a proceeding in accordance with the Montana Administrative Procedure Act,

(c) hold a public hearing, after appropriate notice is given, in accordance with any other provision of state law or a local ordinance or resolution,

(d) cause a news story or advertisement concerning the

decision to be carried prior to a final decision on the matter in a newspaper of general circulation within the area to be affected by the decision: (sample form 1, infra, may be used to publish notice in a newspaper) or,

(e) publish a notice of the proposed agency action in the Montana Register in accordance with form 1, infra. The agency may grant or deny an opportunity for hearing.

(i) Sample form 1: Notice of proposed agency action.

BEFORE THE (1-name of agency)
OF THE STATE OF MONTANA

In the matter of (2-description of proposed agency action)	NOTICE OF PROPOSED AGENCY ACTION

TO: All interested persons.

1. The (3-name of agency) proposes to (4-description of agency action; for ex: amend Model Rules 1-1.6(1)-0600 through 1-1.6(2)P63220, to provide for discovery in administrative proceedings).

2. Interested persons may submit data, views or arguments in written form or a request for opportunity to submit data, views or arguments in oral form to (5-name, address). To be considered, comments and requests must be received by (6-date which affords a reasonable time for opportunity to participate).

(7-name of agency head)

SUB-CHAPTER 2

ORGANIZATIONAL AND PROCEDURAL RULES
REQUIRED BY THE MONTANA ADMINISTRATIVE
PROCEDURE ACT

1-1.6(2)-0620-INTRODUCTION.

(1) All section numbers refer to the Revised Codes of Montana, 1947. The Montana Administrative Procedure Act includes sections 82-4201 through 82-4225.

The Act outlines procedures that agencies must follow when:

(a) adopting, amending or repealing agency rules;

(b) hearing contested cases; or

(c) issuing declaratory rulings.

(2) Each agency subject to the Act must adopt rules describing its organization and procedures. Section 82-4203(1). Section 82-4203(3) directs the Attorney General to prepare a model form for a rule describing the organization of agencies and model rules of practice for agency guidance in fulfilling these requirements. The model rules have been adopted for that purpose. The model rules may be incorporated

by reference to the model rules and all subsequent amendments to them.

1-1.6(2)-0630-APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.

(1) The Act applies to all state agencies as defined in section 82-4202(1). Note that the state board of pardons is subject to only the sections enumerated in section 82-4202(1) (a).

1-1.6(2)-0640-ORGANIZATIONAL RULE.

(1) An agency need not comply with the Montana administrative procedure act notice and hearing requirements when adopting an organizational rule. Section 82-4203(1)(a).

(2) The organizational rule must be reviewed annually to determine whether it should be modified. Section 82-4204(6).

(3) The organizational rule should contain the following:

(a) a description of the method of operations of the agency and each division,

(b) a description of methods by which the public may obtain information or make submissions or requests,

(c) charts showing both the organization of the agency and the functions of each division, indicating those divisions without rulemaking authority, and

(d) in the spirit of the rule, a personnel roster of agency heads, division heads and other key personnel should be appended to the rule.

(i) Sample form 2: Organizational Rule. As an example, this rule describes the organization and functions of a fictitious Department of Natural Resources and Conservation and its various units, including the administratively attached Board of Oil and Gas Conservation. It should be noted that the administratively attached board is required to submit its own organizational description.

36-2.1-0100-ORGANIZATIONAL RULE.

(1) Organization of the Department of Natural Resources and Conservation.

(a) History. The Department of Natural Resources and Conservation was implemented under the Executive Reorganization Act of 1971 by executive order of the governor on December 20, 1971.

(b) Divisions. The department consists of the following five divisions.

(i) Centralized Services Division

(ii) Water Resources Division

(iii) Forestry Division

(iv) Conservation Districts Division
*(v) Oil and Gas Conservation Division

Each division is headed by an administrator. The first four of these divisions are further broken down into bureaus. (See functional charts.)

(c) Director.The director of Natural Resources and Conservation appointed by the governor heads the department. He is responsible for the administration of the department and its divisions.

(d) Board of Natural Resources and Conservation. The Board of Natural Resources and Conservation consists of five members appointed by the governor for four-year terms.

(e) Attached Boards. Attached to the department for administrative purposes is the Board of Oil and Gas Conservation. The board consists of five members appointed by the governor and adopts administrative rules separately from the department of natural resources and conservation.

(f) Advisory Councils. There are two advisory councils advising the department--the State Conservation Commission and the Water Law Advisory Council. These councils have no rulemaking or adjudicating authority.

(2) Functions of Department Divisions.

(a) Centralized Services Division. The Centralized Services Division performs the general fiscal administrative support functions for the department. Its activities include purchasing, information and education, cartography, accounting, budgeting, payroll, personnel, statistics, reports, and records management. This division has no rule making or adjudicating functions under the Administrative Procedure Act.

(b) Water Resources Division. The Water Resources Division has the responsibility for the administration of water resources programs of the department. Included in its functions are ground-water administration, field project supervision, preparation of the state water resource plan, river basin studies, hydrology, flood plain management, and weather modification administration.

(c) Forestry Division. The Forestry Division administers the forestry programs of the state government. Its activities include timber sales administration, reforestation, timber stand improvement, hazard reduction, portable sawmill licensing, farm service forestry, fire protection on state and private forests, and administration of cooperative projects. As required by the Montana Constitution, the division reports to the State Board of Land Commissioners on matters relating to state lands.

*Attached for administrative purposes -- see separate organization description submitted by this division.

(d) Conservation Districts Division. The Conservation Districts Division supervises and coordinates the formation and operation of local grazing and soil and water conservation districts in the state. The division also develops and implements the state rangeland utilization plan, and processes applications for watershed projects.

(e) Oil and Gas Conservation Division (Attached for administrative purposes only.) The Oil and Gas Conservation Division administers the oil and gas laws of the state. Its activities include classification of wells, well inspections and investigations, issuance at drilling permits, engineering studies, establishment of well spacing units and pooling orders, and core depository.

(3) Boards.

(a) Board of Oil and Gas Conservation.

The Board of Oil and Gas Conservation is attached to the department for administrative purposes only. As such, the board is responsible for adopting rules and holding hearings under the oil and gas laws of the state, independently of the department.

(b) Board of Natural Resources and Conservation. Except for actions of the Board of Oil and Gas Conservation, the board must concur in actions of the department which grant or deny rights to the public. Consequently, the board must concur in rules adopted by the department, and in determinations or orders resulting from hearings held by the department. (For a more detailed explanation of the board's functions, inquiries may be directed to the director, who will inform the inquiring party as to where the guidelines can be found in the Montana Administrative Rules.)

(4) Information or Submissions

General inquiries regarding the department may be addressed to the director. Specific inquiries regarding the functions of each division may be addressed to the administrator of that division. All requests for hearings, declaratory rulings, and for participation in rule making may be addressed to the director unless the notice in the Montana Administrative Register makes specific provisions for submissions.

(5) Personnel Roster

Addresses of the director and each division are as follows:

Director, Department of Natural Resources and Conservation, Room 425, Mitchell Building, Helena, Montana 59601

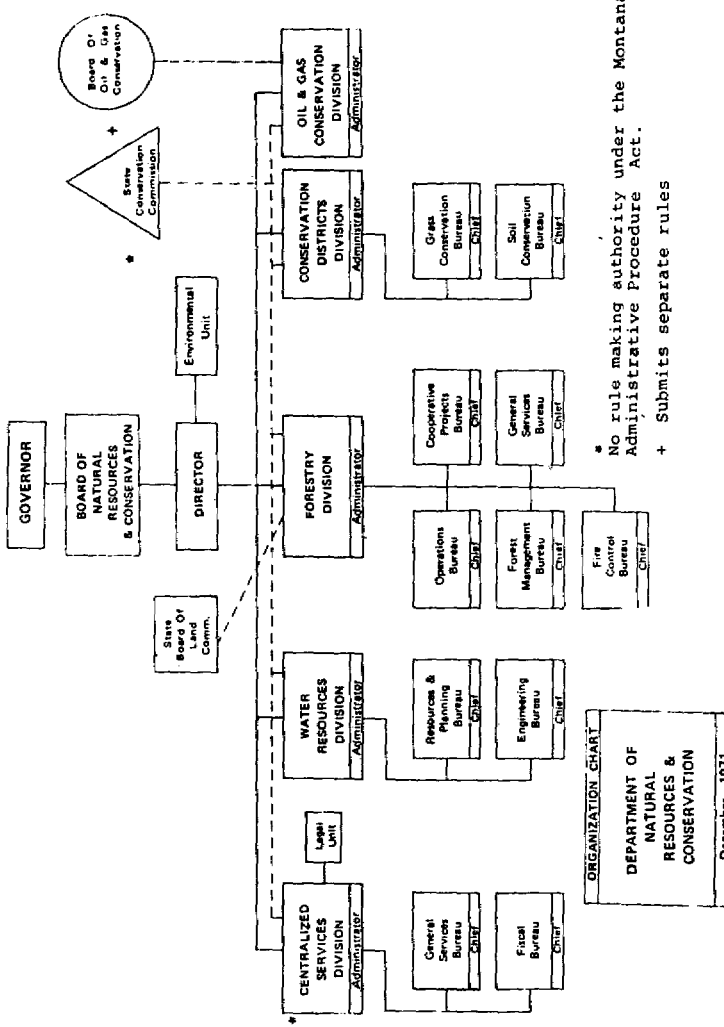
Centralized Services Division, Room 432, Mitchell Building, Helena, Montana 59601

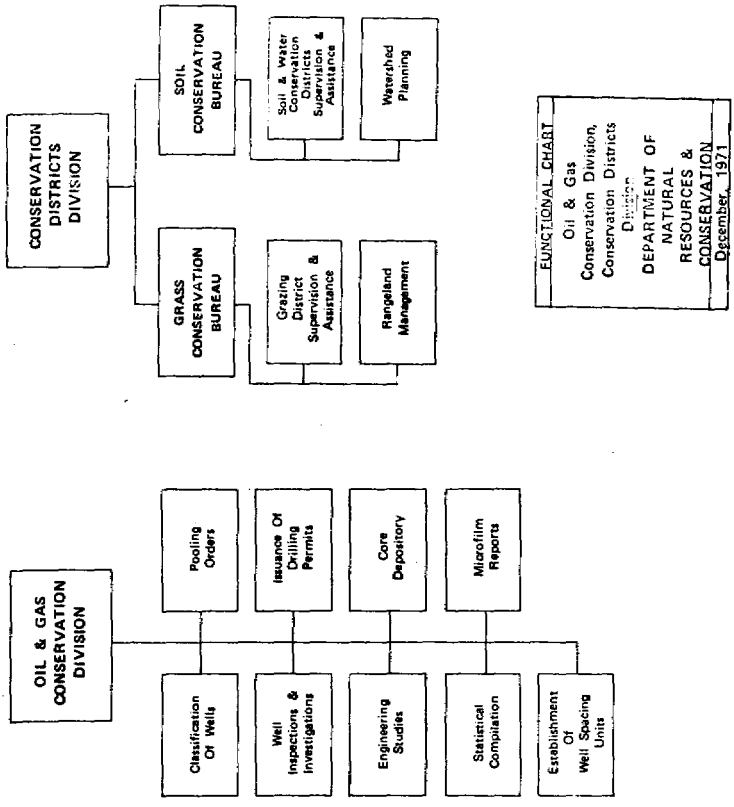
Water Resources Division, Room 403, Mitchell Building, Helena, Montana 59601

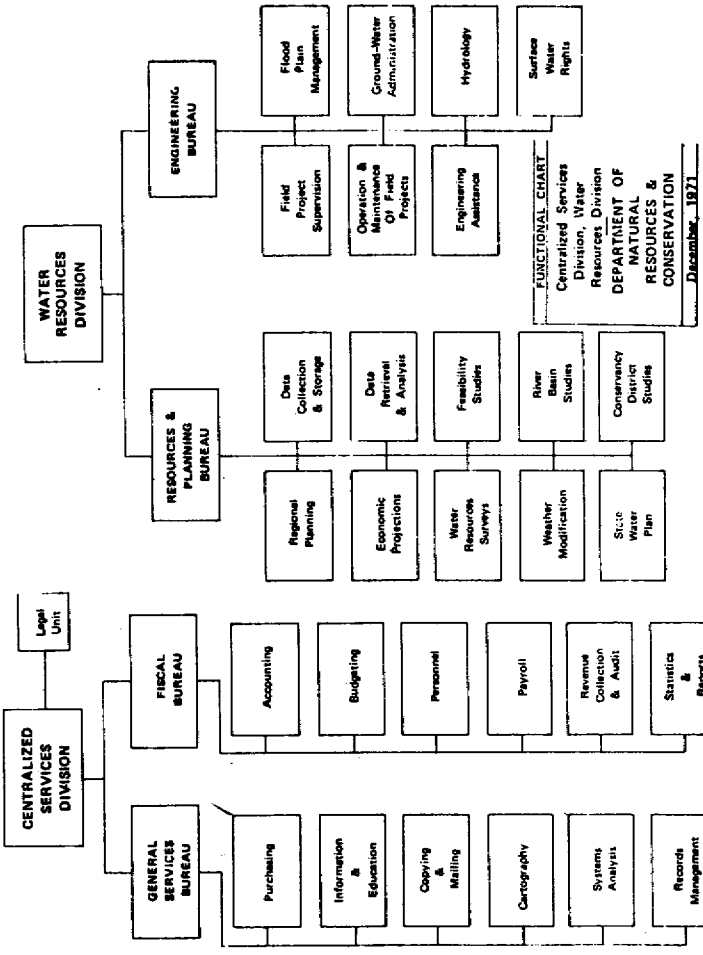
Forestry Division, 2705 Spurgeon Road, Missoula, Montana 59801
Conservation Districts Division, Room 422, Mitchell Building, Helena, Montana 59601
Oil and Gas Conservation Division, 325 Fuller Avenue, Helena, Montana 59601

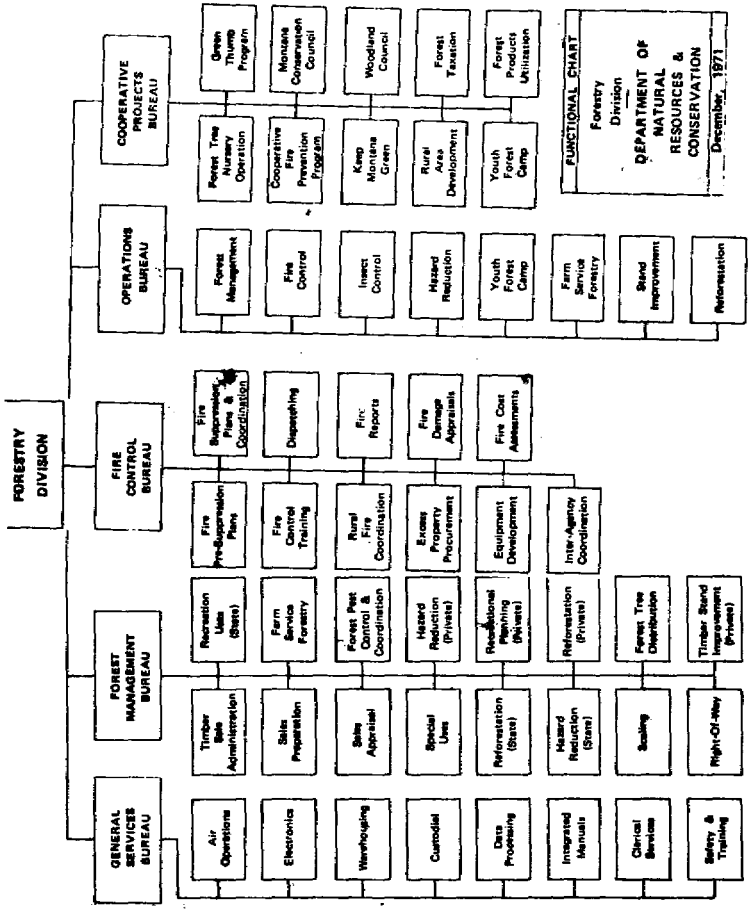
(6) Charts of Agency Organization

Descriptive charts of the Department of Natural Resources and Conservation are attached as the following four pages and are incorporated in this rule.


GOVERNOR
BOARD OF NATURAL RESOURCES & CONSERVATION
DIRECTOR
Environmental Unit
State Board Of Land Comm.
Board Of Oil & Gas Conservation
State Conservation Commission
OIL & GAS CONSERVATION DIVISION
Administrator
CONSERVATION DISTRICTS DIVISION
Administrator
Grass Conservation Bureau
Chief
Soil Conservation Bureau
Chief
FORESTRY DIVISION
Administrator
Cooperative Projects Bureau
Chief
General Services Bureau
Chief
Operations Bureau
Chief
Forest Management Bureau
Chief
Fire Control Bureau
Chief
WATER RESOURCES DIVISION
Administrator
Resources & Planning Bureau
Chief
Engineering Bureau
Chief
Legal Unit
CENTRALIZED SERVICES DIVISION
Administrator
General Services Bureau
Chief
Fiscal Bureau
Chief
ORGANIZATION CHART
DEPARTMENT OF NATURAL RESOURCES & CONSERVATION
December, 1971
* No rule making authority under the Montana Administrative Procedure Act.
+ Submits separate rules


FUNCTIONAL CHART
Oil & Gas
Conservation Division,
Conservation Districts
Division
DEPARTMENT OF
NATURAL
RESOURCES &
CONSERVATION
December, 1971
CONSERVATION
DISTRICTS
DIVISION
SOIL
CONSERVATION
BUREAU
Soil & Water
Conservation
Districts
Supervision &
Assistance
Watershed
Planning
GRASS
CONSERVATION
BUREAU
Grazing
District
Supervision &
Assistance
Rangeland
Management
OIL & GAS
CONSERVATION
DIVISION
Pooling
Orders
Issuance Of
Drilling
Permits
Core
Depository
Microfilm
Reports
Classification
Of Wells
Well
Inspections &
Investigations
Engineering
Studies
Statistical
Compilation
Establishment
Of
Well Spacing
Units


DEPARTMENT OF NATURAL RESOURCES & CONSERVATION
FUNCTIONAL CHART
Centralized Services Division, Water Resources Division
December, 1971
WATER RESOURCES DIVISION
CENTRALIZED SERVICES DIVISION
Legal Unit
FISCAL BUREAU
Accounting
Budgeting
Personnel
Payroll
Revenue Collection & Audit
Statistics & Reports
GENERAL SERVICES BUREAU
Purchasing
Information & Education
Copying & Mailing
Cartography
Systems Analysis
Records Management
RESOURCES & PLANNING BUREAU
Regional Planning
Economic Projections
Water Resources Surveys
Weather Modification
State Water Plan
Data Collection & Storage
Data Retrieval & Analysis
Feasibility Studies
River Basin Studies
Conservancy District Studies
ENGINEERING BUREAU
Field Project Supervision
Operation & Maintenance Of Field Projects
Engineering Assistance
Flood Plain Management
Ground-Water Administration
Hydrology
Surface Water Rights


FUNCTIONAL CHART
Forestry Division
DEPARTMENT OF NATURAL RESOURCES & CONSERVATION
December, 1971
FORESTRY DIVISION
COOPERATIVE PROJECTS BUREAU
OPERATIONS BUREAU
FIRE CONTROL BUREAU
FOREST MANAGEMENT BUREAU
GENERAL SERVICES BUREAU
Green Thumb Program
Montana Conservation Council
Woodland Council
Forest Taxation
Forest Products Utilization
Forest Tree Nursery Operation
Cooperative Fire Prevention Program
Keep Montana Green
Rural Area Development
Youth Forest Camp
Forest Management
Fire Control
Insect Control
Hazard Reduction
Youth Forest Camp
Farm Service Forestry
Stand Improvement
Reforestation
Fire Reports
Fire Damage Appraisals
Fire Cost Assessments
Fire Control Training
Rural Fire Coordination
Excess Property Procurement
Equipment Development
Inter-Agency Coordination
Recreation Use (State)
Farm Service Forestry
Forest Pest Control & Coordination
Hazard Reduction (Private)
Reforestation (Private)
Forest Tree Distribution
Timber Stand Improvement (Private)
Timber Sale Administration
Sales Preparation
Sales Appraisal
Special Uses
Reforestation (State)
Hazard Reduction (State)
Scaling
Right-Of-Way
Air Operations
Electronics
Warehousing
Custodial
Data Processing
Integrated Manuals
Clerical Services
Safety & Training

1-1.6(2)-P650-RULEMAKING, INTRODUCTION.

(1) Sections 82-4204 through 82-4207 prescribe procedures to be followed by agencies when adopting, amending or repealing rules.

(2) See section 82-4202(2) for the definition of "rule". Because of the difficulty in determining whether an agency action falls within the definition of rule, construe the exceptions narrowly and if in doubt, consult legal counsel. Interpretive rules are statements issued by an agency to advise the public of the agency's construction of the statutes and rules which it administers. Interpretive rules may be made under the express or implied authority of a statute, but are advisory only and do not have force of law.

(3) Rulemaking checklist. Rulemaking under the Administrative Procedure Act involves three steps.

/ / Notice of proposed agency action. See model rule 3.

/ / Opportunity to be heard.

The agency must allow at least 28 days for interested persons to submit comments in writing to the agency. Except where otherwise required by law, an agency must hold a public hearing only if its proposed action affects a substantive rule and a hearing is requested by either:

(a) 10% or 25, whichever is less, of the persons who will be directly affected by the proposed action,

(b) a governmental subdivision or agency,

(c) an association having not less than 25 members who will be directly affected, or

(d) the Administrative Code Committee of the Legislature.

See model rule 4.

/ / Agency action. See model rule 5.

(4) Temporary emergency rules may be adopted without prior notice or hearing or after abbreviated procedures. This is discussed in model rule 6.

1-1.6(2)-P660-Model Rule 2-RULEMAKING, PETITION TO PROMULGATE, AMEND OR REPEAL RULE.

(1) Section 82-4207 authorizes an interested person or member of the legislature acting on behalf of an interested person when the legislature is not in session, to petition an agency to promulgate, amend or repeal a rule.

(a) Petition from interested person. The petition shall be in writing, signed by or on behalf of the petitioner and shall contain a detailed statement of:

(i) The name and address of petitioner and of any other person known by petitioner to be interested in the rule sought to be adopted, amended or repealed.

(ii) Sufficient facts to show how petitioner will be

affected by adoption, amendment or repeal of the rule.

(iii) The rule petitioner requests the agency to promulgate, amend or repeal. Where amendment of an existing rule is sought, the rule shall be set forth in the petition in full with matter proposed to be deleted therefrom interlined and proposed additions thereto shown by underlining or boldface.

(iv) Facts and propositions of law in sufficient detail to show the reasons for adoption, amendment or repeal of the rule.

(aa) Sample form 3: Petition from interested person.

BEFORE THE (1-name of agency)
OF THE STATE OF MONTANA

In the matter of the (2-promulgation of a rule, amendment of rule ____, or repeal of rule ____.)	)))	PETITION TO (3-PROMULGATE A RULE, AMEND RULE ____, OR REPEAL RULE ____)

1. Petitioner's name and address is (4-).

2. (5-facts showing petitioner will be affected; for ex.: Petitioner is the owner of Sunset Rooming House, a three-story wood frame structure located at 111 11th street, Anytown, Montana. Under rule 1-1.6(2)-S6040, page 1-47, Montana Administrative Code, petitioner is required to install a sprinkling system in his rooming house. The cost of a sprinkling system to petitioner would be $5,000.)

3. (6-reasons for the proposed agency action; for ex.: Petitioner asserts a sprinkling system is not necessary in petitioner's case because the second and third floors of petitioner's rooming house each contain two fire exists leading to a fire escape. Petitioner contends that a heat-sensing fire alarm system would be an adequate alternative to protect the public safety in petitioner's rooming house.

4. The rule as proposed to be (7-amended, promulgated) would read as follows:

(8-for ex.: Rule ___. Sprinkler Systems --When required.

(1) Except as otherwise provided in this rule, all wood frame structures of two or more stories used for public occupancy shall be equipped with a fire sprinkler system approved as to type and installation by the Fire Marshal Bureau.

(2) Where a wood frame structure which is required by subsection (1) of this rule to have a sprinkler system has two or more exit doors on each floor above the ground floor leading to an approved type of fire escape maintained for public use, a heat sensing fire alarm system approved by the Fire Marshal Bureau as to type and installation, may be substituted for a sprinkler system.)

5. (9-Option 1: Petitioner has no knowledge of any

person who may have a particular interest in the proposed agency action; or

Option 2: Persons known to petitioner to have an interest in the proposed agency action are: _____.)

WHEREFORE, petitioner requests the (10-name of agency) to (11-type of proposed agency action).

(12-Signature)
Petitioner

(b) Petition from legislator. Legislators may petition an agency on behalf of interested parties through an informal letter or memorandum. The petition should include the name of the person or a description of a class of persons on whose behalf the legislator acts. Petitions filed by the Administrative Code Committee of the legislature need not be brought on the behalf of any specifically interested party. Any petition from the legislature or its members should comply with (1)(a) (iii) and (iv) of this rule.

(2) The petition shall be considered filed when received by the agency.

(3) Agency Action. Upon receipt of the petition, the agency:

(a) shall mail a true copy of the petition to all parties named in the petition. The petition shall be deemed served on the date of mailing to the last known address of the person being served.

(b) shall advise petitioner that he has 30 days in which to submit written views.

(c) may schedule oral presentation of petitioner's views if the agency wishes to hear petitioner orally.

(d) shall, within 60 days after date of submission of the petition, either:

(i) issue an order denying the petition, stating its reasons for the denial, and mail a copy to the petitioner and all other persons upon whom a copy of the petition was served, or

(ii) initiate rule making proceedings in accordance with the Administrative Procedure Act.

1-1.6(2)-P670-Model Rule 3-RULEMAKING, NOTICE.

(1) How notice is given. Section 82-4204(a).

(a) An agency shall give notice of intent to adopt, amend or repeal a rule by filing notice with the Secretary of State for publication in the Montana Administrative Register.

(b) Notice shall be mailed to persons who have made timely requests to the agency for advance notice of its rulemaking proceedings.

(c) If the agency is required by statute to provide

for a different method of publication, it shall comply with the statute in addition to the requirements of the administrative procedure act.

(d) An agency may send a copy of the notice to a statewide wire service and any other news media it considers appropriate.

(e) Whenever practicable and appropriate, the agency may send written notice to licensees of the agency.

(2) Notice shall be published or mailed at least 30 days in advance of the agency's intended action. Agency action must be taken within 6 months of the date on which notice was published or mailed.

(3) Contents of notice.

(a) Notice of public hearing.

(i) The notice must include:

(aa) a statement of whether the agency intends to adopt, amend or repeal a rule;

(ab) if the terms of a proposed rule, amendment or repeal of a rule are known to the agency, a copy of any rule proposed to be adopted, amended, or repealed must be included in the notice. If the rule is too voluminous, the notice may instead include a summary and inform interested persons where a copy of the proposed rule may be obtained. If the exact terms of a rule are yet unknown to an agency, the notice may paraphrase a proposed rule and describe the subjects and issues involved in the intended action;

(ac) a statement of the reason why the agency is proposing the action;

(ad) the time (at least 20 days after publication of notice) and place of public hearing and the manner in which interested persons may present their views at the hearing; and

(ae) a designation of the officer or authority who will preside at and conduct the hearing.

(ii) Sample form 4: Notice of public hearing on the proposed adoption of a new rule.

BEFORE THE (1-name of agency)
OF THE STATE OF MONTANA

In the matter of the adoption of a rule (2-summary; for ex.: requiring sprinkler systems in wood frame structures of two or more stories used for public occupancy.)	)))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE (3-subject; for ex.: sprinkler systems)

1. On (4-date) at (5-time), a public hearing will be held in room (6-) of the (7-building), (8-city), Montana, to consider the adoption of a rule which (9-summary of subject matter).

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

3. (Option 1:) The proposed rule provides as follows: (10-text of proposed rule).

(Option 2:) The proposed rule provides in summary that (10-summary). A copy of the entire proposed rule may be obtained by contacting _____.

(Option 3:) The proposed rule provides in substance that: (10-paraphrase rule, describe the subjects and issues involved in the intended action).

4. (11-rationale for proposed rule; for ex.: The department is proposing this rule because investigations by the state Fire Marshal have indicated that at least six fatalitites in 3 separate hotel or nursing homes fires in recent years would probably have been prevented if sprinkler systems had been in the buildings.)

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

6. (12-name, address) has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rule is based on section (13-), R.C.M. 1947.

_____
(14-agency head)

Certified to the Secretary of State (15-date)

(iii) Sample form 5: Notice of public hearing on proposed amendment of a rule.

BEFORE THE (1-name of agency)
OF THE STATE OF MONTANA

In the matter of the amendment of Rule (2-)(3-summary; for ex.: requiring sprinkler systems in wood frame structures of two or more stores used for public occupancy.)	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE (4-) (5-subject; for ex.: Sprinkler Systems)

1. On (6-date) at (7-time) a public hearing will be held in room (8-) of the (9-building), (10-city), Montana, to consider the amendment of rule (11-).

2. The proposed amendment replaces present rule (12-) found in the Administrative Rules of Montana. The proposed amendment would (13-summary; for ex.: permit the use of heat-sensing alarm devices as an alternative to a sprinkler system where a particular building meets certain exit and fire escape requirements).

3. (Option 1:) The rule as proposed to be amended provides as follows:

(15-text of present rule with matter to be stricken interlined and new matter added, then underlined.)

(Option 2:) The rule as proposed to be amended provides in summary that (15-summary). A copy of the entire rule as proposed to be amended may be obtained by contacting_____.

(Option 3:) The rule as proposed to be amended provides in substance that (15-paraphrase rule, describe the subjects and issues involved in the intended action).

4. (16-rationale for proposed amendment; for ex.: The department is proposing this amendment to its rule because compliance with the present rule would be very expensive for the owners of several older buildings, and because these owners have presented credible evidence that the less expensive heat-sensing alarm systems would provide an equal measure of public safety.)

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

6. (17-name, address) 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 (18-), R.C.M. 1947.

_____
(19-agency head)

Certified to the Secretary of State (20-date).

(iv) Sample form 6: Notice of public hearing on proposed repeal of a rule.

BEFORE THE (1-name of agency)
OF THE STATE OF MONTANA

In the matter of the repeal of Rule (2-)(3-summary; for ex.: requiring sprinkler systems in wood frame structures of two or more stories used for public occupancy).	)))))	NOTICE OF PUBLIC HEARING ON REPEAL OF RULE (4-) (5-Subject; for ex.: Sprinkler Systems)

1. On (6-date), at (7-time), a public hearing will be held in room (8-) of the (9-building), (10-city), Montana, to consider the repeal of rule (11-), (12-summary, for ex.: requiring sprinkler systems in wood frame structures of two or more stories used for public occupancy).

2. The rule proposed to be repealed can be found on page (13-) of the Administrative Rules of Montana.

3. The rule is proposed to be repealed because (14-rationale; for ex.: the Department of Health and Environmental Sciences has rules of similar import for hotels, boarding facilities, restaurants, nursing homes and health care facilities, and it appears that almost all wood frame structres of two or more floors used for public occupancy fall into one of those categories. Rule 1-16(2)-S6040 is thus superfluous to the extent it is consistent with the health agency's rule and confusing to the public if it is not consistent.

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

5. (15-name, address) has been designated to preside over and conduct the hearing.

6. The authority of the agency to repeal the rule is based on section (16-), R.C.M. 1947.

(17-agency head)

Certified to the Secretary of State (18-date).

(b) Notice when agency does not plan to hold a public hearing.

(i) the notice must include:

(aa) a statement of whether the agency intends to adopt, amend or repeal a rule.

(ab) if the terms of a proposed rule, amendment or repeal are known to the agency, a copy of any rule proposed to be adopted, amended, or repealed must be included in the notice. If the rule is too voluminous, the notice may instead include a summary and inform interested persons where a copy of the rule may be obtained. If the exact terms of a rule are yet unknown to an agency, the notice may paraphrase a proposed rule and describe the subjects and issues involved in the intended action.

(ac) a statement of the rationale for the intended action.

(ad) the time and place at which data, views, or arguments may be submitted in writing to the agency.

(ae) a statement that any interested person desiring to express or submit his data, views or arguments at a public hearing must request the opportunity to do so; and that if 10% or 25 or more persons directly affected or the legislature's Administrative Code Committee request a hearing, a hearing will be held after appropriate notice is given. Reference to the Administrative Code Committee is unnecessary if the full legislature, by joint resolution, has ordered the repeal of a rule.

(af) a statement of the number of persons directly affected who constitute 10%.

(ag) the name and address of the person to whom request for public hearing must be submitted; and the date by which a request must be submitted.

(ii) Sample form 7: Notice of proposed adoption of a procedural rule.

BEFORE THE (1-name of agency)
OF THE STATE OF MONTANA

In the matter of the adoption of a rule (2-summary; for ex.: requiring	) NOTICE OF PROPOSED ADOPTION OF A RULE (3-subject; for ex.:

plumbers to file annual reports)) Plumber's Reports)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All interested persons

1. On (4-date), the (5-agency) proposes to adopt a rule (6-summary; for ex.: requiring plumbers to file annual reports with the department).

2. (Option 1:) The proposed rule provides as follows: (7-text of proposed rule).

(Option 2:) The proposed rule provides in summary that: (7-summary). A copy of the entire proposed rule may be obtained by contacting _____.

(Option 3:) The proposed rule provides in substance that: (7-paraphrase rule, describe the subjects and issues involved in the intended action).

3. (8-rationale for proposed rule; for ex.: The rule is proposed to respond to a petition for its adoption filed by the Montana Consumers Association. The petition sets forth reasons why the information contained in the proposed reports should be available to the public. Copies of the petition are available from the department.)

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to (9-name, address), no later than (10-date).

5. The authority of the department to make the proposed rule is based on section (11-), R.C.M. 1947.

_____
(16-agency head)

Certified to the Secretary of State (17-).

(iv) Sample form 9: Notice of proposed amendment of a procedural rule.

BEFORE THE 1-name of agency)
OF THE STATE OF MONTANA

In the matter of the amendment of Rule (2-) (3-summary; for ex.: requiring plumbers to file annual reports)) NOTICE OF PROPOSED AMENDMENT OF RULE (4-) (5-subject; for ex.: Plumber's Reports)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Interested Persons

1. On (6-date), the (7-agency) proposes to amend rule (8-) which (9-summary, for ex.: requires plumbers to file annual reports with the department).

2. (Option 1:) The rule as proposed to be amended provides as follows:

(10-text of rule with matter to be omitted interlined and new matter added, then underlined.)

(Option 2:) The rule as proposed to be amended provides in substance that: (10-paraphrase rule, describe the

subjects and issues involved in the intended action).

(Option 3:) The rule as proposed to be amended provides in summary that (7-summary). A copy of the entire rule as proposed to be amended may be obtained by contacting _____.

3. (11-rationale for the proposed amendment; for ex.: The rule is proposed to be amended to respond to a petition for its amendment filed by the Montana Consumer Association. The petiton sets forth reasons why the information contained in the proposed reports should be available to the public. Copies of the petition may be obtained from the department.)

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to (12-name, address), no later than (13-date).

5. The authority of the department to make the proposed amendment is based on section (14-), R.C.M. 1947.

_____
(15-agency head)

Certified to the Secretary of State (16-date).

(v.) Sample form 10: Notice of proposed amendment of a substantive rule when no public hearing is contemplated. Use form 9 through and including paragraph 4, then add:

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 (14-name, address), no later than (15-date).

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. Ten percent of those persons directly affected has been determined to be (16-) persons based on (17- for ex.: the 200 licensed plumbers in Montana).

8. The authority of the agency to make the proposed amendment is based on section (18-), R.C.M. 1947.

_____
(19-agency head)

Certified to the Secretary of State (20-date).

(vi) Sample form 11: Notice of proposed repeal of a procedural rule.

BEFORE THE (1-name of agency)
OF THE STATE OF MONTANA

In the matter of the repeal	)	NOTICE OF PROPOSED
of rule (2-)(3-summary;	)	REPEAL OF A RULE
for ex.: requiring plumbers	)	(4-subject; for ex.:

to file annual reports)) Plumbers Reports)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Interested Persons:

1. On (5-date), the (6-agency) proposes to repeal rule (7-), (8-summary; for ex.: requiring plumbers to file annual reports with the department).

2. The rule proposed to be repealed is on page (9-) of the Administrative Rules of Montana.

3. The agency proposes to repeal this rule because (10-rationale; for ex.: all information contained in the plumber's annual reports is already compiled by the department from permit records and those records are available for public inspection at the office of the department director).

4. Interested parties may submit their data, views, or arguments concerning the proposed repeal in writing to (11-name, address), no later than (12-date).

5. The authority of the department to make the proposed rule is based on section (13-), R.C.M. 1947.

(14-agency head)

Certified to the Secretary of State (15-date).

(vii) Sample form 12: Notice of proposed repeal of a substantive rule when no public hearing is contemplated.

Use form 11 through and including paragraph 4, then add:

5. If a person who is directly affected by the proposed repeal of rule (12-) 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 that request along with any written comments he has to (13-name, address), no later than (14-date).

6. If the agency receives requests for a public hearing on the proposed repeal from more than 10% or 25 or more persons directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be (15-) persons based on (16-for ex.: the 200 licensed plumbers in Montana).

7. The authority of the agency to make the proposed rule is based on section (17-), R.C.M. 1947.

(18-agency head)

Certified to the Secretary of State (19-date).

(viii) Sample form 13: Repeal of a rule by direction of the legislature.

BEFORE THE (1-name of agency)
THE STATE OF MONTANA

In the matter of the repeal) NOTICE OF PROPOSED

of Rule (2-)(3-summary, for ex.: requiring sprinkler systems in wood frame structures of two or more stories used for public occupancy.)	)	REPEAL OF RULE (4-) (5-subject, for ex.: Sprinkler Systems)

TO: All Interested Persons:

1. On (6-date), the (7-agency) will repeal rule (8-), (9-summary, for ex.: requiring sprinkler systems in wood frame structures of two or more floors used for public occupancy).

2. The rule to be repealed is on page (10-) of the Administrative Rules of Montana.

3. (11-rationale for the repeal; for ex.: the department is repealing this rule as directed by Senate Joint Resolution No. 10 of the 45th Legislature, the text of which sets forth the reasons for repealing the rule.)

(12-agency head)

Certified to the Secretary of State (13-date).

(ix) Notice of public hearing when a requisite number of persons or the Administrative Code Committee has requested a hearing.

(aa) When the Administrative Code Committee or more than 10% or 25 persons directly affected by a proposed rule change has requested a hearing, the agency must mail notice of the hearing to persons who have requested a public hearing. Also, notice must be published in the Montana Administrative Register.

(ab) The notice must include:

(i) all information required in section (3)(a)(i) of this rule;

(ii) notice that the hearing is being held upon request of the requisite number of persons designated in the original notice or the Administrative Code Committee of the Legislature.

(ac) Sample form 14: Amendment of notice of proposed adoption, amendment or repeal of a substantive rule.

BEFORE THE (1-name of agency)
OF THE STATE OF MONTANA

In the matter of (2-same as original notice).	)	NOTICE OF PUBLIC HEARING FOR (3-adoption of a rule, amendment of rule ___, or repeal of rule ___) (4-subject, same as original notice.)

TO: All Interested Persons:

The notice of proposed agency action published in the

Montana Administrative Register on (5-date), is amended as follows because (6-the Administrative Code Committee, or the required number of persons designated therein) (7-has/have) requested a public hearing:

1. On (8-date), at (9-time), a public hearing will be held in room (10-) of the (11-building) to consider the (12-adoption of a rule, the amendment of rule __, or repeal of rule __), (13-summary; for ex.: requiring sprinkler systems in wood structures of two or more stories used for public occupancy).

2. (14-the proposed rule or proposed amendment) provides as follows:

(15-same as original notice)

OR

(14-the rule proposed for repeal is found on page ___ of the Administrative Rules of Montana.)

3. The rule is proposed for the purpose of (16-same rationale as original notice).

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

5. (17-name, address) has been designated to preside over and conduct the hearing.

6. The authority of the department to (18-make the proposed rule, amendment, or repeal) is based on section (19-), R.C.M. 1947.

_____
(20-agency head)

Certified to the Secretary of State (21-date).

1-1.6(2)-P680-Model Rule 4-OPPORTUNITY TO BE HEARD.

(1) Written comment. When an agency is not required and does not wish to hold a public hearing, the person designated in the notice to receive written comments from interested persons shall review all submissions within a reasonable time after the period for comment has ended. That person then shall prepare a written summary of the comments and submit this report to the rulemaker.

(2) Public hearing.

(a) Except as otherwise provided by statute, public hearings shall be conducted in the following manner:

(i) the hearing shall be conducted by and under the control of a presiding officer. The presiding officer shall be appointed by the rulemaker; that is, the department, board, or administrative officer authorized by law to make rules for the agency. The rulemaker retains the ultimate authority and responsibility to insure that the hearing is conducted in accordance with the Administrative Procedure Act.

(ii) at the commencement of the hearing, the presiding officer shall ask that any person wishing to submit data, views or arguments orally or in writing submit his name, address, affiliation, whether he favors or opposes the proposed action, and such other information as may be required by the presiding officer for the efficient conduct of the hearing. The presiding officer shall provide an appropriate form for submittal of this information.

(iii) at the opening of the hearing, the presiding officer shall read the notice that has been given in accordance with model rule 3.

(iv) subject to the discretion of the presiding officer, the order of presentation may be:

(aa) statement of proponents;

(ab) statement of opponents;

(ac) statements of any other witnesses present and wishing to be heard.

(v) the presiding officer or rulemaker has the right to question or examine any witnesses making a statement at the hearing. The presiding officer may, in his discretion, permit other persons to examine witnesses.

(vi) there shall be no rebuttal or additional statements given by any witness unless requested by the presiding officer, or granted for good cause. If such statement is given, the presiding officer shall allow an equal opportunity for reply.

(vii) the hearing may be continued with recesses as determined by the presiding officer until all witnesses present and wishing to make a statement have had an opportunity to do so.

(viii) the presiding officer shall, where practicable, receive all relevant physical and documentary evidence presented by witnesses. Exhibits shall be marked and shall identify the witness offering the exhibits. In the discretion of the agency the exhibits may be preserved for one year after adoption of the rule or returned to the party submitting the exhibits, but in any event the agency shall preserve the exhibits until at least 30 days after the adoption of the rule.

(ix) the presiding officer may set reasonable time limits for oral presentation.

(x) a record must be made of all the proceedings, either in the form of minutes or a verbatim written or mechanical record.

(b) The presiding officer shall, within a reasonable time after the hearing, provide the rulemaker with a written summary of statements given and exhibits received and a report of his observations of physical experiments, demon-

strations and exhibits.

(3) Informal conferences or consultations. In addition to the required rulemaking procedures, an agency may obtain viewpoints and advice concerning proposed rulemaking through informal conferences and consultations or by creating committees of experts or interested persons or representatives of the general public. Section 82-4204.

1-1.6(2)-P690-Model Rule 5 - RULEMAKING, AGENCY ACTION.

(1) Introduction. Thirty days after publication of notice and following receipt of the presiding officer's report, the rulemaker may adopt, amend or repeal rules covered by the notice of intended action.

(2) Notice of rulemaking. Upon adoption, amendment, or repeal of a rule, the agency must file notice of its action with the secretary of state.

(a) The notice must include:

(i) Either the text of the rule adopted or amended, reference to the notice of proposed agency action in which the text of the proposed rule or rule as proposed to be amended was printed in full, or reference to the page number of the Administrative Rules of Montana on which the repealed rule appears.

(ii) A statement of the principal reasons for and against the adoption, amendment or repeal of a rule that were presented by interested persons. The statement also must include the agency's reasons for overruling the considerations urged against the agency action. See Patterson v. Montana Department of Revenue, 33 St. Rptr. 1149 (1976).

(b) Sample form 15: Notice of adoption, amendment or repeal of a rule.

BEFORE THE (1-name of agency)
OF THE STATE OF MONTANA

In the matter of (2-same as notice of proposed action)	)	NOTICE OF THE (3-ADOPTION OF A RULE, AMENDMENT OF RULE ___, OR REPEAL OF RULE ___)

TO: All Interested Persons:

1. On (4-date), the (5-agency) published notice of a proposed (6-adoption of a rule, amendment to rule ___, or repeal of rule___) concerning (7-subject; for ex.: salons in residences) at page (8-) of the (9-year) Montana Administrative Register, issue number (10-).

2. (Option 1:) The agency has (11-adopted, amended or repealed) the rule as proposed.

(Option 2:) The agency has (11-adopted, amended) the rule with the following changes:

(text of rule with matter stricken interlined and new

matter added, then underlined.) If the changes are not numerous the following form may be used:

1-1.6(2)-P6030 Payment procedures.

(1) Reimbursement principles.

(a)-(b) same as proposed rule.

(c) The provider shall submit to the Department or its designee financial data within ~~120~~ **days** 90 days.

(d)-(e) same as proposed rule.

(Option 3:) The agency has (11-adopted, amended) the rule with minor editorial changes but substantially as proposed.

(Option 4:) The agency has repealed rule (11-), found on page __ of the Administrative Rules of Montana.

3. (Option 1:) No comments or testimony were received. The agency has (12-adopted, amended or repealed) the rule because (13-may be same rationale as given in original notice).

(Option 2:) (12-when adverse comment or testimony has been received the agency must acknowledge and rebutt the reasons given; for ex.:

At the public hearing, a representative of the Montana Wood Contractors' Association opposed the rule on the grounds that it discriminated against wooden buildings arbitrarily. He argued that fire hazards are also significant in brick and stone buildings, and that the rule would divert new construction business to brick and stone contractors.

A written statement opposing the rule was received from John Doe of Anytown, Montana, who had just installed a heat-sensing fire alarm system in his three-story rooming house. He argued that such a system provided a margin of safety equal to that of a sprinkler system.

The argument of the Wood Contractors is overruled. Statistics from the U.S. Fire Insurers' Association 1974 Annual Report show that fires break out in wood frame buildings at an annual rate of 21.4 per thousand, and in all other types of buildings at a rate of 11.9 per thousand. This differential justifies a stricter rule for wooden buildings.

The argument of Doe has merit on the assumption that adequate exits from upper floors are available. Accordingly, the rule has been modified to allow the substitution of a heat-sensing alarm systems approved by the Fire Marshal for sprinkler systems in buildings having two or more exit doors leading to satisfactory fire escapes on each upper floor.)

(14-agency head)

Certified to the Secretary of State (15-date).

(3) Effective date. The agency action is effective on the day following publication of the notice in the Montana

Administrative Register unless a later date is required by statute or specified in the notice.

1-1.6(2)-P6000-Model Rule 6 - RULE MAKING, EMERGENCY RULES.

(1) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days notice, it may adopt a temporary emergency rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable. Section 82-4204(2).

(2) To adopt an emergency rule the agency must:

(a) file with the secretary of state a copy of the emergency rule and a statement in writing of its reasons for finding that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days notice. Section 82-4205(2).

(b) take appropriate measures to make emergency rules known to persons who may be affected by them, including delivery of copies of the rule to a state wire service and to any other news media the agency considers appropriate.

(3) Effective date of temporary rule. An emergency rule becomes effective upon filing a copy with the secretary of state or on a stated date following publication in the Montana Administrative Register.

(4) Duration of emergency rule. An emergency rule may be effective for a period not longer than 120 days, and may not be renewed. The agency may, however, adopt an identical, permanent rule after notice and hearing in accordance with model rules 2 through 5.

1-1.6(2)-P6010-Model Rule 7 - RULE MAKING, ANNUAL REVIEW.

Each agency must at least annually review its rules to determine whether any rule should be adopted or any existing rule should be modified or repealed. Section 82-4204(6).

1-1.6(2)-P6020-CONTESTED CASES, INTRODUCTION.

(1) A rule is an agency determination of general applicability to all persons who come within its terms. In contrast, a contested case involves an agency determination applicable to a specifically named party. "Contested case" and "party" are defined by section 82-4202.

1-1.6(2)-P6030-Model Rule 8-CONTESTED CASES, NOTICE OF OPPORTUNITY TO BE HEARD.

(1) The notice must include:

(a) A statement of the time, place and nature of the hearing.

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) A reference to the particular sections of the statutes and rules involved.

(d) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved; the notice should include, however, notice of a party's right to obtain a more definite and detailed statement upon application.

(e) A provision advising parties of their right to be represented by counsel at the hearing.

(f) A statement either staying the agency action or detailing at what point the party's legal rights, duties, or privileges will be revoked or imposed.

(2) Sample form 16: Notice of hearing.

BEFORE THE (1-name of agency)
OF THE STATE OF MONTANA

In the matter of (2-summary; for ex.: the Insurance Agent's License of John Doe)	)	NOTICE OF HEARING ON (3-subject; for ex.: THE REVOCATION OF AGENT'S LICENSE

TO: (4-name of party)

At (5-time, (6-date), at (7-address), a hearing will be held for the (8-subject; for ex.: revocation of the insurance agent's license of John Doe).

This hearing is held under the authority of (9-R.C.M. section or agency regulation). Violation of (10-R.C.M. section or agency regulation) is alleged in that (11-statement of facts constituting alleged violation; for ex.:

(Option 1:) John Doe misappropriated to his own use money belonging to a policyholder, specifically the sum of $500 from Mary Smith on or about the 1st day of March 1973.

(Option 2:) John Doe misappropriated to his own use money belonging to a policyholder. A more definite and detailed statement of the allegation may be obtained by applying to Ms. Smith, Capitol Building, Helena, Montana.)

You are entitled to attend this hearing and respond and present evidence and arguments on all issues involved in this action.

You have a right to be represented by counsel at the hearing. If you desire to contest the proposed agency action, you must notify (14-name, address) in writing within (15-a number of days which provides reasonable opportunity to prepare) of service of this notice on you. Failure to notify (16-name) will result in (17-proposed agency action; for ex.: revocation) on the date of this hearing.

Dated: (18-)

(19-agency official)

1-1.6(2)-P6040-Model Rule 9-CONTESTED CASES, EMERGENCY SUSPENSION OF A LICENSE.

(1) Section 82-4214(3) provides:

"...If the agency finds that public health, safety or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined."

(a) Sample form 17-Notice of immediate suspension or revocation of a license.

BEFORE THE (1-name of agency)
OF THE STATE OF MONTANA

In the matter of (2-type of license and name of holder, for ex.: the Insurance Agent's License of John Doe)	)	NOTICE OF (3-action taken; for ex.: SUSPENSION OF AGENT'S LICENSE) AND OF HEARING FOR (4-PERMANENT SUSPENSION OR REVOCATION) OF (5-TYPE OF LICENSE)

TO: (6-name of license holder)

At (7-time),(8-date), at (9-room, building, address), a hearing will be held for the (10-revocation or permanent suspension) of the (11-type of license) of (12-name of license holder).

This hearing is held under the authority of section (13-), R.C.M. 1947. Violation of (14-R.C.M. section or agency regulation) is alleged.

Pending the hearing, the (15-type of license) of (16-name of license holder) is (17-suspended or revoked) as of the date of this notice. This (18-suspension or revocation) is based on (19-option 1: for ex.: misappropriation to his own use of money belonging to a policyholder, specifically $500 from Mary Smith, on or about the 1st day of March 1973).

(Option 2: for ex.: misappropriation to his own use of money belonging to a policyholder. A more definite and detailed statement of the allegation may be obtained by applying to Ms. Smith, Capitol Building, Helena, Mt.).

The (20-agency) finds that the public welfare imperatively requires emergency action, in that (21-finding of fact, for ex.: John Doe has notified the Commissioner that he intends to continue the practice of retaining for his own use initial payments received by him from his clients.)

You are entitled to attend the hearing and present evidence and arguments on whether the (22-suspension or

revocation) should be made permanent. You have a right to be represented by counsel at the hearing. If you desire to contest permanent (23-suspension or revocation), you must notify (24-name, address) in writing within (25-a number of days which provides a reasonable opportunity to prepare) of service of this notice on you. Failure to notify (26-name) of your contest of this action will result in permanent (27-suspension or revocation) on the date of this hearing.

Dated: (28-)

(29-agency official)

1-1.6(2)-P6050-Model Rule 10-CONTESTED CASES, DEFAULT ORDER.

(1) If a party does not appear to contest an intended agency action, the agency may enter a default order. If a default is entered the order must contain findings of fact and conclusions of law.

(a) Sample form 18: Default Order

BEFORE THE (1-name of agency)
OF THE STATE OF MONTANA

In the matter of (2-	)	
summary, for ex.:	)	DEFAULT ORDER
Insurance Agent's License	)	
of John Doe)	)	

On (3-date), a Notice of Proposed (4-agency action, for ex.: Revocation of Agent's License) was served on (4-name, address), by the sheriff of (5-county) Montana. A copy of the sheriff's return is attached to this order and marked Exhibit "A". A copy of the notice is attached to this order and marked Exhibit "B".

The notice provided an opportunity for hearing if requested within (6-) days. More than (6-) days have elapsed since service of the order and no request for hearing has been received. The (7-agency official) considered the evidence and exhibits and makes the following determinations:

FINDING OF FACT

(8-for ex.: On the first day of March, 1973, John Doe appropriated to his own use money belonging to a policyholder, specifically $500 from Mary Smith, as is indicated by sworn statements by two witnesses, Mary Jones and Robert Jones, both being competent to testify and having personal knowledge of the transaction under consideration.

CONCLUSIONS OF LAW

(9-for ex.: Section 40-3329(1), R.C.M. 1947, provides that the commissioner may revoke an insurance agent's license if he finds that the licensee has misappropriated or converted to his own use money belonging to policyholders.

The commissioner has so found; thus cause exists under section 49-3329(1)(d), R.C.M. 1947, for the revocation of the insurance agent's license of John Doe.)

ORDER

(10-for ex.: The insurance agent's license of John Doe is revoked effective August 1, 1973.)

Dated: (11-)

(12-agency official)

1-1.6(2)-P6080-Model Rule 13-CONTESTED CASES, DISCOVERY.

(1) Section 82-4220(3) requires each agency to provide in its rules for discovery prior to a contested case hearing.

(2) In all contested cases discovery shall be available to the parties in accordance with 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 rule amendments thereto. Provided, however, all references to the "court" shall be considered to refer to the appropriate "agency"; all references to the use of the subpoena power shall be considered references to model rule 23; all references to "trial" shall be considered references to "hearing", all references to "plaintiff" shall be considered references to "a party"; all references to "clerk of court" shall be considered references to the person designated by the department head to keep documents filed in a contested case.

(3) If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the agency in which the action is pending, the refusal to obey such agency order shall be enforced as provided in model rule 23.

(4) If a party seeking discovery from the agency in which the action is pending believes he has been prejudiced by a protective order issued by the agency under Rule 26(c), or if the agency refuses to make discovery, that party may petition the district court for review of the intermediate agency action under section 82-4216.

1-1.6(2)-P6060-Model Rule 11-CONTESTED CASES, INFORMAL DISPOSITON.

(1) Section 82-4209(4) provides for informal disposition of any contested cases, where not precluded by law, by stipulation, agreed statement, consent order, or default. For a default order see Model rule 10. The parties may stipulate that no record of a hearing shall be taken or that the rules of evidence shall not apply to a hearing.

(2) Parties may agree to informal disposition if all

parties directly affected agree to the result. To this end the agency may hold one or more informal conferences on notice to all parties. Informal conferences may be held only where the final action of the agency is stayed, and no legal rights, duties, or privileges are terminated prior to post-conference agency action.

(3) An informal conference may be used to define issues, determine witnesses and agree upon stipulations, in the nature of a pre-trial conference.

1-1.6(2)-P6070-Model Rule 12-CONTESTED CASES. APPLICATION FOR MORE DEFINITE AND DETAILED STATEMENT.

(1) Upon application to the agency or the designated hearing examiner, a party who has been given notice of a hearing may apply for a more definite and detailed statement of the issues involved in the hearing. Section 82-4209(2)(d).

1-1.6(2)-P6090-Model Rule 14-CONTESTED CASES, HEARING EXAMINERS.

(1) Section 82-4211 allows the agency to appoint hearing examiners for the conduct of hearings in contested cases.

(a) The powers of the agency members or hearing examiners presiding over hearngs are enumerated in section 82-4211(2).

(2) If a defending party notifies the agency that he will appear at the hearing to contest the intended action, the agency must advise all parties of the appointment of either an agency member or a hearing examiner to manage the case.

(a) Sample form 19: Order appointing a hearing examiner

BEFORE THE (1-name of agency)
OF THE STATE OF MONTANA

In the matter of the	) APPOINTMENT OF HEARING
(2-same as original notice)	) EXAMINER

On (3-date) a notice of hearing for (4-for ex.: revocation of insurance agent's license) was served on (5-name). On (6-date) the agency received written notice that (7-name) will appear at the hearing to contest the intended agency action. (8-name) is appointed the hearing examiner in the above action. All correspondence and motions in the above matter should be directed to the hearing examiner at (9-address).

Dated: (10-)

(11-agency official)

(3) Disqualification of a hearing examiner or agency member is provided for under section 82-4211(3).

1-1.6(2)-P6100-Model Rule 15-CONTESTED CASES, HEARING.

(1) The hearing shall be conducted before the decision-making authority of the agency or a hearing officer designated in accordance with Rule 13.

(2) At the discretion of the presiding officer, the hearing may be conducted in the following order:

(a) Statement and evidence of agency in support of its action.

(b) Statement and evidence of affected parties supporting agency action.

(c) Statement and evidence of affected parties disputing agency action.

(d) Rebuttal testimony.

(3) The presiding officer, parties, and agencies or their attorneys shall have the right to question, examine or cross-examine any witnesses. Section 82-4210(3).

(4) The hearing may be continued with recesses as determined by the presiding officer.

(5) The presiding officer must insure that all parties are afforded the opportunity to respond and present evidence and argument on all issues involved. Section 82-4209(3).

(6) Exhibits shall be marked and the markings shall identify the person offering the exhibits. The exhibits shall be preserved by the agency as part of the record of the proceedings.

1-1.6(2)-P6110-Model Rule 16-CONTESTED CASES, RECORD.

(1) Section 82-4209(5) provides that the record in a contested case shall include the following:

(a) All pleadings, motions, intermediate rulings.

(b) All evidence received or considered, including a stenographic record of oral proceedings when demanded by a party.

(c) A statement of matters officially noticed.

(d) Questions and offers of proof, objections, and rulings thereon.

(e) Proposed findings and exceptions.

(f) Any decision, opinion or report by the hearing examiner or agency member presiding at the hearing.

(g) All staff memoranda or data submitted to the hearing examiner or members of the agency as evidence in connection with their consideration of the case.

(2) Section 82-4209(6) provides that on request of any party the stenographic record of oral proceedings or any part thereof shall be transcribed with the cost of transcription to be paid by the requesting party unless otherwise provided for by law.

1-1.6(2)-P6120-Rule 17-CONTESTED CASES, EVIDENCE

(1) Section 82-4210 provides that unless otherwise provided by a statute directly relating to the agency, the agency is bound by common law and statutory rules of evidence. Objections to offers of evidence may be made and the agency will note them in the record. To expedite the hearing, if the interests of the parties are not prejudiced, any part of the evidence may be received in written form.

(2) Where the original of documentary evidence is not readily available the best evidence rule is modified to allow copies or excerpts.

(3) The presiding officer may take notice of judicially cognizable facts and generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified of materials noticed and be given an opportunity to contest them.

(4) In evaluating evidence the agency may use its experience, technical competence and specialized knowledge.

1-1.6(2)-P6130-Model Rule 18-CONTESTED CASES, EX PARTE CONSULTATIONS.

(1) Section 82-4214 protects all parties in a contested case from informal conferences between the agency and one of the parties. Upon issuance of notice of hearing, those persons who are charged with the duty of rendering a decision or to make findings of fact and conclusions of law shall not communicate with any party or his representative regarding any issue of fact or law without giving notice and opportunity for all parties to participate.

1-1.6(2)-P6140-Model Rule 19-CONTESTED CASES, PROPOSED ORDERS.

(1) If a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, no decision may be made which is adverse to a party other than the agency until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. If the parties adversely affected choose to file exceptions, present briefs or argue orally, the parties favorably affected by the proposal for decision must be given an equivalent opportunity.

(a) The proposal for decision shall be prepared by the person who conducted the hearing unless he becomes unavailable to the agency. If the person who conducted the hearing becomes unavailable to the agency, a person who has read the record may prepare proposed findings of fact only if the demeanor of witnesses is considered immaterial by all parties.

(b) The proposal for decision shall contain a statement of the reasons for the decision and of each issue of fact or law necessary to the proposed decision.

(c) The parties may waive compliance with this rule by written stipulation.

Section 82-4212.

1-1.6(2)-P6150-Model Rule 20-CONTESTED CASES, FINAL ORDERS.

(1) A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include the following:

(a) If a party submitted proposed findings of fact, a ruling upon each proposed finding.

(b) Findings of fact; that is, a statement of facts found to be true and allegations of fact found to be false. The findings of fact must be supported by substantial evidence. If the findings of fact are set forth in statutory language, they must be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(c) Conclusions of law; that is, a statement of how the controlling law applies to the facts found, and the legal results. Each conclusion of law must be supported by legal authority or by a reasoned opinion.

(d) Order; that is, the action taken by the agency as a result of the findings of fact and conclusions of law.

(2) Sample form 20: Final Order

BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF MONTANA

In the matter of the	)	FINDINGS OF FACT,
Insurance Agent's License	)	CONCLUSIONS OF LAW, ORDER
of John Doe	)	AND NOTICE OF OPPORTUNITY
	)	FOR JUDICIAL REVIEW

After notice and hearing on the proposed revocation of the Insurance Agent's License of John Doe, for appropriation of policyholder's money, the Insurance Commissioner considered the evidence and exhibits and makes the following disposition of this contested case.

PROPOSED FINDINGS OF FACT

Counsel for John Doe proposed that the Commissioner find that: The personal check of Mary Smith was deposited to a trust account maintained by agent Doe. The Commissioner does not accept this proposed finding of fact because it was contradicted by two witnesses, both maintaining that the bank account was used for personal purposes by John Doe.

FINDINGS OF FACT

The licensee, John Doe, received the personal check of

Mary Smith in the amount of $500 on the 1st day of March 1973. The licensee, John Doe, maintained two checking accounts, one designated John Doe Insurance, Trust Account, the other a joint checking account between John Doe and Jane Doe. The joint checking account had a mailing address which was 100 Main Street, Anytown, Montana. 100 Main Street is the residence of John and Jane Doe. On March 1, 1973, John Doe deposited the $500 check of Mary Smith to the joint checking account of John and Jane Doe. Thereafter, over a period of two weeks John and Jane Doe drew checks for rent, cash and groceries against the $500 deposited. On March 1, 1973, John Doe gave to Mary Smith a receipt which read:

"Received of Mary Smith the sum of $500 in payment of initial premium of life insurance policy to be issued by the Sandy Bottom Life Insurance Company of North Dakota in the amount of $150,000, insuring the life of Mary Smith.

/s/ John Doe, Agent
Sandy Bottom Life Insurance
Company of North Dakota"

The Commissioner finds that John Doe appropriated to his own use money belonging to a policyholder.

CONCLUSIONS OF LAW

Section 40-3329(1)(d), R.C.M. 1947, provides that the commissioner may revoke an insurance agent's license if he finds that the licensee has misappropriated or converted to his own use money belonging to policyholders. The commissoner has so found; thus cause exists under Section 40-3329(1)(d), R.C.M. 1947, for the revocation of the insurance agent's license of John Doe.

ORDER

The insurance agent's license of John Doe is revoked effective August 1, 1973.

Dated: August 1, 1973.

/s/ John Smyth
Insurance Commissioner

NOTICE: You are entitled to judicial review of this Order in accordance with section 82-4216, R.C.M. 1947. Judicial review may be obtained by filing a petition in district court within thirty days after the service of this Order.

1-1.6(2)-P6160-Model Rule 21-CONTESTED CASES, NOTICE OF FINAL DECISION.

(1) Parties to contested cases and their attorneys shall be notified personally or by mail of any decision or order. On request, a copy of the decision or order shall be delivered or mailed to each party and to his attorney of record. Section 82-4213.

1-1.6(2)-P6170-DECLARATORY RULINGS, INTRODUCTION.

(1) A person taking or wishing to take a particular action may be unsure whether an agency regulation or a statute administered by an agency applies to that action. Section 82-4218 provides that a person may petition the agency for a declaratory ruling as to the applicability of a statute, regulation, or order, to his activity or proposed activity.

1-1.6(2)-P6180-Model Rule 22-DECLARATORY RULINGS, CONTENT OF PETITION.

(1) A petition for declaratory ruling must be typewritten or printed.

(2) The petition must include:

(a) the name and address of petitioner;

(b) a detailed statement of the facts upon which petitioner requests the agency to base its declaratory ruling;

(c) sufficient facts to show that petitioner will be affected by the requested ruling;

(d) the rule or statute for which petitioner seeks a declaratory ruling;

(e) the questions presented;

(f) propositions of law asserted by petitioner;

(g) the specific relief requested;

(h) the name and address of any person known by petitioner to be interested in the requested declaratory ruling.

(3) Sample form 21: Petiton for Declaratory Ruling.

BEFORE THE (1-name of agency)
OF THE STATE OF MONTANA

In the matter of (2-summary; for ex.: the application of John Doe, an insurance agent, for a declaratory ruling on the applicability of §40-3329(1)(d), R.C.M. 1947, to his trust account)	PETITION FOR DECLARATORY RULING

1. Petitioner's name and address is (3-).

2. (4-facts; for ex.: Petitioner maintains an insurance office in his residence in Anytown, Montana. As part of his business petitioner maintains a trust account and a joint checking account under one number. Petitioner regularly deposits checks received from clients into the checking account for future transmittal to petitioner's employer, Sandy Bottom Insurance Company of North Dakota. The insurance commissioner has threatened to bring proceedings under section 40-3329(1(d), R.C.M. 1947, for revocation of petitioner's license.)

3. The (5-statute, regulation, order) as to which petitioner requests a declaratory ruling is (6-) which provides that (7-pertinent provisions).

4. The question presented for declaratory ruling by the agency is (9-for ex.: whether the above statute makes the agent's license subject to revocation for maintaining a combination trust account and private account).

5. Petitioner contends that (8-for ex.: his activity is not an illegal withholding, because he does not use any of the deposited money in trust for his own use).

6. Petitioner requests a declaratory rule that (10-for ex.: he may maintain one checking account for both trust and private moneys without violation of section 49-3329(1)(d), R.C.M. 1947).

7. (11-option 1:) Petitoner knows of no other party similarly affected.

(Option 2:) Petitioner knows of the following parties who are similarly affected: _____.

Dated: (12 -).

_____
(13-name)

1-1.6(2)-P6190-Model Rule 23-DECLARATORY RULINGS, DENIAL OF PETITION.

(1) If the agency denies a petition for declaratory ruling, the agency must mail a copy of the order denying the petition to all persons named in the petition.

(2) An order denying a petition must include a statement of the grounds for denial.

1-1.6(2)-P6200-Model Rule 24-DECLARATORY RULINGS, EFFECT.

(1) A declaratory ruling is binding between the agency and the petitioner concerning the set of facts presented in the petition.

1-1.6(2)-P6210-Model Rule 25-GENERAL PROVISIONS, SUBPOENAS.

(1) Section 82-4220 provides broad authority to the agencies to require the furnishing of information, attendance of witness, and production of evidence necessary to a proceeding subject to the Administrative Procedure Act through subpoenas or subpoenas duces tecum. In addition, the agency must issue subpoenas upon request of any party appearing in a contested case.

(2) Subpoenas must be served in the same manner as subpoenas in civil actions.

(3) Except as otherwise provided by statute, witness fees and mileage shall be paid by the party requesting the issuance of the subpoena.

(4) In the case of disobedience, an agency may apply to the district court for an order to compel compliance with the subpoena or the giving of testimony. If the agency fails to seek such enforcement at the request of a party, the party may do so. Section 82-4220.

1-1.6(2)-P6220-Model Rule 26-GENERAL PROVISIONS, REPRESENTATION.

(1) Section 82-4221 affords any person appearing before the agency the right to be accompanied, represented and advised by counsel. The agency should advise a party to a contested case of his right to counsel.

1-1.6(2)-P6230-Model Rule 27-GENERAL PROVISIONS, SERVICE.

(1) Unless otherwise provided by law, section 82-4222 requires service on parties in accordance with requirements for service in civil actions. Unless otherwise provided by law and these rules, all motions and pleadings will be served in accordance with the Montana Rules of Civil Procedure.

1-1.6(2)-P6240-Model Rule 28-GENERAL PROVISIONS, PUBLIC INSPECTION OF ORDERS AND DECISIONS.

(1) The agency must maintain an index of all final orders and decisions in contested cases and declaratory rulings. All final decisions and orders shall be available for public inspection on request. Section 82-4213(2). Copies of final decisions and orders must be given to the public on request after payment of the cost of duplication.

4. The department is proposing these amendments because many changes have been made in Montana Administrative Procedure Act since the Model Rules were adopted in 1972. The amendments will conform the model rules to these changes.

5. Interested parties may submit their data, views, or arguments concerning the proposed amendments and repeals of these rules in writing to Allan Chronister, Office of the Attorney General, Capitol Building, Helena, Montana. Written comments in order to be considered must be received by November 1, 1977.

6. The authority of the department to make the proposed amendments and repeals is based on section 82-4203(3), R.C.M. 1947.

Mike Greely

MIKE GREELY
Attorney General

Certified to the Secretary of State, September 14, 1977.

Notice No. 23-2-31

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 October 19, 1977, at 10:00 a.m., a public hearing will be held in the highway auditorium, Scott Hart Building, Sixth and Roberts, Helena, Montana, to consider the adoption of a rule establishing the procedural steps for a petition for unit clarification.

2. The proposed rule will replace ARM 24-3.8(10)-S8080.

3. The proposed rule provides as follows:

PETITION FOR CLARIFICATION OF BARGAINING UNIT:

A petition for Clarification of Bargaining Unit may be filed by a bargaining representative of the unit in question or by a public employer.

(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,

(b) deny the petitioned for clarification, or

(c) determine that the matter could be best disposed of by conducting an election among the employees involved.

4. This Board proposed to change its rule on unit clarification because it has determined that the present rule does not provide public employers and bargaining representatives sufficient means to petition this Board for clarification of a bargaining unit. This Board is delegated by section 59-1606, R.C.M. 1947, to determine appropriate units for collective bargaining. It is therefore incumbent upon this Board to provide for a continuing procedure to carry out that responsibility.

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 October 21, 1977.

6. Jerry Painter, staff attorney for the board, has been designated by the board chairman to 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, Chairman
Board of Personnel Appeals

Certified to the Secretary of State
on September 14, 1977.

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

IN THE MATTER OF THE REPEAL OF ARM 24-3.8(10)-S8080 PROVIDING FOR THE PROCEDURAL STEPS FOR FILING A PETITION FOR UNIT CLARIFICATION	NOTICE OF PUBLIC HEARING FOR REPEAL OF RULE (Unit Clarification)

TO: All Interested Persons

1. On October 19, 1977, at 10:00 a.m., a public hearing will be held in the highway auditorium, Scott Hart Building, Sixth and Roberts, Helena, Montana, to consider the repeal of ARM 24-3.8(1)-S8080, the rule which presently sets out the procedural steps for filing a petition for unit clarification or modification with this Board.

2. The rule for consideration for repeal is found on pages 24-28.15 through 24-28.17 of the Administrative Rules of Montana.

3. This Board proposes to substitute the rule proposed in ARM Notice No. 24-3-8-22 for the existing rule. The rationale for this substitution is set out in the above referenced ARM Notice.

4. 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 October 21, 1977.

5. Jerry Painter, staff attorney for the board, has been designated by the board chairman to preside over and conduct the hearing.

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

Brent Cromley, Chairman
Board of Personnel Appeals

Certified to the Secretary of State
on September 14, 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 TO PETITION FOR UNIT DETERMINATION IN ACCORDANCE WITH SECTION 59-1606 (1) (b), R.C.M. 1947	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULE (Employer Petition for Unit Determination)

TO: All Interested Persons

1. On October 19, 1977, at 10:00 a.m., a public hearing will be held in the highway auditorium, Scott Hart Building, Sixth and Roberts, Helena, Montana, to consider the adoption of a rule establishing the procedural steps for an employer to petition for a new unit determination in accordance with section 59-1606 (1) (b), R.C.M. 1947.

2. The proposed rule 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 claiming to be recognized as the exclusive representative and bargaining agent.

(b) A description of the unit to be determined. Such description shall include: (i) the approximate number of employees to be included in the proposed unit, and (ii) an enumeration, by job title, of the unit's inclusions and exclusions.

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

(d) Any other relevant facts.

(5) The board shall serve a copy of the petition on all parties named as claiming to be the

exclusive representative and bargaining agent.

4. Section 59-1606 (1) (b) provides that this Board shall promulgate a procedural rule which would allow a public employer to petition this Board for a new unit determination. This rule is being proposed in accordance with that statutory provision.

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 October 21, 1977.

6. Jerry Painter, staff attorney for the Board, has been designated by the board chairman to 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, Chairman
Board of Personnel Appeals

Certified to the Secretary of State
on September 14, 1977.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of rule 32-2.6B(2)-S610 relating to the Milk Plant Pasteurization Code Numbers.

NOTICE OF PROPOSED AMENDMENT OF RULE 32-2.6B(2)-S610 (Milk Plant Pasteurization Code Numbers)

NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On or after October 24, 1977 the Board of Livestock proposes to amend rule 32-2.6B(2)-S610 to properly identify milk plants preparing pasteurized milk and milk products capable of moving in interstate commerce, and to clarify minor ambiguities in the rule.

2. The proposed amendment will (a) change the numbering system identifying pasteurized milk plants in Montana (b) make the list of such plants current and (c) make minor corrections which eliminate ambiguities in the rule. The proposed amendments read as follows (matter to be stricken is interlined, new matter is underlined):

"32-2.6B(2)-S610 PASTEURIZATION PLANT CODE NUMBERS (1) Montana Department of Livestock regulations require all bottles, cans, packages and other containers enclosing milk or any milk product defined in Chapters 6B and 6BI to be plainly labeled or marked with the identity of the plant at which the contents were pasteurized.

(2) The identity of the plant is maintained by plainly labeling the container with the name of the milk plant, the name of the city or town and the state in which the plant is located.

(3) Chapters 6B and 6BI further provides that the identity of the plant where the milk or milk products are pasteurized may be shown by a code device approved by the Board of Livestock on the label of the container.

(4) The National ~~Labeling-Committee~~ Conference on Interstate Milk Shipments and its membership have adopted the ~~IBM~~ Federal Information Processing Standards (FIPS) Numeral Code for States to identify plants processing fluid milk, fresh milk products and frozen desserts for respective states. The numeral code to identify milk plants in Montana is 25 30. The National ~~Labeling-Committee~~ Conference on Interstate Milk Shipments ~~further~~ recommends that the ~~IBM~~ FIPS Numeral Code for States be followed by a hyphen and an official code number identifying the milk plants in the state.

(5) In view of these recommendations and in order to have milk and milk products labeling acceptable in interstate commerce, it is ordered that the following code numbers shall identify milk plants in Montana:

Code No.	Name	City and State
2530-1	Ayrshire Dairy-Vita Rich	Great Falls, Montana
2530-2	Beatrice Foods Co.	Billings, Montana
2530-3	~~Belgrade Creamery~~	~~Belgrade, Montana~~
2530-4	Montana State Prison	Deer Lodge, Montana
2530-5	Montana Pine Hills School	Miles City, Montana
2530-6	Carbon County Creamery	Red Lodge, Montana
2530-7	Phillips Cloverleaf Dairy	Helena, Montana
2530-8	Boylan's Dairy Bar	Bozeman, Montana
2530-9	~~Columbus Creamery~~	~~Columbus, Montana~~
2530-10	~~Community Creamery~~ Meadow Gold Dairy	Missoula, Montana
2530-11	Dairyland Wholesale, Inc.	Helena, Montana
2530-12	~~Dillon Creamery~~	~~Dillon, Montana~~
2530-13	Peerless Dairy	Great Falls, Montana
2530-14	Dufner's Dairy	Glendive, Montana
2530-15	Elgin Dairy	Butte, Montana
2530-16	Equity Supply Company	Kalispell, Montana
2530-17	~~Farmers Union Co-op Creamery~~ Falls Maid Creamery	Great Falls, Montana
2530-18	~~Gallatin Co-op Creamery~~ Darigold Farms	Bozeman, Montana
2530-19	Gate City Dairy	Glendive, Montana
2530-20	~~Hansen's All Star Dairy~~ Darigold Farms	Great Falls, Montana
2530-21	~~Jersey Creamery~~	~~Bozeman, Montana~~
2530-22	Glacier Mountain Cheese Co.	Gallatin Gateway Montana
2530-23	Hansen's Ice Cream	Missoula, Montana
2530-24	Meadow Valley Creamery	Malta, Montana
2530-25	~~Mede Land Dairies~~ Darigold Farms	Missoula, Montana
2530-26	Laurel Worden Creamery	Laurel, Montana
2530-27	~~Lehrkind's Ice Cream~~	~~Bozeman, Montana~~
2530-28	~~Manhattan Creamery~~	~~Manhattan, Montana~~
2530-29	Ravalli County Creamery	Hamilton, Montana
2930-30	Jersey Creamery	Billings, Montana
2930-31	Sanders County Dairy Co-op	Plains, Montana
2930-32	Beatrice Foods Co.	Great Falls, Montana
2930-33	~~(Vacant)~~ King's Dairy	Missoula, Montana
2530-34	~~(Vacant)~~	
2530-35	~~(Vacant)~~	
2530-36	~~Rock Springs Dairy~~	~~Butte, Montana~~
2530-37	~~(Vacant)~~	
2530-38	Safeway Stores	Butte, Montana
2530-39	~~Sanitary Dairy~~	~~Miles City, Montana~~
2530-40	Skyline Dairy	Kalispell, Montana
2530-41	~~(Vacant)~~	
2530-42	~~(Vacant)~~	
2530-43	Sweet Grass Dairy	Big Timber, Montana

Code No.	Name	City and State
2530-44	~~(Vacant)~~	
2530-45	~~Three Forks Creamery~~	~~Three Forks, Montana~~
2530-46	Wilcoxson's Inc.	Livingston, Montana
2530-47	Vita-Rich Dairy	Havre, Montana
2530-48	~~Vita-Rich Dairy~~	~~Conrad, Montana~~
2530-49	~~(Vacant)~~	
2530-50	Montana State University	Bozeman, Montana
2530-51	~~(Vacant)~~	
2530-52	~~(Vacant)~~	
2530-53		
2530-54		
2530-55		
2530-56		
2530-57		
2530-58		
2530-59		
2530-60		
2530-61		
2530-62		
2530-63	Consolidated Dairies	Ronan, Montana
2530-64	~~(Vacant)~~	
2530-65	~~Foremost Foods~~	~~Stevensville, Montana~~

Any numbers not followed by a plant name are presently unassigned.

(6) It is further ordered that all bottles, cans, packages and other containers enclosing milk or any milk product defined in Chapters 6 B and 6BI shall be plainly labeled with the name of the milk plant in which the milk or milk product was pasteurized, the name of the city or town and state in which the milk plant is located and/or the code number hereon assigned."

3. The purpose of these amendments is to update the rule to bring it into conformity with current Montana and interstate milk identification practice. Since the adoption of the rule recommended identifications have changed, and several plants have gone out of business.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Glenn C. Halver, D.V.M., Administrator & State Veterinarian, Animal Health Division, Department of Livestock, Captiol Station, Helena, MT. 59601. Written comments must be received by October 24, 1977, in order to be considered.

5. If a person directly affected wished to express his data, 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 Dr. Halver or or before October 24, 1977.

6. If the department receives requests for a public hearing from more than twenty-five 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.

7. The authority of the department to make the proposed rules is based on section 46-208.

ROBERT G. BARTHELMESS
Chairman
Board of Livestock

Certified to the Secretary of State September 14, 1977.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM Rule 32-2.6A(78)-S6330 to alter the EIA import test requirement for certain horses moving back and forth between Montana and an adjacent state.	NOTICE OF PUBLIC HEARING FOR AMENDMENT OF RULE 32-2.6A(78)-S6330 (Import Requirements)

TO: ALL INTERESTED PERSONS

1. On November 8, 1977 at 1:30 p.m. a public hearing will be held in the large Conference Room of the Lewis and Clark Public Library, 120 South Last Chance Gulch, Helena, to consider the amendment of rule 32-2.6A(78)-S6330 as it relates to the Equine Infectious Anemia (EIA) import test for horses and other equidae.

2. The proposed amendment will permit horses which are moved back and forth between Montana and an adjacent state and which are EIA tested at least annually as part of a complete herd test to be otherwise exempt from the EIA import test requirement.

3. The exact language will be inserted into paragraph (19) (b) of the rule which in amended form will read as follows: (new material underlined)

(19) (b) With regard to equine infectious anemia (EIA) all equidae six (6) months of age and over entering Montana must have been found negative to the Coggins (AGID) test or any other USDA approved test for EIA performed within six (6) months prior to entry. Owners of horse herds moving between Montana and an adjacent state may annually request and receive a waiver from the six (6) month EIA test requirement, provided the entire herd is tested for EIA at least annually, and the state veterinarian is satisfied that no serious harm to other livestock will result.

4. This amendment is proposed as the result of requests from horse producers moving large numbers of dude and pack horses back and forth between Montana and Wyoming, which requires only an annual EIA test. It is felt that the requirement of an annual test of the entire herd to which each horse eligible for the waiver belongs will provide sufficient surveillance and control of EIA, while at the same time reducing the cost of testing to the producer of such animals.

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

6. The hearing will be before the Board of Livestock, Robert G. Barthelmess, Chairman, presiding.

7. The authority of the department to make these rules is found in section 46-208, R.C.M. 1947.

Robert G. Barthelmess
ROBERT G. BARTHELMESS, Chairman
Board of Livestock

Certified by the Secretary of State, September 14, 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 PUBLIC HEARING FOR THE ADOPTION OF RULES RELATING TO SEISMIC EXPLORATION ACTIVITIES

TO: All Interested Parties

1. On November 3, 1977, at 9:00 a.m., a public hearing will be conducted in Sidney, Montana at the Richland National Bank, Founders Room, by the Board of Oil and Gas Conservation to consider the adoption of rules MAC 36-3.18(18)-S18390, 36-3.18(18)-S18400, and 36-3.18(18)-S18410, all relating to Seismic Exploration Activities.

2. The rules proposed to be adopted are 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 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 holes to be plugged and the name and telephone number of the person in charge of the plugging operations.
(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 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 followed are designed to accomplish the primary objective of containing native 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. Interested persons may present their data, views, or arguments, whether orally or in writing, at the hearing.

4. The Board of Oil and Gas Conservation shall preside over and conduct the hearing.

5. Interested persons may also present their data, views, or arguments in writing prior to said hearing by submitting them to Donald E. Chisholm, Administrator, Oil and Gas Conservation, Department of Natural Resources and Conservation, 325

Fuller Avenue, Box 217, Helena, Montana 59601. Written comments, in order to be considered, must be received by no later than November 3, 1977.

6. The proposed rules implement Senate Bill 241 enacted by the 1977 Legislature. The proposed rules are designed to establish filing requirements for a permit for geophysical activities, to provide the information necessary to be given to the surface user, and to describe the requirement for plugging and reclaiming seismic shot holes.

7. The authority of the Board to adopt the proposed rules is based on Section 69-3304, R.C.M. 1947.

Donald E. Chisholm

Donald E. Chisholm, Administrator
Oil and Gas Conservation Division
Department of Natural Resources
and Conservation

Certified to the Secretary of State September 14, 1977.

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

IN THE MATTER of the adoption of New rules regarding telephone extended area service guidelines.	))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF TELEPHONE EXTENDED AREA SERVICE GUIDELINES

TO: All Interested Persons

1. On October 20, 1977, at 10:00 a.m., a public hearing will be held in the Senate Chambers, State Capitol, Helena, Montana, to consider the proposed adoption of telephone extended area service guidelines.

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

3. The proposed rules read as follows:

Rule I. Extended Area Service (EAS) is nonoptional, unlimited, flat rate calling service between two exchanges, provided at exchange rates or at an increment to exchange rates, rather than at toll prices.

Rule II. The Commission will order a new Extended Area Service arrangement to be provided when the following general conditions have been met.

(1) A strong community of interest exists between contiguous exchanges.

(2) The incremental rates charged for the EAS arrangement will generate revenues within the affected exchanges sufficient to meet the increased intrastate revenue requirement resulting from provision of EAS.

(3) The proposed EAS arrangement, offered at a price sufficient to meet the increased revenue requirement, is approved by a majority of subscribers in the affected exchanges via written ballot.

Rule III. When the Public Service Commission receives a request for EAS from customers of a regulated telephone company, a telephone cooperative, a political subdivision, an organized community group; receives a proposal by a telephone company; or, initiates an investigation, the following standards will be used to determine whether it should implement EAS:

(1) The Commission will determine whether a community of interest exists between the exchanges sufficient to warrant further study in the following manner:

(a) The Commission will order the company or companies involved to initiate a calling usage study. A sufficient indication of community of interest between the exchanges will be deemed to exist if there is an <u>average</u> of eight (8) calls per main and equivalent main station <u>per</u> month <u>and</u> at least 50 percent of the customers make at least one (1) <u>toll</u> call per month to the exchange to which the service is requested. These community of interest qualifications shall exist for both exchanges on the proposed route, unless the large exchange has over twice the number of main and equivalent main stations on the smaller exchange, in which case the community of interest qualification shall apply only to the smaller exchange.

(b) The Commission may order the company (companies) or petitioners involved to provide information on factors influencing community of interest, such as (but not limited to) location relative to exchange boundaries of:

(i) schools
(ii) medical and emergency services
(iii) local government entities
(iv) police and fire protection
(v) shopping and service centers
(vi) churches
(vii) agricultural and civic organizations
(viii) employment centers

(2) When the Commission determines that a sufficient community of interest exists to warrant consideration of EAS it will order its staff and the company or companies involved to determine the increase in intrastate costs resulting from this proposed EAS arrangement. This study will consider the following relevant costs over a five year future planning period:

(a) Losses in revenues from toll and other discontinued services such as foreign exchange service

(b) Increases in capital costs resulting from required additions to network capacity

(c) Changes in operating expenses

(d) Changes in interstate Division of Revenue Settlements

(e) Changes in Bell-Independent settlements

(3) Studies to determine the increased intrastate cost will be completed utilizing the following methodology:

(a) Lost revenue will be based upon estimates of toll messages for each year of the study multiplied by the expected average revenue per message and upon estimates of the quantities of other affected services, such as FX, for each year of the study multiplied by the appropriate annual rate.

(b) The added investment will be based on the additional switching and trunking facilities required to carry the incremental usage each year. Estimates of incremental usage involve call stimulation factors and holding time effects due to EAS. Appropriate annual charges will be applied to the added investment to obtain additional annual revenue requirements.

(c) Changes in Division of Revenue settlements will be based on the increase in intrastate usage and investment quantities experienced under Extended Area Service. The usage and investment increases will be determined from the call stimulation and changed holding time patterns forecast as a result of EAS.

(4) The Commission will then use the equivalent annual average additional revenue requirement to determine the rate increment to be charged to subscribers in the affected exchanges in such a way that no increase in rates or charges will be incurred by nonbenefited exchanges. This will be accomplished in the following manner:

(a) The total additional revenue requirement will be

equally divided between the two exchanges

(b) The additional revenue requirement in each exchange will then be divided by the number of main and equivalent main stations to determine the EAS Rate Increment applicable to all main stations in that exchange.

(c) New extended area service will be priced using these rate increments designed to recover the additional revenue requirement. Each exchange will retain its own appropriate rate group classification.

(5) The Commission will then order a survey by mail to be made under its supervision. The ballot to be mailed to each customer would include all pertinent information (including rates & effective date) that would enable the customer to make a rational choice of acceptance or rejection of the proposal. If at least a simple majority of all affected customers in each exchange vote in favor of establishing EAS at the determined rate, then the Commission will order it implemented.

(6) When the Commission determines that the EAS increment to either exchange is of such magnitude that it believes a substantial majority of the customers would not desire EAS, then it may dispense with the survey.

(7) The Extended Area Service increments are subject to future increase as the Commission may order.

4. The rationale for the adoption of these rules is that certain guidelines are required to inform the public when EAS applications will be granted. The guidelines must describe those situations in which the grant of such applications would not result in discrimination against other telephone subscribers. In addition, the procedures which the Commission intends to follow in deciding these applications should be made known to the public.

5. Interested parties may submit their data, view or arguments, orally or in writing, concerning the proposed rules to Dennis R. Lopach, 1227 11th Avenue, Helena, Montana 59601, phone 449-3007.

6. Authority of the Department to make the proposed rules is based on §70-104, R.C.M. 1947.

GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE September 13, 1977.

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

IN THE MATTER of the adoption of New rules regarding temporary rate increases for public utilities	))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF TEMPORARY RATE INCREASES FOR PUBLIC UTILITIES

TO: All Interested Persons

1. On Wednesday, October 19, 1977, at 10:00 a.m., in the Senate Chamber, State Capitol, Helena, Montana 59601, a public hearing will be held to consider the proposed adoption of temporary rate increases for public utilities.

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

3. The proposed rules read as follows:

Rule I. No application for a temporary or interim grant of authority to increase rates will be separately entertained by this Commission. Applications will be entertained only in conjunction with full rate case proceedings.

Rule II. No application for a temporary or interim grant of authority to increase utility rates will be entertained by this Commission until the application is sufficiently supported by material required under the rules and regulations of this Commission to meet minimum filing requirements for docketing as full rate case applications.

Rule III. Upon the acceptance and docketing of an application by a utility for temporary or interim authority to increase rates, the Commission will issue public notice of the filing, including a recital of the permanent relief sought by the utility, the temporary rate sought by the utility, the reascns it asserts it should be granted authority to increase its rates on a temporary or interim basis, the proposed rate structure for deriving the increased revenue, a recital where copies of the utility's application can be obtained, a specification of a date not less than five days in advance within which interested parties may request a hearing on the merits of the temporary rate increase application, and an admonition that, if no request is made for hearing, the requested authority for leave to increase rates on a temporary or interim basis may be granted. The notice shall also include a recital that the Consumer Counsel is available to assist consumers with respect to both the application for authority to increase rates on a temporary or interim basis and a permanent basis.

(1) The notice shall be transmitted to all media entities and to individual intervening parties and associations participating in the most recent rate increase application involving the utility.

(2) If a hearing on an application for authority to increase rates on a temporary basis is requested, the hearing will be given priority status and advanced on the Commission's hearing calendar without the necessity of prehearing procedures.

Rule IV. In support of its application for authority to increase rates on a temporary or interim basis, the utility shall include in its application and be prepared to prove that it is suffering an obvious revenue deficiency, coupled with two or more of the following circumstances:

(1) A sudden decline in revenues caused by factors outside of the control of the utility;

(2) An inability on the part of the utility to arrange debt financing or attract capital at a reasonable cost without increased operating revenues;

(3) An assertion that deferred rate relief until final order can be issued would result in unreasonable and irreparable loss of revenue to the petitioning utility; and

(4) An assertion that reasonable grounds exist for the Commission to believe that, under its current utility ratemaking standards, the utility would be entitled to rate relief at the time a final order is issued in the proceedings.

4. Rationale for "Temporary" Rules:

These rules are being proposed by the Commission as a result of a petition by the Montana Consumer Counsel. The Consumer Counsel alleges that these rules are required to insure that temporary rate relief will be provided in only those extraordinary situations in which a utility cannot wait for a full public hearing on its application. The fact the Commission is proceeding to hearing on the Consumer Counsel's proposal should not be construed as an endorsement of the contents of the proposed rules.

Rules I through III are being proposed as legislative rules. Rule IV is proposed as an interpretive rule, specifying certain conditions under which the Commission is likely to exercise its discretion, but not having the force of law.

5. Interested parties may submit their data, view or arguments, orally or in writing, concerning the proposed rules to Dennis R. Lopach, 1227 11th Avenue, Helena, Montana 59601, phone 449-3007.

6. Authority of the Department to make the proposed rules is based on §70-104, R.C.M. 1947.

GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE September 13, 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 PUBLIC HEARING FOR THE ADOPTION OF RULES OF PRACTICE AND PROCEDURE FOR ALL COMMISSION CONTESTED CASES

TO: All Interested Persons

1. On Tuesday, October 18, 1977, in the Senate Chamber, State Capitol, Helena, Montana at 10:00 a.m., a public hearing will be held to consider the proposed adoption of rules of practice and procedure for all commission contested cases.

2. Rule 38-2.2(1)-P200 as proposed to be amended is as follows (matter to be stricken is interlined, new matter is underlined):

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 through ~~38~~ 13 and 28 through 38 by reference to such rules ~~as stated in MAC-1-1.6(2)-P640 through MAC-1-1.6(2)-P6320~~.

3. The proposed rules replace those amended in the above Model Procedural Rule and are somewhat lengthy and in the interest of economy they are not published in full in this notice. There are a total of 16 sub-chapters and 89 rules.

(1) General Provisions
(2) Definitions
(3) Parties
(4) Pleadings
(5) Motions
(6) Notice
(7) Filing of Complaints
(8) Interventions
(9) Prehearing Conferences
(10) Voluntary Settlement
(11) Discovery Procedures
(12) Presiding Officer
(13) Hearings
(14) Rules of Evidence
(15) Proposed Findings and Conclusions; Briefs
(16) Commission Decisions and Orders, Exceptions, Rehearings and Reconsideration

If any person wishes to review the full text of the proposed rules he may obtain the same upon request from the Public Service Commission, 1227 11th Avenue, Helena, Montana 59601, 449-3008.

4. The amendment of Model Procedural Rule and the new rules are being proposed by the Commission because the Legislature, in R.C.M. 1947, Sec. 70-104.1, mandated that the Commis-

sion adopt rules or practice and procedure for rate cases. These rules for contested cases will be used in all rate and other contested cases before the Commission.

5. Interested parties may submit their data, view or arguments, orally or in writing, concerning the proposed rules to Dennis R. Lopach, 1227 11th Avenue, Helena, Montana 59601, phone 449-3008.

6. Authority of the Department to make the proposed rules is based on §70-104, R.C.M. 1947.

GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE September 13, 1977.

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

IN THE MATTER of the Proposed) Repeal of MAC 40-3.30(6)-) S3020 through MAC 40-3.30(6)-) S30400; Adoption of MAC 40-3.) 30(6)-S3025 through MAC 40-3.) 30(6)-S30155; and Amendment) of MAC 40-3.30(10)-S30410) through MAC 40-3.30(10)-) S30560.)	NOTICE OF PROPOSED REPEAL, ADOPTION, AND AMENDMENT No Hearing Contemplated

TO: ALL INTERESTED PERSONS

1. On October 23, 1977, the Board of Cosmetologists proposes to repeal MAC 40-3.30(6)-S3020 through MAC 40-3.30(6)-S30400, adopt MAC 40-3.30(6)-S3025 through MAC 40-3.30(6)-S30155, and amend MAC 40-3.30(10)-S30410 through MAC 40-3.30(10)-S30560.

2. The changes as proposed are in the nature of a complete review of the Board of Cosmetology rules. However, it is important to note that no substantive changes, (adding, changing or repealing) are being made, with (3) small exceptions underlined later in this notice. Rather, the sole purpose of this revision is to eliminate requirements which have been duplicated from one rule to another, to eliminate language which is already stated in the cosmetology licensing act, (Title 66, Chapter 8, R.C.M. 1947) and to restructure the order of the rules so that specific requirements may be more easily located.

The procedure for making this revision, which has been approved by the Secretary of State, will be to repeal all the existing rules which are affected by the change and to adopt the restructured rules as new rules with new numbers. The above mentioned amendments relate only to the sanitary rules in sub-section 10 which are being amended to delete the "public health reason" statement in each rule. These statements are not the subject matter of "rules" but are only justifications which need not nor should not appear in the actual text of the rules. These rules will not otherwise be restructured or relocated. However, because the preceding rules for adoption will bear new numbers, than in order to make the numbering sequence proper, the amended sanitary rules will also bear new numbers.

3. The full text of the restructured rules proposed for adoption will read as follows: (note that the first two existing rules, BOARD ORGANIZATION and PROCEDURAL RULES are not included in that they are not being changed in any respect.)

"Sub-Chapter 4
General

40-3.30(4)-S3025 GENERAL REQUIREMENTS: (1) No license shall be altered or changed in any manner except by the Department.

(2) All persons engaged in the practice or teaching of cosmetology must display their cosmetology license in a conspicuous place, in the area where such a person is working.

(3) All persons practicing cosmetology as defined, must provide a suitable place equipped to give adequate service to patrons, subject to inspection by the inspector or persons authorized by the Board or Department.

(4) Any person doing manicuring must have an operator license.

Sub-Chapter 7
Schools

40-3.30(7)-S3035 FILING APPLICATIONS: (1) The applicant must request the necessary application forms from the Department. The applicant shall state the names and address of the proposed owners. If a corporation, the names and address of the officers and principal stockholders must be included.

(2) A personal survey form will be mailed to the applicant requesting detailed information as to the applicant's education and training, previous experience in conducting a school or former teaching employment, evidence of good moral character and the ability to conduct a school. The statement must be attested to by a Notary Public with the seal affixed.

(3) If the information submitted on the Personal Survey Form is satisfactory to the Board, the Department shall mail the necessary blanks and a copy of the law and rules governing the licensing of a school of cosmetology to the applicant.

(4) The application shall include:

(a) The names and address of the proposed owners, address of the proposed location of school and name of proposed school.

(b) A detailed floor plan of the school showing adequate floor space of at least 1,500 square feet, which may include locker room and office space.

(c) A list of proposed equipment.

(d) Names, address and license numbers of the proposed instructors.

(e) Necessary fees for license.

(f) A bond in the amount of five thousand dollars ($5,000) which shall be subject to the inspection of the Board.

(g) This bond will specifically state that in case this proposed new school goes out of business that any prepaid tuition will be refunded.

(h) A copy of the Student Registration Contract must be submitted for approval to the Board.

(i) A copy of the school rules must be submitted to the Board for approval.

(5) No school shall be licensed until the Board has had ample opportunity to verify the sworn statements as to the

ownership and all other claims and representations as set forth in the Personal Survey Form.

(6) The Board reserves the right to deny a school license to any applicant who fails to present satisfactory evidence of his or her business and professional integrity and experience.

40-3.30(7)-S3045 INSPECTION: (1) The location shall be inspected by either a designated inspector or one or more members of the Board before opening.

(2) The Board shall approve the floor plan and equipment of the school.

(3) A separate classroom is required and must have sufficient charts, black boards, chairs and up-to-date books on theory, medical dictionary, current beauty magazines and a copy of the cosmetology law and rules. This room may be used as a recitation, demonstration, study room and reference library.

(4) A practice workroom is required with the following equipment for each ten (10) students:

3 Shampoo Bowls
5 Hair Dryers
2 Manicure Tables
4 Wet Sterilizers
4 Dry Cabinets for Sterile Instruments
Equipment suitable for scalp treatments
1 Facial Chair
3 complete sets of cold wave equipment
5 Gloria type Mannequins
2 covered soiled linen containers
4 covered garbage containers
Shampoo dispensers
1 locker for each student
Work tables for dresserettes
Separate rest rooms for male and female persons which shall include lavatories with hot and cold running water and toilet facilities.
Sufficient equipment and supplies to accommodate and teach a minimum of ten (10) students.
Equipment of at least ten (10) hairbrushes, combs, capes, shears, razors, wefts, textbooks and manicuring kits shall be considered necessary to teach the minimum number of students.

40-3.30(7)-S3055 SCHOOL REQUIREMENTS: (1) Proposed schools may not advertise in any manner until they have received their license and Registration Certificate. Schools shall advertise under designation of "School" only.

(2) Schools are prohibited from advertising in the following manner:

(a) Use of deceptive statements and false promises to induce students to enter school.

(b) It shall be strictly prohibited to advertise prices for clinical services.

(3) Students shall not be registered or admitted until such time as the school license and registration has been received by the school.

(4) Classes may start when at least five (5) students have been enrolled and registered with the Board.

(5) Students shall be furnished with a statement showing the cost that each student is required to pay for tuition, books, supplies and/or any additional fees for their training.

(6) Daily attendance records and records of all subjects taught and practiced shall be submitted to the office of the Department on or before the 10th of each month.

(7) Records must be signed by the school owner, qualified instructor or some one designated by the owner.

(8) There shall be a qualified instructor supervising students on the school premises at all times. Any school found violating this regulation is declared to be in violation of Montana Law.

(9) The Department shall be notified of all instructors employed by the school either full or part time. The Department shall be notified of any changes immediately.

(10) Written and oral tests must be given at intervals to determine the status of the student.

(11) Each student must complete 300 hours of basic training before they shall be allowed to work on the public.

(a) Students shall not be allowed more than eight (8) hours per day for the first 300 hours of basic training.

(12) Students shall not be called out of class to do cosmetology work on the public.

(13) Students are not permitted to operate any equipment in which there is a known operating hazard unless supervised.

(14) School owners shall use proper discipline during school hours and only may dock students by reduction of hours already served when a school rule or Board rule has been violated.

(a) All hours docked must be reported to the Department giving the reason and must be subtracted from the hours accumulated on the monthly hours report.

(15) Any student who has not been in attendance for one (1) week and has not notified the school will be considered as having withdrawn and the school must submit to the Department, a withdrawal notice immediately indicating the last day of attendance.

(a) A re-enrollment card must be completed and submitted to the office of the Department upon return of the withdrawn student.

(b) In case of illness or extreme emergency which causes an interruption of training, the student is required to furnish proof immediately of a valid reason or nature for the interruption by filing a physician's statement or other certified statement setting forth the cause for missing such time of training.

(16) If for any reason a student discontinues his or her enrollment, the school shall within two (2) days, send notification to the office of the Department to that effect together with a statement of the hours completed by said student. Upon re-enrollment in any school, the Department shall be notified of the student's re-enrollment.

(17) The student's required training time stops on the last date of attendance.

(a) The student's required training time continues on the date of the re-enrollment unless over sixty (60) days has lapsed from the last date of attendance.

(18) Schools of cosmetology may have demonstrators and lecturers other than their licensed instructors appear for class upon approval of the Board. Such demonstrators or lecturers may or may not hold Montana Cosmetologist or Instructor licenses, but must confine all demonstrations and lectures to explanation of cosmetics, hair products, procedures of cosmetology or health and sanitation. Such demonstrators or lecturers shall not teach or give any personal assistance to students and must use students as models when demonstrating in the school.

(19) Schools must not enroll any transfer students from any school until a verified transcript of their hours has been received and can be verified by the Department as complying with the training time required in the State of Montana.

(20) At the entrance of each school, a large legible sign with the words "School of Cosmetology" shall be displayed. Each class room shall have similar signs with the words "Student Work Only", posted.

(21) Credit for hours will be given for field trips only if students are accompanied by an instructor. A schedule of all field trips must be submitted to the office of the Department for approval.

(22) Students will be given credit of hours for the time spent when modeling without compensation or giving services whereby no compensation is received at charitable institutions if such students are under supervision of a licensed instructor or manager-operator.

(23) No schools shall be allowed to permit students to instruct or teach co-students.

40-3.30(7)-S3065 CURRICULUM: BRUSH UP COURSES: (1) The hours for training courses shall be distributed as follows:

Manicuring	125 hours
Shampooing	50 hours
Permanent Waving	350 hours
Pin Curls, Finger Waving	
Hair Styling, Etc.	275 hours
Facials	75 hours
Scalp Treatments	150 hours
Dyes, Tints, and Bleaches	250 hours
Hair Cutting and Shaping	125 hours
Ethics, Sales, Personal Grooming	100 hours

Shop Management, Business Methods,
State Law, Rules and Shop Etiquette.....100 hours
Cosmetic Chemistry, Electricity..... 50 hours
Balance to be used at the discretion of
the instructor.....350 hours

(2) All curriculum requirements set up by the Board shall be strictly complied with until rescinded or revised.

(3) It is expected that each school will supplement and enrich the minimum requirements specified by the Board.

(4) When a student has completed two thousand (2000) hours of training, the school must send their final hours record to the Department within two (2) days.

(a) Students who have completed their two thousand (2000) hours of training from a school, but have not passed the State Board Examination may, upon approval of the Board, be in a school of cosmetology for further study and practice, but shall not be permitted to work on the public. This Brush-up course must be limited to not more than four (4) months from the date of registration.

(5) BRUSH UP COURSES: A licensed cosmetologist who wishes to take advance hair styling, tinting, bleaching, permanent waving or hair cutting shall be registered with the office of the Department but shall not be permitted to practice on the public and no hours credit shall be given. Schools must hold an Advanced Training License.

40-3.30(7)-S3075 LAPSED LICENSE: A cosmetologist whose license has lapsed may be enrolled and registered with the office of the Department for a three (3) months brush up course and may work on the public.

(2) The Board shall, in its discretion, determine whether beauty salons and schools of cosmetology are operated by the same person, firm, co-partnership or corporation as separate and distinct business and in arriving at such determination shall include such factors as:

(a) Whether separate books of accounts are kept.

(b) Whether the salon and school have separate addresses and telephone listings.

(c) Whether the salon and school are physically separated.

(d) Whether separate orders for supplies are made.

(3) Any change of ownership and/or location of a school of cosmetology requires a new application for registration fee to be paid.

40-3.30(7)-S3085 STUDENT REGISTRATION: (1) Upon enrollment a student must submit to the school the following items which the school must send to the office of the Department within ten (10) days:

(a) Proof of an eighth grade education. (Diploma or certification.)

(b) Photostatic copy of Birth Certificate.

(c) Certificate of Health issued by a Licensed Physician.

(d) Transfer students must submit a transcript of hours.

(2) REGULATIONS: (a) Students must comply with the Rules of the school of cosmetology and the State Board.

(b) Any student in any school of cosmetology may file a complaint with the Department concerning the school in which they are enrolled, provided the information follows the Board Rules and is clearly and concisely given in writing and signed by the complainant.

(c) Each student enrolling in a registered school of cosmetology shall pay a registration fee which will be made payable to the Board of Cosmetologists.

(d) Students in a school of cosmetology desiring to change to another school shall notify the office of the Department of such a change.

(e) A student in good standing desiring to transfer to another school must present a verified statement indicating the number of hours which the student has had in training before credit can be given for past training.

(f) A student will not be permitted to transfer to a different school in the same city unless the school has been licensed to operate and has been in operation for at least two (2) years.

(i) A student who transfers to another school within the same city must take the three hundred (300) hours of basic training in the new school before being allowed to work on the public.

(g) When a student enrolls in a school for the first time he must pay the registration fee.

(i) If a student withdraws and re-enrolls in another school he is required to pay the registration fee again.

(ii) If a student withdraws and re-enrolls in the same school he is not required to pay the registration fee again.

(h) No credit for past training will be granted a student who delays over a period of sixty (60) days before re-enrolling in a school.

(i) When an out of state student who has not completed the necessary hours re-enrolls in a Montana school within sixty (60) calendar days from the date of last attendance, that student will be allowed full credit for the hours accumulated in the prior school.

(j) Those out of state students who have been out of school for a period of time in excess of sixty (60) calender days would forfeit eighty (80) hours of accumulated credit for each month or fraction thereof since the last day of attendance in a beauty school.

(k) Students may lose credit for any training time during which a school of cosmetology's license is invalid.

(l) Students entering into the Armed Forces of the United States may retain credit for their training time.

40-3.30(7)-S3095 TRANSFER STUDENTS-OUT OF STATE: (1) Students from out-of-state must furnish the school with a transcript of hours at the time of enrolling.

(2) Out of state students will be considered as being

on probationary training until the Department has received and reviewed their transcript of hours, registration card, health certificate and/or any other papers or documents which the Board may deem necessary.

(3) The Department may prorate the remaining amount of hours of training needed for an out-of-state student to comply with Montana Law.

(4) Graduates or licensed operators from other states that are enrolled in cosmetology schools in order to receive the necessary amount of hours of training to take the State Board Examination will be classed as post graduates and are not eligible to apply for a Temporary License.

(5) Transfer students from other states completing one thousand (1000) hours of training in Montana are considered as graduates and are eligible to apply for a Temporary License.

(a) Transfer students from other states with less than one thousand (1000) hours of training in Montana are considered to be transfer students and are not eligible to apply for a Temporary License.

40-3.30(7)-S30005 TEACHER-TRAINING UNITS (1) FILING APPLICATION: (a) The applicant must request the necessary application forms from the Department. The applicant shall state the names and addresses of the proposed owners. If a corporation, the names and addresses of the officers and principal stockholders must be included.

(b) Upon receipt, a teacher-training unit application form will be mailed to the applicant.

(2) APPLICATION:

(a) The application shall show name and address of school of cosmetology, all licenses and/or registration certificate numbers of the school, owners, all instructors, their names, addresses and their license numbers. A detailed floor plan of the teacher-training station, a list of equipment, visual aids and textbooks shall be provided.

(b) The necessary license fees shall be paid at time of application and before an inspection is made.

(c) Cadet Teachers shall not be registered or admitted until the teacher-training unit has been inspected by either a designated inspector or one or more members of the Board and has received notice from the Department approving the school as a teacher-training unit.

(3) INSTRUCTOR REQUIREMENTS:

(a) Each school, approved by the Board as a Teacher-Training Unit must furnish proof to the Board that at least one full-time active instructor holds a current 4-C certificate issued by the Montana State Department of Public Instruction or;

(b) At least one full-time active instructor shall have filed with the Department a plan of intent for completion of a program in adult education related to the curriculum of the teacher-training units or must have satisfactorily completed such a program.

(i) Such plan must be approved in advance by the Board and must provide for completion of at least one (1) class in adult education each year until the plan is completed.

(ii) During the course of the plan the instructor shall annually submit to the Department proof of completion of such classes.

(d) In the event any instructor has completed one (1) or more years of education in any one of the units of the Montana University System or any other duly accredited institution of high learning, the Board shall accept this proof in lieu of this requirement.

(4) EQUIPMENT:

(a) No school shall be approved by the Board as a Teacher-Training Unit having less than the following equipment available for the teacher-training station;

Visual aids of various kinds for the use of teaching theory of cosmetology.

A movie projector with film, or a slide projector with slides.

A chalk board.

Working area in teacher-training station where visual aids may be constructed.

Tape recorder or record player for playing records or tapes on subjects required for the curriculum.

Art materials and aids for the cadet teacher's use.

Library with sufficient textbooks to cover the required subjects of the teacher-training curriculum.

(5) BOND REQUIREMENTS: The bond requirement for teacher-training units shall include a provision protecting cadet teachers from loss of tuition. In the event the amount of said bond is not sufficient to provide such coverage plus the coverage required for a school of cosmetology, the amount shall be increased to provide such additional coverage. This bond will specifically require that in case the school should go out of business or that due to circumstances under the law, fails to meet the requirements necessary, any prepaid tuition by the cadet teacher will be refunded.

(6) CURRICULUM:

	Subject	Quarter Hours	Clock Hours
(a)	Chemistry	4	40
	General Chemistry		
	Hair Chemistry		
	Skin Chemistry		
	Chemistry of Cosmetics:		
	(1-a) Solutions on Hair		
	(1-b) Solutions on Skin		
(b)	Education	10	100
	Method of Teaching:		
	Vocation Education:		
	Visual aids and their construction		
	Job Analysis		
	Preparation of instructive materials		

Lesson Planning
Basic art related to cosmetology
Fundamentals of Speech:
Techniques of public speaking
Voice
Speech organization
General Psychology:
General principles in relation to teaching

(c) Small Business Management:5.....50
Public relation
Office behavior
Ethical employee and
employer relationship
Labor relations
Contracts
Tax forms
Assistant placement
Bookkeeping

(d) Communicable diseases.....1.....10
Skin and scalp
Public health

(e) Theory of Cosmetology.....2.....20

(f) Practice Teaching.....-.....280
At least three (3) one (1) hour
classes per week for basic
students uninterrupted.
All remaining time to be used
upon the discretion of the school

(g) Each graduate of a teacher-training unit must demonstrate a proficiency in basic english, including grammar and simple composition and general mathematics related to the area of cosmetology.

(7) IDENTIFICATION: All instructors in the approved school must wear an insignia or badge indicating that they are an instructor for the teacher-training unit. Cadet teachers must wear a badge or insignia that they are cadet teachers.

(8) SUPERVISION:

(a) Cadet teachers must be under the direct supervision of a full time licensed instructor during practice teaching.

(b) Cadet teachers will not be allowed to work on the public during their practice teacher-training.

(9) CREDIT FOR TRAINING TIME: Schools may, with prior approval of the Board, establish a course of instruction whereby enrolled cadet teachers may earn hours and credits for subjects in the curriculum for teacher-training by studying in the Montana University System, Community Colleges or Adult Education classes taught in high schools.

(10) All Teacher-Training Units in schools shall follow all rules of the schools.

(11) CADET REGISTRATION:

(a) All cadet teachers must register with the Department naming the teacher-training unit and school in which

they are enrolling and no credit for time will be allowed until the office of the Department has received his or her medical certificate and enrollment application.

(b) Daily records of all subjects taught and practiced shall be kept and such records shall be signed by the cadet teacher and the instructor then submitted to the office of the Department prior to the tenth (10th) of each month.

(c) Upon completion of five hundred (500) hours of teacher-training cadet teachers must apply and take the first available instructor examination.

Sub-Chapter 8
Applications-Examinations-Licenses

40-3.30(8)-S30015 INSTRUCTORS: (1) Before any one may teach cosmetology he or she must first obtain a license from the Board.

(2) An Instructor license will not be issued unless a completed application form is submitted, accompanied by the proper fees and any other credentials the Board may require, at least twenty (20) days prior to the examination date.

(3) Applications which are incomplete will be returned to the applicant.

(4) Applications received after the closing of the registration date will be held until the following examination.

(5) Applicants may not appear for the instructor examination unless they have been notified.

(6) EXAMINATION:

(a) Examinations for instructor licenses will be held at least once a year.

(b) The written instructor examination may be taken by request at a time and place convenient to the Board.

(c) The applicant must pass the written examination before a date for the practical examination will be scheduled.

(d) The written examination may include questions on general intelligence, educational alertness, principles of teaching techniques and other subjects the Board may require.

(e) The practical examination will be given at a time and place specified by the Board when at least five (5) applicants have successfully passed the written examination unless there are less than five (5) applicants who have passed and there has not been a practical examination during the year.

(f) Practical examinations may be given by any system or method the Board may specify.

(g) Instructor licenses will not be issued unless the applicant achieves a grade of at least seventy-five (75) percent on the written and at least eighty-five (85) percent on the practical examinations.

(h) Examination papers are considered as Board records.

(i) Applicants will be notified only of "Pass" or "Fail".

(j) Applicants who have taken the examination and

failed any part thereof, must notify the office of the Department of their desire to be re-examined twenty (20) days before the next examination and pay the fee.

(7) Applicants registered for examination but for good cause cannot appear, must notify the office of the Department before the examination date or forfeit their fee.

(8) No Temporary License shall be issued to instructors.

(9) The Board may approve any advance instructor or teacher training seminar or workshop, sponsored by the National Hairdressers and Cosmetologists Association or affiliated with any College or University, credited by the Department of Public Instruction.

(a) Any other alternate training must have prior approval from the Board before credit will be accepted.

(b) Advanced styling will not be considered as teacher-training.

(c) Certified statements, certificates, or affidavits showing dates and hours must be submitted to the office of the Department as proof of attendance on or before renewal of the Instructor License.

(d) Training must have been completed prior to making application for the renewal of an Instructor License.

(10) An Instructor License will be renewed only if the cosmetologist renews an Operator License or Manager-Operator License.

40-3.30(8)-S30025 ADVANCE TRAINING: (1) Manager operators holding an instructor license and wishing to instruct in advance training or post graduate training must provide facilities approved by the Board with such equipment as will be necessary to teach subjects offered.

(2) The facilities must be separate from the beauty salon.

(3) Only licensed operators or manager operators may be accepted as students.

(4) Advance training students must be registered with the office of the Department but will not be examined by the Board.

(5) The owners of the cosmetology establishment must apply for and obtain an advanced training school license.

40-3.30(8)-S30035 SUBSTITUTE INSTRUCTOR: (1) Substitute instructors may be engaged by cosmetology schools by notifying the Board. Substitute instructors may not teach more than ten (10) days for an active instructor in any calender year.

40-3.30(8)-S30045 EXAMINATION - MONTANA STUDENTS: (1) Student Qualifications:

(a) To be eligible to take the examination to practice cosmetology the applicant must be eighteen (18) years of age.

(b) Applicants must be a graduate of the eighth (8th) grade and be of good moral character.

(c) Applicants must have completed a continous course of theoretical study and actual practice of at least two

thousand (2000) hours in a registered school of cosmetology.

(d) Applicants must be in good standing with the school and must have received a diploma.

(2) Application for Examination - Students:

(a) An operator license will not be issued unless a completed application form is submitted accompanied by the proper fees and any other credentials the Board may require.

(b) No application for examination will be accepted unless accompanied by the final examination grades received in the school, the hours record showing that the two thousand (2000) hours have been completed, records showing that the student has been enrolled for at least ten (10) months, and the proper fees.

(c) Applications for examination must be received by the Department at least twenty (20) days prior to the examination date.

(d) Applications which are incomplete will be returned to the applicant.

(e) Applications received after the closing of the registration date will be held until the following examination.

(3) Applicants may not appear for examination unless they have been notified.

(4) No Temporary License to practice as an operator shall be issued to any person who has taken the examination and failed to pass.

(a) Temporary Licenses must be returned to the office of the Department immediately if the applicant is unable to take the examination. Temporary licenses are not renewable.

(5) STUDENT EXAMINATION:

(a) Examinations for operator licenses shall be conducted at least two (2) times a year and not more than five (5) times a year at a place and time specified by the Board.

(b) Examinations shall be conducted by the Board or by examiners appointed by the majority of the Board.

(c) All examiners shall have had at least three (3) years practical experience and shall be a licensed cosmetologist of this state.

(d) Examiners shall not be connected with any school of cosmetology.

(e) Each applicant for examination to license as an operator shall be examined as to his or her qualifications as a cosmetologist.

(f) The examinations shall not be confined to any specific method or system.

(g) Examinations shall consist of written and oral questions and demonstrative tests.

(h) Practical examinations shall consist of actual demonstrations in dressing the hair and other phases of cosmetology on live models.

(i) Written examinations shall cover each of the branches of cosmetology taught in this State.

(j) Written and oral examinations will be given on

cosmetology Law and Rules as part of the State Board Examination.

(k) The Board may, from time to time, add additional subjects and practical tests.

(l) Applicants must appear for examination in a clean white or pastel washable uniform and must furnish their own pencil for their written examination and all equipment necessary for performing the practical examination.

(m) Examination papers are considered as Board records.

(n) Applicants who have taken the examination and failed any part thereof, must notify the office of the Department of their desire to be re-examined twenty (20) days before the next examination and pay the fee.

(o) Applicants registered for examination, but for good cause cannot appear, must notify the office of the Department before the examination date or forfeit the fee.

(p) In order to pass the examination given by the Board to practice cosmetology an applicant must obtain a grade of not less than seventy-five (75) percent in the practical examination and not less than seventy-five (75) percent on the written theory.

(q) Applicants will be notified only of "Pass" or "Fail".

40-3.30(8)-S30055 EXAMINATION - OUT-OF-STATE STUDENTS (1) Applications:

(a) Applications for examination for out-of-state students will be accepted if the application is completed correctly and is accompanied with the following:

(i) Certified hours record from either the school where the student attended or the State Board record showing that the student had successfully completed two thousand (2000) hours of study in a registered cosmetology school.

(ii) The examination fee plus the required operator license fee.

(iii) Applications will not be accepted if the applicant is under eighteen (18) years of age and does not have an eighth (8th) grade education.

(iv) A certificate of health issued by a registered licensed physician.

(b) All applications for out-of-state students must be filed with the office of the Department at least twenty (20) days prior to the examination date.

(c) Applicants will be notified by the office of the Department as to when they may appear for examination.

(d) No Temporary Licenses will be issued to out-of-state students.

40-3.30(8)-S30065 APPLICATION - OUT-OF-STATE OPERATORS: (1) In order to qualify for license by examination an out-of-state operator must furnish the Department with an application supplied by the Department, correctly completed including a health certificate properly filled in and notarized, birth certificate and proof of completing the eighth (8th) grade.

(2) No Temporary Licenses will be issued to out-of-

state operators.

(3) An out-of-state operator must furnish the Department with a current out-of-state license and a Board Transcript. The applicant will be credited for the number of hours currently required in that state or the number of hours in the transcript.

(a) Operators with two thousand (2000) hours of training are eligible for examination with the above credentials plus the required fee.

(b) Operators with fifteen hundred (1500) hours of training, plus the above credentials must also furnish a notarized statement from a former employer showing credit for at least one (1) year experience as a cosmetologist, as approved by the board.

(c) Operators with one thousand (1000) hours of training, plus the above credentials must also furnish a notarized statement from a former employer showing credit of at least two (2) years experience, as approved by the Board.

(d) Written examinations shall cover each of the branches of cosmetology.

(4) Where an out-of-state applicant was tested and licensed in a state which administers the examination provided by the National-Interstate Council of State Boards of Cosmetology Inc., and the applicant received a score which was in excess of the minimum score required for licensure in Montana, then the following rules shall apply:

(a) The applicant need not take the Theory of Cosmetology portion of the written exam.

(b) The applicant shall take the Cosmetology Statutes and Rules portion of the written examination.

(c) The applicant shall take the Practical Examination administered by the Board.

(5) In the event that a person holds a license as an operator in another state and such license has lapsed, then in order to become licensed in this state as an operator, such person must meet the requirements of the State of Montana and satisfy the Rules of the Board. They must apply and take the written and practical examinations.

(6) Only Operator Licenses shall be issued to cosmetologists who qualify for licensure from out-of-state.

(7) Operators from foreign countries will be granted a license on the same basis as out-of-state operators.

40-3.30(8)-S30075 LICENSED WITHOUT EXAMINATION - RECIPROCITY: (1) Any person who is licensed to practice cosmetology in another state upon meeting the following requirements may, at the discretion of the Board, be licensed to practice in the State of Montana without examination provided the state in which such person is licensed, grants the same privilege to persons licensed in the State of Montana seeking a license in that state.

(a) An operator with two thousand (2000) hours of training, plus a photostatic copy of their current license, board transcript, application properly completed and notarized, is eligible for a license upon furnishing these credentials

plus the proper fees.

(b) Operators with less than two thousand (2000) hours of training, plus the credentials listed above and a notarized statement from a former employer showing credit of at least three (3) years of experience out of the last four (4) calendar years, immediately preceding the application, are elibigle for a license when the file is complete with the fees and credentials.

(2) The fees for out-of-state operators to license in Montana without examination is fifty dollars ($50) plus the Operator License fee.

(3) For purposes of (1)(a) and (1)(b) above, any hours completed while working on a federal reservation will not be recognized.

40-3.30(8)-S30085 ITINERANT COSMETOLOGIST: (1) When an itinerant cosmetologist is brought to Montana for the purpose of specialized training the sponsor shall notify the Department, specify the time, place and type of training.

(2) The Itinerant Cosmetologist shall be required to obtain an Itinerant License as defined in Section 66-815 of the Montana Law.

(3) Itinerant cosmetologists performing their services for compensation for demonstration, instructing or selling products, or teaching methods or cosmetology skills are required to apply and be licensed by the Board unless under the auspices of the State Association of Cosmetology or its affiliated units.

(4) An itinerant license will not be issued unless the application form, duplicate copy of a current cosmetology license and the proper fee has been filed with the office of the Department.

(5) The application form will specify the time, place or location, type of service or demonstration to be given and sponsor or company represented.

(6) An itinerant license is valid until December 31st of the year in which it is issued, however, each time the licensed itinerant cosmetologist is in the State of Montana performing their services or skills, they must file their agenda with the office of the Department.

40-3.30(8)-S30095 MANAGER OPERATOR: (1) A manager operator license will not be issued unless an affidavit, current operator license and the required Manager Operator License fee is submitted to the office of the Department.

(a) The affidavit must state that the applicant has worked for one (1) year in the State of Montana under the direct supervision of a manager operator in a salon.

(2) Any operator found in violation will not be granted working experience prior to date of violation.

(3) A year shall constitute fifty-two (52) active weeks as a cosmetologist.

(4) The affidavit must give the name of the salon and the current license number.

(5) The affidavit must give the name of the manager operator and his or her current license number.

(6) The applicant's current Operator License must accompany the affidavit.

(7) Cosmetologists may not hold both a Manager-Operator License and an Operator License at the same time.

40-3.30(8)-S30105 DUPLICATE LICENSES: (1) A duplicate license may be issued to replace a lost license upon filing a verified statement by the applicant and each license so issued shall have the word "DUPLICATE" stamped across the face of the license and shall bear the number of the lost license.

(2) Any cosmetologist may receive a duplicate of their Operator, Manager Operator, or Instructor License upon the payment of two dollars ($2.00) and a verified statement as to why such a duplicate license is needed.

40-3.30(8)-S30115 LAPSED LICENSES: (1) If a license has lapsed for a period of up to ten (10) years, but no longer than ten (10) years, the license may be renewed upon payment of the license fees for the years due, plus the late fees.

(2) In the event an operator or manager operator's license shall have lapsed over ten (10) years for any reason, it is required that such person must pay the proper fees, apply and take both the written and practical examinations.

40-3.30(8)-S30125 RENEWAL OF LICENSES: (1) All cosmetology licenses are to be renewed on or before December 31st of each year.

(2) A fee of ten dollars ($10) will be levied for late renewal of all licenses.

40-3.30(8)-S30135 SALONS: (1) Definition: A cosmetology salon is an establishment wherein any branch of cosmetology is performed for compensation other than a school of cosmetology.

(2) Salons must be equipped with permanent facilities to give adequate service to patrons and they shall be subject to inspection and acceptance by the State Board.

(3) Salons either classified as residential or business area salons must have a separate entrance closed by a door.

(4) In order to guarantee adequate service to the public there shall be in every salon a minimum of one hundred twenty (120) square feet per operator. The applicant must furnish the Board with a blueprint or scale drawing of the floor plan.

(5) Residential Salons:

(a) Salons having their own facilities which shall include toilet facilities that are entirely separate from the living quarters of a permanent resident.

(b) After December 31, 1972, all new residential salons shall have only outside entrances and no open entrance into the residence.

(6) Business Area Salons:

(a) Salons housed in a multi-purpose building are required to be completely separate from any other established

businesses.

(7) Registration: A salon registration permits the operation of a beauty salon only in the premises which have been described on the salon application required by the Department.

(8) Application:

(a) All applications for registration for a beauty salon must be completed in its entirety, notarized and sent into the office of the Department.

(9) All salons must be registered and license received on or before any operation may commence.

(10) Any change of ownership and/or location requires a new application for registration and a new registration fee to be paid.

(11) Every beauty salon is required to have at least one licensed manager operator in attendance at all times that it is open for business.

(12) House to house calls are prohibited except in cases of emergency and in such cases the operator shall be sent on calls from a licensed salon.

(13) It is the responsibility of the manager operator in charge to see that all Rules are complied with by all personnel.

(14) Salon registration and licenses for personnel must be displayed in a conspicuous place in the salon.

Sub-Chapter 9
Electrolysis

40-3.30(9)-S30145 LICENSES: (1) Any person who is currently licensed to practice electrology in another state by the appropriate state board of that state may at the discretion of the State Board be licensed to practice in this State without examination.

(2) The Electrology salon and operator's license will have the same format and appearance as a regular cosmetology salon and operator's license.

(3) License by examination:

(a) Applications for examination will be accepted if the application is completed correctly and is accompanied with the following credentials plus the appropriate fees:

(i) Health statement completed by a licensed practicing physician. High school diploma - or its equivalent. Certified hours record from either the school where applicant attended or the State Board record showing that the student had successfully completed a continous course of theoretical study and actual practice of five hundred (500) hours in a licensed electrology school.

(ii) An electrologist with less than five hundred (500) hours of training must provide a notarized statement from a former employer, showing proof of actual experience of three (3) out of the last four (4) calendar years immediately preceding the application to be eligible for examination.

(b) All applications for examination must be filed with

the office of the Board at least twenty (20) days prior to the examination date.

(4) Examination:

(a) Examinations for an electrologist license will be held at least once a year at a place and time specified by the Board.

(b) The examination for an electrologist license consists of a written test and a practical demonstration.

(c) In order to pass the examination to practice electrology, an applicant must obtain a grade of not less than seventy-five percent (75%) in the practical and not less than seventy-five percent (75%) on the written theory examination.

(d) Examination papers are considered as State Board records.

(e) Applicants registered for examination but for good reason cannot appear must notify the office of the Department before the examination date or forfeit the fee.

40-3.30(9)-S30155 SALON: (1) All applications for registration of an electrology salon must be completed in their entirety, notarized and sent into the office of the Board.

(2) Any change of ownership and/or location requires a new application for registration and a new registration fee to be paid.

(3) Standards and Requirements-Electrology Salon:

(a) An electrology salon is an establishment wherein the practice of electrolysis is performed for compensation.

(b) A salon shall have a separate enclosed area for working on patrons.

(c) A salon shall have convenient handwashing facilities.

(d) Minimum equipment required for an establishment is as follows, one of the following:

High frequency generator
Galvanic generator
Thermolysis machine
Electrolysis machine (dispersive or inactive electrode with connections to the machine, such as wet pad, metal rod or water jar, necessary for electrology treatments, plus one multiple needle arm.)
Needles of various sizes.....4 each
Lamp and bulb, at least 60 watt strength required.....1
Stool, adjustable in height.....1
Table or chair for patron.....1
Utility stand for set-ups.....1
Towel cabinet.....1
Covered containers for lotions, soaps, sterilizing agents and cotton.....4
Container for immersing needles for sterilization purposes.....1
Fine pointed epilation forceps.....1
Covered trash container.....1
Draping sheets.....6

4. In regard to the amendment of MAC 40-3.30(10)-S30410 through MAC 40-3.30(10)-S30560, the numbers will be changed to 40-3.30(10)-S30165 through 40-3.30(10)-S30315. Each rule will further be amended by deleting the sub-section under which begins with "public health reason". As stated above, such language is not necessary and the board finds its unnecessary to print such deletion in full text in this notice.

5. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Cosmetology, LaLonde Building, Helena, Montana. Written comments in order to be considered must be received no later than October 21, 1977.

6. If any persons 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 Cosmetology, LaLonde Building, Helena, Montana on or before October 21, 1977.

7. If the Board of Cosmetology receives requests for a public hearing on the proposed amendment 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 such will be made in the Administrative Register.

8. The authority of the Board of Cosmetology to make the proposed amendment is based on Section 66-806 R.C.M. 1947.

DATED this 14th day of September 1977

BOARD OF COSMETOLOGY
JUNE BAKER,
PRESIDENT

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

Certified to the Secretary of State 9-14, 1977.

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

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 October 23, 1977 the Board of Optometrists 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 Two (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 Optometrists, LaLonde Building, Helena, Montana. Written comments in order to be considered must be received no later than October 21, 1977.

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 Optometrists, LaLonde Building, Helena, Montana, on or before October 21, 1977.

5. If the Board of Optometrists 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 will be made by publication in the Administrative Register.

6. The authority of the Board of Optometrists to make the proposed adoption of a New Rule is based on Section 66-1303, 1947.

NOTICE NO. 40-3-70-3

DATED THIS 14th DAY OF September 1977.

BOARD OF OPTOMETRISTS
CARL A. TOTMAN, O.D.
CHAIRMAN

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

Certified to the Secretary of State 9-14, 1977.

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

IN THE MATTER of the Proposed Repeal of MAC 40-3.78(6)-S7860, Set and Approve Standard Regulation - Substitution; and the adoption of a New Rule Regarding the Passing Grades for Examination.	NOTICE OF PROPOSED Repeal of MAC 40-3.78(6)-S7860, Set and Approve Standard Regulation - Substitution; and the Adoption of a New Rule Regarding the Passing Grades for Examination.

No Hearing Contemplated.

TO: ALL INTERESTED PERSONS

1. On October 23, 1977 the Board of Pharmacists proposes to repeal MAC 40-3.78(6)-S7860, Set and Approve Standard Regulation - Substitution; and the Adoption of a New Rule Regarding the Passing Grades for Examination.

2. The reason for the proposed repeal is that the matters and requirements imposed by the rule have been preempted by the passage of the Drug Product Selection Act in the 1977 Legislative Session, thus the rule is no longer proper or necessary.

3. The new rule proposed for adoption will read as follows:

> "Passing Grade for Examination. A general average of not less than 75 in all subjects and not less than 60 in Chemistry, Mathematics, Pharmacology, Pharmacy nor less than 75 in Practice of Pharmacy shall be a passing score for the examination. The candidate has the option of retaking one or more subjects at the next scheduled testing dates in order to bring his average up to a score of 75 or higher. In any event the candidate must retake any subject that a passing score as defined above was not achieved."

The reason for the proposed rule is that in order to insure that applicants are put on notice of passing grade requirements and to insure that such requirements are enforceable, the Board has determined that this matter is the proper subject of a "Rule" and should thereby be included as such.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Pharmacists, LaLonde Building, Helena, Montana. Written comments in order to be considered must be received no later than October 21, 1977.

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 Pharmacists, LaLonde Building, Helena, Montana, on or before October 21, 1977.

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

7. The authority of the Board of Pharmacists to make the proposed amendment is based on Section 66-1504, R.C.M. 1947.

DATED THIS 14th DAY OF September, 1977.

BOARD OF PHARMACISTS
TERRY J. DONAHUE
CHAIRMAN

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

Certified to Secretary of State 9-14, 1977.

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

IN THE MATTER of the Proposed Amendment of MAC 40-3.82(6)-S8230, Definitions; and the repeal of MAC 40-3.82(6)-S8250, State Plumbing Code; Incorporation of Uniform Plumbing Code by Reference and MAC 40-3.82(6)-S82070, Inspection - Permit Fees.	NOTICE OF PROPOSED Amendment of MAC 40-3.82(6)-S8230, Definitions; and the repeal of MAC 40-3.82(6)-S8250, State Plumbing Code; Incorporation of Uniform Plumbing Code by Reference and MAC 40-3.82(6)-S82070, Inspection - Permit Fees. No Hearing Contemplated.

TO: ALL INTERESTED PERSONS

1. On October 23, 1977 the Board of Plumbers proposes to amend MAC 40-3.82(6)-S8230, Definitions; and the repeal of MAC 40-3.82(6)-S8250, State Plumbing Code; Incorporation of Uniform Plumbing Code by Reference and MAC 40-3.82(6)-S82070, Inspection - Permit Fees.

2. The amendment of MAC 40-3.82(6)-S8230, Definitions, will delete subsections (3), (4), (8) and (9) from the rule.

The reason for the proposed amendment is to treat any and all definitional references to inspection and enforcement of the State Plumbing Code, in that such functions were removed from the Board of Plumbers in the 1977 Legislative Session. Thus, the sub-sections were no longer applicable or necessary.

3. The repeal of MAC 40-3.82(6)-S8250, State Plumbing Code; Incorporation of Uniform Plumbing Code by Reference and MAC 40-3.82(6)-S82070, Inspection - Permit Fees is proposed in that they also relate to Plumbing Code enforcement and are also unnecessary or applicable for the reason stated in Paragraph 2 above.

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 October 21, 1977.

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 Plumbers, LaLonde Building, Helena, Montana, on or before October 21, 1977.

6. If the Board of Plumbing receives requests for a public hearing on the proposed amendment 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 such will be made by publication in the Montana Administrative Register.

7. The authority of the Board of Plumbers to make the proposed amendment is based on Section 66-2409, R.C.M. 1947.

DATED THIS 14th DAY OF September 1977.

BOARD OF PLUMBERS
WALTER E. TYNES
CHAIRMAN

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

Certified to the Secretary of State 9-14, 1977.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of adoption of rules relating to the Income adjustment for capital investment for energy conservation.	)))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES RELATING TO THE INCOME ADJUSTMENT FOR CAPITAL INVESTMENT FOR ENERGY CONSERVATION.

TO: All Interested Persons

1. On October 17, 1977, at 9:30 a.m. a public hearing will be held in the Conference Room of the Montana Historical Society Building, Helena, Montana, to consider the adoption of rules relating to the income adjustment for capital investment for energy conservation.

2. The proposed rules are as follows: new material is underlined.

3. 42-2.8(1)-S80540 - INCOME ADJUSTMENT FOR CAPITAL INVESTMENT FOR ENERGY CONSERVATION. (1) A deduction from adjust gross income in determining personal income tax under Title 84, Chapter 49, R.C.M. 1947, is allowed for a portion of expenditures made for energy conservation purposes in both residential and nonresidential buildings.

(2) In new construction no deduction is allowed for that portion of capital expense incurred in meeting established standards. In new residential and nonresidential buildings only the cost for that portion of a capital expenditure that is in excess of established standards will be entitled to a deduction in computing taxable income. The standards utilized by the Department of Revenue in determining allowances will be taken from the currently recognized energy building code in Montana. If Montana does not have an applicable energy building code then national standards meeting the demands of this geographical area will be followed The energy code or standard relied upon by the Department is to be updated on an annual basis.

(3) In the improvement of existing residential and nonresidential buildings a deduction will be given for capital investments that are recognized to substantially reduce the waste or dissipation of energy, or reduce the amount of energy required for proper utilization of the building.

(4) Deductions will not be allowed for capital investments that are directly used in a production or manufacturing process or rendering a service to customers.

(5) This deduction must be claimed on form 2c, which may be obtained from the Montana Department of Revenue, Helena, Montana 59601. The completed form must be attached to the taxpayer's return for the year in which the deduction is claimed.

4. The purpose of this regulation is to promulgate Administrative rules implementing the energy conservation tax incentives enacted in House Bill No. 292, Chapter No. 576, Montana Session Laws of 1977, by the Forty-Fifth Legislature.

5. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to R. Bruce McGinnis, Deputy Chief Tax Counsel, Mitchell Building, Helena, Montana 59601. Written comments in order to be considered must be received not later than October 17, 1977.

6. Laury Lewis, Deputy Director, Department of Revenue, Mitchell Building, Helena, Montana 59601, has been designated by the Director of Revenue to preside over and conduct the hearing.

7. The authority of the Department to make the proposed rule is based on Section 84-4955, R.C.M. 1947, as amended.

By E. Dore
Raymon Dore
Director
Department of Revenue

Certified to the Secretary of State September 14, 1977.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of adoption of rules relating to the Income adjustment for capital investment for energy conservation.	))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES RELATING TO THE INCOME ADJUSTMENT FOR CAPITAL INVESTMENT FOR ENERGY CONSERVATION.

TO: All Interested Persons

1. On October 17, 1977, at 9:30 a.m., a public hearing will be held in the Conference Room of the Montana Historical Society Building, Helena, Montana, to consider the adoption of rules relating to the definition of income adjustment for capital investment for energy conservation.

2. The proposed rules are as follows: new material is underlined.

3. 42-2.8(1)-S80541 - DEFINITIONS. The following words unless the context clearly indicates otherwise, shall have the meaning hereinafter ascribed to them:

(a) "Building" means a single or multiple dwelling, including a mobile home, or a building used for commercial, industrial, or agricultural purposes, which is enclosed with walls and a roof.

(b) "Capital investment" means any material or equipment purchased and installed in a building, or land, with or without improvements.

(c) "Energy conservation purpose" means one or more of the following results of an investment: reducing the waste or dissipation of energy, or reducing the amount of energy required to accomplish a given quantity of work.

4. The purpose of this regulation is to promulgate Administrative rules implementing the energy conservation tax incentives enacted in House Bill No. 292, Chapter No. 576, Montana Session Laws of 1977, by the Forty-Fifth Legislature.

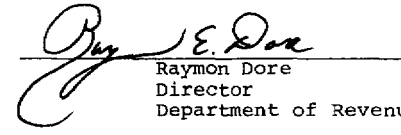
5. Interested parties may submit their data, views, or arguments concerning the proposed rules in writing to R. Bruce McGinnis, Deputy Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601. Written comments in order to be considered must be received not later than October 17, 1977.

6. Laury Lewis, Deputy Director, Department of Revenue, Mitchell Building, Helena, Montana, 59601, has been designated by the Director of Revenue to preside over and

(2)

conduct the hearing.

7. The authority of the Department to make the proposed rule is based on Section 84-4955, R.C.M. 1947, as amended.



Raymon Dore
Director
Department of Revenue

Certified to the Secretary of State September 14, 1977.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of adoption of rules relating to the income adjustment for capital investment for energy conservation.	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES RELATING TO THE INCOME ADJUSTMENT FOR CAPITAL INVESTMENT FOR ENERGY CONSERVATION.

TO: All Interested Parties

1. On October 17, 1977, at 9:30 a.m., a public hearing will be held in the Conference Room of the Montana Historical Society Building, Helena, Montana, to consider the adoption of rules relating to capital investment for energy conservation.

2. The proposed rules are as follows: new material is underlined.

3. 42-2.8(1)-S80542 - CAPITAL INVESTMENT WITH AN ENERGY CONSERVATION PURPOSE. (1) The Department of Revenue has determined that the following capital investments can result in a conservation of energy:

(a) Insulation of floors, walls, ceilings, roofs and pipes and ducts located in non-heated areas, which insulating has an established R factor higher than that of R-11.

(b) Special insulating siding with a certified R value substantially in excess of that of normal siding.

(b) Storm or triple glazed windows or windows with an insulated type of glass.

(d) Storm doors.

(e) Insulated exterior doors.

(f) Caulking and weather stripping of buildings.

(g) Flow limiting devices for shower heads and lavatories, for hot water.

(h) Waste heat recovery devices.

(i) Glass fireplace doors.

(j) Exhaust fans used to reduce air conditioning requirements.

(k) Replacement of incandescent light fixtures with light fixtures of a more efficient type.

(l) Lighting controls with cut-off switches to permit selective use of lights.

(m) Clock thermostats in buildings.

3. The purpose of this regulation is to promulgate Administrative rules implementing the energy conservation tax incentives enacted in House Bill No. 292, Chapter No. 576, Montana Session Laws of 1977, by the Forty-Fifth Legislature.

4. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to R. Bruce McGinnis, Deputy Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana, 59601. Written comments in order to be considered must be received not later than October 17, 1977.

6. Laury Lewis, Deputy Director, Department of Revenue, Mitchell Building, Helena, Montana, 59601, has been designated by the Director of Revenue to preside over and conduct the hearing.

7. The authority of the Department to make the proposed rules is based on Section 84-4955, R.C.M. 1947, as amended.

Raymon Dore
Director
Department of Revenue

Certified to the Secretary of State September 14, 1977.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of adoption of rules relating to the tax credit for nonfossil energy generation systems.	))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES RELATING TO THE TAX CREDIT FOR NON-FOSSIL ENERGY GENERATION SYSTEMS.

TO: All Interested Persons

1. On October 17, 1977, at 9:30 a.m., a public hearing will be held in the Conference Room of the Montana Historical Society Building, Helena, Montana, to consider the adoption of rules relating to the tax credit for nonfossil energy generation systems.

2. The proposed rules are as follows: new material is underlined.

3. 42-2.8(1)-S80550 - TAX CREDIT FOR NONFOSSIL ENERGY GENERATION SYSTEMS. (1) A credit against tax liability is allowed to an individual who is a Montana resident and who either (a) places in use a qualified nonfossil energy system in a dwelling which is his or her principal place of residence or, (b) purchases or otherwise acquires beneficial ownership of a dwelling to be used as his or her principal place of residence, which said dwelling is equipped with a qualifying nonfossil energy system with respect to which this tax credit has not previously been claimed.

(2) The credit may be claimed only with respect to an installation made in the taxpayer's principal residence (including a principal place of residence acquired with an existing system) on or after January 1, 1977, but before December 31, 1982. The credit is allowed only once with respect to a particular installation. Once a tax credit has been given for a particular installation it cannot be claimed again by a subsequent taxpayer who purchases the residence. It must be claimed against the taxpayer's tax determined for the year in which the residence is purchased or the installation is placed in use. In cases in which the residence is purchased in a year subsequent to installation the credit is to be applied to the latter year. If the credit exceeds the taxpayer's tax liability for such taxable year, the unused portion may be carried over and applied against his or her tax liability for succeeding taxable years. However, an unused credit may not be carried beyond the fourth taxable year succeeding the taxable year in which the installation was acquired.

(3) A nonfossil energy system means (a) a system for the utilization of solar heat, wind, solid wastes, or the decomposition of organic wastes; (b) a system for capturing energy or converting energy sources into usable sources; (c) a system for the production of electric power from wood wastes; or (d) a system for the utilization of water power by means

of an impoundment not over twenty acres in surface area.

(4) The only energy sources recognized as supplying nonfossil forms of energy within the scope of this regulation are solar heat, wind, solid wastes, organic wastes, solid wood wastes and water power from impoundments of not over twenty acres in surface area.

(5) A credit may be allowed at the discretion of the Department for the installation of efficient wood-burning stoves. Applications for this tax credit must be filed in advance with the Department along with plans demonstrating that the installation is substantially more efficient than the system it replaces or takes the place of. In new construction the installation must be substantially more efficient than the system it is substituted for. In existing residences the installation must be substantially more efficient than the system it replaces.

(6) This credit must be claimed on Form 2-B, which may be obtained from the Montana Department of Revenue, Helena, Montana 59601. The completed form must be attached to the taxpayer's return for the year in which the credit is claimed.

4. The purpose of this regulation is to promulgate an administrative regulation implementing the tax incentives for installation or acquisition of solar or other recognized nonfossil forms of energy generation by taxpayers which were enacted in Senate Bill No. 167, Chapter No. 574, Montana Session Laws of 1977, by the Forty-Fifth Legislature.

5. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to R. Bruce McGinnis, Deputy Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601. Written comments in order to be considered must be received no later than October 17, 1977.

6. Laury Lewis, Deputy Director, Department of Revenue, Mitchell Building, Helena, Montana 59601 has been designated by the Director of Revenue to preside over and conduct the hearing.

7. The authority of the Department to make the proposed rules is based on Section 84-4955, R.C.M. 1947, as amended.

RAYMON E. DORE
Director
Department of Revenue

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of adoption of rules relating to the income adjustment for capital investment for energy conservation.	))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES RELATING TO THE INCOME ADJUSTMENT FOR CAPITAL INVESTMENT FOR ENERGY CONSERVATION.

TO: All Interested Persons

1. On October 17, 1977, at 9:30 a.m., a public hearing will be held in the Conference Room of the Montana Historical Society Building, Helena, Montana, to consider the adoption of rules relating to the income adjustment for capital investment for energy conservation.

2. The proposed rules are as follows: new material is underlined.

3. 42-2.6(1)-S6161 - INCOME ADJUSTMENTS FOR CAPITAL INVESTMENT FOR ENERGY CONSERVATION. (1) A deduction is allowed for a portion of expenditures made for energy conservation purposes in buildings, both residential and nonresidential, used in the taxpayer's business.

(2) In new construction no deduction is allowed for that portion of capital expense incurred in meeting established standards. In new buildings only the cost for that portion of a capital expenditure that is in excess of established standards will be entitled to a deduction in computing taxable income. The standards utilized by the Department of Revenue in determining allowances will be taken from the currently recognized energy building code in Montana. If Montana does not have an applicable energy building code then national standards meeting the demands of this geographical area will be followed. The energy code or standard relied upon by the Department is to be updated on an annual basis.

(3) In the improvement of existing structures a deduction will be given for capital investments that are recognized to substantially reduce the waste or dissipation of energy, or reduce the amount of energy required for proper utilization of the building.

(4) Deductions will not be allowed for capital investments that are directly used in a production or manufacturing process or rendering a service to customers.

(5) This deduction must be claimed on form CT-7, which may be obtained from the Montana Department of Revenue, Helena, Montana 59601. The completed form must be attached to the taxpayer's corporation license tax return for the year in which the deduction is claimed.

4. The purpose of this regulation is to promulgate Administrative rules implementing the energy conservation tax incentives enacted in House Bill No. 292, Chapter No. 576,

Montana Session Laws of 1977, by the Forty-Fifth Legislature.

5. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to R. Bruce McGinnis, Deputy Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601. Written comments in order to be considered must be received not later than October 17, 1977.

6. Laury Lewis, Deputy Director, Department of Revenue, Mitchell Building, Helena, Montana 59601, has been designated by the Director of Revenue to preside over and conduct the hearing.

7. The authority of the Department to make the proposed rule is based on Section 84-1508, R.C.M. 1947, as amended.

By E. Dore

RAYMON E. DORE
Director
Department of Revenue

Certified to the Secretary of State September 14, 1977.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of adoption of rules relating to the income adjustment for capital investment for energy conservation.	))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES RELATING TO THE INCOME ADJUSTMENT FOR CAPITAL INVESTMENT FOR ENERGY CONSERVATION.

TO: All Interested Persons

1. On October 17, 1977, at 9:30 a.m., a public hearing will be held in the Conference Room of the Montana Historical Society Building, Helena, Montana, to consider the adoption of rules relating to the definition of income adjustment for capital investment for energy conservation.

2. The proposed rules are as follows: new material is underlined.

3. 42-2.6(1)-S6162 - DEFINITIONS. The following words unless the context clearly indicates otherwise, shall have the meaning hereinafter ascribed to them:

(1) "Building" means a single or multiple dwelling, including a mobile home, or a building used for commercial, industrial, or agricultural purposes, which is enclosed with walls and a roof.

(2) "Capital investment" means any material or equipment purchased and installed in a building, or land, with or without improvements.

(3) "Energy conservation purpose" means one or more of the following results of an investment: reducing the waste or dissipation of energy, or reducing the amount of energy required to accomplish a given quantity of work.

4. The purpose of this regulation is to promulgate Administrative rules implementing the energy conservation tax incentives enacted in House Bill No. 292, Chapter No. 576, Montana Session Laws of 1977, by the Forty-Fifth Legislature.

5. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to R. Bruce McGinnis, Deputy Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601. Written comments in order to be considered must be received not later than October 17, 1977.

6. Laury Lewis, Deputy Director, Department of Revenue, Mitchell Building, Helena, Montana 59601, has been designated by the Director of Revenue to preside over and conduct the hearing.

7. The authority of the Department to make the proposed

rule is based on Section 84-1508, R.C.M. 1947, as amended.

Raymon Dore
Director
Department of Revenue

Certified to the Secretary of State September 14, 1977.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of adoption of rules relating to the income adjustment for capital investment for energy conservation.	))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES RELATING TO THE INCOME ADJUSTMENT FOR CAPITAL INVESTMENT FOR ENERGY CONSERVATION.

TO: All Interested Persons

1. On October 17, 1977, at 9:30 a.m., a public hearing will be held in the Conference Room of the Montana Historical Society Building, Helena, Montana, to consider the adoption of rules relating to capital investment for energy conservation.

2. The proposed rules are as follows: new material is underlined.

3. 42-2.6(1)-S6163 - CAPITAL INVESTMENT WITH AN ENERGY CONSERVATION PURPOSE. (1) The Department of Revenue has determined that the following capital investments can result in a conservation of energy:

(a) Insulation of floors, walls, ceilings, roofs and pipes and ducts located in non-heated areas, which insulation has an established R factor higher than that of R-11.

(b) Special insulating siding with a certified R value substantially in excess of that of normal siding.

(c) Storm or triple glazed windows or windows with an insulated type of glass.

(d) Storm doors.

(e) Insulated exterior doors.

(f) Caulking and weather stripping of buildings.

(g) Flow limiting devices for shower heads and lavatories, for hot water.

(h) Waste heat recovery devices.

(i) Glass fireplace doors.

(j) Exhaust fans used to reduce air conditioning requirements.

(k) Replacement of incandescent light fixtures with light fixtures of a more efficient type.

(l) Lighting controls with cut-off switches to permit selective use of lights.

(m) Clock thermostats in buildings.

4. The purpose of this regulation is to promulgate Administrative rules implementing the energy conservation tax incentives enacted in House Bill No. 292, Chapter No. 576, Montana Session Laws of 1977, by the Forty-Fifth Legislature.

5. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to R. Bruce McGinnis, Deputy Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601. Written comments in order to be considered must be received not later than October 17, 1977.

6. Laury Lewis, Deputy Director, Department of Revenue Mitchell Building, Helena, Montana 59601, has been designated by the Director of Revenue to preside over and conduct the hearing.

7. The authority of the Department to make the proposed rule is based on Section 84-1508, R.C.M. 1947, as amended.

Raymon Dore
Director
Department of Revenue

Certified to the Secretary of State September 14, 1977.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of adoption of Rule 42-2.12(6)-S1500 relating to combined populations of municipalities.	))))	NOTICE OF PROPOSED ADOPTION OF REGULATION CONCERNING COMBINED POPULATIONS OF MUNICIPALITIES.

TO: All Interested Persons

1. On October 18, 1977, at 9:00 a.m. a public hearing will be held in the Highway Auditorium, Sixth and Roberts, Helena, Montana, to consider the adoption of rules relating to the Combined Populations of Municipalities.

2. The proposed changes are as follows, (new matter underlined).

42-2.12(6)-S1500(1) COMBINED POPULATION. If the corporate boundaries of two or more incorporated cities or towns are within 5 miles of each other, the total number of retail all-beverage and beer licenses that may be issued shall be determined on the basis of their combined populations. The purpose of this provision is to allow the aggregation of the populations of adjacent cities and to determine the quota for the entire populated area.

(2) In order to combine populations both cities and towns must be incorporated and their respective corporate limits must be within 5 miles of each other at the nearest point. If these requirements are met the populations of both municipalities are to be combined and the total population figures used to determine the number of retail all-beverage and beer licenses available under the quota.

(3) All-beverage and beer licenses issued within the combined area, as well as within the distance of five miles from the corporate boundaries of each municipality may be transferred to any point within the corporate limits of both municipalities and the area within five miles of their corporate limits.

The purpose of this regulation is to clarify the provisions contained in Sections 4-4-201 and 4-4-202, R.C.M. 1947, allowing the populations of municipalities situated within five miles of each other to be combined for the purpose of determining quotas for beer and all-beverage licenses.

3. Interested parties may submit their data, views, or arguments concerning the proposed rules in writing to R. Bruce McGinnis, Deputy Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601. Written comments in order to be considered must be received not later than October 17, 1977.

4. Mr. Laury Lewis, Deputy Director, Department of Revenue, Mitchell Building, Helena, Montana 59601, has been designated by the Director of Revenue to preside over and conduct the hearing.

5. The authority of the Department of Revenue to amend the rules is based on Section 4-1-303, R.C.M. 1947.

RAYMON DORE
Director
Department of Revenue

Certified to the Secretary of State September 14, 1977.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of adoption of) NOTICE OF PROPOSED ADOPTION
Rule 42-2.12(6)-S1510 relating) OF REGULATION CONCERNING FEES
to fees of combined population) FOR COMBINED POPULATION AREAS
areas.

TO: All Interested Persons

1. On October 18, 1977, at 9:00 a.m., a public hearing will be held in the Highway Auditorum, Sixth and Roberts, Capitol Complex, Helena, Montana, to consider the adoption of rules relating to the Regulation Concerning Fees for Combined Population Areas.

2. The proposed changes are as follows, (new material is underlined):

3. 42-2.12(6)-S1510 FEES FOR COMBINED POPULATION AREAS. Section 4-4-401(6)(e), R.C.M. 1947, explains how license fees are to be determined for combined population areas. This statute provides a series of categories that must be examined to determine the appropriate license fee when a bar license in a combined population area is not located within the larger incorporated city or town.

(1) When the premises of the licensee are within five miles of the corporate limits of two or more municipalities the fee chargeable in the largest city or town shall apply. This means that when a licensed establishment is within five miles of the boundary of two municipalities the fee for the larger municipality is to be charged. If the establishment is only within five miles of one of the municipalities, then the fee applicable to that city or town applies.

(2) When the corporate boundaries of the smaller municipality, in their entirety, fall within five miles of the larger city or town the license fee of the larger city or town applies.

(3) If any portion of the corporate boundaries of the smaller municipality falls outside five miles of the larger city or town the license fee of a smaller city or town applies.

(4) The license fee of the larger municipality only applies to licensees if the licensed premises are within the five mile limit of both the municipalities, or if the smaller city or town where the licensed premises are located in its entirety falls within five miles of a larger municipality.

(5) Where the combined population of municipalities as provided for in MAC 42-2.12(6)-S1500 and Section 4-4-201 and 4-4-202, R.C.M 1947, create an original license or licenses a one time original license fee of twenty thousand dollars ($20,000.) as provided for in Section 4-4-401(6)(f), R.C.M. 1947, shall apply for the first year of each original license. Subsequent, renewals of the original license shall be at the fee levels prescribed in Section 4-4-401, R.C.M. 1947 and

this regulation. The twenty thousand dollars ($20,000.) original license fee shall apply only to original licenses created by the combination of populations of incorporated cities and towns, and shall not apply to transfers or renewals of existing licenses.

The purpose of this regulation is to clarify the provisions contained in Sections 4-4-201 and 4-4-202, R.C.M. 1947, allowing the populations of municipalities situated within five miles of each other to be combined for the purpose of determining quotas for beer and all-beverage licenses.

3. Interested parties may submit their data, views, or arguments concerning the proposed rules in writing to R. Bruce McGinnis, Deputy Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601. Written comments in order to be considered must be received not later than October 17, 1977.

4. Mr. Laury Lewis, Deputy Director, Department of Revenue, Mitchell Building, Helena, Montana 59601, has been designated by the Director of Revenue to preside over and conduct the hearing.

5. The authority of the Department of Revenue to amend the rules is based on Section 4-1-303, R.C.M. 1947.

RAYMON DORE
Director
Department of Revenue

Certified to the Secretary of State September 14, 1977.

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

In the matter of the adoption of rule MAC 46-2.10(18)-S11447 pertaining to personal care services in a recipient's home.	))))	NOTICE OF PUBLIC HEARING ON ADOPTION OF RULE PERTAINING TO PERSONAL CARE SERVICES.

TO: All Interested Persons

1. On October 17, 1977, 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 receive comments on the adoption of rule MAC 46-2.10(18)-S11447, pertaining to personal care services in a recipient's home, which was adopted by emergency rule on June 28, 1977, effective on that same date. 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 Richard Weber, P.O. Box 4210, Helena, Montana, 59601, any time before October 14, 1977.

2. The rule, which was adopted June 28, 1977, reads as follows:

46-2.10(18)-S11447 PERSONAL CARE SERVICES IN A RECIPIENT'S HOME (1) The Department shall provide, either directly or by contract with provider organizations or persons, Personal Care Services in a recipient's home to all persons eligible under the terms of MAC 46-2.10(18)-S11420.

(2) Personal Care Services shall consist of assistance with:

(a) Skin, hair and nail care
(b) Oral hygiene and denture care
(c) Ambulation and transfers
(d) Dressing
(e) Eating and special diets
(f) Transportation to necessary medical services.

(3) Personal Care Services does not include the following domestic type services:

(a) Household maintenance: such as cleaning, dishwashing, etc.
(b) Clothing: repair, selection or laundry.
(c) Socialization, friendly visiting, escort services to social events, counseling.
(d) Babysitting.

(4) Personal Care Services must be prescribed by a physician. The physician shall prescribe the types of services and the amount of time required for their provision.

(5) A Personal Care Service Plan must be developed and carried out under the supervision of a Registered

Nurse licensed to practice in the State of Montana.

(6) Provider of service cannot be a member of the family and must meet the following criteria:

(a) Mental and physical competency.

(b) Ability to read and write.

(c) Willingness to accept training and supervision of Registered Nurse. (History: Sec. 71-1511, 71-1517, R.C.M. 1947; EMERG, Order MAC 46-2-63; MAC Notice No. 46-2-122; Adp. 6/28/77; Eff. 6/28/77.)

3. The rationale for adopting the rule is to provide authority in rule for the Department to provide Personal Care Services, to specify the services to be provided and by whom they may be provided, and to specify those persons who are eligible to receive the services.

4. Richard Weber, 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.

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

Patrick E. Hadley
Director, Social and Rehabilitation Services

Certified to the Secretary of State September 14, 1977.

DEPARTMENT OF AGRICULTURE

Adoption of Rule 4-2.6(6)-S666, AGRICULTURAL SEED LICENSING FEES

1. Department of Agriculture published Notice 4-2-39 of a proposed NEW rule to ARM 4-2.6(6)-S666, Agricultural Seed Licensing Fees on June 15, 1977 in Part I of the 1977 Montana Administrative Register.

2. Statement of reasons in support of the adoption of ARM 4-2.6(6)-S666. The above rule was created because of a statutory change in Sections 3-311 and 3-313, R.C.M. 1947 in Senate Bill 194 during the 45th Legislative Session whereby the department must create these charges by rule.

No testimony or comments were received.

3. This rule has been adopted as proposed with no language changes and becomes effective on September 24, 1977.

Adoption of Rule 4-2.6(2)-S647, LICENSING OF GRAIN MERCHANDISERS - FEES - EXEMPTIONS

1. Department of Agriculture published Notice 4-2-40 of a proposed Amendment to ARM 4-2.6(2)-S647, Licensing of Grain Merchandisers - Fees - Exemptions on June 15, 1977 in Part I of the 1977 Montana Administrative Register.

2. Statement of reasons in support of the adoption of ARM 4-2.6(2)-S647. The above rule was amended because of a statutory change in Section 3-228.2, R.C.M. 1947 in House Bill 234 during the 45th Legislative Session, whereby the department must create these fees by rule and the last portion of the rule was created because of major increases in grain movement by truck.

No testimony or comments were received.

3. The amendment to this rule has been adopted as proposed with no language changes and becomes effective on September 24, 1977.

DEPARTMENT OF FISH AND GAME

Amendment of Rule transferred to Rule 12-2.10(22)-S10220 REGULATIONS FOR ISSUANCE OF FALCONER'S LICENSES.

1. The Department of Fish and Game published Notice No. 12-2-42 of a proposed amendment to ARM 12-2.6(1)-S610 which was transferred to ARM 12-2.10(22)-S10220 regarding falconry regulations on July 25, 1977, at page 12, Montana Administrative Register; 1977 issue Number 7.

2. The Department has heretofore implemented this rule in order to comply with federal regulations and thereby qualify as a falconry state. This amendment prohibiting the use of certain raptors for falconry is necessary to accomplish the Department's objective. The amendment also implements Ch. 414, Sec. 13 and Ch. 9, Sec. 34, Laws of Montana, 1977. This rule is transferred from Centralized Services to Enforcement since its administration is primarily through the latter.

3. No testimony or public comments were received.

4. The Department has adopted the foregoing amendment to ARM 12-2.6(1)-S610 and renumbered it ARM 12-2.10(22)-S10220 as proposed. The text of the rule as it appears in the published notice is unchanged.

Adoption of Rule 12-2.26(1)-S2601 MONTANA STATE GOLDEN YEAR'S PASS.

1. The Department of Fish and Game published Notice No. 12-2-43 of a proposed new rule ARM 12-2.26(1)-S2601 regarding Montana State Golden Year's Pass on July 25, 1977, at page 14, Montana Administrative Register; 1977 issue Number 7.

2. The Department has implemented this rule in order to clarify administration of the Golden Year's Pass created by amendment of Section 62-305, R.C.M. 1947.

3. No testimony or public comments were received.

4. The Department has adopted the above rule as proposed with no change in the text as it appears in the published notice.

Adoption of Rules 12-2.6(2)-S6100 through 12-2.6(2)-S6160 RELATING TO LICENSE AGENTS

1. The Department of Fish and Game published Notice No. 12-2-44 of proposed new rules ARM 12-2.6(2)-S6100 through ARM 12-2.6(2)-S6160 relating to license agents on July 25, 1977, at page 16, Montana Administrative Register; 1977 issue Number 7.

2. The Department has implemented these rules to clarify the present procedures and to provide more opportunity for public acquisition of hunting and fishing licenses and other department certificates.

3. No testimony or public comments were received.

4. The Department has adopted the above rules as proposed with no change in the text as published in the notice.

Reasons for Adopting Emergency Rule MAC 16-2.14(10)-S14341

Section 69-5005 of the Sanitation in Subdivisions Act was amended in 1977 to require the Department of Health and Environmental Sciences to delegate authority to review minor subdivisions to local governments with adequate personnel. This section also requires the Department of Health and Environmental Sciences to remit at least $10 per parcel of the review fee to the local government performing the review. The maximum fee schedule was increased to $25 per parcel to make reimbursement to the local government possible. The present fee schedule sets a limit of $15 per parcel, pursuant to prior law, which makes it impossible financially to implement the amendments.

Presently, due to the small staff available on the state level to review all subdivisions, minor subdivision review requires weeks to conclude, making many small land transactions difficult. The primary purpose of the amendments was to speed up small subdivision review, preventing a backlog and weeks delay, and to reimburse local governments for their help. Proposed permanent rule 16-2.14(10)-S14341 containing this same fee schedule has been noticed for hearing September 26, 1977, at 9:00 a.m., in Rooms 142-143 of the Cogswell Building, Helena. The earliest date that rule may be effective is October 25, 1977. In the meantime, unless an emergency fee schedule is in effect, the Department will be unable to contract with local governments to facilitate small subdivision review. In order to meet the legislative mandate, emergency implementation of a new fee schedule is necessary, recognizing the present $25 maximum.

16-2.14(10)-S14341 HEALTH AND ENVIRONMENTAL SCIENCES

ENVIRONMENTAL SCIENCES DIVISION

EMERGENCY RULE TO AMEND

16-2.14(10)-S14341 FEE SCHEDULE FOR PLAT OR SUBDIVISION REVIEW (1) Purpose. The purpose of this rule is to establish a schedule of fees to be paid to the department for the local and state review of plats and subdivisions. The schedule consists of three sections relating to the collection of fees for the review of divisions of land, condominiums and areas providing permanent multiple space for recreational camping vehicles and mobile homes. The fees relate to the complexity of the review of the types of water and sewage disposal systems to serve the subdivision.

(2) Definitions. In addition to the terms defined in Section 69-5002, R.C.M. 1947:

(a) "Condominium" means the ownership of single units with common elements located on property and is a subdivision.

(b) "Condominium living unit" means a part of the property of a condominium intended for occupancy.

(c) "Parcel" means a part of land which is created by a division of land (referred to in 16-2.14(10)-S14340 as lots) or a space in an area used for recreational camping vehicles and mobile homes.

(3) Fee schedules.

(a) The fees in Schedule I shall be charged:

(i) Per parcel when land is divided into one or more parcels.

(ii) Per condominium living unit.

SCHEDULE I

Fee schedule for division of land into one or more parcels and for condominiums.

	Individual Sewerage System	Public Sewer requiring Department approval	Sewer Extension requiring Department approval	Existing Sewer previously approved (no extensions required)
Individual Water Supply	$25	$25	$25	$20
Public Water Supply requiring Department review	$25	$25	$25	$20
Water Extension requiring Department review	$25	$25	$25	$20
Existing Water Supply previously approved (no extension is required)	$20	$20	$20	$10

(b) The fees in Schedule II shall be charged per mobile home/trailer court parcel.

SCHEDULE II

Fee schedule for mobile home/trailer courts.

	Individual Sewerage System	Public Sewer requiring Department approval	Sewer Extension requiring Department approval	Existing Sewer previously approved (no extensions required)
Individual Water Supply	$15	$15	$15	$10
Public Water Supply requiring Department review	$15	$15	$15	$10
Water Extension requiring Department review	$15	$15	$15	$10
Existing Water Supply previously approved (no extension is required)	$10	$10	$10	$ 5

(c) The following fees shall be charged for recreational camping vehicles and tourist campgrounds.

(i) Where water and sewer hookups are to be provided, the fee shall be five dollars ($5.00) per vehicle parcel.

(ii) Where no water and sewer hookups are provided, the fee shall be two dollars ($2.00) per vehicle parcel.

(4) Disposition of fee money.

(a) The department will reimburse local governing bodies under department contract to review the minor subdivisions in the following amounts:

(i) Five dollars ($5.00) for major subdivisions with individual sewage treatment systems.

(ii) Five dollars ($5.00) per parcel for major and minor subdivisions coming under master plan exclusions.

(iii) Fifteen dollars ($15.00) per parcel for minor subdivisions with three or more parcels on individual sewage systems.

(iv) Twenty dollars ($20.00) per parcel for divisions of two (2) parcels or less on individual sewage treatment systems.

(b) The department may reimburse counties not involved in the minor subdivision review program in the following amounts:

(i) Two dollars ($2.00) per parcel for major subdivisions with individual sewage treatment systems.

(ii) Five dollars ($5.00) per parcel for minor subdivisions with individual sewage treatment systems.

(iii) Reimbursement to counties in this category is dependent upon departmental determination of the amount of involvement

by local health department in the review process.

(c) Funds will be reimbursed to the counties quarterly, based upon a fiscal year starting on July 1, 1977 and ending June 30, 1978.

(d) Payment should be by check or money order made payable to the Department of Health and Environmental Sciences.

(5) When a subdivision is changed by the developer during the review process or as a resubmittal, the subdivision shall be subject to additional review fees not to exceed the amounts listed in subsection (3) of this rule. The exact amount of the additional fee shall be determined by the department and will be based on the scope of the change(s) and how much additional review time the change(s) will require. (History: Sec. 69-5005, R.C.M. 1947; NEW; EMERG; Order MAC No. 16-2-22; Adp. 5/13/75; Eff. 5/15/75; NEW, MAC Not. No. 16-2-65; Order MAC No. 16-2-24; Adp. 8/7/75; Eff. 9/5/75; AMD, MAC Not. No. 16-2-71; Order MAC No. 16-2-28; ADP. 4/9/76; Eff. 5/6/76; AMD, EMERG; Order MAC No. 16-2-34; Adp. 9/6/77; Eff. 9/6/77.)

Amd. Emerg. Order MAC No. 16-2-34
Eff. 9/6/77 Expires ~~Dec. 4, 1977~~
Jan 3, 1978

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY

Amendment of Rule 24-3.10(6)-P1020, FILING OF APPEALS

1. The Employment Security Division who published Notice 24-3-10-22 of a proposed amendment to ARM 24-3.10(6)-P1020 on filing of appeals on July 25, 1977 at page 37, Montana Administrative Register; 1977 issue Number 7.

2. The Division heretofore amended this rule by changing the words "information required thereby" to "reason for the appeal" in appeal filing procedures, and to change the word "tribunal" to "referee". The reason for this change is to more clearly define information needed on an appeal, and to change the title of the appeal tribhnal to appeal referee.

No testimony or comments were received.

3. The amendment to this rule has been adopted as proposed and becomes effective September 24, 1977.

Amendment of Rule 24-3.10(6)-P1090, INTERESTED PARTIES DEFINED

1. The Employment Security Division who published Notice 24-3-10-23 of a proposed amendment to ARM 24-3.10(6)-P1090 on the definition of interested parties on July 25, 1977 at page 39, Montana Administrative Register; 1977 issue Number 7.

2. The Division heretofore amended this rule by changing the definition of interested party under (c), removing staff member under (e), and changing chargeable employer to reimbursable employer under (f). The reason for the change in item (c) is to include any aggrieved employing unit, under either Section 87-107 or Section 87-109. No decision is made by the staff member listed in item (e) and this individual has no interest in the outcome of the claim. Our law no longer has a "chargeback" provision except in the case of the base-period reimbursable employer.

No testimony or comments were received.

3. The amendment to this rule has been adopted as proposed and becomes effective September 24, 1977.

Amendment of Rule 24-3.10(6)-P10010, BENEFIT APPEAL NOTICE

1. The Employment Security Division who published Notice 24-3-10-24 of a proposed amendment to ARM 24-3.10(6)-P10010 on benefit appeal notice on July 25, 1977 at page 41, Montana Administrative Register; 1977 issue Number 7.

2. The Division heretofore amended this rule by adding the sentence "Request for extension of the appeal rights for good cause shall not exceed 30 days." The reason for this change is to place some limit on the appeal time extension for good cause.

No testimony or comments were received.

3. The amendment to this rule has been adopted as proposed and becomes effective September 24, 1977.

Amendment of Rule 24-3.10(10)-S10020, CLAIM FILING

1. The Employment Security Division who published Notice 24-3-10-25 of a proposed amendment to ARM 24-3.10(10)-S10020 on claim filing on July 25, 1977 at page 42, Montana

Administrative Register; 1977 issue Number 7.

2. The Division heretofore amended this rule by removing the words "in this state" from item (2). The reason for this change is to accept medical documents provided by claimants who have received care out of state.

No testimony or comments were received.

3. The amendment to this rule has been adopted as proposed and becomes effective September 24, 1977.

Amendment of Rule 24-3.10(10)-S10030, EFFECTIVE DATE OF INITIAL, ADDITIONAL AND CONTINUED CLAIM

1. The Employment Security Division who published Notice 24-3-10-26 of a proposed amendment to ARM 24-3.10(10)-S10030 relating to effective dates of initial, additional and continued claims on July 25, 1977 at page 44, Montana Administrative Register; 1977 issue Number 7.

2. The Division heretofore amended this rule by providing that claims filed on Thursday or Friday be effective the following week, and by adding item (2) to this section, regarding filing of continued claims. The reason for the change of effective date of claims filed at the end of the week is to encourage early filing. This would ensure that the claimant is available to the local office during the full week he is unemployed in the event work is available, and will also permit earlier processing and payment of the claim. The reason for the addition of item (2) is to provide the same procedures for intrastate claims as for interstate claims (now in effect in MAC 24-3.10(14)-S10170).

No testimony or comments were received.

3. The amendment to this rule has been adopted as proposed and becomes effective September 24, 1977.

Adoption of Rule 24-3.10(10)-S10051, WEEK OF PARTIAL UNEMPLOYMENT DEFINED

1. The Employment Security Division who published Notice 24-3-10-27 of a proposed new rule ARM 24-3.10(10)-S10051 regarding week of partial unemployment on July 25, 1977 at page 46, Montana Administrative Register; 1977 issue Number 7.

2. The Division heretofore adopted this rule to define partial unemployment for the purpose of payment of benefits under new law provisions.

No testimony or comments were received.

3. The adoption of this rule has been adopted as proposed and becomes effective September 24, 1977.

Amendment of Rule 24-3.10(10)-S10060, AFFIDAVITS OR DOCUMENTED EVIDENCE TO SUPPORT CERTAIN CLAIMS

1. The Employment Security Division who published Notice 24-3-10-28 of a proposed amendment to ARM 24-3.10(10)-S10060, relating to affidavits or documented evidence to

support certain claims on July 25, 1977 at page 48, Montana Administrative Register; 1977 issue Number 7.

2. The Division heretofore amended this rule to accept documented evidence as proof of earnings. The reason for this change is to accept check stubs, W-2 forms, etc., as proof of earnings to establish a claim in the cases indicated.

No testimony or comments were received.

3. The amendment to this rule has been adopted as proposed and becomes effective September 24, 1977.

Adoption of Rule 24-3.10(10)-S10071, DETERMINATION OF CLAIM ON FACTS AVAILABLE

1. The Employment Security Division who published Notice 24-3-10-29 of a proposed new rule ARM 24-3.10(10)-S10071 regarding the determination of a claim on facts available on July 25, 1977 at page 50, Montana Administrative Register; 1977 issue Number 7.

2. The Division heretofore adopted this rule to encourage the prompt submission of facts by the claimant and employer in each case.

No testimony or comments were received.

3. The adoption of this rule has been adopted as proposed and becomes effective September 24, 1977.

Repealing of Rule 24-3.10(10)-S10080, INITIAL DETERMINATION

1. The Employment Security Division who published Notice 24-3-10-30 repealing rule ARM 24-3.10(10)-S10080 pertaining to initial determinations on July 25, 1977 at page 52, Montana Administrative Register; 1977 issue Number 7.

2. The Division heretofore repealed this rule as the matter is sufficiently covered in the law so that this rule is no longer needed.

No testimony or comments were received.

3. The repealed rule as proposed becomes effective September 24, 1977.

Repealing of Rule 24-3.10(10)-S10090, WITHDRAWALS FROM TRUST FUND

1. The Employment Security Division who published Notice 24-3-10-31 repealing rule 24-3.10(10)-S10090 pertaining to withdrawals from the Trust Fund on July 25, 1977 at page 53, Montana Administrative Register; 1977 issue Number 7.

2. The Division heretofore repealed this rule as the matter is sufficiently covered in the law so that this rule is no longer necessary.

No testimony or comments were received.

3. The repealed rule as proposed becomes effective September 24, 1977.

Repealing of Rule 24-3.10(10)-S10100, DISQUALIFICATION UPON SEPARATION

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY

1. The Employment Security Division who published Notice 24-3-10-32 repealing rule 24-3.10(10)-S10100 pertaining to disqualification upon separation on July 25, 1977 at page 54, Montana Administrative Register; 1977 issue Number 7.

2. The Division heretofore repealed this rule as the rule is no longer applicable in view of new disqualification provisions in the law, and the repeal of chargeback provisions.

No testimony or comments were received.

3. The repealed rule as proposed becomes effective September 24, 1977.

Adoption of Rule 24-3.10(10)-S10081, DURATION OF WEEKS REDUCED BY PAYMENT OF PARTIAL BENEFITS

1. The Employment Security Division who published Notice 24-3-10-33 of a proposed new rule ARM 24-3.10(10)-S10081 regarding duration of weeks reduced by payment of partial benefits on July 25, 1977 at page 55, Montana Administrative Register; 1977 issue Number 7.

2. The Division heretofore adopted this rule to adequately define duration of benefits under the new partial-benefit provision of the law.

No testimony or comments were received.

3. The adoption of this rule has been adopted as proposed and becomes effective September 24, 1977.

Adoption of Rule 24-3.10(10)-S10086, AMOUNT OF EARNINGS CONSIDERED AS SELF EMPLOYMENT

1. The Employment Security Division who published Notice 24-3-10-34 of a proposed new rule ARM 24-3.10(10)-S10086 regarding self employment of claimants on July 25, 1977 at page 57, Montana Administrative Register; 1977 issue Number 7.

2. The Division heretofore adopted this rule to define what will be considered self employment in view of the new law provision where self employment claimants will be disqualified.

No testimony or comments were received.

3. The adoption of this rule has been adopted as proposed and becomes effective September 24, 1977.

Amendment of Rule 24-3.10(18)-S10210, FIRST FACTOR IN EXPERIENCE RATING

1. The Employment Security Division who published Notice 24-3-10-35 of a proposed amendment to ARM 24-3.10(18)-S10210 relating to first factor experience rating on July 25, 1977 at page 59, Montana Administrative Register; 1977 issue Number 7.

2. The Division heretofore amended this rule by changing the order of the factors in experience rating. The reason for this change is to place the factors for experience rating in the proper order. The first factor in experience

rating will now read as the second factor previously read.

No testimony or comments were received.

3. The amendment to this rule has been adopted as proposed and becomes effective September 24, 1977.

Amendment of Rule 24-3.10(18)-S10220, SECOND FACTOR IN EXPERIENCE RATING

1. The Employment Security Division who published Notice 24-3-10-36 of a proposed amendment to ARM 24-3.10(18)-S10220 relating to second factor in experience rating on July 25, 1977 at page 62, Montana Administrative Register; 1977 issue Number 7.

2. The Division heretofore amended this rule by changing the order of the factors in experience rating. The reason for this change is to place the factors for experience rating in the proper order. The second factor in experience rating will now read as the third factor previously read.

No testimony or comments were received.

3. The amendment to this rule has been adopted as proposed and becomes effective September 24, 1977.

Amendment of Rule 24-3.10(18)-S10230, THIRD FACTOR IN EXPERIENCE RATING

1. The Employment Security Division who published Notice 24-3-10-37 of a proposed amendment to ARM 24-3.10(18)-S10230 relating to third factor in experience rating on July 25, 1977 at page 65, Montana Administrative Register; 1977 issue Number 7.

2. The Division heretofore amended this rule by changing the order of the factors in experience rating. The reason for this change is to place the factors for experience rating in the proper order. The third factor in experience rating will now read as the first factor previously read.

No testimony or comments were received.

3. The amendment to this rule has been adopted as proposed and becomes effective September 24, 1977.

Amendment of Rule 24-3.10(18)-S10260, SUBSTITUTION OF NEW ACCOUNT FOR EXISTING ACCOUNT

1. The Employment Security Division who published Notice 24-3-10-38 of a proposed amendment to ARM 24-3.10(18)-S10260 relating to substitution of new account for existing account on July 25, 1977 at page 68, Montana Administrative Register; 1977 issue Number 7.

2. The Division heretofore amended this rule by changing section (1) to apply when an employing unit purchases all assets of one employer, and by adding sections (2) and (3). The reason for this change is to more precisely show how the contribution rate will be determined when an employing unit purchases the assets of one business, a portion of the assets of a business, or assets of more than one business.

No testimony or comments were received.

3. The amendment to this rule has been adopted as proposed and becomes effective September 24, 1977.

Amendment of Rule 24-3.10(18)-S10290, SUBSTITUTION OF EXEMPTION AFTER TAXABLE WAGES PAID

1. The Employment Security Division who published Notice 24-3-10-39 of a proposed amendment to ARM 24-3.10(18)-S10290 relating to substitution of exemption after taxable wages paid on July 25, 1977 at page 70, Montana Administrative Register; 1977 issue Number 7.

2. The Division heretofore amended this rule by striking the sentence "Such wages are $3,000 prior to December 31, 1971, and $4,200 beginning January 1, 1972." The reason for this change is to remove any reference to amount of taxable wages. The amounts now listed are obsolete, and current amounts are covered in the law.

No testimony or comments were received.

3. The amendment to this rule has been adopted as proposed and becomes effective September 24, 1977.

Amendment of Rule 24-3.10(18)-S10300, PAYMENTS BY THE STATE AND ITS POLITICAL SUBDIVISIONS

1. The Employment Security Division who published Notice 24-3-10-40 of a proposed amendment to ARM 24-3.10(18)-S10300 relating to payments by state and its political subdivisions on July 25, 1977 at page 72, Montana Administrative Register; 1977 issue Number 7.

2. The Division heretofore amended this rule by changing "benefits paid and charged to the employing unit" to "the benefit cost experience of governmental entities as a whole and individually" and include a chart. The reason for this change is to make the rule applicable to new law provisions.

No testimony or comments were received.

3. The amendment to this rule has been adopted as proposed and becomes effective September 24, 1977.

Adoption of Rule 24-3.10(18)-S10301, MONTHLY BILLING OF REIMBURSABLE EMPLOYERS

1. The Employment Security Division who published Notice 24-3-10-41 of a proposed new rule ARM 24-3.10(18)-S10301 regarding monthly billing of reimbursable employers on July 25, 1977 at page 75, Montana Administrative Register; 1977 issue Number 7.

2. The Division heretofore adopted this rule to advise agencies monthly of amounts owing so the agency can pay on a monthly basis if desired.

No testimony or comments were received.

3. The amendment to this rule has been adopted as proposed and becomes effective September 24, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY

Amendment of Rule 24-3.10(22)-S10310, RECORDS TO BE KEPT BY EMPLOYER

1. The Employment Security Division who published Notice 24-3-10-42 of a proposed amendment to ARM 24-3.10(22)-S10310 relating to records to be kept by employers on July 25, 1977 at page 77, Montana Administrative Register; 1977 issue Number 7.

2. The Division heretofore amended this rule by changing numbering, and addition section (2). The reason for this change is to correct the numbering of the sections, and to include a written rule to provide to employers when field representatives are assigned audits.

No testimony or comments were received.

3. The amendment to this rule has been adopted as proposed and becomes effective September 24, 1977.

Adoption of Rule 24-3.10(22)-S10321, OTHER REPORTS BY EMPLOYERS

1. The Employment Security Division who published Notice 24-3-10-43 of a proposed new rule ARM 24-3.10(22)-S10321 regarding separation notices to be completed by employers on July 25, 1977 at page 80, Montana Administrative Register; 1977 issue Number 7.

2. The Division heretofore adopted this rule regarding separation notices to be completed by employers. The reason for this rule is to furnish the unemployed individual with the information he will need in order to file his claim for unemployment benefits.

No testimony or comments were received.

3. The adoption of this rule has been adopted as proposed and becomes effective September 24, 1977.

Repealing of Rule 24-3.10(22)-S10360, EMPLOYMENT NOT LOCALIZED IN MONTANA

1. The Employment Security Division who published Notice 24-3-10-44 repealing rule 24-3.10(22)-S10360 pertaining to employment not localized in Montana on July 25, 1977 at page 82, Montana Administrative Register; 1977 issue Number 7.

2. The Division heretofore repealed this rule as this matter is sufficiently covered in the law and is not needed.

No testimony or comments were received.

3. The repealed rule as proposed becomes effective September 24, 1977.

Adoption of Rule 24-3.10(26)-S10401, INTEREST ON PAST-DUE CONTRIBUTIONS

1. The Employment Security Division who published Notice 24-3-10-45 of a proposed new rule ARM 24-3.10(26)-S10401 regarding interest on past-due contributions on July 25, 1977 at page 83, Montana Administrative Register; 1977 issue Number 7.

2. The Division heretofore adopted this rule to provide

for the method of computing interest under the new law provision.

No testimony or comments were received.

3. The adoption of this rule has been adopted as proposed and becomes effective September 24, 1977.

Amendment of Rule 24-3.10(26)-S10410, REPORTING OF REMUNERATION IN EXCESS OF TAXABLE WAGE BASE

1. The Employment Security Division who published Notice 24-3-10-46 of a proposed amendment to ARM 24-3.10(26)-S10410 relating to reporting of remuneration in excess of taxable wage base on July 25, 1977 at page 85, Montana Administrative Register; 1977 issue Number 7.

2. The Division heretofore amended this rule by removing the reference to the amount of taxable wages. The amounts now listed are obsolete and the current amounts are covered in the law.

No testimony or comments were received.

3. The amendment to this rule has been adopted as proposed and becomes effective September 24, 1977.

Amendment of Rule 24-3.10(26)-S10420, DUE DATE OF CONTRIBUTIONS OF NEW EMPLOYERS

1. The Employment Security Division who published Notice 24-3-10-47 of a proposed amendment to ARM 24-3.10(26)-S10420 relating to due date of contributions of new employers on July 25, 1977 at page 87, Montana Administrative Register; 1977 issue Number 7.

2. The Division heretofore amended this rule by reducing the size of the section. The reason for this change is to remove unnecessary wordage and simplify the rule.

No testimony or comments were received.

3. The amendment to this rule has been adopted as proposed and becomes effective September 24, 1977.

Amendment of Rule 24-3.10(26)-S10430, DEMAND PAYMENT UNDER CERTAIN CONDITIONS

1. The Employment Security Division who published Notice 24-3-10-48 of a proposed amendment to ARM 24-3.10(26)-S10430 relating to demand payment under certain conditions on July 25, 1977 at page 89, Montana Administrative Register; 1977 issue Number 7.

2. The Division heretofore amended this rule by adding an additional sentence. The reason for this change is to make this rule more effective by applying the penalty and interest provision of the law as in the case of other delinquent reports and contributions.

No testimony or comments were received.

3. The amendment to this rule has been adopted as proposed and becomes effective September 24, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY

Amendment of Rule 24-3.10(26)-S10440, REPORT REQUIRED ALTHOUGH NO WAGES PAID

1. The Employment Security Division who published Notice 24-3-10-49 of a proposed amendment to ARM 24-3.10(26)-S10440 relating to report required although no wages paid on July 25, 1977 at page 91, Montana Administrative Register; 1977 issue, Number 7.

2. The Division heretofore amended this rule by striking the second sentence and adding a sentence. The reason for this change is to remove the superflous sentence, and to provide penalty for late filing in accordance with new law provisions.

No testimony or comments were received.

3. The amendment to this rule has been adopted as proposed and becomes effective September 24, 1977.

Repealing of Rule 24-3.10(30)-S10480, GRATUITIES AS WAGES

1. The Employment Security Division who published Notice 24-3-10-51 repealing rule 24-3.10(30)-S10480 pertaining to gratuities as wages on July 25, 1977 at page 97, Montana Administrative Register; 1977 issue Number 7.

2. The Division heretofore repealed this rule as this will be moved to a section dealing with definition of "wages".

No testimony or comments were received.

3. The repealed rule as proposed becomes effective September 24, 1977.

Repealing of Rule 24-3.10(30)-S10490, PRORATING WAGES AND EQUIPMENT RENTAL

1. The Employment Security Division who published Notice 24-3-10-52 repealing rule 24-3.10(30)-S10490 pertaining to prorating wages and equipment rental on July 25, 1977 at page 98, Montana Administrative Register; 1977 issue Number 7.

2. The Division heretofore repealed this rule as this will be moved to a section dealing with definition of "wages".

No testimony or comments were received.

3. The repealed rule as proposed becomes effective September 24, 1977.

Adoption of Rule 24-3.10(10)-S10091, IMPOSITION OF PENALTIES

1. The Employment Security Division who published Notice 24-3-10-53 of a proposed new rule ARM 24-3.10(10)-S10091 regarding imposition of penalties on July 25, 1977 at page 99, Montana Administrative Register; 1977 issue Number 7.

2. The Division heretofore adopted this rule to adequately safeguard the rights of the claimants and other interested parties, and satisfy the requirements of due process of law.

No testimony or comments were received.

3. The adoption of this rule has been adopted as proposed and becomes effective September 24, 1977.

Adoption of Rule #36-3.18(6)-S18010(1)(s), DEFINITION OF TERMS, Rule #36-3.18(10)-S18050 BOND TO BE FURNISHED, AND Rule #36-3.18(14)-S18380 ADOPTION OF FORMS.

STATEMENT OF REASONS IN SUPPORT OF THE AMENDMENT OF ARM RULES 36-3.18(6)-S18010(1)(s) DEFINITION OF TERMS, 36-3.18(10) -S18050 BOND TO BE FURNISHED and 36-3.18(14)-S18380 ADOPTION OF FORMS.

On August 18, 1977 the Board of Oil and Gas Conservation adopted the amendments to Rule 36-3.18(6)-S18010, 36-3.18(10) -S18050 and 36-3.18(14)-S18380 to clarify the definition of "cubic foot of gas" and to allow producers to furnish a cash bond in the form of a certificate of deposit. This action followed notice of the proposed amendments published in the Montana Administrative Register June 24, 1977. No public hearing was conducted, and no requests for such a hearing were received.

The amendments to the rules have been adopted as found in Notice 36-3-18-9. Effective date of Rule 36-3.18(6)-S18010 is January 1, 1978. The effective date of Rules 36-3.18(10) -S18050 and 36-3.18(14)-S18380 is October 3, 1977.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF ARCHITECTS

Amendment of Rule #40-3.10(6)-S1050 RULES AND REGULATIONS - INDIVIDUAL SEAL

1. The Board of Architects published Notice 40-3-10-4 of a proposed amendment to ARM 40-3.10(6)-S1050, Rules and Regulations - Individual Seal, on July 25, 1977 at Page 103, Montana Administrative Register; 1977, Issue No. 7.

2. The amendment was originally proposed in Notice No. 40-3-10-3, published on June 24, 1977. However, because of some misunderstanding and because the Board has determined it necessary to slightly revise the original proposal the Board made no adoption therefrom and published the above-stated as an amended Notice.

The proposed amendment provides an illustration of the required individual architect's seal. The reason therefor is to help clarify the required appearance of the seal as described in the text of the existing rule.

No requests for hearing were made, nor testimony or comments received.

3. The amendment has been adopted exactly as proposed.

4. It should be noted that the amendment as proposed was to Rule 40-3.10(6)-S1030. This adoption is an amendment to Rule 40-3.10(6)-S1050. The intention was to add the illustration to the existing rule pertaining to individual seals (-S1050) rather than the board seal (-S1030). The Board has determined it unnecessary to republish notice in that it was only a mechanical error, and the substance of the text has not been altered.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF ARCHITECTS

Amendment of Rule #40-3.10(6)-S10000 RENEWALS

1. The Board of Architects published Notice 40-3-10-4 of a proposed amendment of ARM 40-3.10(6)-S10000, Renewals, on July 25, 1977 at Page 103, Montana Administrative Register; 1977, Issue No. 7.

2. The amendment relates to the specification of license renewal deadlines. The reason is to clarify the existing rule and bring it into conformance with Section 66-110 R.C.M. 1947, which makes all licenses expire on the last day of July.

No requests for hearing were made, nor written comments received.

3. The amendment to this rule has been adopted exactly as proposed.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF ARCHITECTS

Amendment of Rule #40-3.10(6)-S10010 RECIPROCITY

1. The Board of Architects published Notice 40-3-10-4 of a proposed amendment of ARM 40-3.10(6)-S10010, Reciprocity, on July 25, 1977 at Page 103, Montana Administrative Register; 1977, Issue No. 7.

2. The amendment imposes an additional requirement for reciprocity licensing for applicants who were licensed prior to 1964. The reason is to provide a more efficient procedure for certifying competency in seismic forces. The amendment would eliminate the need for administering individual examinations testing for such competency. The amendment applies only to applicants licensed out of state prior to 1964 because in that year the National examination commenced testing for competency in seismic forces.

The Montana Administrative Code committee requested a representative of the Board to appear at its July meeting. The committee was concerned that unequal treatment may be given to out of state applicants. The Board answered, to the satisfaction of the committee, that substantial evidence appeared that such applicants who had not taken the National examination, including testing for competency in seismic forces may not have been as sufficiently familiar with seismic problems relating to Montana as were Montana licensed architects.

No requests for hearing were made, nor written comments received.

3. The amendment to this rule has been adopted exactly as proposed.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF PHARMACISTS

Amendment of Rule 40-3.78(6)-S78040 SET AND APPROVE REQUIREMENTS AND STANDARDS - INTERNSHIP REGULATIONS

1. The Board of Pharmacists published Notice No. 40-3-78-15 of a proposed amendment to ARM 40-3.78(6)-S78040, Set and Approve Requirements and Standards - Internship Regulations, on July 25, 1977 at Page 106, Montana Administrative Register; 1977, Issue No. 7.

2. The amendment relates to a revision of the required internship time period for pharmacist interns to fulfill their requirements in a shorter time period than is now allowed. Under the change interns will be allowed to accumulate internship hours during the school year at times other than those now allowed in the clinical area. In addition the amendment will allow accumulation up to forty-eight (48) hours per week rather than forty (40) and will accumulate towards the fifteen hundred (1500) hours in a maximum of five hundred (500) hours clinical experience rather than four hundred (400) hours.

No requests for hearing were made or comments received.

3. The amendment to this rule has been adopted exactly as proposed.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF REAL ESTATE

Amendment of Rule 40-3.98(6)-S98050 FEE SCHEDULE

1. The Board of Real Estate published Notice No. 40-3.98-9 of a proposed amendment to ARM 40-3.98(6)-S98050 Fee Schedule on July 25, 1977 at Page 110, Montana Administrative Register; 1977, Issue No. 7.

2. The amendment relates to changing the existing license fee schedule. The 1977 Legislature, in adopting House Bill 610, imposed the maximum fees for which the Board may charge in the catagories listed above. This Notice proposes setting the fees reflected above in the proposed change at the maximum allowed and within the limits set by such legislation. The Board has determined that the maximum fee must be assessed in order to properly absorb administrative costs.

No requests for hearing were made or written comments received.

3. The amendment to this rule has been adopted exactly as proposed.

(4) The decision so made shall be in writing and include a statement describing the method of appeal to the Board.

(5) Decisions by the hearing officer or board, if appealed, are binding on the state and county department. The State Department shall establish and maintain a method of informing county departments of the decision, at least in summary form. Identifying information shall be deleted in the summary. The decision shall also be accessible to the claimant and the public. One copy each of the decisions shall be transmitted by certified mail to the claimant and his representative only, one copy to the chairman of the county board, one copy to the county director or county staff in charge, and one copy to the state field supervisor. When the decision is favorable to the claimant or when the Department decides in favor of the claimant prior to the hearing, the Department shall make the corrected payments retroactively to the date the incorrect action was taken.

(6) The county director in charge shall immediately, upon the receipt of the notice of decision, take the necessary steps to carry out the decision and shall notify the hearing officer that the decision made has been carried out. (History: Sec. 82-4203, 82-4213, R.C.M. 1947; AMD, MAC Not. No. 46-2-27; Adp. 12/16/73; Eff. 1/5/74; Order MAC No. 46-2-9.)

46-2.2(2)-P2060 CONTESTED CASES, REPORT OF HEARING-APPEAL TO BOARD (1) The hearing officer's decision shall be based exclusively on the evidence and other material introduced at the hearing. The verbatim transcript of testimony and exhibits, together with all papers and requests filed in the proceedings, offers of proof, evidentiary objections and rulings, and the hearing officer's findings of fact, statement of matters officially noticed, conclusions of law and decision shall constitute the exclusive record on appeal to the Board and shall be available to the claimant at a place accessible to him or his representative at any reasonable time.

(2) All materials shall be in writing, including the decision, and shall be signed by the hearing officer.

(3) If any affected party feels the evidence presented does not sustain the findings of fact, or the conclusions of law are incorrect, or if the decision is not in conformity with the law or facts he may file a written Notice of Appeal, within 10 days of receipt of the hearing officer's decision, with the county department for forwarding to the hearing officer.

(4) The Notice of Appeal should set forth the specific grounds complained of; however, a lack of specificity shall not be used to defeat an appeal.

(5) Upon receipt of a Notice of Appeal, the hearing officer shall cause a transcript to be prepared and transmitted, together with all evidence admitted in the fair hearing.

(6) The Board will consider the appeal not less than ten (10) days nor more than thirty (30) days after receipt of the completed transcript and evidence.

(7) No party shall be allowed to submit additional evidence to the Board but shall be afforded the opportunity to submit a brief and/or present his legal argument either personally or through his representative.

(8) The Board shall reduce its decision to writing and mail a copy, by certified mail, within ten (10) days to all parties and their representatives, if any. The decision of the Board shall contain a statement notifying the affected parties that they have the right to seek judicial review of the Board's action within thirty (30) days. (History: Sec. 82-4203, R.C.M. 1947; Order MAC No. 46-1; Adp. 12/31/72; Eff. 12/31/72; AMD, MAC Not. No. 46-2-119; Order MAC No. 46-2-64; Adp. 9/14/77; Eff. 9/24/77.)

46-2.2(2)-P2070 CONTESTED CASES, ASSISTANCE DURING APPEAL (1) When a fair hearing is requested because of termination or reduction of assistance involving an issue of fact, or of judgment relating to the individual case between the Department and the claimant, assistance shall be continued during the period of the fair hearing and through the end of the month in which the final decision on the fair hearing is reached. If the fair hearing is requested solely because of Federal or state law or policy, assistance shall not be continued through the hearing process. If assistance has been terminated prior to timely request for fair hearing, assistance may be reinstated if the hearing is requested because of termination or reduction of assistance involving an issue of fact or of judgment. Where delays are occasioned during the period of fair hearing, assistance shall be continued if the delay is at the instance of the Department or because of illness of the claimant or for other essential reasons. To the extent that there are other delays at the request of the claimant, the Department may, but is not required to, continue assistance. The county department shall promptly inform the claimant and his representative in writing if assistance is to be discontinued pending the hearing decision.

(2) No assistance shall continue after the end of the month in which an adverse determination by the hearing officer is rendered unless, within 10 days of the receipt of the adverse decision, the claimant shall file a Notice of Appeal specifying the reasons for such appeal. Upon receipt of the Notice of Appeal, the hearing officer shall issue a Certificate of Probable Cause if it appears that the appeal raises any issue of significance. One the Certificate of Probable Cause is issued, assistance shall continue until such time as the Board rules on the Appeal and through the end of the month in which the final decision of the Board is reached. If the hearing officer refuses to issue the Certificate of Probable Cause, the claimant may apply to the Chairman of the State Board of Social and Rehabilitation Services for a Certificate

tation in any application or in determining any right to any benefit or payment, or any fraudulent concealment or conversion shall be grounds to impose penalties in accordance with 42 U.S.C. Section 1396h.

(2) Any soliciting, offering or accepting bribes or kickbacks, or concealing events affecting a person's rights to benefits with an intent to defraud, shall invoke penalties imposed in accordance with 42 U.S.C. Section 1396h.

(3) False reporting of a material fact as to conditions or operations of a health care facility is a misdemeanor and is subject to a penalty in accordance with 42 U.S.C. Section 1396h. (History: Sec. 82A-107, 82A-1902, 82-4203, 71-1511, R.C.M. 1947; 42 U.S.C. 1936h; 45 C.F.R. 250.80 (1973); NEW, MAC Not. No. 46-2-57; Order MAC No. 46-2-26; Adp. 10/15/74; Eff. 11/4/74.)

46-2.10(18)-S11490 THIRD PARTY LIABILITY AND SUBROGATION

(1) Before Medicaid payments can be made to providers, all other identifiable sources of payment must be exhausted by recipients and/or providers.

(a) It is the responsibility of the provider to inquire of the Medicaid patient and/or his/her representative about other identifiable sources of payment, which includes third party liabilities, for payment for their services. The providers must bill all identifiable sources of payment prior to billing Medicaid.

(b) The Department will not withhold payment in behalf of an eligible individual because of third party liability. When such liability or the amounts thereof cannot be established or is not available to pay the individual medical expense within 180 days of receipt of the billing by the Department, the Department will make payment within 180 days of receipt of billing.

(i) Billing statements delivered to recipients of medical assistance by providers who are seeking payment for said recipients' medical care or who have received payment for said recipients' medical care must clearly state on such billing statements, "Subrogation Notice -- billed to Medicaid". In the event of providers' failure to clearly state on their billing statements the foregoing information, the Department may withhold or recover from such providers such sums of money lost to the Department as a result of providers' failure.

(2) The Department is subrogated to the recipients' right to third party recoveries to the extent necessary to reimburse the Department for medical assistance paid on behalf of the recipient. The Department will seek reimbursement from a third party for assistance provided, when the third party's liability is established after assistance is granted, and in any other case in which the liability of the third party exists, but was not treated as a current source of payment.

(3) Third party includes an individual, institution, corporation, public or private agency who is or may be liable to pay all or part of the medical cost of injury, disease or disability of an applicant or recipient of medical assistance.

(4) Referrals shall be made to the Program Integrity Bureau, Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, Montana, 59601, for examination. The Program Integrity Bureau may send referrals to the Department of Revenue for recovery. (History: Sec. 71-1511 et. seq., R.C.M. 1947; NEW, MAC Not. No. 46-2-57; Order MAC No. 46-2-26; Adp. 10/15/74; Eff. 11/4/74; AMD, MAC Not. No. 46-2-117; Order MAC No. 46-2-64; Adp. 9/5/77; Eff. 10/03/77.)

Sub-Chapter 22

Food Stamps

46-2.10(22)-S11500 DISCRIMINATION (1) Food stamp benefits shall be available to all households without regard to race, color, religious creed, national origin, or political beliefs. Minority groups, if organized in the locality, shall be advised in writing that "standards for participation in the food stamp program are the same for everyone without regard to race, color, religion, national origin, or political beliefs. (History: Sec. 82A-107, 82A-1902, 82-4203, R.C.M.

Notice No. 46-2-111; Order MAC No. 46-2-59; Adp. 12/15/76; Eff. 1/3/77.)

Sub-Chapter 86

State Economic Need Policies

46-2.14(86)-S14830 ECONOMIC NEED (1) Economic need of each client will be established simultaneously with, or within a reasonable time prior to, the provision of those services for which the Division requires a needs test. No economic needs test will be applied as a condition for furnishing the following vocational rehabilitation services:

(a) Evaluation of rehabilitation potential, including diagnostic and related services (including transportation).

(b) Counseling, guidance and referral services.

(c) Placement in suitable employment.

(d) Vocational and other training services.

(2) Services contingent upon economic need include:

(a) Physical and mental restoration services.

(b) Maintenance.

(c) Transportation, except when necessary in connection with determination of eligibility or nature and scope of services.

(d) Occupational licenses, books and training supplies.

(e) Tools, equipment and initial stocks and supplies.

(f) Services to members of a handicapped individual's family.

(g) Interpreter services for the deaf.

(h) Reader services for the blind.

(i) Telecommunications, sensory, and other technological aids and devices.

(j) Post employment services.

(k) Other goods and services. (History: Section 71-2105, R.C.M. 1947; NEW, MAC Notice No. 46-2-111; Order MAC No. 46-2-59; Adp. 12/15/76; Eff. 1/3/77; AMD MAC Notice No. 46-2-121; Order MAC No. 46-2-64; Adp. 9/14/77; Eff. 9/24/77.)

Sub-Chapter 90

Determination of Economic Need

46-2.14(90)-S14840 GENERAL (1) In each case involving services conditioned on financial need, the State Division will ascertain the financial circumstances of the client. Data showing his financial requirements and his resources will be secured. This information will be obtained from the client

Montana Department of SRS
Reasons for Amendment of
MAC 46-2.10(18)-S11490

By Notice of Public Hearing certified to the Secretary of State on July 1, 1977, the Montana Department of Social and Rehabilitation Services expressed its intent to amend MAC 46-2.10(18)-S11490. A public hearing on the proposed amendments was held on August 22, 1977, at 10:00 a.m. in the Auditorium of the Department, at which time oral comments were received. Written comments were received by the Department from the date of Notice until September 1, 1977.

The rationale of the Department in adopting the amendments, as stated in the Notice of Public Hearing, is to implement Section 71-241.1, R.C.M. 1947, by:

a. requiring that liable third parties be considered the primary source of payment for medical services;

b. assuring that payment will be made within a reasonable period of time, regardless of determination of third party liability;

c. assuring that third parties are notified that the Department is subrogated to the rights of the recipient of medical services; and

d. defining the circumstances under which the Department will seek reimbursement from a third party, the amount of reimbursement which may be sought, and the parties from whom reimbursement may be sought.

1. The comment was received that the proposed amendments have the effect of shifting the responsibility for pursuit of liable third parties from the Department to the providers. Further comment was received that the provider is under no statutory obligation to protect the Department's rights of subrogation.

   RESPONSE: The proposed amendments do not shift the responsibility of pursuing liable third parties to a provider except to the extent that the provider is required to inquire of the recipient as to the existence of third party liability, and bill liable third parties prior to billing the Medicaid program. It has been the policy of the Department as expressed in MAC 46-2.10(18)-S11490 prior to amendment to consider third party liability as a current resource. The proposed amendments require the provider to attempt to identify this resource and exhaust it prior to seeking compensation from the Medicaid program. The provider will not be placed in the position of protecting the Department's rights of subrogation, because such rights

will not come into existence until a billing is received and paid by the Department. Nor will the provider be placed in the position of actively pursuing a liable third party, because in all cases the Department will make payment within 180 days of receipt of billing and will then pursue the liable third party.

2. The comment was received that the proposed amendments are ambiguous in that they do not define the scope of inquiry which the provider must make under subsection (a), and do not define the terms "currently established" and "currently available" as they apply to third party liability under subsection (b).

RESPONSE: The term "inquire," as defined by Webster's New Collegiate Dictionary, 2nd Edition, means: (1) to interrogate, question; (2) to seek to know by asking. Although the term is perhaps subject to differing interpretations, the Department does not by its use intend to place any greater burden upon the provider than that of merely asking the recipient or his representative about the existence and amount of third party liability. A good faith attempt to ascertain from the recipient or his representative the existence and amount of third party liability is all that is required.

The phrases "currently established" and "currently available" have been clarified by the addition of the language "within 180 days of receipt of billing by the Department" to subsection (b) of the proposed amendments.

3. The comment was received that the proposed amendments contain a penalty provision in subsection (b) which allows payment to be withheld for 180 days from the date of receipt of billing.

RESPONSE: Under MAC 46-2.10(18)-S11490 prior to amendment, the Department is required to make payment within 180 days from receipt of billing. The proposed amendments do not affect the time in which payment must be made to the provider. In any case, the provision is not intended to be imposed as a penalty, but is rather in the nature of a guarantee that payment will be made within reasonable time regardless of determination, of the existence or amount of third party liability.

4. The comment was received that it is impractical to require that all Medicaid recipients' bills be identified as "Billed to Medicaid" and be stamped with a subrogation notice for the reason that bills are not normally sent to a recipient after Medicaid is billed, and the provider records do not identify Medicaid recipients as such, and so it is not possible to identify those recipients whose charges have been billed to Medicaid.

RESPONSE: It is necessary that any bill forwarded to a recipient be identified as already billed to Medicaid, in order to prevent a double recovery by the recipient. The rule does not require that all bills be identified and stamped with a subrogation notice, but only those bills delivered to a recipient. This may necessitate some change in the provider's record keeping system. However, there is no alternative means of preventing double recoveries by recipients except a flat prohibition against delivery of bills by the provider to the recipient once the Department has been billed. A provider may voluntarily follow this course of action. In any event, it will be necessary for the provider to identify those recipients' charges which have been billed to the Medicaid program. The Department cannot perform this function.

5. The comment was received that under subsection (b)(i) of the proposed amendments, the provider could be held responsible for payments made by a liable third party to the recipient, even in the case where the recipient declines to disclose the existence of a liable third party.

   RESPONSE: The provider will be held liable only in the case where it delivers a bill to a recipient without identifying it as billed or paid by Medicaid, and the recipient or provider receives a double recovery as a result. The provider can avoid any liability by stamping bills delivered to recipients with the required subrogation notice. This will prevent any double recovery by the recipient and avoid the resulting loss to the Department.

6. The comment was received that there are alternative means of pursuing third party liability which do not place any substantial burden upon the provider, and the Department should consider adoption of one of these methods in preference to the proposed amendments.

   RESPONSE: The Department considered all methods of pursuing and exhausting third party liability, and in light of the available resources of the Department and the minimal responsibility placed upon the providers by the proposed amendment, chose to adopt those amendments.

INTERPRETATION SECTION

DECLARATORY RULING
SECRETARY OF STATE

August 22, 1977

Jack C. Crosser, Director
Department of Administration
Capitol Post Office
Helena, Montana 59601

Dear Mr. Crosser:

Regretfully, I must decline to accept your Administrative Order No. 2-2-8 for filing under the Montana Administrative Procedure Act and subsequent publication in the Montana Administrative Register. The original and one copy of the Order are returned.

Your Order was presented to my office on August 17, 1977, by J. Michael Young of your Department. Your Order, if filed and published, would incorporate by reference into the Administrative Rules of Montana (ARM) certain management memoranda and chapters from Volume I of the Montana Operations Manual (MOM) published by your Department.

Section 82-4206 R.C.M. requires a copy of the complete text of any rule adopted by an agency to be filed with my office for publication in the Montana Administrative Register and subsequent inclusion in the Administrative Rules of Montana. Your Order does not include the text of the rules adopted. It seeks the inclusion of the text of the rules by reference in the register and code.

Section 82-4206(3) R.C.M. permits the Secretary of State, with the consent of the adopting agency, to omit from the register or code any rule the publication of which would be,

> "...unduly cumbersome, expensive or otherwise inexpedient, if the rule merely incorporates by reference a model code, federal agency rule, or like publication made available on application to the agency and if the code or register contains a notice stating the citation and general subject matter of the omitted rule and stating how a copy may be obtained."

Your Order contains a notice stating the citation and general subject matter of the rules sought to be omitted from the register and code and stating how a copy may be obtained.

Mr. Young argued that the publication of the omitted rules is unduly cumbersome, expensive, and otherwise inexpedient, and that the omitted rules are a "like publication" within my discretion to omit from publication in the register and code, all else being favorably determined.

That determination is not critical to this decision. However, it should be noted that the rules sought to be incorporated by reference into ARM by your Order are rules formulated and adopted originally by an agency of the State of Montana for the State. They are distinguishable from a federal agency rule or a model code which are not originated, first noticed and heard here. In that sense, they are not a form of "like publication" as defined in Section 82-4206(3) R.C.M.

The transition schedule in Section 28, Chapter 285, Laws of Montana, 1977, effectively precludes in the matter at hand the exercise of any discretion for omitting the publication of the rules consisting of the management memoranda and chapters in Volume I of the Montana Operations Manual. Section 28 provides in part:

> "The secretary of state shall arrange with the director of administration for the publication of the rules of the department of administration in a volume separable from the administrative rules of Montana for the convenience of state offices which do not wish to acquire the entire code."

The transition schedule was first drafted so as to require that the Department of Administration discontinue publication of Volume I of MOM. It was amended to permit the continued publication of that Volume to accommodate the Department of Administration's concern that various offices who do not want Volume I would not also want the remainder of Administrative Rules of Montana. It was not amended to deny to the current holders of ARM access to all rules originally and solely adopted by this state.

To construe the amendments so as to permit the Department to not publish the rules in Volume I of MOM in ARM at this time effectively ignores the accommodation evidenced by the amendments in the transition schedule.

It is for these reasons that I do not solicit your consent to omit the publication of the rules referred to in your Order No. 2-2-8.

The arrangement between your Department and my office which has been mandated by the Legislature must take into account that the complete text of your rules must follow the code numbering system in a fashion which permits separation from the rest of the code so state offices may acquire only that part of the entire code which consists of your rules.

To accommodate the publication of the rules of your Department in a volume separable from the remainder of the code, I propose to assign Title 4 presently in Part I of Volume 1 to Part II in Volume 1, leaving Titles 1 and 2, Department of Administration, in Part I of Volume 1.

I request the continued cooperation and assistance of your Department in arranging to fulfill the transition requirements of Section 28, Chapter 285, Laws of Montana, 1977. After discussing this matter with Doyle Saxby and Mike Young, I am aware of the burden this decision places on your Department. Consequently, I remain open to any suggestions within the limits discussed which will permit us to satisfy the law in a practical and timely fashion with the least disruption and confusion and a minimum of costs.

Sincerely,

Frank Murray

FRANK MURRAY
Secretary of State

VOLUME 37 OPINION NO. 54

PUBLIC EMPLOYEES - Contribution by employer to insurance plans;

INSURANCE - Contribution by public employer to insurance plans;

INSURANCE - Group insurance for public employees and officers;

INSURANCE - Contribution by public employer must be to group plan;

SECTION 11-1024, R.C.M. 1947.

HELD: Under Section 11-1024, R.C.M. 1947, a city may not contribute to individual employees' insurance plans, but must contribute to a city group insurance plan.

August 18, 1977

David V. Gliko
City Attorney
City of Great Falls
P. O. Box 1609
Great Falls, Montana 59401

Dear Mr. Gliko:

You have asked for my opinion on the following question:

Under Section 11-1024, R.C.M. 1947, may a city contribute to whatever insurance plan each individual employee chooses or must the city contribute to a city group insurance plan?

Section 11-1024, as amended during the 1977 session of the Montana Legislature, states in pertinent part:

> 11-1024. Group insurance for public employees and officers. (1) All...cities...shall upon approval by two-thirds vote of the officers and employees of each such...city..., enter into group hospitalization, medical, health including long-term disability, accident and/or group life insurance contracts or plans for the benefit of their officers, employees and their dependants.
> (2)(a) The respective administrative and governing bodies shall contribute the amount specified in this section towards the insurance premium..... For employees of...local government units, the employer's premium contributions may exceed but shall not be less than $10 per month.

Cities are thus authorized to contribute to group insurance contracts which they must enter into upon approval by two-thirds vote of their officers and employees. No authorization is given cities to contribute to individual insurance contracts entered into by the employees themselves. The plain meaning of the words of the statute control its interpretation here, where the words are unambiguous, direct and certain. Security Bank and Trust Co. v. Connors, _____ Mont. _____, 550 P.2d 1313 (1976).

"Group insurance," to which the statute refers, plainly does not encompass "whatever insurance plan each individual employee chooses." "Group disability insurance" has been defined by the Montana Legislature as that form of disability insurance covering groups of persons under policies issued to employers, associations, or trustees of funds established by employers or associations, who are deemed the policyholders, insuring employees or members for the benefit of persons other than the policyholders. Section 40-4101, R.C.M. 1947. The laws of the State governing "group life insurance" allow such policies to be issued to employers, labor unions, trustees of funds established by employers or labor unions, public employers including cities, creditors, or credit unions. Sections 40-3901-3907, R.C.M. 1947. No provision is made for issuing a "group insurance" policy to an individual employee.

The argument that the Legislature, in enacting Section 11-1024, intended to provide compensation for public employees which they are entitled to use as they wish is without merit. In 32 Opinions of the Attorney General, no. 5 (1967), it was held that, under this section, "non-participating employees are not entitled to pay increases equivalent to the cost of the employer's premium payment for participating employees." The Legislature has adopted this construction by re-enacting Section 11-1024 without expressly refuting that interpretation. E.g., Laws of Montana (1969), ch. 220. See Vantura v. Montana Liquor Control Board, 113 Mont. 265, 124 P.2d 569 (1942). In the same chapter as its most recent re-enactment, the Legislature also enacted Section 59-919, Laws of Montana (1977), ch. 563, sec. 5, which makes clear that state employees who elect not to be covered by a state health insurance plan will not receive as wages the state contribution for health insurance as determined by Section 11-1024. This provision, read together with Section 11-1024, indicates the Legislature's general intent that the employer's contributions in Section 11-1024 are benefits conditional upon an employee's participation in a group insurance plan. See Belote v. Bakken, 139 Mont. 43, 359 P.2d 372 (1961).

THEREFORE, IT IS MY OPINION:

> Under Section 11-1024, R.C.M. 1947, a city may not contribute to individual employees' insurance plans, but must contribute to a city group insurance plan.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME 37 OPINION NO. 55

APPROPRIATIONS - Necessity of legislative appropriation to reimburse counties for expenses;
COUNTIES - Determining and paying mileage rates for travel of juvenile probation officers; no reimbursement by State;
OFFICERS - Travel expenses of probation officers; determination of and county's responsibility for payment.
SECTION 10-1234 and 59-801, R.C.M. 1947; 1972 Montana Constitution, Article VIII, §14.

HELD: A county is not entitled to a refund from the State for mileage payments to juvenile probation officers in excess of fifteen cents per mile.

18 August 1977

Jay Fluss, Chairman
Board of County Commissioners
Office of Clerk and Recorder
Terry, Montana 59349

Dear Mr. Fluss:

You have requested my opinion on the following question:

If a county paid juvenile probation officers nineteen cents per mile between January 1976 and February 1977 for use of their own automobiles on official business, is the county entitled to a refund from the State for payments in excess of fifteen cents per mile?

The last paragraph of Section 10-1234, R.C.M. 1947, requires that juvenile probation officers be reimbursed for their "actual" travel expenses. In January of 1976 an official opinion of the Attorney General found at Volume 36, Opinion No. 50, held that the "actual expenses" standard of reimbursement of Section 10-1234, rather than the IRS mileage allotment standard of Section 59-801, R.C.M. 1947, is applicable to travel expenses incurred by juvenile probation officers in the performance of their duties. Apparently as a result of that opinion and an opinion of the Montana Supreme Court, In re. Actual Necessary Expenses of Judges, ___ Mont. ___, 541 P.2d 345 (1975), wherein the Court determined that "actual expenses" for miles traveled by judges using their personal automobiles be set at nineteen cents (19¢) per mile, Prairie County began paying its juvenile probation officers nineteen cents (19¢) per mile for travel expenses. The county then reduced the travel expense allowance to fifteen cents (15¢) per mile when the Montana Supreme Court in February 1977 issued an order reducing the mileage rate for district court judges and Supreme Court justices from nineteen to fifteen cents per mile, In re. Actual Necessary Expenses of Judges, ___ Mont.___ (1977). The latter Supreme Court order had the effect of reversing the earlier order setting judges' mileage allowances at nineteen cents per mile. I understand the county's position is that since the Montana Supreme Court "changed its mind" about the amount of judges' mileage allowance, the State should reimburse the county for its reliance on the earlier order. The argument fails for several reasons.

First, neither Supreme Court order concerned travel expenses of probation officers. Both orders applied exclusively to judges and justices and were based on constitutional considerations limited to judges and justices. The first decision was based on a conflict between the Montana Constitution and the basic statute governing mileage for State and county employees. That statutue, Section 59-801, R.C.M. 1947, provides in relevant part:

> (1) Automobiles: Members of the legislature, state officers, township officers, jurors, witnesses, county agents, and all other persons, except sheriffs, who may be entitled to mileage, when using their own automobiles in the performance of official duties, are entitled to collect mileage for the distance actually traveled by automobile and no more unless otherwise specifi-

> cally provided by law; provided, however, that nothing herein contained shall be construed as affecting the validity of section 43-310.
>
> ***
>
> (3) Where a privately owned vehicle is used because a government owned or leased vehicle is not available for use or it is in the best interest of the governmental entity that a privately owned vehicle be used, a rate equal to the mileage allotment allowed by the United States internal revenue service for the next preceding year shall be paid for the first one thousand (1,000) miles and three cents (3¢) per mile less for all miles thereafter traveled within a given calendar month.

The Court found that the effect of the statute was to reduce compensation of judges during periods of inflation, thus violating Article VII, Section 7(1) of the Montana Constitution which provides that "justices and judges shall be paid as provided by law, but salaries shall not be diminished during terms of office." The constitutional provision applies only to justices and judges and the statute was declared unconstitutional "[a]s applied to district court judges and supreme court justices only ...." In re. Actual Necessary Expenses of Judges, supra, 541 P.2d at 347.

Since the statute was held unconstitutional as applied to judges' travel expenses, the Court determined for itself how to compute judges' travel expenses. The Court first held that judges must be reimbursed for "actual travel expenses." It then found that actual expenses for food and lodging can be precisely calculated, and ordered that judges be paid those actual expenses rather than a fixed per diem rate. Id. On the other hand, it found that automobile mileage expenses cannot be precisely calculated, but must be estimated. The Supreme Court fixed nineteen cents per mile as a "fair and necessary figure, subject to periodic adjustment to meet changing conditions." Id. at 348.

The 1976 Attorney General's Opinion, Volume 36, Opinion No. 50, hereinbefore referred to, held that juvenile probation officers were similarly entitled to "actual travel expenses", not because of a constitutional conflict, but because of the specific requirement of Section 10-1234, R.C.M. 1947, which provides in relevant part:

> For all necessary travel incident to his official duties in connection with the investigation, supervision, and transportation of children, the probation officer shall, in addition to his official salary, be reimbursed for actual expenses incurred.

The opinion did not specify a method for calculating actual mileage expenses, except to enumerate several of the costs included in fixing a mileage formula (gasoline, insurance, tires, depreciation and general upkeep). In effect, the opinion left the determination of what rate which will reflect "actual" expenses to the counties. Neither the opinion nor the first Supreme Court decision required counties to calculate mileage rates for probation officers at nineteen cents (19¢) per mile.

The Montana Supreme Court, in making the nineteen cents (19¢) per mile determination, was acting in a purely administrative capacity, as it recognized in the second order:

> In its order and opinion of August 11, 1975, the Supreme Court, by virtue of its constitutional and statutory supervisory authority over all courts, assumed the administrative duty of determining the validity of expense claims on the part of the judiciary and of auditing the same." In re Actual Necessary Expenses of Judges, ___ Mont. ___ (1977).

As an administrative decision it had no binding effect on the parallel decision which county commissioners must make concerning the calculation of probation officers' actual mileage expenses. Counties were not foreclosed from making their own independent, reasonable determination of what mileage rate will reimburse probation officers for the "actual" expense of operating their cars. In fixing a mileage rate, counties' actions are not reviewable unless the rate set is arbitrary or not reasonably calculated to reimburse probation officers for their actual expenses. See State ex rel. Bowler v. Board of Commissioners of Daniels County, 106 Mont. 251, 76 P.2d 1048 (1938). If any county chooses to give weight to and adopt the mileage standard of Section 59-801, R.C.M. 1947, (presently 15¢ a mile), which is the announced, general public policy of the legislature as to mileage reimbursement, it may do so absent a clear and

manifest showing that such rate is not commensurate with actual expenses. Cf. In re Actual Necessary Expenses of Judges, ___ Mont. ___, (1977). If on the other hand a county chooses to adopt the Supreme Court's formula for actual mileage expenses, it was free to do so. But it can not then claim a refund from the State because the Supreme Court changes its formula.

Even assuming that the first Supreme Court order mandated payment of juvenile probation officers' travel expenses at nineteen cents per mile, the later reversal of the order would not entitle the counties to a refund of the difference between 19¢ and 15¢. The State may direct a county to expend its revenues for a particular purpose or to a particular party, State ex rel. Wilson v. Weir, 106 Mont. 526, 532, 79 P.2d 305 (1938), and has done so with regard to paying juvenile probation officers. If the 19¢ rate had been applicable to juvenile probation officers the county would have been bound by that first mileage rate while it was in effect.

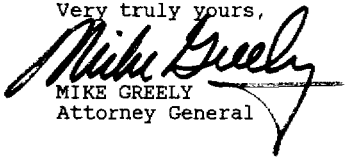
> When a case is decided it is expected that people will make their behavior conform to the rule it lays down and also to the principle expressed in so far as it can be determined.... If, at last, the first decision is overruled, then there is new law, better evidence, or an enlightened basis for prediction. Those transactions which occurred between the two decisions, are, for the most part, accepted history .... The Supreme Court has found no constitutional limitation on state courts proceeding in this manner." Warring v. Colpoys, 122 F. 2d 642, 645 (D.C. Cir. 1941).

Finally, no refund can be made in any event unless money has been appropriated by the Legislature for such purposes. "Except for interest on the public debt, no money shall be paid out of the treasury unless upon an appropriation made by law ...." 1972 Montana Constitution, Art. VIII, §14.

THEREFORE, IT IS MY OPINION:

A county is not entitled to a refund from the state for mileage payments to juvenile probation officers in excess of fifteen cents per mile.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME 37 OPINION NO. 56

UNEMPLOYMENT COMPENSATION BENEFITS - Award of back pay;
DEPARTMENT OF LABOR AND INDUSTRY - Unemployment compensation benefits, award of back pay;
HUMAN RIGHTS DIVISION - Unemployment compensation benefits, award of back pay;
EMPLOYMENT SECURITY DIVISION - Unemployment compensation benefits, award of back pay;
SECTIONS 87-106(e) and 87-145(d), R.C.M. 1947.

HELD: The Human Rights Division is not required by Section 87-145(d) to disclose to the Employment Security Division the award of back pay to a party who has filed a complaint with the Human Rights Division.

18 August 1977

Raymond D. Brown
Administrator
Human Rights Division
Power Block
Helena, Montana 59601

Dear Mr. Brown:

By your letter of May 3, 1977, you have asked for an opinion. I state your question in the following manner:

> Is the Human Rights Division of the Department of Labor and Industry required by Section 87-145(d), R.C.M. 1947, to disclose to the Employment Security Division of the Department of Labor and Indus-

> try the award of back pay to a party who has filed a complaint with the Human Rights Division?

This problem arises when the following facts occur: A person is discharged from his employment and files for unemployment compensation benefits with the Employment Security Division. The person is granted and paid such benefits and subsequently is also granted an award by the Human Rights Division. Employment Security would seek reimbursement of unemployment benefits paid to that person if he also received a back pay award covering the same time period.

Employment Security is apparently relying on Section 87-145(d), R.C.M. 1947, in requesting this information from Human Rights. Section 87-145(d) provides:

> Any person who, by reason of the nondisclosure or misrepresentation by him or by another, of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) has received any sum as benefits under this act while any conditions for the receipt of benefits imposed by this act were not fulfilled in his case, or while he was disqualified from receiving benefits, shall in the discretion of the division, either be liable to have such sum deducted from any future benefits payable to him under this act, or shall be liable to repay to the division for the unemployment compensation fund, a sum equal to the amount so received by him, and such sum shall be collectable in the mannner provided in this act for the collection of past due contributions.

Therefore an unemployment compensation benefit recipient who received benefits as a result of nondisclosure or misrepresentation can be required to reimburse Employment Security for those benefits.

In addition to Section 87-145(d) the Employment Security Division can also seek reimbursement in certain instances under Section 87-106(e), R.C.M. 1947. Section 87-106(e) requires a recipient of benefits to repay those benefits if he subsequently receives payments under Workmen's Compensation or Occupational Disease Acts or under Railroad Unemployment Insurance Acts.

Section 87-106(e) specifically lists those instances in which a benefit recipient must repay unemployment compensation benefits when he also receives benefits under other compensatory acts. The Human Rights Act is not among those listed. The express mention of one matter excludes other similar matters not mentioned. Helena Valley Irrigation District v. State Highway Commission, 150 Mont. 192, 433 P.2d 791 (1967). Employment Security cannot seek reimbursement under this section.

Of course, Employment Security claims that it can seek reimbursement under Section 87-145(d). As I stated above, in order to seek reimbursement a recipient must have failed to disclose or misrepresented a material fact which thereby allowed him to receive the benefits under Section 87-145(d). The Maryland Supreme Court in interpreting a section of its unemployment compensation act, which for our purposes is identical to Section 87-145(d), R.C.M. 1947, found that an unemployment compensation recipient who was subsequently awarded back pay was not required to reimburse the State for benefits. Waters v. State, 220 Md. 337, 152 A.2d 811 (1959). Whether or not a recipient later receives back pay, the recipient did not fail to disclose or misrepresent his unemployed status at the time he made application for unemployment compensation benefits. Section 87-145(d) contemplates the nondisclosure of an existing fact, not something which may or may not occur in the future. Neither the statement that the claimant is unemployed nor a failure to disclose the possibility of a future back pay award can be considered a nondisclosure or misrepresentation of fact. Waters v. State, supra.

There is a line of cases typified and culminated by Griggs v. Sands, 526 S.W. 2d 441 (Tenn. 1975), which hold that back pay recipients are liable to the state for reimbursement of unemployment compensation benefits received for that period of time covered by the back pay awards. However, those cases deal with a specific statute which allows the agency, which administers unemployment compensation, to redetermine eligibility and seek reimbursement from a recipient who, subsequent to receiving unemployment compensation benefits, receives other compensation for the same time period. Montana does not have an equivalent statute and those cases are therefore not on point.

Since Section 87-145(d) does not afford the Employment Security Division a means of seeking reimbursement from recipients of back pay awards, a disclosure of the existence

of such an award would seem to be a violation of the recipients right of privacy. Article II, Section 10, Constitution of Montana.

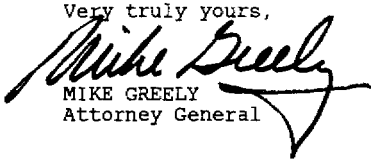
This would not prevent the Employment Security Division from requiring applicants to disclose complaints filed by such applicants with the Human Rights Division at the time they make application for Unemployment Compensation benefits.

However, the solution would seem to be in legislative action, either by allowing recovery of unemployment compensation benefits when a recipient also receives other compensation for the same time period or by requiring the Human Rights Division to award back pay less the amount paid by the Employment Security Division for that same time period.

THEREFORE, IT IS MY OPINION:

The Human Rights Division is not required by Section 87-145(d) to disclose to the Employment Security Division the award of back pay to a party who has filed a complaint with the Human Rights Division.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME 37 OPINION NO. 57

COUNTIES - Charges;

COUNTIES - Official misconduct of an officer;

COUNTY OFFICERS AND EMPLOYEES - Compensation for legal fees;

COUNTY OFFICERS AND EMPLOYEES - Official misconduct;

MISFEASANCE AND MALFEASANCE - Costs of defense;

PUBLIC OFFICERS - Compensation for legal fees;

PUBLIC OFFICERS - Official misconduct;

SECTIONS 16-3802 and 94-7-401, R.C.M. 1947.

HELD: A county is not obligated to pay the costs of defending a non-indigent county officer charged with official misconduct under Section 94-7-401, Revised Codes of Montana, 1947.

23 August 1977

Arthur W. Ayers, Jr., Esq.
Carbon County Attorney
112 South Broadway
Post Office Box 67
Red Lodge, Montana 59068

Dear Mr. Ayers:

You requested my opinion on this question:

Is a county obligated to pay the costs of defending a non-indigent county officer charged with official misconduct under Section 94-7-401, Revised Codes of Montana, 1947?

My opinion is that a county is not so obligated.

Section 94-7-401 provides criminal sanctions against a public servant who, in his or her official capacity, intentionally acts in a manner he or she knows to be contrary to regulation or statute. Section 16-3802, which enumerates county charges, does not include specifically the costs of defending a county officer, but does have a general provision including among county charges "[t]he contingent expenses necessarily incurred for the use and benefit of the county." Section 16-3802(i), R.C.M. 1947. The Montana Supreme Court has interpreted that provision narrowly: "What is not by the law imposed as expenses upon a county is not a charge against it." Wade v. Lewis and Clark County, 24 Mont. 335, 340; 61 P. 879, 880 (1900); Brannin v. Sweet Grass County, 88 Mont. 412, 416; 293 P. 970, 972 (1930).

Nothing in the law of Montana imposes on counties the expense of defending a public officer charged with official misconduct. Other states, however, have long recognized that:

> [i]t is not the duty of the public to defend or aid in the defense of one charged with official misconduct. The history of morals or jurisprudence recognizes no such obligation. When a citizen accepts a public office, he assumes the risk of defending himself against unfounded accusations at his own expense.

Chapman v. New York, 168 N.Y. 80, 61 N.E. 108 (1901).

Furthermore, public policy should not allow the use of public funds to aid in the defense of one charged with official misconduct.

> Personal liability of public officers for misconduct in office tends to protect the public and to secure honest and faithful service by such servants.... [T]o permit such use of public funds is but to encourage a disregard of duty and to put a premium upon neglect or refusal of public officials to perform the duties imposed upon them by law.

Roofner's Appeal, 81 Pa. Super. Ct. 482, 485 (Super. Ct. 1923).

Section 94-7-401(4) provides that a public servant charged with official misconduct be suspended without pay pending final judgment. Upon acquittal, he or she is to be reinstated with back pay. Counsel fees incurred by the officer may not be recovered under this provision. Leo v. Barnett, 48 App. Div. 2d 463, 369 N.Y.S.2d 789, 792 (App. Div. 1975). See also Tracy v. Fresno County, 125 Cal. App. 2d 52, 270 P.2d 57, 63 (Ct. App. 1954); Township of Manalapan v. Loeb, 126 N.J. Super. 277, 314 A.2d 81 (Super. Ct. Ch. Div. 1974), aff'd per curiam, 131 N.J. Super. 469, 330 A.2d 593 (Super. Ct. App. Div. 1974).

THEREFORE, IT IS MY OPINION:

A county is not obligated to pay the costs of defending a non-indigent county officer charged with official misconduct under Section 94-7-401, Revised Codes of Montana, 1947.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME 37 OPINION NO. 58

ZONING - Protest area

SECTION 11-2705

HELD:

1. Section 11-2705 creates four separate protest areas. Protest by twenty percent of the owners of any area requires a 3/4 council vote;

2. To the extent that a rezoning proposal does not encompass more than one district, as in the case of changing the use classification of an entire district, twenty percent of the owners of all lots included in the proposed change must protest to trigger the 3/4 council voting requirement;

3. A single rezoning proposal which entails separable changes in separate districts must be considered as a series of proposals for the purpose of mapping the protest areas and determining the voting requirements.

August 25, 1977

Mae Nan Ellingson
Assistant City Attorney
City of Missoula
Missoula, Montana 59801

Dear Ms. Ellingson:

You have requested my opinion on the following question:

> In order to have a valid protest under Section 11-2705, R.C.M. 1947, what is the area from which the 20% must be comprised?

Section 11-2705 as a rezoning provision, must be read in conjunction with the zoning statutes. Section 11-2702 establishes the district as the basic zoning unit. Section 11-2703 directs cities to provide the manner in which such districts are established, their boundaries determined, restrictions imposed, and amendments or changes effectuated. Section 11-2507 provides for such changes:

> Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such change, signed by the owners of twenty per centum (20%) or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending one hundred and fifty (150) feet therefrom, or of those adjacent on either side thereof within the same block, or of those directly opposite thereof extending one hundred and fifty (150) feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths (3/4) of all the members of the city...council....

The Montana Supreme Court discussed, but did not define, the protest perimeter areas in Olson v. City Commission, 146 Mont. 386, 393-394, 407 P.2d 374 (1965). Many states have similar provisions and their interpretation has been the subject of litigation in a variety of contexts. The cases are compiled and discussed in Annot., 4 A.L.R.2d 335 (1949), 1 R. Anderson, American Law of Zoning §§4.33 to 4.35 (2d ed. 1968), 1 A. Rathkopf, the Law of Zoning and Planning §§28-1 to 28-11 (3d ed. 1974), 1 N. Williams, American Land Planning Law §16.23 (1974), and 1 E. Yokley, Zoning Law and Practice §§7-12 (3d ed. 1965).

Because the statutes differ and their application depends to a large extent on the particular facts of the rezoning action, few general rules can be categorically enunciated. Annot; 4 A.L.R. 2d at 338.

The statute creates four separate protest areas, E. Basseth, Zoning, 38 (1936). Area of lots and percentages must be calculated for each of the following protest areas:

(a) the area of the lots included in the proposed change;

(b) the area of the lots immediately adjacent in the rear of the lots included in the proposed change extending 150 feet from those lots;

(c) the area of the lots adjacent on either side of the lots included in the proposed change within the same block;

(d) the area of the lots directly opposite the area of the blocks included in the proposed change extending 150 feet from the street frontage of such opposite lots.

If a proposed change encompasses several blocks, for instance, changing the use classification of an entire district, 20% of the owners of all lots included in the change must protest. The words, "the area of lots included in [the] proposed change," are unambiguous, and the plain meaning of the language of a statute is used in construing its meaning. State ex rel. Woodahl v. District Court, 162 Mont. 283, 292, 511 P.2d 318, 323 (1973). Similar provisions have been so interpreted. See Morrell Realty Corp. v. Rayon Holding Corp., 240 N.Y.S. 38, 135 Misc. 845, aff'd 241 N.Y.S. 918, 229 App.Div. 760, aff'd 254 N.Y. 268, 172 N.E. 494, 499 (1930); Rusnak v. Township of Woodbridge, 69 N.J. Super. 309, 174 A.2d 276, 280 (1961).

You indicated that Missoula has permitted 20% of the owners of a single block which is a part of such redistricting to require a 3/4 vote just as to that block.

A redistricting proposal, while it affects several blocks, is but one proposal, and the "proposal" determines the relevant protest areas. See Section 11-2705. Therefore to the extent that a single block is a part of a proposal affecting many blocks, the 3/4 voting requirement is triggered only when 20% of the owners of all of the blocks enter a valid protest.

It has been held that there are limitations on the breadth of acceptable proposals for the purpose of determining protest areas. Rusnak, 174 A.2d at 279. This is directed to your concern that if the language "area of lots included

in such proposed change," is always read literally, it would permit rezoning of areas so large and unrelated that a citizen's right of protest would effectively be cut off.

The existence of the limitation and its scope derive from two considerations. The first involves dual policies. Section 11-2705 evinces a policy to protect the property owners most immediately affected by rezoning from unwarranted proposals. 1 A. Rathkopf at 285. A parallel policy dictates that the city council not be unduly restricted in redistricting broad areas in order to effectuate a comprehensive zoning system in conformity with changing municipal needs. See Morrell Realty Corp., 172 N.E. at 499.

The second consideration is statutory. Section 11-2702 creates districts as the basic zoning units. The interpretation of related zoning statutes must be consistent with this fundamental concept. See, State ex rel. Jones v. Giles, 168 Mont. 130, 134, 541 P.2d 355, 358 (1975).

The court in Rusnak addressed these interrelated concerns. A proposed comprehensive ordinance would have affected many lots of that township. In determining the quantum of property necessary for an effective protest under a statute similar to Section 11-2705, the court adopted the following rule:

> [I]n computing the protest area the measure is not the land throughout an entire city or township but the area affected by any separable change. Not only must the areas affected by separable, but also the changes brought by the amendment must not be inseparably related to each other. They must be able to be considered separate sections separately enacted. Property not affected by a separable change should be excluded from the computation for there would be no reason for such owners to object.

Rusnak, 174 A.2d at 279.

The entire district rezoned to a different use classification was deemed the measure of protest. Id.

You present a fact situation wherein contiguous portions of commercial and B-residential districts were proposed to be

rezoned to RII. Applying the rule of separable change enunciated above, separate protest areas would be determined for the commercial portion and the B residential portion. For purposes of determining protest areas and voting requirements, the council should consider the rezoning measure as entailing two separate proposals.

THEREFORE, IT IS MY OPINION:

1. Section 11-2705 creates four separate protest areas. Protest by twenty percent of the owners of any area requires a 3/4 council vote;

2. To the extent that a rezoning proposal does not encompass more than one district, as in the case of changing the use classification of an entire district, twenty percent of the owners of all lots included in the proposed change must protest to trigger the 3/4 council voting requirement;

3. A single rezoning proposal which entails separable changes in separate districts must be considered as a series of proposals for the purpose of mapping the protest areas and determining the voting requirements.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME 37 OPINION NO. 59

CONTRACTS - county water and sewer district;

CONTRACTS - resident bidders;

CONTRACTS - federal funding (HUD);

CONSTITUTIONAL LAW - preference for resident contractors;

SECTION 82-1924

HELD: 1.) Section 82-1924, R.C.M. 1947, requires the County Water and Sewer District to apply a three percent preference to the lowest responsible resident bidder with respect to the entire contract cost regardless of the source of funds;

2.) In determining the lowest responsible resident bidder and the lowest responsible nonresident bidder, the District may exercise its discretion;

3.) Having exercised its discretion in determining the lowest responsible resident and nonresident bidders, the District's function becomes ministerial and it must award the contract to such resident bidder if his bid is not more than 3% higher than that of the nonresident bidder.

31 August 1977

John Forsythe, Esq.
Rosebud County Attorney
Forsyth, Montana 59327

Dear Mr. Forsythe:

You have requested my opinion on the following question:

> Does Section 82-1924, R.C.M. 1947, require a county water and sewer district to apply a three percent preference to a resident Montana contractor with respect to the entire contract cost, regardless of the source of funds, or does the preference apply only to those funds derived from the state or its political subdivision?

The Rosebud County Water and Sewer District requested bids for a new sewer system. The low bidder was an out-of-state construction company. The second low bidder was a resident Montana construction company. If the three percent preference of Section 82-1924 is deducted from the bid of the resident construction company, it then becomes the low bidder for the project.

The sewer system is being financed with a $51,000 grant from the Montana Coal Board, and a $200,000 grant from the Housing and Urban Development (HUD) department of the federal government. If the three percent preference attaches only to funds received from the State of Montana, the out-of-state construction company remains the low bidder. The District, as a public corporation, Sections 16-4501 and 4505, is subject to the provisions of Section 82-1924.

Section 82-1924 provides as follows:

> In order to provide for an orderly administration of the business of the State of Montana in awarding contracts for materials, supplies, equipment, construction, repair and public works of all kinds, it shall be the duty of each board, commission, officer or individual charged by law with the responsibility for the execution of the contract on behalf of the state, board, commission, political subdivision, agency, school district or a public corporation of the State of Montana, to award such contract to the lowest responsible bidder who is a resident of the State of Montana and whose bid is not more than three per cent (3%) higher than that of the lowest

> responsible bidder who is a nonresident of this state. In awarding contracts for purchase of products, materials, supplies or equipment such board, commission, officer or individual shall award the contract to any such resident whose offered materials, supplies or equipment are manufactured or produced in this state by Montana industry and labor and whose bid is not more than three per cent (3%) higher than that of the lowest responsible resident bidder whose offered materials, supplies or equipment are not so manufactured or produced, provided that such products, materials, supplies and equipment are comparable in quality and performance. This requirement shall prevail whether the law requires advertisement for bids and it shall apply to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant thereto. (Emphasis supplied)

It is not clear whether the last sentence applies to the resident preference in awarding contracts in general, as provided in the first sentence of Section 82-1924, or whether such language was intended to speak only to the preference granted resident bidders supplying Montana products over resident bidders supplying foreign products.

In cases of such ambiguity, the title of the act may help in determining the purpose and meaning of the statute. Board of County Commissioners v. Lamoreaux, 168 Mont. 102, 105, 540 P.2d 975 (1975); State v. Midland National Bank, 132 Mont. 339, 343, 317 P.2d 880 (1957).

This language was added by amendment in 1969. Laws of Montana (1969), ch. 197. The title of the Act is as follows:

> An Act to Amend Sections 82-1924, 82-1925, and 82-1926, R.C.M. 1947, to Provide that All Contracts of the State of Montana, Agencies Thereof, Political Subdivisions Thereof, School Districts and Other Public Corporations for Materials, Supplies, Equipment, Construction, Repair and Public Works, Including Contracts

Involving Funds Obtained from the Federal Government Unless Expressly Prohibited by the Laws of the United States or Regulations Adopted Thereto, Shall be Awarded to the Lowest Responsible Bidder Who is a Resident of or Has Its Principal Place of Business in the State of Montana Whose Bid Is Not More Than Three Percent Higher Than That of the Lowest Responsible Bidder Who is Not a Resident of the State of Montana. (Emphasis supplied)

Laws of Montana (1969), ch. 197.

The federal funds reference explicitly relates to the resident/nonresident preference. Therefore Section 82-1924 must be construed to require the County Water and Sewer District to apply the three percent preference to a resident contractor with respect to the entire contract cost even though the contract involves federal funds. The preference is mandatory unless a federal statute or regulation prohibits its application. Section 82-1924.

The District received the federal grant, referred to as a federal block grant, pursuant to the Housing and Community Development Act of 1974. Pub. L. 93-383 (codified at 42 U.S.C. §§5301 to 5317). Neither the Act nor regulations interpreting the Act prohibits application of state preferences to contracts financed in part with federal block grants.

On the basis of the following decisions, it appears that Section 82-1924 would be found not to violate either the United States or the Montana Constitutions: Heim v. McCall, 239 U.S. 175, 194 (1915) (upholding the constitutionality of a New York statute forbidding the employment of aliens in the construction of public works and giving preference to citizens of New York); Perkins v. Lukens Steel Co., 310 U.S. 113 (1940) (challenge to application of Public Contracts Act minimum wage provision); Schrey v. Allison Steel Manufacturing Co., 75 Ariz. 282, 255 P.2d 604, 607 (1953) (Arizona statute giving preference to taxpaying domestic contractors was constitutional). See also Hersey v. Neilson, 47 Mont. 133, 146-149, 131 P. 30 (1913); Strange v. Esval, 67 Mont. 301, 306, 215 P. 807 (1923); State v. Board of Commissioners, 70 Mont. 252, 255-258, 225 P. 389 (1924) (constitutionality of statutes providing that county printing must be done within the state or county).

Pursuant to Section 82-1924, the District must award the contract to the lowest responsible resident bidder whose bid is not more than 3% higher than that of lowest responsible nonresident bidder. The District must accordingly make two initial determinations: the lowest responsible resident bidder and the lowest responsible nonresident bidder. In making these determinations the District may exercise its discretion, Koich v. Cvar, 111 Mont. 463, 466, 110 P.2d 964 (1941), but not arbitrarily or unfairly. Id. In determining the lowest responsible bidder within each category, resident and nonresident, "the phrase 'lowest responsible bidder' does not merely mean the lowest bidder whose pecuniary ability to perform the contract is deemed the best, but the bidder who is most likely in regard to skill, ability and integrity to do faithful, conscientious work, and promptly fulfill the contract according to its letter and spirit." Id.

Having made these determinations, the District's function becomes ministerial, and it must award the contract to the lowest responsible resident bidder, if any, whose bid is not more than 3% higher than that of the lowest responsible nonresident bidder. See Strange v. Esval, 67 Mont. at 306-307.

The statute does not provide that the District may find a nonresident bidder "more responsible" than the lowest responsible resident bidder, and award the contract to such bidder on that basis in disregard of the statutory preference. Such a power may not be read into the statute. The purpose in construing a statute is to "ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted...." In re Transportation of School Children, 117 Mont. 618, 622, 161 P.2d 901 (1945). Moreover, as a public corporation, the Water and Sewer District has only those powers expressly conferred by the Constitution or statutes, or by necessary implication from those expressly given. See Morse v. Granite County, 44 Mont. 79, 88-89, 119 P. 286 (1911); Roosevelt County v. State Board of Equalization, 118 Mont. 31, 37, 162 P.2d 887 (1945).

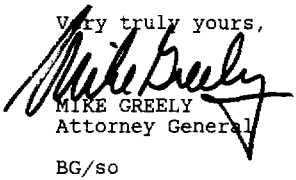
THEREFORE, IT IS MY OPINION:

1.) Section 82-1924, R.C.M. 1947, requires the County Water and Sewer District to apply a three percent preference to the lowest responsible resident bidder with respect to the entire contract cost regardless of the source of funds;

2.) In determining the lowest responsible resident bidder and the lowest responsible nonresident bidder, the District may exercise its discretion;

3.) Having exercised its discretion in determining the lowest responsible resident and nonresident bidders, the District's function becomes ministerial and it must award the contract to such resident bidder if his bid is not more than 3% higher than that of the nonresident bidder.

Very truly yours,



MIKE GREELY
Attorney General

BG/so

AUDIOLOGISTS - May not dispense hearing aids without license as part of program which sells hearing aids;
CHARITABLE OR NONPROFIT ORGANIZATION - May not sell hearing aids without a license;
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING - Organization selling hearing aids must obtain license from the Department;
HANDICAPPED - Program for physically, mentally, and communicatively handicapped may not sell hearing aids without a license;
HEARING AIDS - May not be sold, or dispensed under a program which sells them, without a license;
LICENSES - Neither a charitable organization nor its employees may sell hearing aids without a license.

HELD:

1. A charitable or nonprofit organization primarily supported by voluntary contributions, or any audiologist or other employee of such organization, may dispense free hearing aids without a license from the Department of Professional and Occupational Licensing, but neither the organization nor its employees may sell hearing aids without a license.

2. A charitable or nonprofit organization selling or dispensing hearing aids as

part of a program for the physically, mentally, and communicatively handicapped is subject to the rules applying to any other charitable or nonprofit organization.

2 September 1977

Mr. Ed Carney, Director
Department of Professional and
Occupational Licensing
LaLonde Building
Helena, Montana 59601

Dear Mr. Carney:

You have requested my opinion on the following questions:

1. May a charitable or nonprofit organization, primarily supported by voluntary contributions, dispense or sell hearing aids without a license issued by the Department of Professional and Occupational Licensing?

2. May a charitable or nonprofit organization, primarily supported by voluntary contributions, dispense or sell hearing aids without a license as part of a program for the physically, mentally, and communicatively handicapped?

3. May a licensed audiologist, as an employee of a charitable or nonprofit organization, primarily supported by charitable contributions, dispense or sell hearing aids without a license?

The Montana statutes contain a general prohibition against selling, dispensing, or fitting hearing aids without a license issued by the Department of Professional and Occupational Licensing. Section 66-3007, R.C.M. 1947, provides:

A person may not engage in the sale or practice of dispensing and fitting hearing aids or display a

> sign or in any other way advertise or hold himself out as a person who practices the dispensing and fitting of hearing aids unless he holds a current regular or temporary license issued by the department.

There is an exception to the general licensing requirement. Persons who fit hearing aids under the auspices of certain programs are exempt from the licensing requirement, provided those programs do not also sell hearing aids. Section 66-3009(2), R.C.M. 1947, provides:

> This act does not apply to a person while he is engaged in the practice of fitting hearing aids if his practice is part of the academic curriculum of an accredited institution of higher education, or part of a program conducted by a public agency or by a charitable or nonprofit organization which is primarily supported by voluntary contributions, unless they sell hearing aids.

In any of the three situations suggested by your questions, if the charitable or nonprofit organization sells hearing aids, there is no Section 66-3009 exemption and the licensing requirement of Section 66-3007 applies. This is true whether or not the hearing aids are sold at a profit, since a "sale" is a "contract whereby property is transferred from one person to another for a consideration of value...." Black's Law Dictionary, 4th ed. If the organization dispenses hearing aids at no cost, there is no "selling," and the licensing requirement does not apply. A charitable or nonprofit organization, primarily supported by voluntary contributions, may dispense free hearing aids without a license, but it may not sell hearing aids without a license. This is true whether or not the organization is conducting a program for the physically, mentally, and communicatively handicapped since the statutes provide no exceptions for such programs.

Your final question concerns the possibility of audiologists dispensing hearing aids without a license as part of a program conducted by a nonprofit organization. Again, if the hearing aids are dispensed at no charge, the audiologist does not need a license. But if any charge is made for the instruments, the audiologist must obtain a license from the Department of Professional and Occupational Licensing.

The Board of Speech Pathologists and Audiologists has adopted rules constituting a code of ethics for audiologists and speech pathologists. Among its provisions are two governing the dispensing of products. Montana Administrative Code, Section 40-3.101(6) - S101010(8)(a) provides in relevant part:

> (iv) He may dispense products associated with his professional practice, but not for the purpose of supplementing his income or the income of his employer; neither he nor his employer may receive profits from his patient, other than payment for professional services rendered.
>
> (v) Fees for professional services and fees for products dispensed shall be separately itemized for the patient. The supplier's charge to the licensed speech pathologist and/or audiologist for all products shall be the maximum charge allowable to the patient.

These rules describe a minimum standard of conduct which an audiologist or speech pathologist may not breach without acting unethically. If it is otherwise legal to do so, an audiologist may ethically dispense hearing aids at cost. But Section 66-3007, R.C.M. 1947 makes it illegal to sell hearing aids without a license. Administrative rules cannot authorize what a statute forbids. "Rules made by agencies...shall conform and be pursuant to statutory authority." Section 82-4203.1(5), R.C.M. 1947.

THEREFORE, IT IS MY OPINION:

1. A charitable or nonprofit organization primarily supported by voluntary contributions, or any audiologist or other employee of such organization, may dispense free hearing aids without a license from the Department of Professional and Occupational Licensing, but neither the organization nor its employees may sell hearing aids without a license.

2. A charitable or nonprofit organization selling or dispensing hearing aids as part of a program for the physically, mentally, and communicatively handicapped is subject to the rules applying to any other charitable or nonprofit organization.

Very truly yours,

MIKE GREELY
Attorney General

DK/so

VOLUME 37 OPINION NO. 62

CITY ATTORNEY - City court, misdemeanor crimes,

responsibility to prosecute;

CITY COURT - Misdemeanor crimes, city attorney,

responsibility to prosecute;

MISDEMEANOR CRIMES - City court, disposition of fees;

Held: 1. The city attorney has primary responsibility to prosecute in city court offenses committed in the city limits and charged as violations of state law.

2. Fines imposed and collected by a city judge for any offenses occuring in the city limits must be paid to the city treasurer.

8 September 1977

Richard A. Simonton, Esq.
Dawson County Attorney
Glendive, Montana 59330

Dear Mr. Simonton:

You have requested my opinion on the following questions:

1. Is it the responsibility of the City Attorney or the County Attorney to prosecute offenses committed in the city limits and charged as violations of state law in City Court?

2. What is the correct disposition of fines collected by a City Judge for offenses brought in the name of the State of Montana

in City Court for offenses occuring in the City limits?

Section 11-1602 gives city courts concurrent jurisdiction with justice courts.

> Concurrent jurisdiction. (1) The city court has concurrent jurisdiction with the justice's court of all misdemeanors punishable by a fine not exceeding $500 or by imprisonment not exceeding 6 months or by both fine and imprisonment.
>
> (2) Applications for search warrants and complaints charging the commission of a felony may be filed in the city court. When they are filed, the city judge has the same jurisdiction and responsibility as a justice of the peace, including the holding of a preliminary hearing. The city attorney may file an application for a search warrant or a complaint charging the commission of a felony when the offense was committed within the city limits. The county attorney, however, must handle any action after a defendant is bound over to district court.

Section 11-1603.1 governs the style of action brought:

> Who named as plaintiff. (1) an action brought for violation of a city or town ordinance shall be brought in the name of the city or town as the plaintiff and against the accused as the defendant.
>
> (2) An action brought for violation of a state law within the city or town shall be brought in the name of the state of Montana as the plaintiff and against the accused as the defendant.

A city court can try misdemeanor cases under state law, brought in the name of the state, as well as actions for violation of city ordinances brought in the name of the city. Further, the city court has concurrent jurisdiction with the justice court to receive applications for search warrants and complaints charging felonies under state law.

The city attorney is required to "attend before the police court and other courts of the city and the district court, and prosecute on behalf of the city..." (Section 11-811, R.C.M. 1947). Similarly, Section 11-1608, R.C.M. 1947, provides that the city attorney "must prosecute all cases for the violation of any ordinance...." Section 11-1602(2), quoted above, empowers, but does not require, the city attorney to apply for a search warrant or to file a complaint charging a felony under state law in city court when the offense was committed within the city limits.

The county attorney is required by Section 16-3101, R.C.M. 1947, to "attend the district court and conduct, on behalf of the state, all prosecutions for public offenses...." See also, State ex rel. Olsen v. Public Service Commission, 129 Mont. 106, 112-13 (1955); State ex rel. Woodahl v. District Court, 159 Mont. 112, 117 (1972). Therefore, there is a general, but clear, line of demarcation between the respective "responsibilities" of the city and county attorney. The county attorney is primarily responsible for instituting proceedings in district court; the city attorney is primarily responsible for instituting proceedings in city court.

Section 11-1602 empowers the city court to try misdemeanor cases. It also empowers the city attorney to initiate certain felony cases in city court. All other proceedings must then be handled by the county attorney in district court. While that section does not expressly empower the city attorney to prosecute misdemeanor cases in city court, the implication is clear. The city attorney has primary responsibility for proceedings in the city court, and that court has concurrent jurisdiction to try misdemeanor cases.

Nothing herein should be construed to prohibit the county attorney from instituting proceedings in the name of the state in city court for violations of state law. The question asked goes only to "responsibility," and the legislature's intention in that regard is clear.

Your second question may be answered with reference to Section 95-2008, R.C.M. 1947, which provides in part:

> All fines imposed and collected by a justice or police court must be paid to the treasurer of the county, city or town as the case may be, within thirty (30) days after the receipt of the same, and the justice or police judge must take (sic)

duplicate receipts therefore, one (1) of which he must deposit with the county or city or town clerk as the case may be.

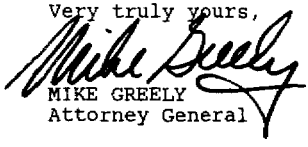
This section is clear and unambiguous on its face. All fines imposed and collected in city court must be paid to the city treasurer. No distinction is made as to whether the offense charged was under state law or city ordinance. Therefore, for the purpose of collecting and remitting fines, that distinction is irrelevent.

THEREFORE, IT IS MY OPINION:

1. The city attorney has primary responsibility to prosecute in city court offenses committed in the city limits and charged as violations of state law.

2. Fines imposed and collected by a city judge for any offenses occuring in the city limits must be paid to the city treasurer.

Very truly yours,



MIKE GREELY
Attorney General

AC/ar

VOLUME 37 OPINION NO. 64

JUSTICE COURTS - Disposition of fines and forfeitures for violation of the 55 mile per hour speed limit, Crime Victims' Compensation Account;
CRIME VICTIMS' COMPENSATION ACCOUNT - Justice Courts, disposition of fines and forfeitures for violation of the 55 mile per hour speed limit.

HELD: Payments to the Crime Victims Compensation Account are to be calculated as six percent of the total of all non-parking motor vehicle fines and bail forfeitures, including fines and forfeitures for violations of the 55 mile per hour speed limit.

12 September 1977

Harold F. Hanser, Esq.
Yellowstone County Attorney
County Attorney's Office
Billings, MT 59101

Dear Mr. Hanser:

You have requested my opinion concerning the following question:

Should justice courts include fines and bail forfeitures for violation of the 55 mile per hour speed limit in calculating payments to the Crime Victims Compensation Account?

Section 25, Chapter 527, Laws, 1977, (codified at Section 72-2601, et seq., R.C.M., 1947), creates a Crime Victims Compensation Account in the State's Earmarked Revenue Fund, and provides:

> There shall be paid into this account 6% of the fines assessed and bails forfeited on all offenses involving a violation of a state statute or a city ordinance relating to the operation or use of motor vehicles, except offenses relating to parking of vehicles.

This statute might be interpreted as requiring court officials to pay six percent of each individual fine or bail forfeiture into the account, or to total all such fines and forfeitures and pay six percent of the total. The effect of both procedures would seem to be the same, but in fact the first interpretation creates a conflict among statutes which the second avoids.

Section 32-2144.6(1), R.C.M. 1947, imposes a five dollar fine for violation of the 55 mile per hour speed limit, and also directs that four dollars of this amount shall be retained as fees for the justice court:

> A person violating the speed limit imposed pursuant to section 32-2144.1 is guilty of the offense of unnecessary waste of a resource currently in short supply and upon conviction shall be fined five dollars ($5) and no jail sentence may be imposed. Bond for this offense shall be five dollars ($5).
>
> For the purpose of this section only, the fees of the justice court shall be four dollars ($4) to be remitted as set forth in section 25-311.

Section 32-2144.6 disposes of eighty percent of each of the five-dollar fine it imposes. The other twenty percent of the fine is paid to the Traffic Education Account, as provided by Section 75-7902, R.C.M. 1947:

> There is hereby established a traffic education account in the treasury of the state of Montana. There shall be paid into this account a portion of the fines assessed and bails forfeited on all

> offenses involving a violation of a state statute or city ordinance relating to the operation or use of motor vehicles, except offenses relating to parking of vehicles, in the following amounts:
>
> (1) where a fine is imposed, twenty per cent (20%) of the fine imposed;
>
> (2) where multiple offenses are involved, twenty per cent (20%) of the total sum of all fines imposed;
>
> (3) where a fine is suspended, in whole or in part, the portion paid to the traffic education account shall be twenty per cent (20%) of the fine actually paid; and
>
> (4) when any deposit of bail is made for an offense to which this section applies and the bail is forfeited, twenty per cent (20%) of the forfeited bail.

If Chapter 527, Laws, 1977, is interpreted as requiring that six percent of each fine must be paid to the Crime Victims Compensation Account, the result will be that the Legislature has apportioned 106% of every fine imposed by Section 32-2144.6. In other words, such an interpretation would create a conflict among the statutes.

Statutes which deal in different ways with the same subject matter (for example, statutes which deal in different ways with the same traffic fines), "are in pari materia and must be construed together with reference to the whole subject matter and made to harmonize, if this can be consistently done." State ex rel. McHale v. Ayers, 111 Mont. 1, 5, 105 P.2d 686 (1940).

Chapter 527 cannot be harmonized with Sections 32-2144.6 and 75-7902 by construing it as requiring that six percent of each non-parking motor vehicle fine and forfeiture be paid to the Crime Victims Compensation Account, excluding 55 mile per hour speed limit violations. Since Chapter 527 itself does not exclude speeding violations, this interpretation would require an impermissible addition of words to the statute.

> It is a general rule of statutory construction that the function of the court is to interpret the intention of the legislature, if at all possible, from the plain meaning of the words used; the

> court is not at liberty to add or detract language from the statute in question.

State v. Finley, 164 Mont. 268, 270, 521 P.2d 198 (1974).

A harmonious interpretation construes Chapter 527 as requiring that six percent of the total of all non-parking motor vehicle fines and forfeitures shall be paid to the Crime Victims Compensation Account. This interpretation is consistent with the plain meaning of the words of the statute. It does not require the addition of any words, and it avoids conflict with any other statutes, since it does not require apportionment of more than 100% of any particular fine.

Finally, this interpretation is the one which most adequately fulfills the purpose of the Act. Section 2 of Chapter 527 provides in part:

> It is the intent of the legislature of this state to provide a method of compensating and assisting those persons within the state who are innocent victims of criminal acts and who suffer bodily injury or death.

This purpose will be more fully realized by including speeding fines in the funding source than by excluding them, because more money will be available for compensation of victims. The statute is clearly remedial in nature, and must be construed to fulfill its purpose.

> Generally, statutes of this nature providing a remedy for those who may have been taken advantage of have been liberally construed in favor of the persons whom they are designed to protect.

Bullard v. Garvin, 1 Ariz. App. 249, 401 P.2d 417, 419 (1965).

THEREFORE, IT IS MY OPINION:

> Payments to the Crime Victims Compensation Account are to be calculated as six percent of the total of all

non-parking motor vehicle fines and bail forfeitures, including fines and forfeitures for violations of the 55 mile per hour speed limit.

Very truly yours,

MIKE GREELY
Attorney General

ABC/ar