RESERVE

MONTANA ADMINISTRATIVE REGISTER

1979 ISSUE NO. 12
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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 12

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BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 12-2.2(14)-P2070 relating to the sale or distribution of license lists	)))))	NOTICE OF PROPOSED AMENDMENT OF RULE 12-2.2(14)-P2070 (relating to sale or distribution of license lists) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. At its first meeting after July 28, 1979, the Fish and Game Commission proposes to amend the following rule.

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

12-2.2(14)-P2070 POLICY OF THE DEPARTMENT FOR SALE OR ~~DISSEMINATION~~ DISTRIBUTION OF HUNTING, FISHING, AND TRAPPING LICENSE AND OTHER DEPARTMENT LISTS (1) The Fish and Game Commission determines and sets forth for the Department of Fish, ~~and Game~~ Wildlife, and Parks as part of the department's fulfillment of its responsibility for provision of hunting, fishing, and trapping licenses, the following policy regarding access to, the sale of and ~~dissemination~~ distribution of lists of holders of those ~~license lists~~ licenses:

(a) Examination of lists of hunting, fishing, and trapping license holders. ~~Upon request, the department should make available for examination the lists of license holders of hunting, fishing, and trapping licenses held by the department.~~ The original documents or applications for hunting, fishing, or trapping licenses are not open to public inspection; however, the computer printout or other printing of those lists shall be made available upon request for examination by members of the public. This availability ~~should~~ must be during ordinary working hours of the department and ~~should~~ must not require extra expense or time by department employees beyond that expense and time ordinarily required in the preparation of the lists for the regular purposes of the department. Where extra time and expense are required of the department for the examination of those lists, beyond that expense and time ordinarily required in the preparation of the lists for the regular purposes of the department, the requesting person ~~should be~~ is required to pay a reasonable fee for that time and expense. Authorization to examine department lists does not include, and ~~should~~ must not be construed to include, reproduction of these

lists either mechanically or manually for utilization other than as set forth in this policy, or as provided by law.

(b) Sale or ~~dissemination~~ distribution of lists of hunting, fishing, and trapping license holders. The department ~~should~~ may not sell or otherwise ~~disseminate~~ distribute lists of hunting, fishing, and trapping license holders. The lists should be utilized as necessary to fulfill the responsibilities of the department under state law and to carry out federal projects or federal requirements administered or participated in by the department.

(c) Unless specifically requested as set forth in subsection (1)(e) of this rule, subscription lists controlled by the department should be treated in the same manner as lists of license holders.

(d) Other lists of individuals. Except as provided in this rule or by applicable statute, ~~The~~ the department should treat lists of holders of other licenses or permits, and all other lists of individuals maintained by it, in the same manner as lists of holders of hunting, fishing, and trapping licenses. ~~except as otherwise provided by law or applicable rule.~~

(e) Upon written request of any individual, the provisions of this rule ~~should~~ may be waived for that individual's name and address.

(f) Lists that may be compiled. The original documents or applications for the hereinafter enumerated licenses or permits issued by the department are open to public inspection, and an individual may compile a mailing list by examination thereof:

(i) fur dealers licenses;

(ii) commercial and private pond licenses;

(iii) taxidermists licenses;

(iv) outfitters or guides licenses;

(v) game or fur farm permits;

(vi) shooting preserve licenses or permits;

(vii) roadside menagerie or zoo permits;

(viii) commercial seining licenses; and

(ix) falconer licenses.

Lists of officers of sportsmen's clubs, associations, and other organized groups may be compiled for distribution.

3. The proposed amendment modifies Rule 12-2.2(14)-P2070 found on page 12-10.12 of the Administrative Rules of Montana.

4. The department is proposing to amend this rule to meet the provisions of SB170, to clarify those lists that can be compiled, and to include a statement as to the availability of original applications for public inspection.

5. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to Robert F. Wambach, Director, Department of Fish, Wildlife, and Parks, 1420 E. 6 Avenue, Helena, Montana 59601. Written comments in order to be considered must be received no later than July 26, 1979.

6. If a person who is directly affected wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request along with any written comments to Dr. Wambach at the above-stated address prior to July 26, 1979.

7. 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 in excess of 25.

8. The authority of the Fish and Game Commission to amend the proposed rule is based on Section 87-1-301, MCA (Section 26-103.1, R.C.M. 1947).

Joseph J. Klabunde, Chairman
Montana Fish and Game Commission

Certified to the Secretary of State June 18, , 1979

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of repeal of Rule 12-2.10(14)-S10200 relating to the annual Yellowstone boat float	) NOTICE OF PROPOSED REPEAL OF RULE 12-2.10(14)-S10200 (annual Yellowstone boat float) NO PUBLIC HEARING CONTEMPLATED

TO; All Interested Persons:

1. At its first meeting after July 28, 1979, the Montana Fish and Game Commission proposes to repeal the following rule.

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

12-2.10(14)-S10200 ANNUAL YELLOWSTONE BOAT FLOAT (1) All persons participating in, or accompanying floaters on the Annual Yellowstone Boat Float, usually held in July, running from the Livingston, Montana area to the Billings, Montana area, shall wear a U. S. Coast Guard approved personal flotation device at all times while on the water.

3. This is a proposed repeal of a rule found on page 12-47.1 of the Administrative Rules of Montana.

4. The rule is proposed to be repealed because the participants in the boat float feel this is unduly restrictive of their activities.

5. Interested parties may submit their data, views, or arguments concerning the proposed repeal in writing to Robert F. Wambach, Director, Department of Fish, Wildlife, and Parks, 1420 E. 6 Avenue, Helena, Montana 59601. Written comments in order to be considered must be received no later than July 26, 1979.

6. If a person who is directly affected wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request along with any written comments to Dr. Wambach at the above-stated address prior to July 26, 1979.

7. If the agency receives requests for a public hearing on the proposed repeal from more than 10% or 25 or more persons who are directly affected by the proposed repeal, 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 in

excess of 25.

8. The authority of the Fish and Game Commission to repeal the rule is based on Section 23-2-521, MCA (Section 69-3505(1)(a), R.C.M. 1947).

Joseph J. Klabunde, Chairman
Montana Fish and Game Commission

Certified to the Secretary of State June 18, 1979.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the repeal of Rules 12-2.2(10)-P290 through -P2060 pertaining to rules implementing the Montana Environmental Policy Act; and the adoption of new rules I through X implementing MEPA	NOTICE OF PUBLIC HEARING FOR THE REPEAL OF PRESENT RULES IMPLEMENTING THE MONTANA ENVIRONMENTAL POLICY ACT: AND ADOPTION OF REVISED RULES IMPLEMENTING MEPA

TO: All Interested Persons:

1. On Aug.30,1979, at 9:30 a.m. a public hearing will be held in the Senate Chambers, State Capitol Building, Helena, Montana to consider repeal of the present rules for implementing the Montana Environmental Policy Act and adoption of new rules pertaining to MEPA.

2. The proposed new rules replace the present rules. They are similar in many respects; but because of many changes throughout the text, they are presented as new rather than amended rules. The main purpose is to make the processing of environmental impact statements and other environmental review as quick and efficient as possible while meeting the requirements of the Montana Environmental Policy Act.

Rule I POLICY STATEMENT CONCERNING MEPA RULES The purpose of these rules is to implement Chapter 1, Title 75, MCA, the Montana Environmental Policy Act, through the establishment of administrative procedures. In order to fulfill the stated policy of that Act, the department shall conform to the following rules prior to reaching a final decision on actions covered by the Act. It must be noted that the Act requires state agencies to comply with its terms "to the fullest extent possible".

Rule II DEFINITION OF MEPA TERMS. (1) "Emergency actions" include, but are not limited to:

(a) projects undertaken, carried out, or approved by the department to repair or restore property or facilities damaged or destroyed as a result of a disaster when a disaster has been declared by the governor or other appropriate government entity;

(b) emergency repairs to public service facilities necessary to maintain service; or

(c) projects, whether public or private, undertaken to prevent or mitigate immediate threats to public health, safety, welfare, or the environment.

(2) "Human environment" includes, but is not limited to, biological, physical, social, economic, cultural, and

aesthetic factors that interrelate to form the environment.

(3) "Lead agency" means the state agency that has primary authority for committing the government to a course of action having significant environmental impact or is the agency designated by the governor to supervise the preparation of a joint environmental impact statement.

(4) "Environmental impact statement" (EIS) means the detailed written statement required by Section 75-1-201, MCA, which may take several different forms:

(a) "Draft environmental impact statement" (DEIS) means a detailed written statement prepared to the fullest extent possible in accordance with Section 75-1-201,MCA, and Rule V(1)(2) of these MEPA rules.

(b) "Final environmental impact statement" means a written statement prepared to the fullest extent possible in accordance with Section 75-1-201, MCA, and Rule V of these rules and which responds to substantive comments received on the draft environmental impact statement.

(c) "Joint environmental impact statement" means an EIS prepared jointly by more than one agency, either state or federal, when such agencies are involved in the same or closely related proposed action.

(5) "Preliminary environmental review" (PER) is a brief written statement on a proposed action to determine whether the action might significantly affect the quality of the human environment and therefore requires a draft environmental impact statement.

(6) "Programmatic review" is a general analysis of related agency-initiated actions, programs or policies, or the continuance of a broad policy or program which might involve a series of future actions.

(7) "Cumulative impact" means the impact on the environment which results from the incremental impact of the action when added to other past and present actions, and feasible and reasonably foreseeable future actions.

(8) "Environmental Quality Council" (EQC) means the council established pursuant to Chapter 1, Title 75, MCA.

(9) "State agency" or "agency" means an office, commission, committee, board, department, council, division, bureau, or section of the executive branch of state government.

Rule III DETERMINATION OF NECESSITY FOR ENVIRONMENTAL IMPACT STATEMENT (1) In determining whether to prepare an environmental impact statement, the agency shall:

(a) determine under Subsection (6) of this rule whether the proposal is one which

(i) normally requires an environmental impact statement,

(ii) normally does not require either an environmental impact statement or a preliminary environmental

review; or

(b) if the proposed action is not covered by subparagraph (a) above or subsection (4) below, prepare a preliminary environmental review; or

(c) if the proposed action is in category (1)(a)(i) above, but it appears that there are special circumstances which may obviate the necessity for an EIS, prepare a PER.

(2) If the proposed action is in category (1)(a)(ii) but it appears that there are special circumstances, the agency may prepare a PER.

(3) The following are categories of actions which normally require the preparation of an EIS:

(a) the action may significantly affect environmental attributes recognized as being endangered, fragile, or in severely short supply;

(b) the action may be either significantly growth-inducing or growth-inhibiting;

(c) the action may substantially alter environmental conditions in the terms of quality or availability; or

(d) the action will result in substantial cumulative impacts.

(4) An environmental impact statement is not required for the following actions:

(a) administrative actions: routine, clerical, or similar functions of the department, including but not limited to administrative procurements, contracts for consulting services, and personnel actions;

(b) existing facilities: minor repairs, operations, or maintenance of existing equipment or facilities;

(c) investigation and enforcement: data collection, inspection of facilities, or enforcement of environmental standards;

(d) nondiscretionary action: actions in which the department exercises no discretion, but rather acts upon a given state of facts in a prescribed manner.

(e) rule making: rules promulgated pursuant to law.

(5) If the preliminary environmental review shows a significant impact on the human environment, an environmental impact statement shall be prepared on that action.

(6) The department shall maintain a list of those activities or functions that fall within subparagraphs (1)(a)(i) and (1)(a)(ii) above. The list shall be maintained as a public document. Copies of the list and any subsequent revisions shall be sent to EQC and any person who has requested a copy. EQC or any person may recommend additions to or deletions from the list in accordance with rule-making procedures provided by the Montana Administrative Procedure Act (Sec. 2-4-101, et seq., MCA)

RULE IV PREPARATION OF PRELIMINARY ENVIRONMENTAL REVIEW (1) A preliminary environmental review shall include:

(a) an adequate description of the proposed action, including maps and graphs, where appropriate;

(b) an evaluation of the immediate and cumulative impact on the physical environment, through the use of a checklist and a brief narrative, including where appropriate: terrestrial and aquatic life and habitats; water quality, quantity, and distribution; geology; soil quality, stability, and moisture, vegetation cover, quantity and quality; aesthetics; air quality; unique, endangered, fragile, or limited environmental resources; historical and archaeological sites; and demands on environmental resources of land, water, air, and energy;

(c) an evaluation of the immediate and cumulative impact on human population in the area to be affected by the proposed action, through the use of a checklist and brief narrative, including where appropriate: social structures and mores; cultural uniqueness and diversity; access to and quality of recreational and wilderness activities; local and state tax base and tax revenues; agricultural or industrial production; human health; quantity and distribution of community and personal income; transportation networks and traffic flows; quantity and distribution of employment; distribution and density of population and housing; demands for government services; industrial and commercial activity; demands for energy; and locally adopted environmental plans and goals;

(d) a listing of other agencies or groups that have been contacted or which may have overlapping jurisdiction;

(e) the names of those individuals or groups contributing to and responsible for compiling the PER.

(2) A PER is a public document and may be inspected upon request by any person. Any person may obtain a copy of a PER by making a request to the department. The department may give public notice of the availability of the PER and may distribute it. The agency shall submit a copy of each completed PER to EQC.

RULE V PREPARATION, CONTENT, AND DISTRIBUTION OF ENVIRONMENTAL IMPACT STATEMENTS (1) Preparation and contents of draft EIS. If required by Rule III or IV, the department shall prepare a draft environmental impact statement which shall include:

(a) a description of the nature and objectives of the proposed action;

(b) a description of the current environmental conditions in the area significantly affected by the proposed action, including maps and charts where appropriate;

(c) a description of the impact on the human

environment of the proposed action including:

(i) the factors listed in Rule IV(1)(b) and (c) where appropriate;

(ii) primary, secondary, and cumulative impacts;

(iii) potential growth-inducing or growth-inhibiting impacts;

(iv) irreversible and irretrievable commitments of environmental resources, including land, air, water, and energy;

(v) economic and environmental benefits and costs of the proposed action. When a benefit-cost analysis is considered for the proposed action, it shall be incorporated by reference or appended to the statement to aid in evaluating the environmental consequences.

(vi) the relationship between local short-term uses of man's environment, with the effects on maintenance and enhancement, the long-term productivity of the environment;

(vii) additional or secondary impacts at the local or area level, if any;

(d) a description of reasonable alternative actions that could be taken by the department;

(e) the proposed department decision on the proposed action, when appropriate;

(f) source material used in the preparation of the draft EIS; and

(g) the names of those individuals or groups responsible for compiling the EIS and the names of those individuals or groups contributing to the EIS.

(2) Distribution of Draft EIS. Following preparation of the draft EIS in accordance with subsection (1) of this rule, the department shall distribute copies to the governor, EQC, appropriate local, state, and federal agencies, the applicant whose project is being evaluated by the EIS, and those members of the public who request it. The department shall send a copy of the summary to persons who request it only. For purposes of distribution to the public, the department shall maintain a mailing list of any person or group who has requested to be placed on the list for receipt of either the EIS or summary.

(a) Depending upon the nature and number of substantive comments received in response to the draft environmental impact statement, the draft statement may suffice. In this case, the department shall submit one copy of all comments or a summary of a representative sample of comments received in response to the draft statement to the governor, EQC, the applicant whose project is being evaluated by the EIS, and all commentators.

(b) When the department determines that a final environmental impact statement is not necessary, it may make

a final decision on the proposed action no sooner than 15 days after complying with subsection (2)(a) above. The department shall also include with the comments notice of its decision not to prepare a final EIS and a statement describing its proposed course of action. The applicant whose project is being evaluated by the EIS may request an extension of this 15-day period in order to respond to the written comments that have been received.

(3) Preparation and contents of final EIS. A final environmental impact statement shall include:

(a) A summary of major conclusions and supporting information from the draft environmental impact statement and the responses to substantive comments received on the draft environmental impact statement, stating specifically where such conclusions and information were changed from those which appeared in the draft.

(b) A list of all sources of written and oral comments on the draft EIS, including those obtained at public hearings, and unless impractical, the text of comments received by the department. In all cases, a representative sample of comments or a summary of a representative sample of comments shall be included.

(c) The department's responses to substantive comments. These responses shall include an evaluation of the comments received and a disposition of the issues involved.

(d) Data, information, and explanations obtained subsequent to circulation of the draft.

(e) The department's final decision on the proposed action, where appropriate.

(4) Time limits and distribution requirements of environmental impact statements shall be as follows:

(a) Following preparation of a final EIS, the department shall distribute copies to the governor, EQC, appropriate state and federal agencies, the applicant, persons who submitted comments on or received a copy of the draft EIS, and,upon request, other members of the public.

(b) The listed transmittal date to the governor and the EQC shall not be earlier than the date that the draft environmental impact statement is mailed to other agencies, organizations, and individuals. The department shall allow 30 days for reply; provided that the department may extend this period by 30 days and for an additional reasonable period of time if the department finds good cause for such extension. No extension which is otherwise prohibited by law may be granted.

(c) After the time period for comment on the draft EIS has expired, a copy of all written comments received

by the department shall be sent to the applicant whose project is being evaluated by the EIS. The applicant shall be advised that he has a reasonable time to respond in writing to the comments received by the department on the draft EIS and that the applicant's written response must be received before a final EIS can be prepared and circulated. The applicant may waive his right to respond to the comments on the draft EIS.

(d) No action which requires the preparation of a final environmental impact statement may be taken sooner than 45 days after the transmittal date to the governor and EQC of the draft environmental impact statement.

(e) Except as provided in subsection (2)(b) of this rule, a final decision may be made on the proposed action being evaluated by the EIS after 15 days have expired from the date of transmittal of the final EIS to the governor and EQC. The listed transmittal date to the governor and EQC shall not be earlier than the date that the final EIS is mailed to other agencies, organizations, and individuals.

(5) Record of decision. At the time of its decision the department shall make a written record of the decision stating how the final EIS was considered and used by the department in making its decision on the proposed action.

(6) Availability of written comments. All written comments received on an EIS, including written responses received from the applicant, shall be made available to the public upon request.

(7) Limitations on actions. Until the department reaches its final decision on the proposed action, no action concerning the proposal shall be taken which would:

(a) have an adverse environmental impact; or

(b) limit the choice of reasonable alternatives, including the no-action alternative.

(8) Supplements.

(a) Department shall prepare supplements to either draft or final environmental impact statements if:

(i) the department or the applicant makes substantial changes in the proposed action; or

(ii) there are significant new circumstances, including information bearing on the proposed action or its impacts.

(b) The same time periods applicable to draft a final EIS specified in Rule V apply to the circulation and review of supplements.

(9) Incorporation by reference and adoption.

(a) The department shall adopt and incorporate by reference as part of a draft EIS all or any part of the information, conclusions, comments, and responses to comments contained in an existing EIS which has been previously

or is being contemporaneously prepared pursuant to the Montana Environmental Policy Act or the National Environmental Policy Act if:

(i) the department determines that the existing EIS covers an action paralleling or closely related to the action proposed by the department or applicant;

(ii) the department determines, on the basis of its own independent evaluation, that the information contained in the existing EIS has been accurately presented; and

(iii) the department determines that the information contained in the existing EIS is applicable to the action currently being considered.

(b) The existing EIS, or portion adopted or incorporated by reference, shall be circulated as a part of the EIS and treated as part of the draft EIS for all purposes, including, where required, preparation of a final EIS. However, where reproduction of the adopted or incorporated portions of a previously prepared EIS would be prohibitively expensive because of the volume of the material involved, the department may summarize the content of the adopted or incorporated information if the previous EIS has been circulated and the department lists the places where the full text of the adopted or incorporated EIS is available for inspection. Furthermore, the department shall not be required to send copies of the existing EIS to persons who have previously received the adopted or incorporated EIS from the department or from any other state or federal agency which prepared the existing EIS.

(c) If the incorporated EIS does not adequately assess all of the impacts of a proposed action as required by these rules, an addendum shall be prepared in compliance with this rule.

(d) If all or any part of an existing EIS is adopted or incorporated by reference, an addendum shall be prepared by the department as part of the draft EIS. The addendum shall include as a minimum:

(i) a description of the specific action to be taken; and

(ii) any impacts, alternatives, or other items that were not covered in the original statement.

(e) The department shall take full responsibility for the contents of the previous EIS. If the department disagrees with certain portions of the previous EIS, the points of disagreement shall be specifically discussed in the addendum.

(f) No material may be adopted or incorporated by reference unless it is reasonably available for inspection by interested persons within the time allowed for comment.

(10) Length, format, and summary.

(a) The recommended maximum length of the text of draft and final environmental impact statements is 150 pages and for complex proposals is 300 pages.

(b) Environmental impact statements shall be written in plain and concise language.

(c) If the EIS is long and complex, the department shall prepare with the draft or final EIS a brief summary which shall be available for distribution separate from the EIS. When a summary is prepared, it shall state:

(i) the proposed action being evaluated by the EIS, the impacts, and the alternatives;

(ii) areas of controversy and major conclusions; and

(iii) the department's proposed decision, when appropriate.

RULE VI JOINT ENVIRONMENTAL IMPACT STATEMENTS.

(1) Lead agency. If another state agency also has jurisdiction over a project, proposal, or major state action which may have a significant impact on the human environment and is clearly the lead agency, the department shall cooperate with the lead agency in the preparation of a joint EIS. When the department is clearly the lead agency, it shall be responsible for coordinating the preparation of the EIS as required by this rule. When two or more agencies have jurisdiction over the same project, proposal, or major state action and lead agency status cannot be resolved, the department shall request a determination from the governor.

(2) Participation. When the department acts as a lead agency it may request the participation of other state agencies which have special expertise in areas which should be addressed in the EIS. When participation of the department is requested under this rule, it shall make a good-faith effort to participate in the EIS as requested, with its expenses for participation in the EIS paid by the agency collecting the MEPA fee if one is collected.

(3) Federal and local agencies. The department shall cooperate with federal and local agencies in preparing an environmental impact statement. This cooperation may include:

(a) joint environmental research studies;

(b) joint public hearings, or

(c) joint environmental impact statements.

Where federal laws have environmental impact statement requirements, the department may cooperate in fulfilling the requirements of the federal as well as the state laws so that one document will comply with all applicable laws.

RULE VII PREPARATION, CONTENT, AND DISTRIBUTION OF A PROGRAMMATIC REVIEW. (1) When the department is contemplating a series of department initiated actions,

programs, or policies which in part or in total will constitute a major state action significantly affecting the human environment, the department may prepare a programmatic review discussing the impacts of the series of actions.

(2) The programmatic review shall include, as a minimum, a concise, analytical discussion of alternatives and the cumulative environmental effects of these alternatives.

(3) The time limits specified for public comment in Rule V(5) apply to the distribution of programmatic reviews.

(4) While work on a programmatic environmental impact statement is in progress, the department may not take major state actions covered by the program in that interim period unless such action:

(a) is part of an ongoing program; or

(b) is justified independently of the program; or

(c) will not prejudice the ultimate decision on the program; interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or foreclose reasonable alternatives;

(d) actions taken under subsection (4) shall be accompanied by an environmental impact statement if required.

RULE VIII SPECIAL RULES APPLICABLE TO CERTAIN MEPA SITUATIONS (1) Emergencies. The department may take or permit action having a significant impact on the human environment in an emergency situation without preparing an EIS. Within 30 days following initiation of the action, the department shall notify the governor and the EQC as to the need for such action and the impacts and results of it. Emergency actions shall be limited to those actions necessary to control the immediate impacts of the emergency.

(2) Confidentiality. Information declared confidential by state law or by an order of a court shall be excluded from a PER and EIS. The department shall briefly state the general topic of the confidential information excluded.

(3) Resolution of statutory conflicts. When conflicting provisions of other state laws prevent the department from fully complying with these rules, the department shall notify the governor of the nature of the conflict and shall suggest a proposed course of action that will enable the department to comply to the fullest extent possible with the provisions of MEPA. In addition, the department shall recommend proposals for legislature that will remove the statutory conflict. These recommendations shall be prepared within 45 days of decision on the project, proposal, or major state action.

(4) Disclosure. No person who has a financial interest in the outcome of the project may contract with the department in the preparation of an EIS. Persons contracting with the department in the preparation of an EIS must execute a disclosure statement in affidavit form prepared by the department, demonstrating compliance with this prohibition.

RULE IX PUBLIC HEARINGS (1) When a public hearing is held on an EIS, the department shall advise the applicant whose project is being evaluated by the EIS, persons who have submitted comments on the draft EIS, and persons who received a copy of the draft EIS, of the date and location of the hearing and that the applicant shall have an opportunity to respond to all oral comments received at the hearing. The applicant may respond orally at the conclusion of the hearing and in writing at a later date. The hearing held pursuant to this rule shall be held after the draft EIS has been circulated and prior to preparation of the final EIS.

(2) The department shall hold a public hearing when requested by either:

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

(b) by another agency which has jurisdiction over the action; or

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

Instances of doubt shall be resolved in favor of holding a public hearing.

RULE X RETROACTIVE APPLICATION OF THE MEPA RULES The rules adopted to implement MEPA apply to all applications pending at the time these rules are adopted by the department, provided that the procedures outlined herein may not be used to delay the preparation of an EIS in preparation at the time the rules are adopted.

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

4. John F. North, Attorney, Department of State Lands, 1625 11 Avenue, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

5. The authority of the commission to repeal and adopt these rules is based upon Sections 2-4-201,MCA (82-4203, R.C.M. 1947), 2-15-112, MCA (82A-107,R.C.M. 1947), 87-1-201(1)-(6),MCA (26-104, R.C.M. 1947), and 75-1-201, MCA (69-6504, R.C.M. 1947).

Joseph D. Klabunde, Chairman
Montana Fish and Game Commission

Certified to Secretary of State June 18, 1979

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 12-2.10(14)-S10190 relating to water safety regulations	) NOTICE OF PROPOSED AMENDMENT OF RULE 12-2.10(14)-S10190 (water safety regulations) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. At its first meeting after July 28, 1979, the commission proposes to amend the following rule.

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

12-2.10(14)-S10190 WATER SAFETY REGULATIONS

(1) In the interest of public health, safety, or protection of property, the following regulations concerning the public use of certain waters of the state of Montana are hereby adopted and promulgated by the Montana Fish and Game Commission.

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

Wood Lake - Lewis and Clark County
Arapooish Access Area - Big Horn County
Feys Reservoir - Toole County
Axtman Reservoir - Toole County
Fitzpatrick Reservoir - Toole County
Henry Reservoir - Toole County
Twin Lakes - Ravalli County
Big Hole River
Smith River
Forest Lake - Meagher County
Harpers Lake - Missoula County
Frenchtown Pond - Missoula County
Bear Mouth Rest Area Pond - Granite County
Branum Pond - Custer County
Park Lake - Jefferson County
Bearpaw Lake - Hill County
~~South Sandstone Reservoir - Fallon County~~
Gartside Reservoir - Richland County

(b) The following waters are closed to the use of all boats propelled by machinery of over 10 horsepower, except in cases of use for search and rescue, official patrol, or for scientific purposes:

(i) All rivers and streams in the following counties east of the Continental Divide:

Silver Bow	Park-Exception: Yellowstone
Beaverhead	downriver from Interstate
Jefferson	90 bridge at Livingston
Gallatin	Broadwater-Exception: Missouri
Madison	downriver from Toston Dam

(ii) Other waters of the state as follows:
Beaver Creek Reservoir - Hill County
South Sandstone Reservoir - Fallon County
(rest of the rule (c) through (e) remains the same)

3. The proposed amendment modifies Rule 12-2.10(14)-S10190 found on page 12-46 of the Administrative Rules of Montana.

4. The reasons for the proposed modification are: (a) the banks of South Sandstone Reservoir have stabilized to the extent that wave action by slow-moving motorboats will not cause erosion and break-down, and (b) to provide another form of recreational activity on the reservoir.

5. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to Robert F. Wambach, Director, Department of Fish, Wildlife, and Parks, 1420 E. 6 Avenue, Helena, Montana 59601. Written comments in order to be considered must be received no later than July 26, 1979.

6. If a person who is directly affected wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request along with any written comments to Dr. Wambach at the above-stated address prior to July 26, 1979.

7. If the department 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 in excess of 25.

8. The authority of the commission to amend the rule is based upon sections 87-1-303, MCA (26-104.9, R.C.M. 1947) and 23-1-106(1),MCA (62-306, R.C.M. 1947).

Joseph J. Klabunde, Chairman
Montana Fish and Game Commission

Certified to Secretary of State June 18, , 1979.

BEFORE THE DEPARTMENT OF STATE LANDS AND
THE BOARD OF LAND COMMISSIONERS
OF THE STATE OF MONTANA

In the matter of the amendment of rules 26.3.108 and 26.3.121 relating to the preference right granted to surface lessees of state lands	NOTICE OF PROPOSED AMENDMENT OF ARM 26.3.108 RENEWAL OF LEASE and ARM 26.3.121 TRANSFER OF LEASES: ASSIGNMENTS AND SUBLEASES; NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On May 10, 1979 the Department and Board published Notice of Proposed Amendment of ARM 26.3.108 and ARM 26.3.121, MAR Notice No. 26-2-24, 1979 Issue No. 9 on page 397.

2. The above Notice stated that the Board of Land Commissioners proposed to amend rules 26.3.108 and 26.3.121 on June 18, 1979.

3. The Board of Land Commissioners propose to amend rule 26.3.108 and 26.3.121 on July 16, 1979 and therefore will accept comments until July 6, 1979.

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

Rule VIII (26.3.108) RENEWAL OF LEASE (1) A current lessee shall be sent an application to renew his lease. The application shall be accepted under the same conditions as specified in Rule VI (1); however, application for renewal will only be accepted from December 1 of the year preceding the expiration of the lease until February 28, the date of expiration.

(2) A surface lessee who has paid all rentals and complied with the terms of the previous lease is entitled to exercise a preference right if:

(a) he has not subleased or otherwise allowed the land or any portion of the land to be operated by a person other than himself for more than 30% of the lease term and has not subleased or allowed another person to operate on the land during the last 2 years of the term; provided that the department may grant exceptions to these rules in special circumstances beyond the control of the lessee such as illness or injury; or,

(b) he terminates a current sublease or other arrangement which allows another person to use the land, prior to January 1, 1980, and uses the land himself until the lease expires.

(3) ~~(2) A surface lessee has a preference right to renew his lease provided all rentals have been paid and the terms of the previous lease have not been violated.~~ The lease shall be renewed at the rental rate provided by law, provided no other applications for the lease have been received by the department 30 days prior to the expiration of the lease.

(4) ~~(3)~~ If other applications are received by January 28 of the year the lease expires the lessee shall have a preference right to renew his lease provided he meets the bid of the high bidder for such lease. Such bid is deemed to be met if the amount of the high bid is received by the department prior to the expiration of the lease or in the case of agricultural land leased solely on a crop share rental basis, if the lessee agrees in writing to meet the high bid prior to the expiration of the lease. A lessee may request a hearing before the commissioner after he meets the high bid if he considers the bid too high to be in the best interests of the state. The lessee shall submit evidence of rental rates in the area for similar land with his request. The commissioner may grant or deny a request for a hearing and if the request is granted the commissioner may recommend to the board that the bid be lowered only if he feels that it is in the best interests of the state to do so. The Board may accept or reject the commissioner's recommendation. The lessee is obligated to lease the property at the rate determined by the Board. The lease of such land shall be such as to return to the state revenue commensurate with the highest and best use of the land or portions thereof, as determined by the Department.

(5) ~~(4)~~ Regardless of any provision to the contrary in these rules, the board, at renewal time, may withdraw any land, or portion of land from further leasing for an indefinite period. The department may provide in any lease at time of execution or renewal that the land may be withdrawn from further leasing after resaonable notice, if the department considers such action to be in the best interests of the state.

(6) ~~(5)~~ When land, under lease, has previously been sold and the certificate of purchase has been cancelled, any later reinstatement of the certificate of purchase shall not have the effect of cancelling any lease except that the current lessee shall loose his right to renew the lease.

Rule XXI (26.3.121) TRANSFER OF LEASES: ASSIGNMENTS AND SUBLEASES (1) All assignments and subleases shall be made on blanks prescribed by the department and available at no cost. An assignment in order to be binding on the state and a sublease in order to be legal must be approved by the

department. A copy must be filed with the department and a fee as specified in ARM 26.2.401, 26.2.2(10)-S230 must be paid. An assignment or sublease will not be approved if all rentals or other payments due have not been paid or the terms of the lease have been violated. If a sublease or assignment is made on terms less advantageous to the sublessee than terms given by the state or without filing a copy of the sublease and receiving the department's approval, the commissioner shall cancel the lease subject to the appeal procedures provided in Rule XXV. A person who subleases or otherwise allows another person to utilize the land may lose his preference right to renew the lease as provided in rule 26.3.108.

(2) A lessee of state land shall not sublease such land as part of the sale of his own fee lands. In order to transfer such lease as part of the sale of lands, the lessee must assign the lease as provided in paragraph (1). Failure to comply with the terms of this rule shall be grounds for cancellation of the lease.

(3) State land leases and leasehold interests may be pledged or mortagaged by the lessee. The pledgee or mortgagee shall file the pledge or mortagage or certified copy thereof with the department within 30 days of its receipt by him. Within 30 days after payment of the indebtedness, termination of the pledge agreement, or release of the mortagaged leasehold interest, the lessee shall file proof of that fact with the department.

(4) A lessee who wishes to surrender his lease in whole or in part must submit a request to the department for approval. Also upon request, two or more leases may be conbined when held by the same lessee. The request from the lessee must be in writing and if approved, the lease or leases will be combined with the lease which expires first so that no lease shall run longer than its prescribed term.

(5) In the event of a lessee's death the lease shall be transferred to the decedent lessee's estate. The department shall consider the estate to be the lessee until such time as proof of different ownership is received by the department. In most cases the department shall require a copy of the decree of distribution or assignment by a court appointed personal representative. Exceptions to this rule may be allowed when the department determines that an unusal situation exists.

5. The rules are proposed to be amended in response to a recent ruling by the Montana Supreme Court in Jerke v. State Department of Lands 36 St. Rptr. 389 (1979), which declared the preference right to be unconstitutional as applied to the facts in Jerke. The proposed amendments specify when a lessee may exercise the preference right to

renew the lease.

6. Interested parties may submit their data views or arguments concerning the proposed amendment in writing to Leo Berry, Jr., Commissioner, Department of State Lands, Capitol Station, Helena, MT 59601 no later than July 6, 1979.

7. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing he must make a written request for a hearing and submit this request along with any written comments he has to Leo Berry, Jr., Commissioner, Department of State Lands, Capitol Station, Helena, MT 59601 no later than July 6, 1979.

8. 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 more than 25 persons based on approximately 8,600 surface leases.

9. The authority of the board to make the proposed amendment is based on section 77-6-104 MCA (section 81-423 R.C.M. 1947).

John F. North

John F. North, Acting Commissioner
Department of State Lands

Certified to the Secretary of State June 19, 1979.

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

In the matter of the amendment of ARM 32-2.6BI(1)-S660 relating to antibiotic residues in Grade A pasturized milk and milk products	NOTICE OF PROPOSED AMENDMENT OF ARM 32-2.6BI(1)-S660 (Antibiotic Residues In Milk) NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On or after July 28, 1979 the Board of Livestock proposes to amend rule 32-2.6BI(1)-S660 Standards For Milk & Milk Products by clarifying that antibiotic residues in Grade A pasteurized milk and milk products will not be allowed.

2. ARM 32-2.6BI(1)-S660 Standards For Milk & Milk Products as proposed to be amended affects only that portion of Table 1 of that rule relating to Grade A pasteurized milk and milk products. Table 1 is found on page 32-129 of the Administrative Rules of Montana. The part of the table to be amended is set forth as follows: (New material underlined)

TABLE 1

CHEMICAL, BACTERIOLOGICAL, AND TEMPERATURE STANDARDS FOR GRADE A MILK AND MILK PRODUCTS

TYPE OF SAMPLE	TYPE OF EXAMINATION	STANDARDS
GRADE A RAW MILK...	Remains the same.	
GRADE A RAW MILK FOR PASTEURIZATION	Remains the same.	
GRADE A PASTEURIZED MILK AND MILK PRODUCTS (except cultured products)	Temperature.....	Cooled to 45°F. or less and maintained thereat.
	Bacterial limits...	Milk and milk products 20,000 per m.
	Coliform limit.....	Not exceeding 10 per ml.
	Phosphatase.....	Less than 1 microgram per ml. by Scharer Rapid Method (or equivalent by other means.)
	Antibiotics.....	No detectible antibiotic residues.
GRADE A PASTEURIZED CULTURED PRODUCTS	Remains the same.	

3. The rule is proposed to be amended to correct an oversight which occurred when it was adopted. The U. S. Public Health Service's Grade A Milk Ordinance requires that there be no detectible antibiotic residues in Grade A milk or milk products. For some reason at the time of adoption of the rule that particular language was left out of the table of standards.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to Everett L. Tudor, Chief, Milk & Egg Bureau, Montana Department of Livestock, Capitol Station, Helena, Montana no later than July 28, 1979.

5. If a person is directly affected by the proposed amendment and wishes to express his data, views, or argument at a public hearing he must make written request for a hearing and submit this request along with any comments to Everett L. Tudor no later than July 28, 1979. As there are approximately 300 licensed Grade A dairies, if the agency receives requests from more than 25 persons 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.

6. The authority of the agency to make the proposed amendment is based on 81-2-102 (MAC 46-208 R.C.M. 1947). It implements the same section.

Robert G. Barthelmess
ROBERT G. BARTHELMESS, Chairman
Board of Livestock
by James W. Flowers

Certified to the Secretary of State June 19, 1979

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

IN THE MATTER of the Proposed) Amendment of ARM 40-3.30(8)-) S30115 concerning lapsed) licenses.)	NOTICE OF PROPOSED AMENDMENT OF ARM 40-3.30(8)-S30115 LAPSED LICENSES NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 28, 1979, the Board of Cosmetologists proposes to amend ARM 40-3.30(8)-S30115 concerning lapsed licenses.

2. The proposed amendment will delete the present wording of the rule in its entirety and replace it with the following:

"(1) If a license has lapsed for a period of up to four years, but no longer than four (4) years, the license may be renewed upon payment of license fees plus penalty fees for years due.

(2) If a license has lapsed for a period of four (4) years to six (6) years, but no longer than six (6) years, it is required that in addition to payment of license fees plus penalty fees for years due, an applicant must take a course of eighty (80) hours of training in a properly licensed school of cosmetology, providing certification thereof.

(3) If a license has lapsed for a period of six (6) years to eight (8) years, but no longer than eight (8) years, it is required that in addition to payment of license fees plus penalty fees for years due, an applicant must take a course of one hundred sixty (160) hours of training in a properly licensed school of cosmetology, providing certification thereof.

(4) If a license has lapsed for a period of eight (8) years to ten (10) years, but no longer than ten (10) years, it is required that in addition to payment of license fees plus penalty fees for years due, an applicant must take a course of three hundred (300) hours of training in a properly licensed school of cosmetology, providing certification thereof.

(5) In the event that a license shall have lapsed for over ten (10) years, for any reason, it is required that such a person must make application, pay the proper fees and take the written and practical examinations."

3. The Board is proposing the amendment to implement section 37-31-322 MCA, sub-section (1) [66-816 (1) R.C.M. 1947] and to clearly define the requirements for reinstatement of a lapsed license that has lapsed for a period of time in excess of four (4) years, in order to guarantee the health, safety and welfare of the consuming public against unqualified practitioners.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Cosmetologists, Lalonde Building, Helena, Montana 59601

no later than July 26, 1979.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Cosmetologists, Lalonde Building, Helena, Montana 59601, no later than July 26, 1979.

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

7. The authority of the Board to make the proposed amendment is based on sections 37-31-203 (1) and (2) and 37-31-322 (1) MCA (66-806(1) and 66-816 (1) R.C.M. 1947). The amendment implements section 37-31-322 (1) MCA (66-816 (1) R.C.M. 1947).

BOARD OF COSMETOLOGISTS
JUNE BAKER, PRESIDENT

BY: 
ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, June 19, 1979.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF REALTY REGULATION

IN THE MATTER of the Amendment of subsection (5)(b) of ARM 40-3.98(6)-S9885 concerning franchising	NOTICE OF PROPOSED AMENDMENT OF SUBSECTION (5)(b) OF ARM 40-3.98(6)-S9885 SET AND APPROVE REQUIREMENTS AND STANDARDS - FRANCHISING

TO: All Interested Persons:

1. On July 28, 1979, the Board of Realty Regulation will amend subsection (5)(b) of ARM 40-3.98(6)-S9885 concerning franchising.

2. The subsection of the rule to be amended is on page 40-391 of the Administrative Rules of Montana and will read as follows: (deleted matter interlined)

" 40-3.98(6)-S9885 SET AND APPROVE REQUIREMENTS AND STANDARDS - FRANCHISING ....(5)(b) incorporate in the franchise name and logotype, his own name; ~~however, the broker's name may not be less than fifty percent (50%) of the surface area of the entire combined area of both the borker's name and franchise name or logotype;~~ and "

3. The Board is amending this subsection of the above stated rule as directed by Senate Joint Resolution No. 24 and in accordance with Senate Bill 427 of the 46th Legislature, the text of which sets forth the reasons for the amendment of the rule.

BOARD OF REALTY REGULATION
DEXTER DELANEY, CHAIRMAN

BY: _____
ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, July 19, 1979.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of Rule 42-2.12(1)-S1250 Samples	NOTICE OF PROPOSED AMENDMENT OF 42-2.12(1)-S1250 Samples - NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

(1) On July 28, 1979, the Department of Revenue proposes to amend Rule 42-2.12(1)-S1250 which provides for the use and distribution of liquor samples by licensed agents.

(2) The Rule, as proposed to be amended, provides as follows:

Section 42-2.12(1)-S1250. Samples. (1) A vendor shall be permitted to use as samples not more than 24 cases of liquor during any calendar year. This allotment includes all brands of liquor manufactured, produced or sold by the vendor.

(2) For purposes of this section a sample is defined as a container of liquor presented by a vendor or agent for inspection or demonstration of the quality of the product and which is purchased by the employer or brokerage of the vendor or agent.

(3) A sample may be of any size so long as the sample size is in conformance with applicable Federal regulations.

(4) Not more than 1 pint of any brand of distilled spirits and not more than 1 gallon of any brand of wine, may be furnished or given as a sample to a retailer, licensed by the department, who has not previously purchased that product. Samples of distilled spirits may be furnished or given to the department of revenue, liquor division under the provisions of Section 16-1-304, MCA.

(5) Such samples of liquor shall be purchased only through the State Liquor Stores at retail price. A separate order for samples shall be placed for each registered agent, and the agent's name shall appear on the order.

(6) The vendor shall file with the Department a statement setting forth the territories and names of all registered agents under his supervision.

(7) Each authorized agent shall ~~keep~~ maintain a permanent ~~stock ledger record~~ sample log. ~~of all samples purchased by him and distributed by him to any person as provided in this section together with quantity and brand.~~ Such log must contain exact information as to all sample purchases, including the date and location of each recipient and the date he received the sample.

(8) Samples distributed must be reported to the department of revenue investigation division on a monthly basis.

(9) The department may at any reasonable time and place examine the books and records of the registered agent or vendor for purpose of determining compliance with the requirements of this regulation. Reasonable time and place shall be construed as normal business hours. Thirty (30) calendar day's notice shall be given for any inspection conducted under this regulation.

(3) The amendments to this rule are required by House Joint Resolution No. 44. This legislation was enacted by the 1979 Legislature. The stated purpose of the regulation was to make Montana Regulations coincide with the Federal regulations.

IN THE MATTER OF THE AMENDMENT of Rule 42-2.12(1)-S1260 on Advertising Specialities	)))	NOTICE OF PROPOSED AMENDMENT of Rule 42-2.12(1)-S1260 on Advertising Specialities NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

(1) On July 28, 1979, the Department of Revenue proposes to amend Rule 42-2.12(1)-S1260 which provides for advertising specialities.

(2) The Rule, as proposed to be amended, provides as follows:

Section 42-2.12(1)-S1260. Advertising Specialities. ~~Unlawful Acts~~ (1) Regulation Numbers 6.27 and 6.28 of the Bureau of Alcohol, Tobacco and Firearms, United States Department of the Treasury as set forth in 27 C.F.R., and subsequent amendments and supplements are hereby adopted as through fully set forth herein as the regulations for consumer advertising specialities and retailer advertising specialities.

(2) Vendors and agents may distribute such advertising specialities to the extent allowed by Sections 6.28 and 6.27 C.F.R.

~~(1)~~ (3) Sections 16-1-304, 16-2-105, 16-3-101, 16-3-102, 16-3-103, 16-6-204 and 16-6-301 of the Alcoholic Beverage Code, provide that certain practices in connection with the sale of ~~liquor~~ alcoholic beverages shall be unlawful. All vendors and agents shall be familiar with and abide by these statutes. Although not limiting the scope of the statutory provisions, and with the exception of the advertising specialities of subsection (1) and (2), above, the following practices are in violation of one or more of these sections:

(a) Remains the same.
(b) Remains the same.
(c) Remains the same.
(d) Remains the same.
(e) Remains the same.

4. Interested parties may submit their data, views or arguments to Bruce McGinnis, Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601, no later than July 28, 1979.

The authority of the Department to make the proposed amendments is based on Section 16-1-303 (§4-1-303 R.C.M. 1947) implementing 16-3-103 MCA (§4-3-103, R.C.M., 1947).

DEPARTMENT OF REVENUE

Mary L. Craig

MARY L. CRAIG, Director

Certified to the Secretary of State June 19, 1979.

12-6/28/79 **MAR Notice No. 42-2-127**

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of a rule 1. Allowing holders of a to sell liquor off premises and defining special event.	)))))	NOTICE OF PUBLIC HEARING for Adoption of Rule 1 - Catering Endorsement

TO: All Interested Persons:

(1) On July 18, 1979, at 9:30 a.m. a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Helena, Montana 59601 to consider the adoption of Rule 1 which provides the holders of a catering endorsement may sell liquor off their regular premises at special events and defining special events.

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

(3) The proposed rule provides as follows:

Rule 1 - Catering Endorsement (1) Any all-beverage licensee, having obtained a catering endorsement under the provisions of Section 16-4-204, MCA 1978, is authorized to sell alcoholic beverages to persons attending a special event upon premises not otherwise licensed.

(2) For purposes of this section a 'special event' may be defined as any occasion including but not limited to picnics, fairs, conventions, civic or community enterprises or sporting events lasting one or more consecutive days.

(3) Licensees granted approval to cater such special events are subject to the provisions of Section 16-6-314, MCA and Section 42-2.12(6)-S12015, MAC.

(4) The Legislature adopted Chap. 139, Laws 1979 which allows holders of an all-beverage license to add a catering endorsement. The purpose of the catering endorsement is to allow a licensee to sell alcoholic beverages at special events within a 100-mile radius of the licensee's regular premises. The Rule contains definitions of special event. The underlying statute contains no definition of the term. Such definition is necessary so that licensees with the endorsement may have some idea of what events they may cater. The Department has received inquiries of this nature. Rather than work on a case by case basis it is the position of the Department a Rule is necessary to give guidance.

(5) Interested parties may present their data, views or arguments, either orally or in writing, at the hearing. Written comments will be received by the Department until July 26, 1979. Written comments shall be submitted to R. Bruce McGinnis, Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601.

(6) Mr. Ross W. Cannon has been designated to preside over

and conduct the hearing.

(7) The authority of the agency to make the proposed rule is based upon Section 16-1-303. Implementing 16-4-204 (§4-4-206, RCM 1947).

DEPARTMENT OF REVENUE

Mary L Craig

MARY L. CRAIG, Director

Certified to the Secretary of State 6-14-79

BEFORE THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 12-2.6(3)-S6170 relating to bird stamp artwork contest rules	NOTICE OF THE AMENDMENT OF RULE 12-2.6(3)-S6170

TO: All Interested Persons:

1. On April 26, 1979, the Department of Fish, Wildlife, and Parks published notice of a proposed amendment of a rule concerning bird stamp artwork contest rules on page 383 of the 1979 Montana Administrative Register, issue No. 8.

2. The department has amended the rule as proposed.

3. No comments or testimony were received. The department has amended the rule for two major reasons: (1) the protection of the artwork itself, and (2) standardization of its size.

Robert F. Wambach
Director

Certified to Secretary of State June 18, 1979

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of new rules regarding recodification of ARM and the amendment of 1.2.111 ANNUAL REVIEW OF RULES BY AGENCY.	))))	NOTICE OF ADOPTION OF NEW RULES REGARDING RECODIFICATION OF ARM AND AMENDMENT OF 1.2.111 REGARDING ANNUAL REVIEW.

TO: All Interested Persons:

1. On May 10, 1979, the Secretary of State published notice of proposed amendment and adoption of new rules concerning annual review and recodification at page 415, of the 1979 MAR issue no. 9.

2. 1.2.403 (1.2.111) BIENNIAL REVIEW OF RULES BY AGENCY has been amended as proposed.

1.2.301 (Rule I) RECODIFICATION OF THE ADMINISTRATIVE RULES OF MONTANA (ARM) has been adopted as proposed with the exception of a change in (4) - the dates listed as April 22, 1979 should read April 20, 1979.

1.2.311 (Rule II) SCHEDULE FOR SUBMITTING RECODIFIED PAGES has been adopted with the following changes:

(1) the date listed as April 22, 1979 should read April 20, 1979.

(2) through (4) remain the same.

~~(5) Sufficient time must be allotted by August 30, 1979, by each department to thoroughly review its chapters, rearrange if necessary, and submit to the secretary of state, the title's chapter table of contents which indicates the chapter numbers names and the beginning page number of each chapter. This table is needed to furnish the subscribers to the Administrative Rules of Montana the insertion and removal instructions of the replacement pages.~~

~~(6)~~ (5) remains the same.

(6) After the organizational rule is recodified and refiled by June 30, 1979, the number of pages prescribed for the remaining four replacement page dates, will be approximately one-fourth of each department's existing pages.

~~(7) The number of pages prescribed for the four remaining replacement dates will be approximately 1/4 of the existing pages, along with the usual number of replacement pages that reflect rule changes that have appeared in the register for the past three months. Since we are accepting recodified pages in chapter increments only, the rule change replacement pages will not be recodified unless they are being placed in the chapters being recodified or that have already been recodified.~~

(7) All recodified pages will be accompanied by a recodification order which will indicate the old rule number, the new rule number and the catchphrase. This order will serve as a checklist for the secretary of state to account for every rule in each title.

(8) All recodified pages will be held in the secretary of state's office until recodification is complete. They will be sent to the printer in July 1980 and upon return, each subscriber will receive a completely assembled recodified set of ARM.

1.2.312 (Rule III) VALIDITY OF RULES IF PAGES SPECIFIED ON AGENCY'S SCHEDULE ARE NOT SUBMITTED BY DATE SPECIFIED adopted as proposed.

1.3.341 (Rule IV) OFFICIAL REPORT OF THE RECODIFICATION OF TITLE adopted as proposed.

3. No comments or testimony were received. ARM 1.3.311 SCHEDULE FOR SUBMITTING RECODIFIED PAGES is changed due to the fact that the secretary of state has decided to withhold all recodified pages until July 1980 to be printed and distributed to subscribers to ARM.

Dated this 19th day of June 1979.

Frank Murray

FRANK MURRAY
Secretary of State

By: Edward L. Larson

Chief Deputy

BEFORE THE COMMISSIONER OF CAMPAIGN
FINANCES AND PRACTICES OF
THE STATE OF MONTANA

In the matter of the repeal of rules ARM 44-3.10(6)-S1041, 44-3.10(6)-S1070, 44-3.10(6)-S1081, 44-3.10(6)-S1086, 44-3.10(10)-S10130, 44-3.10(10)-S10160, 44-3.10(10)-S10180 through 44-3.10(10)-S10200, 44-3.10(10)-S10230, and 44-3.10(10)-S10390 through 44-3.10(10)-S10410; and amending rules relating to campaign finances and practices.	NOTICE OF REPEAL OF RULES AND AMENDMENT OF RULES ARM 44-3.10(2)-P1010(44.10.201), 44-3.10(6)-S1060(44.10.321), 44-3.10(6)-S1080(44.10.323), 44-3.10(6)-S1090(44.10.325), 44-3.10(10)-S10120(44.10.401), 44-3.10(10)-S10125(44.10.403), 44-3.10(10)-S10150(44.10.407), 44-3.10(10)-S10240(44.10.507), 44-3.10(10)-S10250(44.10.511), 44-3.10(10)-S10330(44.10.523)

TO: All interested persons

1. On May 10, 1979, the Commissioner published notice of the proposed repeal and amendment of several rules relating to campaign finances and practices. The rules were set forth at pages 420 through 425 of the Montana Administrative Register, issue number 9 (1979).

2. The Commissioner has repealed and amended the rules as proposed, with only minor editorial changes.

3. The Commissioner has repealed and amended the rules concerned for the following reasons: (1) to edit the rules for style and grammar, (2) to eliminate language which is now redundant due to recent amendments to the Montana Campaign Practices Act in which the language of repealed rules is substantially duplicated, and (3) as a part of the Agency's annual review of its rules. No substantive change in the law is intended. No requests for a hearing were received and no comments or testimony were received. Authority: section 13-37-114.

4. The amendments and repeals are effective July 1, 1979.

In the matter of the amendment of rule ARM 44-3.10(6)-S10100, which describes various types of political committees under the Montana Campaign Practices Act	NOTICE OF AMENDMENT OF ARM 44-3.10(6)-S10100 (44.10.327)

TO: All interested persons

1. On May 10, 1979, the Commissioner published notice of intent to amend ARM 44-3.10(6)-S10100, concerning various types of political committees under the Montana Campaign Practices Act. The rule as proposed to be amended is set forth at page 426 of the Montana Administrative Register, issue number 9 (1979).

2. The Agency has amended the rule as proposed.

3. No comments or testimony were received. The Agency is amending the rule because recent amendments to the Campaign Practices Act make the classification of political committees significant for the purposes of filing reports, and the amendment clarifies the standards under which committees will be classified. Authority: 13-37-114.

4. The amendment is effective July 1, 1979.

In the matter of the amendment of rule ARM 44-3.10(10)-S10170, which prescribes a schedule for the filing of reports by incidental political committees under the Montana Campaign Practices Act	NOTICE OF AMENDMENT OF ARM 44-3.10(10)-S10170 (44.10.411)

TO: All interested persons

1. On May 10, 1979, the Commissioner published notice of intent to amend ARM 44-3.10(10)-S10170. The rule concerns the schedule for filing of reports by incidental political committees.

2. The Agency has amended the rule substantially as proposed, with only minor editorial changes.

3. No comments or testimony were received. The Agency is amending the rule because recent amendments to the Campaign Practices Act give express authority to treat incidental political committees differently from principal campaign committees. In general, such incidental committees will have to file fewer reports, as the rule now provides. Authority: 13-37-114.

4. The amendment is effective July 1, 1979.

In the matter of the amendment of rule ARM 44-3.10(10)-S10310, which provides a definition of "itemized account of proceeds" as the term is used in the Campaign Practices Act	NOTICE OF AMENDMENT OF ARM 44-3.10(10)-S10310 (44.10.521)

TO: All interested persons

1. On May 10, 1979, the Commissioner published notice of intent to amend ARM 44-3.10(10)-S10310, which concerns the reporting of itemized accounts of proceeds of fund-raising activities under the Campaign Practices Act.

2. The Commissioner has amended the rule substantially as proposed, with the following changes:

44-3.10(10)-S10310 MASS COLLECTIONS AT FUND-RAISING EVENTS - ITEMIZED ACCOUNT OF PROCEEDS, REPORTING (1) For purposes of section 13-37-229(7), MCA:

(a) "Mass collections" made at a fund-raising event include the proceeds received from passing the hat or from the sale of items such as campaign pins, flags, emblems, hats, banners, raffle tickets, auction items, refreshments, baked goods, admission tickets and similar items sold at a dinner, rally, auction, dance, bake sale, rummage sale or similar fund-raising event. Provided, that mass collections do not include the proceeds of purchases of ~~which total more than~~ $25 or more ~~from any one person~~ at ~~a particular fund-raising~~ the event.

(b) "Itemized account of proceeds" means the date and number of individuals in attendance at a fund-raising event, a description of the method utilized to gain the proceeds of a mass collection (i.e.; passing the hat, sale of raffle tickets, auction items, etc.) and the total amount received from each method utilized.

(2) For purposes ~~of determining those persons who contribute a total of $25 or more through mass collections at a fund-raising event and for purposes~~ of preparing the statement of deposit required by section 13-37-207(2), MCA, a record identifying the name of and amount received from each person must be maintained for ~~each~~ a purchase of ~~any item sold at a cost of~~ $~~15~~25 or more. The proceeds of ~~items sold at a cost~~ purchases of less than ~~$15 and contributions received from passing the hat, if less than~~ $25 ~~from any one person,~~ may be recorded and deposited in lump sum without identifying the name of the contributor.

3. No comments or testimony were received. The amendment is adopted in order to ease record-keeping requirements for fund-raising activities. The prior version of the rule, in effect, required preparation of a statement of deposit which itemized every purchase or donation at a fund-raiser, regardless of amount. That burden of record-keeping was probably severe enough to discourage many candidates and committees from holding fund-raisers at all. Under the rule as amended, only purchases of $25 or more need to be accounted for by name and identification of the purchaser. The Agency feels it is better to sacrifice some accuracy rather than to force candidates and committees to depend on fewer and larger contributions. Authority: 13-37-114.

4. The amendment is effective July 1, 1979.

In the matter of the adoption of two rules; one prescribing the circumstances under which a year-end report must be filed by independent political committees, and one prescribing rules for the filing of reports by out-of-state political committees which file reports with the Federal Election Commission)	NOTICE OF ADOPTION OF NEW RULES I AND II **(44.10.409 and 44.10.413)**

TO: All interested persons

1. On May 10, 1979, the Commissioner gave notice of intent to adopt two new rules, designated I and II, dealing with year-end reports by independent political committees and filing of reports by non-resident and federally-filing committees respectively. The language of the new rules is set forth on page 431 of the Montana Administrative Register, issue number 9 (1979).

2. The Commissioner has adopted the new rules substantially as proposed, with only minor editorial changes.

3. No comments or testimony were received. Rule I is adopted because recent amendments to section 13-37-226, MCA, provide for filing of a year-end report by independent committees on a date to be prescribed by the Commissioner. It is expected that the new report will not result in any increase in the overall number of reports filed by committees in most circumstances.

Rule II is adopted because recent amendments to section 13-37-227, MCA, mandate that the Commissioner shall by rule provide for the filing of reports by committees which are headquartered out-of-state and committees which file periodic reports with the Federal Election Commission. In most cases such committees can satisfy the requirements of the Montana Campaign Practices Act by filing copies of reports already filed with other agencies.

4. The authority of the Commissioner to adopt the proposed rules is based on section 13-37-114, MCA (§23-4786(14), R.C.M. 1947); and sections 13-37-226(4)(c) and 13-37-227, MCA (no equivalent R.C.M. statutes.) Implement: sections 13-37-226(4)(c) and 13-37-227, MCA (no equivalent R.C.M. statute.)

5. The rules are effective July 1, 1979.

John N. Hanson

JOHN N. HANSON
Commissioner of Campaign
Finances and Practices

Certified to the Secretary of State June 19, 1979.

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VOLUME NO. 38 OPINION NO. 21

LICENSES - Applicability of new car sales tax to disabled veterans;
VETERANS - Free license plates - applicable taxes;
MONTANA CODE ANNOTATED - Sections 10-2-301 and 61-3-502.

HELD: A disabled veteran who qualifies under section 10-2-301, MCA, may receive free license plates for a new motor vehicle upon payment of a one percent personal property tax, and without payment of a new motor vehicle sales tax imposed under section 61-3-502, MCA.

15 June 1979

Chester L. Jones, Esq.
Madison County Attorney
Virginia City, Montana 59755

Dear Mr. Jones:

You have requested my opinion on a question which I have phrased as follows:

> May a disabled veteran receive free license plates for a new motor vehicle without payment of the new motor vehicle sales tax?

Section 10-2-301, MCA, provides that veterans who suffer from a one hundred percent service connected disability "shall be provided free license plates upon payment of personal property tax equal to one percent of the taxable value for such automobile or truck and upon proof of one hundred percent service connected disability." Your question arises from the apparent conflict between this provision and section 61-3-502, which creates a "new motor vehicle sales tax" to be collected from the owners of new vehicles in lieu of the personal property tax. The Division of Motor Vehicles has apparently taken the position that a disabled veteran must pay the new motor vehicle sales tax in order to receive license plates under section 10-3-301.

In reconciling this conflict, I am mindful that the people of Montana have specifically recognized the propriety of conferring special privileges and considerations on veterans.

Article II, Section 35 of the 1972 Montana Constitution provides, "The people declare that Montana servicemen, servicewomen, and veterans may be given special considerations determined by the legislature." As I noted in 37 OP. ATT'Y GEN. NO. 167 (1978), this provision constitutes a "strong statement of public policy" in favor of veteran's preference legislation.

Your question presents a conflict between partially overlapping general and special statutes. Section 61-3-502, MCA, is a statute of general application governing the taxation of new motor vehicles. It provides that normally, a sales tax and not a property tax will be levied on new motor vehicles. Section 10-2-301, MCA, in contrast, is a special statute dealing with the registration and licensing of motor vehicles, including new motor vehicles, belonging to qualifying veterans. The conflict in these provisions may be resolved by reference to the rule stated by the Montana Supreme Court in City of Billings v. Smith, 158 Mont. 197, 211, 490 P.2d 221 (1971):

> Where one statute deals with a subject in general and comprehensive terms, and another deals with a part of the same subject in a more minute and definite way, the latter will prevail over the former to the extent of any repugnancy.

Here, the special registration and licensing provisions of section 10-2-301, MCA, must control the registration and licensing of vehicles owned by qualifying veterans. This is especially true in light of the strong policy in favor of veteran's preference legislation and the fact that the special statute was enacted after adoption of the general statutory scheme. State v. Holt, 121 Mont. 459, 476, 194 P.2d 651 (1948).

Section 10-2-301, MCA, allows a qualifying veteran to receive "free license plates" upon satisfaction of two conditions, (1) proof of one hundred percent service connected disability; and (2) payment of a one percent personal property tax. It was obviously the intent of the legislature to allow qualifying veterans to register and license their vehicles, new and used, upon satisfaction of these conditions and no others.

THEREFORE, IT IS MY OPINION:

A disabled veteran who qualifies under section 10-2-301, MCA, may receive free license plates for a new motor vehicle upon payment of a one percent personal property tax, and without payment of a new motor vehicle sales tax imposed under section 61-3-502, MCA.

Very truly yours,

MIKE GREELY
Attorney General

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