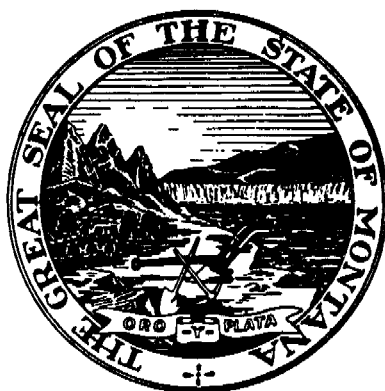


RESERVE

MONTANA ADMINISTRATIVE REGISTER

1979 ISSUE NO. 16
PAGES 861 — 1035



NOTICE: The July 1977 through June 1979 Montana Administrative Registers have been placed on microfiche. For information, please contact the Secretary of State, Room 202, Capitol Building, Helena, Montana, 59601.

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BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adop-) NOTICE OF PROPOSED ADOPTION OF
tion of new rules: Rule I) NEW RULES I THROUGH XII ESTABLISH-
through XII.) ING PROCEDURES FOR APPLICATIONS
) FOR FUNDING RESEARCH, DEVELOPMENT,
) PRODUCTION AND MARKETING OF FUEL
) AND FOOD DERIVED FROM MONTANA
) WHEAT AND BARLEY
) NO PUBLIC HEARING CONTEMPLATED

TO: All interested persons

1. On the 1st day of October, 1979 the Montana Department of Agriculture proposes to adopt new Rules I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII, establishing procedures for applications for funding research, development, production and marketing of fuel and food derived from Montana wheat and barley.

2. The proposed rules provide as follows:

Rule I PURPOSE OF RULES Senate Bill 520 enacted by the 1979 Montana Legislature provided for funding through the Department of Agriculture for research relating to development, production and marketing of fuels and food products derived from Montana wheat and barley.

Rule II DEFINITIONS Unless the context requires otherwise, as used in the act and in these rules:

(1) "Act" means Chapter No. 530, Montana Session laws of 1979 (also referred to as the "Wheat Research and Marketing Act", Section 80-11-206 et seq., M.C.A.

(2) "Fuel" means ethanol or other energy sources derived from Montana produced agriculture crops mainly wheat or barley

(3) "Food" means a source of energy to be consumed by humans or animals produced as a by-product in the process of manufacturing ethanol or other energy sources

(4) "Department" means Montana Department of Agriculture

(5) "Contract" means to award grants for research or construction of facilities for the production of fuel or food in Montana using Montana produced products

(6) "Application" means a written proposal to the department for grants under the terms of the act and these rules

(7) "Research" means an extensive, systematic study to discover or revise facts or theories and which would bring to a more advanced state the capabilities, availability and suitability of production of fuel and food from wheat and barley

(8) "Person" means a natural person, corporation, partnership, or other business entity, association, cooperative,

trust, foundation, any educational or scientific institution, or any governmental unit

(9) "Develop or development" means a project which utilizes the basic results of research or available knowledge and applies these results or knowledge to the actual development of hardware. The term also includes the establishment of manufacturing or processing facilities to produce fuel and food from wheat and barley

(10) "Demonstrate" or "demonstration" means an extensive, systematic plan and follow through to establish that specific theories and processing or manufacturing techniques are practical and can be made to work reliably over long periods of time. These projects are primarily physical models which can be observed or examined

Rule III STATEMENT OF ADMINISTRATIVE POLICIES (1) It is the intention of the Department to conduct the funding program in such a manner as to obtain the maximum amount of research and development possible for the moneys expended and, in addition to attract the maximum amount of federal and/or private matching funds which can be utilized in the funding program.

(2) It is the objective of the Department to give funding preference to development and demonstration projects.

(3) It is the objective of the Department to only grant funding for applications which are submitted by persons who are residents of the state of Montana, and only for projects conducted in Montana. "Conducted" means that the research and development project will be headquartered in Montana and that all development will be built in Montana. This condition does not prohibit the use of expertise from outside the State of Montana.

(4) Persons who are employees or contractors of the Department, relations of such persons by consanguinity within the fourth degree or by affinity within the second degree, and public utility companies are not eligible for funding.

(5) The Department will solicit comment from the Wheat Research and Marketing Committee and other farm organizations and individuals as to which applications should be considered for funding. Final decision will be made by the department.

(6) As a general rule applications for more than \$100,000 will not be granted. However, the Department will accept and review applications for more than \$100,000. If the Department determines that such a proposal is particularly applicable to Montana's energy needs and technically outstanding, it may be funded. There is no lower limit for funding.

(7) In order for an application for funding to be considered the project must relate directly to the fuel and food energy needs of Montana, the utilization of Montana wheat and/or barley, and shall be compatible to Montana conditions and environment.

(8) The Department may fund all or only part of a proposal. Generally, only applications which are directly related to research or construction of fuel or food facilities will be funded.

Rule IV APPLICATIONS - GENERAL REQUIREMENTS (1) Any Montana resident may make application for a grant to fund a proposal or project under the Act and these rules. The applicant should normally submit ten copies of the application at the time of filing to the Department of Agriculture, Agriculture/Livestock Building, 6th and Roberts, Helena, Montana 59601, in a format consistent with these rules. A lesser number of copies may be submitted upon prior approval of the Department.

(2) Although not required, to facilitate uniformity the application should meet the following requirements:

(a) The application should be typed, printed, or otherwise legibly reproduced on 8 1/2 x 11" paper. Maps, drawings, charts, or other documents bound in an application should be cut or folded to 8 1/2 x 11" size. Maps, drawings, or charts may accompany an application as separate exhibits.

(b) Typed or offset material should have a one (1) inch margin on all sides.

(c) All pages in an application should be consecutively numbered. Maps, drawings, or charts accompanying the application as exhibits should be identified as "Exhibit _____", and if comprising more than one sheet should be numbered "sheet _____ of _____".

(3) (a) The application shall state the name, title, telephone number, and post office address of the person to whom communication in regard to the application should be made.

(b) The application shall contain a statement agreeing that all materials submitted by the applicant to the Department are subject to public scrutiny.

(4) The Department will review the application to determine whether it is in substantial compliance with the Act and these rules. If the Department determines that the application is not in substantial compliance with the Act and these rules, the application will be considered deficient and the Department will reject the application, notifying the applicant in writing and listing the application deficiencies. The application may be resubmitted after corrections are made.

(5) The applicant should submit supplemental material upon request or when it becomes available without undue delay after an application is filed and information submitted with the original application.

(6) If an applicant desires to change or add to an application, after it is formally filed, the applicant shall inform the Department in writing as soon as possible of the change or addition. If the change or addition will result in a substantial change in the amount of funding requested or the goals and objectives stated in the original application, the Department will consider the change or addition to constitute a new application.

(7) There is no official form adopted by the Department to fill out in making an application.

Rule V APPLICATION CONTENT (1) An application shall include a general declaratory statement indicating whether the

applicant is seeking funds for a research, development or construction project.

- (a) The proposed research methods and construction methods if construction is a factor;
- (b) The proposed facilities and equipment needed, including physical dimensions, diagrams and photographs;
- (c) The proposed time schedule for project development;
- (d) A description of the proposed anticipated results, both practical and theoretical;
- (e) A statement indicating where the project will be constructed, and why that particular site is suited to the proposed project;
- (f) A statement indicating who will work on the project, and what their various qualifications are;
- (g) A statement of the role of the project in meeting future energy and food needs;
- (h) A statement of how the project will be feasible and applicable;
- (i) A statement of the project's environmental compatibility, especially:
 - (i) Pollutants or contaminants produced;
 - (ii) An estimate of the net production yield of the project per unit of time;
 - (iii) An estimate of the by-products and their utilization.
- (2) The application shall include an estimated maximum budget which may not be exceeded, which should contain:
 - (a) The wages and salaries of all research personnel, clerical help, craftsmen, etc. (itemized);
 - (b) A list of employee benefits;
 - (c) A list of building costs;
 - (d) A list of equipment costs (equipment generally are permanent items);
 - (e) A list of administrative and overhead costs;
 - (f) A list of the cost of supplies (supplies generally are exhaustible items);
 - (g) A list of communication and travel costs;
 - (h) A list of any other expenses.
- (3) The application should contain a copy of all contracted or subcontracted work, including budgets, who is to do the work, and what work is to be done. If these are not available at the time of application, they shall be submitted at the time they become available.

Rule VI APPLICATION SUBMITTAL DEADLINES Applications for fiscal 1980 funding shall be submitted by September 30, 1979 and June 30th thereafter.

Rule VII APPLICATION EVALUATION (1) In general applications will be reviewed and evaluated by members of an Ad-Hoc Technical Committee which will be established by the Department. Technical evaluations will be done on an anonymous and confidential basis and the results will be disclosed to the applicant upon request.

(a) If in the opinion of the Ad-Hoc Technical Committee there is a question concerning a possible patent infringement, they may request the applicant to include a patent search which cost may be included in the project funding.

(b) If discoveries are made which are deemed to be patentable, patent applications thereon may be filed. In such cases, the Department may delay public disclosure so that patent protection is not jeopardized. The Department will not be obligated to bear any expense involved in filing for, procuring or defending patents and accordingly will not receive rights under any patents which may be issued.

Rule VIII AWARDING GRANTS - CRITERIA (1) A grant awarded by the Department may cover a period exceeding one (1) year. The Department may, issue letters of intent to renew projects which require more than one year for completion if in the opinion of the Department, the first year of work is successful and achieves the goals established by the original application. Applications for renewal will be evaluated in the normal evaluation manner and must compete with new applications for funding.

(2) The Department may give preference to research centers unattached to existing educational institutions where several investigators can share supporting services. However, this shall not be interpreted to prohibit the Department from awarding grants to existing educational institutions or individuals.

(3) If any project defined under the development type of application is successful, the applicant may be required to repay the Department all or part of the funds granted.

(4) By law, all information resulting from research, development, or demonstration projects funded by the Department under the Act and these rules shall be made available to the public and may not become the private property of or under the exclusive control of any one company or person.

(5) The Department is under no requirement to expend or commit available funds when in its judgement such expenditures or commitments would be unproductive.

Rule IX CONDITIONS UNDER WHICH GRANTS MAY BE USED AND OTHER CONDITIONS (1) Applicants shall enter into a contract grant agreement with the Department if funded, under such terms and conditions the Department considers appropriate. If the recipient feels that changes in the contract are necessary at some later date, then those changes shall be negotiated with the Department. If a satisfactory agreement cannot be reached, the contract and the funding may be terminated by the Department.

(2) Grant recipients shall submit periodic progress reports as specified by the Department, and shall submit final reports to the Department within three (3) months following the yearly grant period.

(3) Grant recipients shall make oral or written presentations of progress if requested to do so by the Department.

(4) Funds granted under the terms of the Act and these rules may be used only for the purposes outlined and described in the application and approved by the Department, and detailed records shall be kept by the recipient for all expenditures. Since the proposal budgets are initially estimated, some transfers up to twenty-five percent (25%) among the budget categories expenditures will be allowed.

(5) The grant recipient shall maintain an accounting system which adequately accounts for expenditures in a manner acceptable to the Department. Records, expenditures, bookkeeping etc. for funded projects are subject to audit by the Office of the Legislative Auditor and the Department.

(6) Arrangements shall be made to assist, guide, and inform the Department during on sites investigations. The Department will make such investigations at its discretion.

Rule X PAYMENT OF GRANTS (1) Upon approval of an application by the Department, funds will be set aside for the particular project.

(2) Payments shall be made on a monthly or quarterly basis against the balance of a given application's funds, upon a request for payment by the recipient.

(3) Payments will be made only on valid project related expenditures.

Rule XI PROJECT ADMINISTRATION (1) The results of all research, development or demonstration projects shall be made to the Department or their designee.

(2) Persons receiving funds may be required to make their projects open to the public during reasonable hours for a period of time specified by the Department.

(3) The Department may inspect and monitor all projects on a regular basis during and after completion of the project.

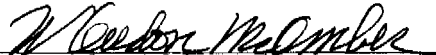
Rule XII CONFIDENTIALITY Upon submitting an application to the Department pursuant to Rules the application becomes a government document subject to public scrutiny. The applicant waives any claim of confidentiality by filing an application with the Department.

3. The rules are proposed to implement the procedures to be followed in filing and processing applications for funding grants provided in Senate Bill 520 enacted by the 1979 Montana Legislature.

4. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to Jack Gunderson, Administrative Officer, Montana Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59601, no later than September 28, 1979.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Jack Gunderson, Administrative Officer, Montana Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59601, no later than September 28, 1979.

6. The authority of the Department to make the proposed new rules is based upon Section 80-11-206(3) MCA 3-2911 RCM 1947 IMP, Section 80-11-205 MCA.


W. Gordon McOmber, Director

Certified to the Secretary of State August 21st, 1979.

BEFORE THE DEPARTMENT OF AGRICULTURE
THE STATE OF MONTANA

In the matter of the repeal of)	NOTICE OF PUBLIC HEARING
Rules 4.2.070, 4.2.080, 4.2.090)	FOR THE REPEAL OF THE
4.2.100, 4.2.110, 4.2.120,)	PRESENT RULES IMPLEMENTING
4.2.140, 4.2.150 pertaining to)	THE MONTANA ENVIRONMENTAL
the implementation of the)	POLICY ACT; AND ADOPTION OF
Montana Environmental Policy)	REVISED RULES IMPLEMENTING
Act; and the adoption of new)	MEPA
rules I through X implementing)	
MEPA)	

TO: All Interested Persons

1. On September 20, 1979, at 9:30 a.m. a public hearing will be held in Room 225, Agriculture-Livestock Building, Helena, Montana, to consider repeal of the present rules (with the exception of 4.2.130, the fee bill rule) implementing the Montana Environmental Policy Act, Chapter 1, Title 75, MCA, hereinafter referred to as "MEPA", and adoption of new rules pertaining to MEPA.

2. Although the new rules are similar in many respects to the present rules, the new format and many changes dictate that they be published as new rules. The new rules, as proposed for adoption, may be found in the notice section of 1979 MAR shown as MAR Notice No. 26-2-26, p 768-779.

3. The new rules are being proposed to streamline the MEPA process, standardize the MEPA process among executive agencies, provide for more public participation in the EIS process, and to make other numerous changes in the implementation of MEPA. The proposed new rules are being proposed by adoption by several other executive agencies, and the hearing will be a joint hearing by all agencies proposing adoption.

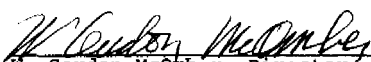
4. Any person may submit data, views, or comments concerning the proposed new rules either orally or in writing at the hearing. Written data, views, or arguments may be submitted to Raymond W. Brault, Department Attorney, Department of Agriculture, Room 229 Agriculture-Livestock Building, Capitol Station, Helena, Montana 59601 any time before September 28, 1979. To be considered, mailed comments must be postmarked on or before September 28, 1979.

5. Raymond W. Brault, Department Attorney, Department of Agriculture, has been designated to preside over and conduct the hearing.

6. The authority of the board and department to repeal and adopt is section 2-4-201 MCA (82-4293 RCM 1947). The code provisions implemented are Part 1, Chapter 1, Title 75 and section 73-1-201 MCA (69-6504).

MAR Notice No. 4-2-57

16-8/30/79


W. Gordon McOmber, Director
Department of Agriculture

Certified to the Secretary of State August 20. 1979.

16-8/30/79

MAR Notice No. 4-2-57

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

In the matter of the amend-) NOTICE OF PROPOSED AMEND-
ment of Rule 12-2.14(6)-S1430) MENT OF RULE 12-2.14(6)-
relating to nongame wildlife) S1430 RELATING TO NON-
in need of management) GAME WILDLIFE NO PUBLIC
) HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 1, 1979, the Department of Fish, Wildlife, and Parks proposes to amend Rule 12-2.14(6)-S1430.

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

12-2.14(6)-S1430 NONGAME WILDLIFE IN NEED OF MANAGEMENT (1) The following nongame wildlife species are determined by the department to be nongame wildlife in need of management within the meaning of the Nongame and Endangered Species Conservation Act, 87-5-101, et seq., MCA. Management regulations for these species will be issued annually by the department.

~~(a)--Wolverine-(Gulo-gulo)~~

~~(b)--Lynx-(Rufus-canadensis)~~

No species listed.

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

4. The department is proposing to amend this rule to meet the provisions of HB29 which directed the department to take the necessary administrative action to remove the wolverine and lynx from the listing of nongame species in need of management.

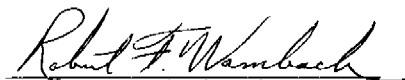
5. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to Robert F. Wambach, Director, Department of Fish, Wildlife, and Parks, 1420 E. 6 Avenue, Helena, Montana 59601. Written comments in order to be considered must be received no later than September 29, 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 September 29, 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 department to make the proposed amendment is based upon 87-1-201 and 87-5-110, MCA, implementing 87-5-105, MCA, and Section 2, Chapter 46, Laws of 1979. (Sec. 26-104, 26-1807, 26-1804, R.C.M.).



Robert F. Wambach, Director
Department of Fish, Wildlife, and Parks

Certified to Secretary of State August 20, 1979

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amend-	)	RENOTICE OF PROPOSED AMEND-
ment of Rule 12-2.6(1)-S650	)	MENT OF RULE 12-2.6(1)-S650
relating to priorities for	)	RELATING TO SPECIAL PERMIT
special permits	)	PRIORITIES NO PUBLIC
	)	HEARING CONTEMPLATED

TO: All Interested Persons:

1. At its first meeting after October 1, 1979, the Fish and Game Commission proposes to amend Rule 12-2.6(1)-S650.
2. The rule as proposed to be amended provides as follows:

12-2.6(1)-S650 SPECIAL PERMITS - PRIORITIES

(1) There is hereby established a priority system for hunters applying for limited special moose, sheep, and goat permits. Hunters who have received five (5) or more annual consecutive unsuccessful notices for the same species are eligible to apply for priority status for that species by enclosing the five (5) or more annual consecutive unsuccessful application notices in the current year's application envelope, marking the number of years' priority claimed on the outside of the envelope and mailing to the Department of Fish, Wildlife, and Parks, Helena, Montana 59601.

Notices must be for the same species in consecutive years and all issued to the person applying. Unsuccessful notices are not transferable.

Priority applications will be given first consideration in the order of number of unsuccessful notices submitted. When the number of priority applications exceeds the number of permits to be issued, a drawing will be held to determine successful priority applicants.

For the license year beginning May 1, 1980 and each succeeding year thereafter, the number of special licenses to be made available for hunting moose, mountain sheep, and mountain goat under this rule shall be allocated as follows:

(a) 75% of the number of licenses available for a species in each hunting district shall be allocated to applicants with preference for that species under this rule or building such preference under this rule;

(b) 25% of the number of licenses available for a species in each hunting district shall be allocated to applicants who do not hold preference for that species under this rule; applicants for a special license for a species under this subsection by electing to apply for a special license from the 25% available under the provisions of this subsection forfeit any and all preference previously obtained under provisions of this rule; and further, failure to obtain a license under this subsection may not be counted toward building preference under this rule;

(c) the 10% limitation applicable to non-residents shall be determined from the total number of special licenses available for a species in a hunting district.

3. The commission gave notice of proposal to amend this rule on December 14, 1978, and over the next several months held hearings, reviewed comments, discussed alternative modifications, and subsequently adopted the rule as set forth effective in July, 1979. However, amendments to the Montana Administrative Procedure Act require that action be taken and made effective within six months of first notice. Thus, it is necessary to renotece the proposed amendment of this rule.

4. The proposed amendment modifies Rule 12-2.6(1)-S650 found on page 12-18 of the Administrative Rules of Montana.

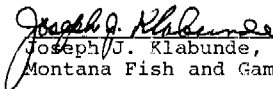
5. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to Robert F. Wambach, Director, Department of Fish, Wildlife, and Parks, 1420 E. 6 Avenue, Helena, Montana 59601. Written comments in order to be considered must be received no later than September 29, 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 September 29, 1979.

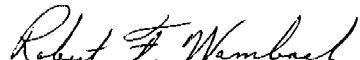
7. If the commission receives requests for a public hearing on the proposed amendment from more than 10% or 25 or more persons who are directly affected by the proposed amendment, or from the Administrative Code Committee of the Legislature, a hearing will be held at a later date. Notice of the hearing 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 make the proposed amendment is based upon Section 87-1-301 and implements Section 87-1-304, MCA. (Section 26-103.1 and 26-104.3, R.C.M. 1947).


Joseph J. Klabunde, Chairman
Montana Fish and Game Commission

Attest:


Robert F. Wambach, Secretary
Montana Fish and Game Commission

Certified to Secretary of State August 20, 1979

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amend-) NOTICE OF PROPOSED AMENDMENT
ment of Rule 12-2.18(1)-S1805) OF RULE 12-2.18(1)-S1805 --
relating to commercial) COMMERCIAL FISHING PERMITS
fishing permits) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Interested Persons:

1. At its first meeting after October 1, 1979, the Fish and Game Commission proposes to amend Rule 12-2.18(1)-S1805.
2. The rule as proposed to be amended provides as follows:

12-2.18(1)-S1805 COMMERCIAL FISHING PERMIT

(1) Any person desiring to harvest nongame fish from any body of water in the state for sale or commercial distribution must make written application to the director for a commercial fishing permit upon a form furnished by the department.

(2) The form must be signed by the applicant including mailing address and residence of applicant and stating specifically the waters and species of nongame fish desired for harvest and equipment owned or controlled by applicant.

(3) If an application is approved, applicant must then give a bond to the department in favor of the state of Montana in the sum of \$1,000 with corporate surety, conditioned on the faithful carrying out of the provisions of the application and permit. The department will then issue a license describing approved waters, species, seasons, and fishing methods.

(4) Commercial fishing on any water of the state, except Fort Peck Reservoir, will be limited to one operator unless the department determines that additional harvest would be beneficial. Also special regulations regarding gear, limits, seasons, closures, etc., may be imposed on any water. Existing fishermen will receive first priority for retaining present permits. If additional waters are approved for commercial fishing or existing fishermen terminate their operation, the following criteria will be used to select permits for each water.

(a) ability of applicant to provide desired level of harvest;

(b) number of years of commercial fishing under Montana contract or permit;

(c) adequacy of equipment and facilities and investment in land and facilities in Montana for commercial fishing;

(d) previous fishing experience;

(e) state of residence.

(5) Permit fees for a commercial fishing permit and species that may be taken are as follows:

~~Class A--\$500-per-year-which-authorizes-the-taking of-smallmouth-buffalo,-bigmouth-buffalo,-goldeye,-river-carpsucker,-freshwater-drum,-white-sucker,-shorthead-redhorse-sucker,-longnose-sucker,-carp, and-black-bullhead-for-commercial-purposes; Class B--\$200-per-year-which-authorizes-the taking-of-goldeye,-river-carpsucker,-freshwater drum,-white-sucker,-shorthead-redhorse-sucker,-longnose-sucker,-carp,-and-black-bullhead-for-commercial-purposes.~~

Class A--\$500 per year which authorizes the taking of all nongame species designated by the department for commercial purposes; Class B--\$200 per year which authorizes the taking of all nongame species designated by the department except smallmouth buffalo and largemouth buffalo for commercial purposes; Class X--may be granted for not more than 12 months with no fee required, which authorizes the taking of specific nongame species for commercial purposes on an experimental basis. The Class X permit must be replaced by a Class A or Class B permit after 12 months' operation unless a renewal is specifically authorized in writing by the commission.

(6) Issuance of Class X Permits. Class X permits may be issued to those persons who desire to determine the feasibility of a commercial fishing operation in waters and for nongame species for which there has been no history of commercial fishing. Criteria for issuance of a Class X permit are (a) the method of harvest is new and untried, or (b) the operation will be carried out in waters which are difficult to run a commercial operation, or (c) the nongame species that is to be taken is not usually handled in the commercial trade.

~~467~~(7) The permittee shall keep written records of all his operations and transactions relating to the taking, sale of, or other disposal of fish. The permittee shall make reports on commercial fishing activities to the director on forms provided by the department. These reports shall be submitted within 30 days following the end of each month.

~~47~~(8) All species of fish except those taken as provided in paragraph 5 of this agreement shall be returned alive and unharmed to the waters from which they came. All dead game fish shall be cut and sunk.

3. The proposed amendment modifies Rule 12-2.18(1)-S1805 found on page 12-53 of the Administrative Rules of Montana.

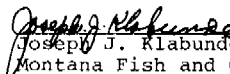
4. The commission is proposing to amend this rule to allow the issuance of permits for taking any of the state's nongame fish species. The Class X permit is designed to allow experimental fishing for any fish species not normally in the commercial market.

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 September 29, 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 September 29, 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 make the proposed amendment is based upon Sections 87-1-201, 87-1-301, and 87-3-204, MCA, implementing Sections 87-3-204 and 87-4-602, MCA. (Sec. 26-202.4, 26-103.1, 26-332, and 26-333 R.C.M. 1947)


Joseph J. Klabunde, Chairman
Montana Fish and Game Commission

Certified to Secretary of State August 20, 1979

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

In the matter of the amendment)	NOTICE OF PROPOSED AMEND-
of Rule 12-2.6(3)-S6170 relat-	MENT OF RULE 12-2.6(3)-
ing to bird stamp artwork)	S6170 - BIRD STAMP ARTWORK
contest rules)	CONTEST RULES
)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Interested Persons:

1. On October 1, 1979, the Department of Fish, Wildlife, and Parks proposes to amend Rule 12-2.6(3)-S6170.
2. The rule as proposed to be amended provides as follows:

12-2.6(3)-S6170 BIRD-STAMP-ARTWORK BIRD ART STAMP CONTEST RULES (1) There will be an annual contest for selection of a design for ~~the game bird licenses, Class-A-1 and Class-B-1, when issued by the department in the form of stamps,~~ a bird art stamp to be issued in conjunction with the game bird license.

Individuals who desire to submit artwork for consideration as the design selected for a license year may do so under the provisions of this rule.

((2) through (5) remains unchanged)

(6) Individuals submitting entries do so with the following understandings:

(a) The artist retains reproduction rights.

(b) Neither the department nor the commission will provide any financial remuneration; however, the winning artist will receive 10 ~~bird stamps~~ bird art stamps depicting that artist's winning entry.

(remainder of the rule is unchanged)

3. The proposed amendment modifies Rule 12-2.6(3)-S6170 found on page 12-18.5 of the Administrative Rules of Montana.

4. The department is proposing to amend this rule because the new license format requires that the dimensions of the bird stamp be approximately 5" x 1/2". This makes it impossible to place the artwork on such a stamp. Thus, the department proposes to make the stamp a separate item.

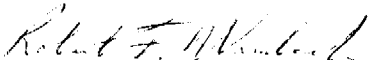
5. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to Robert F. Wambach, Director, Department of Fish, Wildlife, and Parks, 1420 E. 6 Avenue, Helena, Montana 59601. Written comments in order to be considered must

be received no later than September 29, 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 September 29, 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 department to make the proposed amendment is based upon 87-1-201, MCA, and implements 87-2-107, MCA. (Section 26-202.4 and 26-212, R.C.M. 1947).



Robert F. Wambach, Director
Dept. of Fish, Wildlife, and Parks

Certified to Secretary of State August 20, 1979

BEFORE THE ATTORNEY GENERAL
OF THE STATE OF MONTANA

In the matter of the Amendments	)	NOTICE OF PROPOSED
to the Attorney General's Model	)	AMENDMENTS TO THE
Rules.	)	ATTORNEY GENERAL'S
	)	MODEL RULES; NO
	)	PUBLIC HEARING
	)	CONTEMPLATED.

TO: All Interested Persons

1. On October 2, 1979, the Attorney General proposes to amend the Model Rules of Procedure, Rule 1.6.101 et seq., MCA.

2. The amendments are being proposed to revise and update the Model Rules to reflect statutory changes since the last amendments in 1977.

3. The proposed amended rules are as follows:

*Will be
Chap. 3*

SUB-CHAPTER 1

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

³
1.1.101 INTRODUCTION. (1) All section numbers refer to the Montana Code Annotated. Section 2-3-103(1) 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 2-3-102(1). Note that exceptions to the term "agency" are fewer under this section than the Montana Administrative Procedure Act, section 2-4-102(1). "Agency action" is defined by section 2-3-102(3); exceptions are listed in section 2-3-112. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

⁴
1.1.102 Model Rule 1 NOTICE OF AGENCY ACTION THAT IS OF SIGNIFICANT INTEREST TO THE PUBLIC. (1) In accordance with sections 2-3-102 through 2-3-114, prior to making a final decision that is of significant interest to the public, the agency shall afford reasonable opportunity for public participation. Public participation may be afforded by:

(a) any of the agency actions allowed pursuant to section 2-3-104; or

(b) the publishing of 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-) NOTICE OF PROPOSED
description of proposed) AGENCY ACTION
agency action))

TO: All Interested Persons.

1. The (3-name of agency) proposes to (4-description of agency action; for ex: amend Model Rules 1.1.101 through 1.1.110, 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 at least 28 days from the day of notice. 2-4-302(4)).

name of department head or chairman of governing board must be signed by:

By: (7-Authorized person's signature)

(History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

SUB-CHAPTER 2

ORGANIZATIONAL AND PROCEDURAL RULES REQUIRED BY THE MONTANA ADMINISTRATIVE PROCEDURE ACT

1.6.201 INTRODUCTION. (1) All section numbers refer to the Montana Code Annotated. The Montana Administrative Procedure Act includes section 2-4-101 through 2-4-711.

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 2-4-201. Section 2-4-202 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. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

1.6.202 APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.

The Act applies to all state agencies as defined in section 2-4-102(2). Note that the state board of pardons is subject to only the sections enumerated in sections 2-4-103, 2-4-201, 2-4-202 and 2-4-306. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

1.6.203 ORGANIZATIONAL RULE. (1) An agency need not comply with the Montana administrative procedure act notice and hearing requirements when adopting an organizational rule. Section 2-4-201(1).

(2) The organizational rule must be reviewed biennially to determine whether it should be modified. Section 2-4-314.

(3) The organizational rule should contain the following:

(a) the items required by section 2-4-201(1),

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

(c) in the spirit of the rule, a personnel roster of agency heads, divisions 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. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

1.6.204 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

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

(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 of 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. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

1.6.205 RULE MAKING, INTRODUCTION. (1) Title 2, Chapter 4, Part 3 prescribes procedures to be followed by agencies when adopting, amending or repealing rules.

(2) See section 2-4-102(10) 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) Rule making checklist. Rule making 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 not discussed in model rule 6. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

1.6.206 Model Rule 2 RULE MAKING, PETITION TO PROMULGATE, AMEND OR REPEAL RULE.

(1) Section 2-4-315 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,

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

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

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

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

TO: All Interested Persons.

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 1.6.604 page 1-47, Administrative Rules of Montana, 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's 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 exits 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) must initiate rule making proceedings pursuant to section 2-4-302.

(b) must make a timely ruling on the petition pursuant to section 2-4-315.

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

(d) must, 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. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

1.6.207 Model Rule 3 RULE MAKING, NOTICE.

(1) How notice is given. Section 2-4-302.

(a) An agency shall publish notice of intent to adopt, amend or repeal a rule in accordance with sections 2-4-302(2) and (3).

(b) An agency may send a copy of the notice to a state-wide wire service and any other news media it considers appropriate. Section 2-3-105.

(c) Whenever practicable and appropriate, the agency may send written notice to licensees of the agency. Section 2-4-631(3).

(2) Agency action must be taken within 6 months of the date on which notice was published or mailed. Section 2-4-305(6).

(3) Contents of notice.

(a) Notice of public hearing.

(i) The notice must include:

(A) All notice items required by section 2-4-302(1).

(I) The agency may issue a single public notice that it intends to adopt, amend and repeal several rules dealing with the same subject matter in a single proceeding (public hearing scheduled, or not contemplated).

(II) Whenever possible the agency must include in the notice a copy of any rule proposed to be adopted, amended or repealed. Summaries and paraphrasing are to be used only when it is not possible to include a copy of the proposed rule in the notice. Such summaries and paraphrasing must accurately reflect the substance of the proposed agency actions.

(B) a citation to the authority for the proposed rule;

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

TO: All Interested Persons.

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).

(Note: Option 1 is preferred. Options 2 and 3 are to be used only when it is not possible to provide the complete text. When options 2 and 3 are used the summaries and paraphrasing must accurately reflect the substance of the proposed rule.)

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 fatalities in 3 separate hotel or nursing home 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. Written data, views or arguments may also be submitted to (12-name, address), no later than (13-date at least 28 days from the day of notice. 2-4-302(4)).

6. (14-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 (15-), MCA.

name of department head or chairman of governing board must be signed by:

By: (16-Authorized person's signature)

Certified to the Secretary of State (17-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	)	NOTICE OF PUBLIC
of Rule (2-) (3-summary; for ex.:	)	HEARING ON PRO-
requiring sprinkler systems in	)	POSED AMENDMENT
wood frame structures of two	)	OF RULE (4-)
or more stories used for public	)	(5-subject; for
occupancy).	)	ex.: Sprinkler
	)	Systems).

TO: All Interested Persons.

1. On (6-date) at (7-time) a public hearing will be held in room (8-) of the (9-building), at (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 exit and fire escape requirements).

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

(14-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 (14-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 (14-paraphrase rule, describe the subjects and issues involved in the intended action).

(Note: Option 1 is preferred. Options 2 and 3 are to be used only when it is not possible to provide the complete

text. When options 2 and 3 are used the summaries or paraphrasing must accurately reflect the substance of the proposed rule.)

4. (15-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. Written data, views or arguments may also be submitted to (16-name, address), no later than (17-date at least 28 days from the day of notice. 2-4-302(4)).

6. (18-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 (19-), MCA.

name of department head or chairman of the governing board must be signed by:

By: (20-Authorized person's signature)

Certified to the Secretary of State (21-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	)	NOTICE OF PUBLIC
Rule (2-) (3-summary; for ex.:	)	HEARING ON REPEAL
requiring sprinkler systems in	)	OF RULE (4-)
wood frame structures of two or	)	(5-Subject; for ex.:
more stories used for public	)	Sprinkler Systems)
occupancy).		

TO: All Interested Persons.

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 structures of two or more floors used for public occupancy fall into one of those categories. Rule 1.6.604 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. Written data, views or arguments may also be submitted to (15-name, address), no later than (16-date at least 28 days from the day of notice. 2-4-302(4)).

5. (17-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 (18-), MCA.

name of department head or chairman of the governing board must be signed by:

By: (19- Authorized person's signature)

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

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

(i) The notice must include:

(A) all notice items required by section 2-4-302(1).

(B) in the case of substantive rules:

(I) 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, whichever is less, of the persons directly affected or a governmental subdivision or agency; or an association having not less than 25 members who will be 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;

(II) a statement of the number of persons directly affected who constitute 10%; and,

(III) 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	)	NOTICE OF PROPOSED
ADOPTION OF A RULE (2-	)	ADOPTION OF A RULE
summary; for ex.: speci-	)	(3-subject; for ex.:
fying the forms available)	)	Water Use Act Forms)
for use under the Montana))	
Water Use Act)	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons.

1. On (4-date), the (5-agency) proposes to adopt a rule (6-summary; for ex.: specifying the forms available for use under the Montana Water Use Act).

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).

(Note: Option 1 is preferred. Options 2 and 3 are to be used only when it is not possible to provide the complete text. When options 2 and 3 are used the paraphrasing and summaries must accurately reflect the substance of the proposed rule.)

3. (8-rationale for proposed rule; for ex.: The rule is proposed to respond to a petition for its adoption filed by the Montana Water Users Association. The petition sets forth reasons why the forms 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 at least 28 days from the day of notice. 2-4-302(4)).

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

name of department head or chairman of the governing board must be signed by:

By: (12- Authorized person's signature)

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

(iv) Sample form 8: Notice of proposed amendment of a procedural rule.

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

In the matter of the	)	NOTICE OF PROPOSED
amendment of Rule (2-)	)	AMENDMENT OF RULE (4-)
(3-summary; for ex.: specify-	)	(5-subject; for ex.:
ing the forms available for	)	Water Use Act Forms)
use under the Montana Water)	
Use Act)	)	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.: specifying the forms available for use under the Montana Water Use Act).

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 summary that (10-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 : (10-paraphrase rule, describe the subjects and issues involved in the intended action).

(Note: Option 1 is preferred. Option 2 and 3 are to be used only when it is not possible to provide the complete

text. When options 2 and 3 are used the paraphrasing and summaries must accurately reflect the substance of the proposed rule.)

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 Water Users Association. The petition sets forth reasons why the new forms 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 amendments in writing to (12-name, address), no later than (13-date at least 28 days from the day of notice. 2-4-302(4)).

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

name of department head or chairman of the governing board must be signed by:

By: (15-Authorized person's signature)

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

(v) Sample form 9: Notice of proposed amendment of a substantive rule when no public hearing is contemplated. Use form 8 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 at least 28 days from day of notice. 2-4-302(4)).

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the 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-), MCA.

name of department head or chairman of the governing board must be signed by:

By: (19-Authorized person's signature)

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

(vi) Sample form 10: 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.: specifying the forms	)	(4-subject; for ex.:
available for use under the	)	Water Use Act Forms)
Montana Water Use Act)	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons.

1. On (5-date), the (6-agency) proposes to repeal rule (7-), (8-summary; for ex.: specifying the forms available for use under the Montana Water Use Act).

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.: the forms are no longer needed because of amendments to the act).

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 at least 28 days from day of notice. 2-4-302(4)).

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

name of department head or chairman of the governing board must be signed by:

By: (14-Authorized person's signature)

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

(vii) Sample form 11: Notice of proposed repeal of a substantive rule when no public hearing is contemplated. Use form 10 through and including paragraph 4, then add:

5. If a person who is directly affected by the proposed repeal of rule (13-) 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 (14-name, address), no later than (15-date at least 28 days from day of notice. 2-4-302(4)).

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the 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 will directly affected has been determined to be (16-) persons based on (17-for ex.: the 200 licensed plumbers in Montana).

7. The authority of the agency to make the proposed rule is based on section (18-), MCA.

name of department head or chairman of the governing board must be signed by:

By: (19-Authorized person's signature

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

(viii)Sample form 12: Repeal or change of a rule by direction of the legislature.

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

In the matter of the repeal	)	NOTICE OF PROPOSED
or change of Rule (2-)(3-	)	REPEAL OR CHANGE OF
summary, for ex.: requiring	)	RULE (4-)(5-subject,
sprinkler systems in wood	)	for ex.: Sprinkler
frame structures of two or	)	Systems)
more stories used for public)	
occupancy).)	

TO: All Interested Persons.

1. On (6-date), the (7-agency) will repeal or change 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 or changed is on page (10) of the Administrative Rules of Montana.

3. (11-rationale for the repeal or change; 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).

name of department head or chairman of the governing board must be signed by:

By: (12-Authorized person's signature

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.

(A) When a hearing has been properly requested, the agency must mail notice of the hearing to persons who have requested a public hearing, Section 2-4-302(1). Also, notice must be published in the Montana Administrative Register, Section 2-4-302(2).

(B) 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, section 2-4-302(4), or the Administrative Code Committee of the Legislature, section 2-4-402(2)(c).

(C) Sample form 13: 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) NOTICE OF PUBLIC HEARING
as original notice).) 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 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. Written data, views or arguments may also be submitted to (17-name, address), no later than (18-date at least 28 days from day of notice. 2-4-302(4)).

5. (19-name, address) has been designated to preside over and conduct the hearing.

6. The authority of the department to (20-make the proposed rule, amendment, or repeal) is based on section (21-), MCA.

name of department head or chairman of the governing board must be signed by:

By: (22-Authorized person's signature

Certified to the Secretary of State (23-date).
(History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

16-8/30/79

MAR Notice No. 23-2-25

1.6.207 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. Section 2-4-305(1). That person then shall prepare a written summary of the comments and submit this report to the rule maker.

(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 rule maker; that is, the department, board, or administrative officer authorized by law to make rules for the agency. The rule maker 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 or summarize 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:

(A) statement of proponents;

(B) statement of opponents;

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

(v) The presiding officer or rule maker 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 rule makers with a written summary of statements given and exhibits received and a report of his observations of physical experiments, demonstrations and exhibits.

(3) Informal conferences or consultations. In addition to the required rule making 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 2-4-304(2). (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

1.6.208 Rule 5 RULE MAKING, AGENCY ACTION. (1) Introduction. Thirty days after publication of notice and following receipt of the residing officer's report, the rule maker may adopt, amend or repeal rules covered by the notice of intended action. 2-4-302(2).

(2) Notice of rule making. Upon adoption, amendment or repeal of a rule, the agency must file notice of its action with the secretary of state. 2-4-306(1).

(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 was

presented by interested persons. The statement also must include the agency's reasons for overruling the considerations urged against the agency action. The statement may be omitted if no written or oral submissions were presented. Section 2-4-305(1). See Patterson v. Montana Department of Revenue, 557 P.2d 798 (1976),

(iii) a citation to the authority for the rule. 2-4-305(3).

(b) Sample form 14: 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-	)	NOTICE OF THE (3-
same as notice of pro-	)	ADOPTION OF A RULE,
posed action)	)	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:

1.1.999 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.

(Option 2:) (12-when adverse comment or testimony has been received, the agency must acknowledge and accept or 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 this 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 system 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).

name of department head or chairman of the governing board must be signed by:

By: (14-Authorized person's signature)

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. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

1.6.209 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 2-4-303(1)).

(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 2-4-306(3)(b).

(b) Take appropriate measures to make emergency rules known to persons who may be affected by them, section 2-4-306(3)(b), including delivery of copies of the rule to a state wire service and to any other news media the agency considers appropriate. Section 2-3-105.

(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. Section 2-4-306(3)(b).

(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. Section 2-4-303(1).

(5) Sample form 15: Abbreviated Notice for emergency rule making.

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

In the matter of the proposed)	NOTICE OF PUBLIC HEARING
adoption of an emergency rule)	(on abbreviated notice)
(2-summary; for ex.: on horse)	on (3-subject; for ex.:
racing records))	the adoption of a rule
)	on horse racing records)

TO: All Interested Persons.

(1) Statement of reasons for emergency (3-date):

(a) (4-explanation of emergency, for ex.: The board has recently had cause to believe that a number of out-of-state horses will be brought to Montana to race in the

forthcoming spring season meets, and that the out-of-state track records of some of these horses may not be fully disclosed. No rule of the board now requires such disclosure. The practice of running so-called "ringers" imperils public safety and welfare in that public dissatisfaction with race results and posted odds could lead to altercations and commotion in betting areas and stands. Such welfare and safety considerations are in imminent peril in that 14 meets are scheduled between this date and the publication of the July Administrative Register, the soonest that a remedial rule could be adopted under regular procedures.

Therefore, the Board intends to adopt the following emergency rule in public hearing on May 28, 1978 (three days after publication of this issue of the Register). Comments received on or before that date will be considered prior to adopting the rule, and the Board reserves the right to revise the rule. The rule as adopted will be mailed to all licensed meets and commenting parties and published as an emergency rule in the next issue of the Register).

(2) The hearing will take place in (5-place) (6-time and date).

(3) The text of the proposed rule is as follows: (7-text).

(4) The rationale for the proposed rule is as set forth in the statement of reasons for emergency.

(5) Interested persons may comment in writing to: (8-name and address).

(6) (9-name) has been appointed hearing officer to preside over and conduct the hearing.

(7) The authority of the board to adopt the proposed rule is (10-citation to authority).

(11-name of department)

name of department head or chairman of the governing board must be signed by:

By: (12-Authorized person's signature

Certified to the Secretary of State (13-date).
(History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

1.6.210 Model Rule 7 RULE MAKING, ANNUAL REVIEW.

Each agency must at least biennially review its rules to determine whether any rule should be adopted or any existing rule should be modified or repealed. Section 2-4-314. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

1.6.211 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 2-4-102. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

1.6.212 Model Rule 8 CONTESTED CASES, NOTICE OF OPPORTUNITY TO BE HEARD.

(1) All parties to contested cases shall be afforded notice of hearing pursuant to section 24-601(1). The notice must include:

- (a) All items required by section 2-4-601(2).
- (b) A provision advising parties of their right to be represented by counsel at the hearing. Section 2-4-105.
- (c) 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-)	NOTICE OF HEARING ON
summary; for ex.: the)	(3-subject; for ex.:
Insurance Agent's License)	THE REVOCATION OF
of John Doe))	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-MCA section or agency regulation). Violation of (10-MCA 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 (12-name, address) in writing within (13-number of days which provides reasonable opportunity to prepare) of service of this notice on you. Failure to notify (14-name) will result in (15-proposed agency action; for ex.: revocation) on the date of this hearing.

Dated: (16-)

name of department head or chairman of the governing board must be signed by

By: (17-Authorized person's signature)

(History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

1.6.213 Model Rule 9 CONTESTED CASES, EMERGENCY SUSPENSION OF A LICENSE.

(1) Section 2-4-631(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-	)	NOTICE OF (3-action
type of license and name)	)	taken; for ex.:
of holder, for ex.: the	)	SUSPENSION OF AGENT'S
Insurance Agent's License)	)	LICENSE) AND OF HEARING
of John Doe)	)	FOR (4-PERMANENT SUSPEN-
	)	SION 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-), MCA. Violation of (14-MCA 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, Montana).

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-).

name of department head or chairman of the governing board must be signed by:

By: (29-Authorized persons's signature)

(History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

1.6.214 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. Section 2-4-623.

(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 (5-name, address), by the sheriff of (6-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 (7-) days. More than (7-) days have elapsed since service of the order and no request for hearing has been received. The (8-agency official) considered the evidence and exhibits and makes the following determinations:

FINDING OF FACT

(9-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.

16-8/30/79

MAR Notice No. 23-2-25

CONCLUSIONS OF LAW

(10-for ex.: Section 33-17-1001(1), MCA, 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 33-17-1001(1)(d), MCA, for the revocation of the insurance agent's license of John Doe).

ORDER

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

name of department head or chairman of the governing board must be signed by:

By: (12-Authorized person's signature

DATED: (13-).

(History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

1.6.215 Model Rule 11 CONTESTED CASES, INFORMAL DISPOSITION.

(1) Informal disposition of contested cases is permissible pursuant to section 2-4-603.

(2) Any informal proceedings must be conducted in accordance with the provisions of section 2-4-604.

(3) An informal conference, in the nature of a pre-trial conference, may be used to define issues, determine witnesses and agree upon stipulations. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

1.6.216 Model Rule 12 CONTESTED CASES. APPLICATION FOR MORE DEFINITE AND DETAILED STATEMENT.

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 2-4-601 (2)(d). (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

1.6.217 Model Rule 13 CONTESTED CASES, DISCOVERY.

(1) Section 2-4-602 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 (except 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 25; 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 25.

(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) M.R.Civ.P., or if the agency refuses to make discovery, that party may petition the district court for review of the intermediate agency action under section 2-4-701. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/24/77; AMD, 1979 MAR p. ____, Eff. ____.)

1.6.218 Model Rule 14 CONTESTED CASES, HEARING EXAMINERS.

(1) Section 2-4-611 allows the agency to appoint hearing examiners for the conduct of hearings in contested cases.

(2) The powers of the agency members or hearing examiners presiding over hearings are enumerated in section 2-4-611(3).

(3) 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) EXAMINER
notice))

TO: All Interested Persons.

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-)

name of department head or chairman of the governing board must be signed by:

By: (11-Authorized persons's signature)

(3) Disqualification of a hearing examiner or agency member is provided for under section 2-4-611(4). (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

1.6.219 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 Model Rule 14.

(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 hearing may be continued with recesses as determined by the presiding officer. Section 2-4-611(2).

(4) The hearing shall proceed in compliance with sections 2-4-612(1),(4) and (5).

(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 2-4-612(1).

(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. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

1.6.220 Model Rule 16 CONTESTED CASES, RECORD.

(1) The record in a contested case shall include all items required by section 2-4614(1).

(2) The record shall be transcribed and the costs of transcription paid as provided in section 2-4-614(2). (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

1.6.221 Model Rule 17 CONTESTED CASES, EVIDENCE.

(1) All evidence introduced in a contested case hearing shall be received and evaluated in conformance with sections 2-6-612(2), (3), (6) and (7). (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

1.6.222 Model Rule 18 CONTESTED CASES, EX PARTE CONSULTATIONS.

Section 2-4-613 protects all parties in a contested case from informal conferences between the agency and one of the parties. Such conferences may only occur under the circumstances and requirements provided in that section. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

1.6.223 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, a proposed decision must be prepared and served pursuant to sections 2-4-621(1), (2) and (4).

(a) If the hearings officer becomes unavailable, proposed findings of fact may be prepared pursuant to section 2-4-622.

(b) All parties shall be given equal opportunities to file exceptions and present briefs and oral argument.

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

(3) The agency may adopt the proposed for decision as the agency's final order, pursuant to section 2-4-621(4). (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

1.6.224 Model Rule 20 CONTESTED CASES, FINAL ORDERS.

A final decision or order adverse to a party in a contested case shall be in writing or stated in the record, and contain findings of fact and conclusions of law. These requirements shall all be fulfilled pursuant to sections 2-4623(1) through (4).

(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)	)	CONCLUSION 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. 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 33-17-1001(1)(2), MCA, 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 33-17-1001(1)(d), MCA, 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 2-4-702, MCA. Judicial review may be obtained by filing a petition in district court within thirty days after the service of this Order. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

1.6.225 Model Rule 21 CONTESTED CASES, NOTICE OF FINAL DECISION.

(1) Parties to contested cases and their attorneys shall be notified of any decision or order pursuant to section 2-4-623(5). (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

1.6.226 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 2-4-501 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. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff._____.)

1.6.227 Model Rule 22 DECLARATORY RULINGS, CONTENT OF PETITION.

(1) A petition for declaratory ruling must be type-written 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: Petition 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)	PETITION FOR
agent, for a declaratory)	DECLARATORY
ruling on the applicability)	RULING
of section 33-17-1001(1)(d),)	
MCA, to his trust account))	

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 33-17-1001(1)(d), MCA, 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 (8-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 (9-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 33-17-1001(1)(d), MCA).

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

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

Dated: (12-).

(13-name)

(4) The record in a declaratory ruling proceeding shall include:

- (a) the petition;
- (b) a statement of matters officially noticed;
- (c) if for good cause shown the agency has held hearings on the petition, a stenographic record of the proceedings when demanded by a party; and
- (d) the ruling.

(History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

1.6.228 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. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

1.6.229 Model Rule 24 DECLARATORY RULINGS, EFFECT.

A declaratory ruling is binding between the agency and the petitioner concerning the set of facts presented in the petition. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

1.6.230 Model Rule 25 GENERAL PROVISIONS, SUBPOENAS.

(1) Section 2-4-104 provides broad authority to agencies to require the furnishing of information, attendance of witnesses, and production of evidence through subpoena and subpoena duces tecum.

(a) subpoenas shall be issued and served pursuant to section 2-4-104(1).

(b) in the case of disobedience, an agency may compel compliance with a subpoena pursuant to section 2-4-104(2). (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

1.6.231 Model Rule 26 GENERAL PROVISIONS, REPRESENTATION.

(1) Section 2-4-105 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. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

1.6.232 Model Rule 27 GENERAL PROVISIONS, SERVICE.

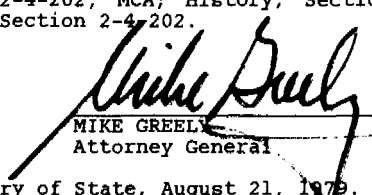
(1) Unless otherwise provided by law, section 2-4-106 requires service on parties in accordance with requirements for service in civil actions. Unless otherwise provided by law and these rules, all motions and pleadings will be served in accordance with the Montana Rules of Civil Procedure. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

1.6.233. 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 2-4-623(6). Copies of final decisions and orders must be given to the public on request after payment of the cost of duplication. (History: Sec. 2-4-202 MCA; IMP, Sec. 2-4-202 MCA; Eff. 12/31/72; AMD, 1977 MAR p.1192, Eff. 12/24/77; AMD, 1979 MAR p. _____, Eff. _____.)

4. Interested parties may submit their data, views or arguments concerning the proposed amendments to: Allen Chronister, Attorney General's Office, State Capitol, Helena, Montana 59601. Written comments in order to be considered must be received no later than September 28, 1979.

5. The authority for the Model Rules and the proposed amendments is Section 2-4-202, MCA; History, Section 82-4203, R.C.M. 1947; IMP. Section 2-4-202.



MIKE GREELY
Attorney General

Certified to the Secretary of State, August 21, 1979.

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

IN THE MATTER OF THE AMENDMENT OF	)	NOTICE OF PROPOSED
RULE 24.26.520 SPECIFYING THE	)	AMENDMENT OF RULE
PROCEDURE FOR AN EMPLOYER PETITION	)	24.26.520 (Employer
FOR UNIT DETERMINATION	)	Petition) NO PUBLIC
		HEARING CONTEMPLATED

TO: All Interested Persons

1. On or about October 1, 1979, the Board of Personnel Appeals proposes to amend Rule 24.26.520, which now states the procedure for filing an employer petition for unit determination.
2. The amended rule states when an employer petition may be filed. The rule as amended would read as follows (new matter underlined):

24.26.520 EMPLOYER PETITION (1) A petition may be filed with the board by an employer alleging that one or more labor organizations has presented to it a claim to be recognized as the exclusive representative in an appropriate unit.

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

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

(4) The petition shall contain:

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

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

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

(i) The approximate number of employees in the unit, and

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

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

(e) Any other relevant facts.

(5) The employer petition must be filed:

(a) not more than 90 days before, and not less than 60 days before the termination date of the previous collective bargaining agreement, or after the termination of the existing collective bargaining agreement. An employer petition of a bargaining unit comprised of school employees may only be filed in January of the year the existing collective bargaining agreement is scheduled to terminate, or after the termination of the existing collective bargaining agreement; or

(b) when the incumbent bargaining representative gives notice to the employer that it desires to begin negotiations of a successor agreement.

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

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

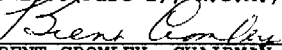
(8) The same right of intervention shall exist for an employer petition as exists for unit determination petitions.

3. The Board of Personnel Appeals proposes the change to clarify the existing rule, to show when the Board will allow an employer's petition to be filed.
4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to Jerry L. Painter, Staff Attorney, Board of Personnel Appeals, Box 202, Capitol Station, Helena, Montana 59601. Written comments in order to be considered must be received by not later than September 28, 1979.
5. If a person directly affected desires to express his/her views, or arguments orally or in writing at a public hearing, he/she must make written request for a public hearing and submit this request along with any written comments he/she has to Mr. Painter on or before September 28, 1979.
6. If the board receives requests for a public hearing on a proposed rule amendment from twenty-five 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 Board to make the proposed rule is based on section 39-31-104 MCA, implementing 39-31-207 MCA. (Sec. 59-1613(4) and 59-1606 (Part 1), R.C.M.)

BY


BRENT CROMLEY, CHAIRMAN
BOARD OF PERSONNEL APPEALS

Certified to the Secretary of State, August 21, 1979.

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

IN THE MATTER OF THE AMENDMENT	NOTICE OF PROPOSED AMENDMENT
OF RULE 24.26.544 SPECIFYING)	OF RULE 24.26.544 (Answer
PROCEDURE FOR FILING AN ANSWER)	to Decertification Petition)
TO THE PETITION FOR DECERTI-)	NO PUBLIC HEARING CONTEM-
FICATION)	PLATED

TO: All Interested Persons

1. On or about October 1, 1979, the Board of Personnel Appeals proposes to amend Rule 24.26.544, which now provides that an answer to a decertification may be filed within five working days.
2. The amended rule makes the matter of unit composition an improper matter for consideration in a decertification proceeding. The rule as amended would read as follows (new matter underlined):

24.26.544 ANSWER (1) Each party may file an answer to the petition for decertification within five working days after receipt thereof.

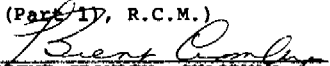
(2) The composition of the unit is not a proper matter to be considered in a decertification proceeding. Eligible voters for any decertification election shall be those who are members of the bargaining unit at the time of the filing of the petition.

3. The Board of Personnel Appeals proposes this change because the Board has adopted rule 24.26.534 Petition for Unit Clarification of Bargaining Unit which provides a procedure by which a bargaining representative of the unit or a public employer may challenge composition of the unit.
4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to Jerry L. Painter, Staff Attorney, Board of Personnel Appeals, Box 202, Capitol Station, Helena, Montana 59601. Written comments in order to be considered must be received by not later than September 28, 1979.
5. If a person directly affected desires to express his/her views, or arguments orally or in writing at a public hearing, he/she must make written request for a public hearing and submit this request along with any written comments he/she has to Mr. Painter on or before September 28, 1979.

6. If the Board receives requests for a public hearing on a proposed rule amendment from twenty-five 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 Board to make the proposed rule is based on section 39-31-104 MCA, implementing 39-31-207 MCA. (Sec. 59-1613(4) and 59-1606(Part IV, R.C.M.))

BY


BRENT CROMLEY, CHAIRMAN
BOARD OF PERSONNEL APPEALS

Certified to the Secretary of State, August 21, 1979.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

IN THE MATTER OF THE PROMULGATION)	NOTICE OF PROPOSED
OF PROCEDURAL RULES TO IMPLEMENT)	PROCEDURAL RULES TO
TITLE 39, CHAPTER 32 MCA,)	IMPLEMENT TITLE 39
COLLECTIVE BARGAINING FOR NURSES)	CHAPTER 32, MCA (Col-
)	lective Bargaining
)	for Nurses) PUBLIC
)	HEARING SCHEDULED
)	FOR SEPTEMBER 26, 1979

TO: All Interested Persons

1. On or about October 10, 1979 the Commissioner of Labor, Department of Labor and Industry proposes to promulgate procedural rules to effectuate Title 39, Chapter 32, Montana Code Annotated, Collective Bargaining for Nurses. These procedural rules are new.
2. Annexed are the following proposed new rules:

Section 1	Division Address
2	Service of Process
3	Intervention
4	Amending Petitions
5	Contested Cases, Default Order when Party Fails to Appear at Hearing
6	Motions
7	Hearings
8	Extension or Waiver of Time Limits
9	Suspension
10	Severability
11	Definitions
12	Filing of Negotiated Agreements
13	Filing of Labor Organization's Bylaws
14	Proof of Interest Confidential
15	Notice of Strike
16	Composition of Unit
17	Appropriate Unit
18	Professional Employees
19	Petitions for New Unit Determination and Election
20	Employer Counter Petition
21	Notice of Unit Determination Proceedings
22	Petition to Intervene
23	Procedure Following Filing of Petition for New Unit Determination and Election

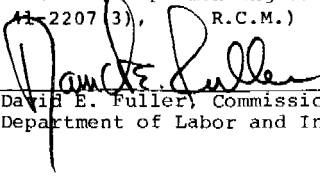
16-8/30/79

MAR Notice No. 24-26-3

- 24 Petition for Unit Clarification of Bargaining Unit
 - 25 Petitions for Decertification
 - 26 Answer
 - 27 Notice of Decertification Proceedings
 - 28 Petition to Intervene
 - 29 Procedure Following Filing of Petition for Decertification
 - 30 Elections Directed
 - 31 Conditions
 - 32 Secret Ballot
 - 33 Eligible Voters
 - 34 Notice
 - 35 Ballots
 - 36 Poll Watchers
 - 37 Polling Area, Electioneering Prohibited
 - 38 Challenges
 - 39 Majority
 - 40 Objections
 - 41 Certification
 - 42 Complaint
 - 43 Answer
 - 44 Notice of Hearing
 - 45 Proposed Findings
 - 46 Petition
 - 47 Mediations
 - 48 Fact Finding
 - 49 Arbitration
3. The Commissioner of Labor and Industry proposes these new rules to implement Title 39, Chapter 32, MCA, Collective Bargaining for Nurses.
4. Interested parties may present their data, views or arguments concerning the proposed rules orally or in writing at the public hearing to be held September 26, 1979, at 10:00 a.m. in the University System Conference Room, 33 South Last Chance Gulch, Helena, Montana.
5. Written data, views or arguments concerning the proposed rules may be submitted to Jerry L. Painter, Staff Attorney, Department of Labor and Industry, Box 202, Capitol Station, Helena, Montana 59601. Written comments in order to be considered must be received by not later than September 28, 1979.

6. The authority of the Department to make the proposed rules is Section 39-32-103 MCA, implementing 39-32-103 MCA. (41-2207(3), imp. 41-2207(3), R.C.M.)

BY


David E. Fuller, Commissioner
Department of Labor and Industry

Certified to the Secretary of State, August 21, 1979

16-8/30/79

MAR Notice No. 24-26-3

NURSES' COLLECTIVE BARGAINING

I
Procedural Rules

Section 1	Division Address
2	Service of Process
3	Intervention
4	Amending Petitions
5	Contested Cases, Default Order When Party Fails to Appear at Hearing
6	Motions
7	Hearings
8	Extension or Waiver of Time Limits
9	Suspension
10	Severability

LABOR AND INDUSTRY

1. DIVISION ADDRESS (1) All requests, petitions, and other correspondence to the division should be addressed to the Personnel Appeals Division, Box 202, Capitol Station, Helena, MT 59601.

2. SERVICE OF PROCESS All service and computation of time in proceedings before this division shall be bound by the Montana Rules of Civil Procedure.

3. INTERVENTION (1) Any employee, group of employees, employee representative, or employer may be permitted to intervene by serving a motion to intervene upon the parties and the division. The motion shall be accompanied by affidavit(s) establishing a basis for intervention. The division shall determine the validity of the basis for intervention.

4. AMENDING PETITIONS (1) Any petition may be amended, in whole or in part, by the petitioner or the division, or withdrawn by the petitioner at any time prior to the casting of the first ballot in an election, or prior to the closing of a case, upon such conditions as the division considers proper and just.

5. CONTESTED CASES, DEFAULT ORDER WHEN PARTY FAILS TO APPEAR AT HEARING (1) When a notice of a hearing has been given, but a party fails to appear at the time specified for that hearing, the Personnel Appeals Division shall enter an order at that time, stating the evidence before it supporting the division's action. If the defaulting party is able to show good cause for his absence, the order will be vacated and a new hearing date set.

6. MOTIONS (1) All motions other than those made during a hearing shall be made in writing and submitted to

the division. They shall briefly state the relief sought, and shall be accompanied by affidavits setting forth the grounds upon which they are based. The moving party shall serve a copy of all motions on all other parties and shall file with the division the original with proof of service. Answering affidavits, if any, must be served on all parties and the original thereof, together with proof of service, shall be filed with the division within five days after service of the moving papers, unless the division directs otherwise. The division may decide to hear oral argument or testimony thereon.

(2) Motions for postponements of hearing or conference scheduled by the division will not be granted unless good and sufficient cause is shown and the following requirements are met:

(a) The request must be in writing directed to the Administrator or hearing examiner.

(b) The grounds for the request must be set forth in detail.

(c) The requesting party must specify alternate dates for rescheduling the hearing or conference.

(d) The position of all parties must be ascertained in advance by the requesting party and set forth in the request.

(e) Copies of the request must be served contemporaneously on all parties, and that fact must be noted on the request.

(f) The request must be signed by the person making it.

(3) Except for good cause shown, no request for postponement will be granted on any of the three days immediately proceeding the date of the hearing or conference.

7. HEARINGS (1) The division shall conduct its hearings in accordance with the appropriate provisions of the Administrative Procedure Act.

8. EXTENSION OR WAIVER OF TIME LIMITS (1) Time limits provided for in these rules may be waived or extended as follows:

(a) by written agreement between the parties, subject to final approval of the division; or

(b) by motion to the division, subject to the granting of the motion by the division.

9. SUSPENSION (1) At the discretion of the division, these rules may be waived or suspended at any time in any proceeding unless such action results in depriving a party of substantial rights.

10. SEVERABILITY (1) If any one of these rules is held to be invalid, it shall not invalidate any other rule.

II.
General Provisions

Section 11	Definitions
12	Filing of Negotiated Agreements
13	Filing of Labor Organization's Bylaws
14	Proof of Interest Confidential
15	Notice of Strike

11. DEFINITIONS (1) The Department of Labor and Industry hereby adopts the definitions set forth in Section 39-32-102, MCA.

(2) The word "division" means the personnel appeals division and in the proper context may also mean an agent appointed by the division to perform certain division functions.

12. FILING OF NEGOTIATED AGREEMENTS. (1) One copy of each collective bargaining contract between a public employer and a labor organization shall be filed with the division within 30 days after the final execution thereof.

13. FILING OF LABOR ORGANIZATION'S BYLAWS (1) Any employee organization seeking certification from the board as exclusive representative of a group of employees must first file with the division a copy of the labor organization's written bylaws. The bylaws must be filed only once with the division. If any revisions or changes are made, the bylaws must be refiled.

(2) The bylaws must provide for and guarantee that:

(a) Provisions are made for democratic organization and procedures.

(b) Elections are held pursuant to adequate standards and safeguards.

(c) Controls are provided for the regulation of officers and agents having fiduciary responsibility.

(d) Sound accounting, fiscal control, and annual audit requirements exist.

14. PROOF OF INTEREST CONFIDENTIAL (1) The proof of interest submitted with any petition shall not be furnished to any of the parties. The division shall consider the adequacy of the showing of interest and such decision shall not be subject to challenge.

15. NOTICE OF STRIKE (1) Any notice of strike given by the employees of a health care facility or their duly elected representative as is required by 39-32-110, MCA, must be simultaneously filed with this division.

III
Unit Determinations

Section 16	Composition of Unit
17	Appropriate Unit
18	Professional Employees
19	Petitions for New Unit Determination and Election
20	Employer Counter Petition
21	Notice of Unit Determination Proceedings
22	Petition to Intervene
23	Procedure Following Filing of Petition for New Unit Determination and Election

16. COMPOSITION OF UNIT (1) A unit may consist of all of the employees of the employer or any department, division, bureau, section, or combination thereof if found to be appropriate by the division.

17. APPROPRIATE UNIT (1) In considering whether a bargaining unit is appropriate, the division shall consider such factors as:

- (a) similarity of duties
- (b) licensure
- (c) conditions of employment
- (d) community of interest;
- (e) wages;
- (f) hours;
- (g) fringe benefits and other working conditions;
- (h) the history of collective bargaining;
- (i) common supervision;
- (j) common personnel policies;
- (k) extent of integration of work functions and interchange among employees affected; and,
- (l) desires of the employees.

18. PROFESSIONAL EMPLOYEES (1) When a petition for unit determination proposes a unit which contains both professional and nonprofessional employees, and the unit is found to be appropriate by this division, an election will be conducted among the professional employees to determine whether or not they wish to be included in the proposed unit.

- (a) If a majority of the professional employees do not desire to be included in the proposed unit, they shall be excluded from the unit.
 - (b) If a majority of the professional employees desire to be included in the unit they shall be included in the unit.
- (2) Notice of the special election shall be posted by the employer no less than five days prior to the election.

19. PETITIONS FOR NEW UNIT DETERMINATION AND ELECTION

- (1) A petition for new unit determination and election shall be filed with the division by an employee or a representative of a group of employees.
- (2) The original petition shall be signed by the petitioner.
- (3) The original petition and five copies of the petition shall be filed with the division.
- (4) The petition shall contain:
 - (a) a description of the unit to be determined specifying inclusions and exclusions;
 - (b) a statement as to whether there is any known disagreement between the employer and the petitioner as to the nature and scope of the proposed unit and the reasons for the disagreement;
 - (c) the names of all labor organizations known to the petitioner who claim to represent employees in the proposed unit;
 - (d) the expiration dates and brief description of any contracts covering any employees in the proposed unit;
 - (e) the approximate number of employees in the proposed unit; and
 - (f) any other relevant facts.
- (5) The petition shall be accompanied by proof, consisting of authorization cards, or copies thereof, which have been individually signed and dated within six months prior to the filing of the petition that the desire for organization represents 30 percent of the employees in the proposed unit.
- (6) The division shall serve a copy of the petition upon the other party to the petition.

20. EMPLOYER COUNTER PETITION (1) The party served by the division shall have five working days from receipt of the petition in which to file a counter petition with the division.

- (2) The party served shall file a counter petition when the party served disagrees with the appropriateness of the proposed unit as described in the petition.
- (3) The petition shall contain:
 - (a) discussion of the nature of the disagreement with the petitioner(s) proposed appropriate unit;
 - (b) description of the served party's proposed appropriate unit;
 - (c) the number of employees in the served party's proposed unit;
 - (d) the expiration dates and brief description of any contracts covering any employees in the served party's proposed unit; and
 - (e) any other relevant facts.
- (4) The division shall serve a copy of the counter petition upon the petitioner.

21. NOTICE OF UNIT DETERMINATION PROCEEDINGS (1) The division shall require the employer to post in a conspicuous manner a notice of unit determination proceedings. Such notice shall be provided by the division and shall remain posted for a period of 20 days.

(2) The employer shall confirm in writing to the division that it has received, posted, and shall continue posting of the notice for the required 20 days.

22. PETITION TO INTERVENE (1) Within 20 days from the first day of posting of the notice of unit determination proceedings, any labor organization or group of employees may file a petition to intervene.

(2) The petition shall contain the name and address of petitioner.

(3) The petition shall be accompanied by proof of interest consisting of authorization cards, or copies thereof, which have been signed and dated within six months prior to the filing of the petition representing 10 percent of the employees in the unit.

(4) The petition to intervene shall conform in all other respects to the requirements for a petition for new unit determination and election.

(5) The division shall serve a copy of the petition to intervene upon all other parties.

23. PROCEDURE FOLLOWING FILING OF PETITION FOR NEW UNIT DETERMINATION AND ELECTION (1) The division shall direct an investigation of all questions and facts concerning the proposed unit, and shall have the following options:

(a) to direct a unit determination hearing within 20 days after time for intervening has passed; or

(b) to dispense with a unit determination hearing at its sole discretion, under the following conditions:

(i) there has been no counter petition filed;

(ii) no intervenors contest the petitioner's proposed unit structure.

(2) After a hearing, the division shall issue its determination of the appropriate unit. If a unit petitioned for is found not to be appropriate, the findings and conclusions shall give specific reasons therefor. If the unit is found to be appropriate, the division shall schedule the election and a pre-election conference at which time challenges for individual inclusions and exclusions shall be made by either party.

IV
Unit Clarifications

Section 24 PETITIONS FOR UNIT CLARIFICATION OF
BARGAINING UNIT

24. PETITION FOR UNIT CLARIFICATION OF BARGAINING UNIT. (1) A Petition for Clarification of Bargaining Unit may be filed with the division only by a bargaining representative of the unit in question or by an employer and only if:
- (a) there is no question concerning representation;
 - (b) the parties to the agreement are neither engaged in negotiations nor within 120 days of the expiration date of the agreement;
 - (c) a petition for clarification has not been filed with the division concerning substantially the same unit within the past 12 months immediately preceeding the filing of the petition; and
 - (d) no election has been held in substantially the same unit within the past 12 months immediately proceeding the filing of the petition.
- (2) A copy of any such petition shall be served by the division upon the bargaining representative if filed by the employer and upon the employer if filed by a bargaining representative.
- (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 on each such classification;
 - (f) a statement setting forth the reasons why petitioner desires a 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 the address of petitioner.
- (4) The party on whom the petition was served shall have 20 days to file a response with this division.
- (5) Upon a determination that a question of fact exists, this division may set the matter for hearing. Upon completion of the hearing this division may:
- (a) grant the petitioned for clarification in whole or in part; or
 - (b) deny the petitioned for clarification in whole or in part.

IV
Petitions for Decertification

Section 25	Petitions for Decertification
26	Answer
27	Notice of Decertification Proceedings
28	Petition to Intervene
29	Procedure Following Filing of Petition for Decertification

25. PETITION FOR DECERTIFICATION (1) A petition for decertification of an exclusive representative shall be filed by an employee, a group of employees, or a labor organization, provided that 12 months have elapsed since the last election.

(2) The petition must be filed not more than 90 days before, and not less than 60 days before the termination date of the previous collective bargaining agreement, or upon the terminal date thereof. A contract whose duration is more than two years shall not be a bar to a decertification proceeding after the expiration of the second year.

(3) The original petition shall be signed by the petitioner(s) or their authorized representative.

(4) The original petition and five copies of the petition shall be filed with the division.

(5) The petition shall contain:

- (a) the name and address of petitioner(s);
- (b) a statement that the labor organization that has been certified or is currently being recognized by the employer as bargaining representative no longer represents the interests of the majority of the employees in the unit;
- (c) the name of the labor organization, if any, which claims to be the majority representative;
- (d) a description of the bargaining unit involved and the approximate number of employees; and
- (e) any other relevant facts.

(6) The petition shall be accompanied by proof that 30 percent of the employees in the unit do not desire to be represented by the existing exclusive representative. This proof will consist of authorization cards, or copies thereof, which have been individually signed and dated within six months prior to the filing of the petition.

(7) The division shall serve a copy of the petition upon the labor organization(s) concerned, and upon the employer.

26. ANSWER (1) Each party may file an answer to the petition for decertification within five working days after receipt thereof.

(2) The composition of the unit is not a proper matter to be considered in a decertification proceeding. Eligible voters for any decertification election shall be those who are members of the bargaining unit at the time of the filing of the petition.

27. NOTICE OF DECERTIFICATION PROCEEDINGS (1) The division shall require the employer to post in a conspicuous manner, a notice of decertification proceedings. Such notice shall be provided by the division and shall remain posted for a period of 20 days.
(2) The employer shall confirm in writing to the division that it has received, posted, and shall continue posting of the notice for the required 20 days.

28. PETITION TO INTERVENE (1) Any labor organization or group of employees may file a petition to intervene within 20 days of the first day of posting of the notice of decertification proceedings.
(2) The original petition shall be signed by the petitioner(s) or their authorized representative.
(3) The original petition and five copies of the petition shall be filed with the division.
(4) The petition shall contain the name and address of petitioner(s).
(5) The petition shall be accompanied by proof of interest representing ten percent of the employees in the unit. This proof will consist of authorization cards, or copies thereof, which have been individually signed and dated within six months prior to the filing of the petition.
(6) The petition to intervene shall conform in all other respects to the requirements for a petition for decertification.
(7) The division shall serve a copy of the petition to intervene upon all other parties.

29. PROCEDURE FOLLOWING FILING OF PETITION FOR DECERTIFICATION (1) The division shall direct an investigation of all questions and facts concerning the proposed decertification and shall have the following options:
(a) to direct a hearing if deemed appropriate, after which the election and a pre-election conference shall be scheduled; or
(b) to schedule the election and a pre-election conference.

VI
Elections

Section 30	Election Directed
31	Conditions
32	Secret Ballot
33	Eligible Voters
34	Notice
35	Ballots
36	Poll Watchers
37	Polling Area, Electioneering Prohibited
38	Challenges
39	Majority
40	Objections
41	Certification

30. ELECTION DIRECTED (1) The division shall direct an election to be conducted by an employee of the division where an appropriate unit has been determined and a question of representation exists or where a petition for an election has been filed. The election shall be conducted under the direction and supervision of the division with all determinations made by an employee.

31. CONDITIONS (1) All elections shall be held at such times and places and upon such terms as the division may specify.

32. SECRET BALLOT (1) All elections shall be by secret ballot.

33. ELIGIBLE VOTERS (1) The employees eligible to vote shall be those within the unit on the date of the filing of the petition excluding those employees who have voluntarily terminated their employment between the filing date and the date of the election.
(2) At least seven days prior to the election, the employer shall furnish to each labor organization which is party to the proceeding, a list of names and addresses of the employees eligible to vote.

34. NOTICE (1) Not more than 20 calendar days nor less than 10 calendar days prior to any election set by the division, the division shall cause to be prepared and distributed a Notice of Election specifying the date and place thereof; the hours the polls will be open; the classification of employees in the appropriate unit for which the election is to be conducted; rules concerning eligibility to vote; a sample ballot; and such additional information and instruction as the division may consider appropriate. Copies of the Notice of Election and the sample ballot will be sent to all labor organizations appearing on the ballot and to the employer. The employer shall cause copies of the Notice of Election and the sample ballot to be posted for

at least five working days prior to the election at work locations where notices are normally posted for the benefit of employees in the appropriate unit. The posting requirement may be modified by mutual agreement of management and the parties appearing on the ballot.

35. BALLOTS (1) The rank order of the employee organization names to be placed on the ballot will be determined during the pre-election hearing. "No Representation" will always be listed as the last choice.

(2) Only those labor organizations which have been designated by more than ten percent of the employees in the unit shall be placed on the ballot.

(3) Absentee ballots shall not be allowed.

36. POLL WATCHERS (1) Each party to the election shall be entitled to be represented by an equal number of observers watching at each polling place. Observers shall be employees eligible to vote, or in the case of employer's observers, shall be any appropriate persons who are not on the list of eligible voters. Each party may observe the ballot counting.

37. POLLING AREA ELECTIONEERING (1) Prior to the commencement of the election the employee of the division shall designate the polling area and no electioneering of any kind shall be permitted within this area. Any violation of this rule by any party or its representative or agent may be grounds for setting aside the election.

38. CHALLENGES (1) All employees whose names appear on the list certified by the division as being a complete list of the employees within the defined appropriate unit shall be eligible to vote.

(2) Any prospective voter may be challenged for cause.

(3) All employees whose names do not appear upon the list certified by the division as being a complete list of the employees within the defined appropriate unit shall be challenged by the agent of the division.

(4) A challenged voter shall be permitted to vote but his ballot shall not be cast. It shall instead be sealed in a separate, unmarked envelope under the supervision of the employee of the division and then inserted in a special identifiable form envelope provided by the division for that purpose and returned to the division.

39. MAJORITY (1) In all elections, a majority of the valid votes cast shall determine the employees' representative to be certified. In the case of a tie vote, no certification shall be issued.

40. OBJECTIONS (1) Within five working days after the tally of ballots has been furnished, any party may file with the division, objections to the conduct of the election or

conduct affecting the results of the election. Such objections shall be in writing and shall contain a brief statement of facts upon which the objections are based. An original and five copies of such objections shall be signed and filed with the division, the original being sworn to. The party filing an objection shall serve a copy upon each of the other parties to the election.

41. CERTIFICATION (1) If no objections are filed within the time set forth above, and if the challenged ballots are insufficient in number to affect the result of the election, the division shall forthwith issue to the parties a certification of representative, where appropriate.

IV
Improper Employment Practices

Section 42	Complaint
43	Answer
44	Notice of Hearing
45	Proposed Findings

42. COMPLAINT (1) A complaint alleging that a person has engaged in or is engaging in an improper employment practice may be filed by an employee, or a group of employees, a labor organization.

(2) A complaint shall be in writing. The original shall be signed and verified by the complainant or his authorized representative. The original and five copies of the complaint shall be filed with the division. The division shall serve one copy of the complaint on each party named in the complaint.

(3) A complaint shall contain the following:

(a) the name, address and telephone number of the complainant;

(b) the name, address and telephone number of the party against whom the charge is made; and

(c) a clear and concise statement of facts constituting the alleged violation, including the time and place of occurrence of the particular acts and a statement of the portion or portions of the law or rules alleged to have been violated.

(4) If the division determines that the facts alleged in the complaint do not constitute an improper employment practice under section 39-32-109 MCA, it shall dismiss the charge.

43. ANSWER (1) The party named in the complaint shall file a written verified answer within ten days after service of the complaint.

(2) One copy of the answer shall be served on the complainant, and the original, with proof of due service and five copies, shall be filed with the division.

(3) The answer shall include a specific admission, denial, or explanation of each allegation in the complaint.

(4) If the party charged fails to file a timely answer, the division may consider it an admission of material facts and waiver of a hearing.

44. NOTICE OF HEARING (1) After the time for filing an answer has passed, the division shall serve a notice of hearing upon the parties. The hearing date shall not be less than five nor more than 20 working days from the date of service. The notice shall include all those items listed in section 2-4-601, MCA, and shall state who will hear the complaint.

45. PROPOSED FINDINGS (1) The hearing examiner may request proposed findings of fact and conclusions of law.

VII
Impasse

Section 46	Petition
47	Mediations
48	Fact Finding
49	Arbitration

46. PETITION (1) In the event of an impasse, a petition, in writing, requesting assistance of the division, may be filed with the division by an employee or group of employees, a labor organization, or employer. The original of the petition shall be signed by the petitioner or his authorized representative, and the original and five copies thereof shall be filed with the division. The petitioner shall serve a copy of the petition simultaneously upon any party in the petition. The petition shall contain:

- (a) name, address, and telephone number of petitioner or authorized representative;
- (b) name address, and telephone number of the employer;
- (c) description of unit involved;
- (d) name, address, and telephone number of the recognized or certified labor organization and authorized representative thereof;
- (e) description of the dispute in detail;
- (f) statement as to what assistance is requested; and
- (g) statement indicating if the request is unilateral or joint.

(2) A petition may be withdrawn with the consent of the division.

47. MEDIATION (1) Upon petition, the division, any member or employee thereof designated by the division, or any other competent, impartial, disinterested person designated by the division may act as the mediator in a dispute or, if available, the division may request a mediator from the Federal Mediation and Conciliation Service or from the American Arbitration Association.

(2) Any information disclosed to the mediator in the performance of his duties shall not be divulged unless approved by the parties involved. All files, records, reports, documents, or other papers received or prepared by the mediator shall be classified as confidential and not as a public record. Such matters shall not be disclosed to anyone without the prior consent of the division.

(3) The mediator shall not produce any confidential records or testimony with regard to any mediation conducted by him on behalf of the party to any case pending in any proceeding before any court, board, investigatory body, arbitrator, or fact finder without the written consent of the division.

(4) The mediator may hold separate or joint meetings with the parties or their representatives, and such meetings shall be private and nonpublic, except if otherwise mutually agreed upon by the parties.

(5) The mediator shall, within 30 days of his designation, report in writing the progress of his mediation efforts, as well as the terms of the settlement of the dispute, if any, to the division.

48. FACT FINDER (1) Either party to a dispute may petition the division to initiate fact-finding or, if it is apparent that matters in disagreement might be more readily settled if facts involved were determined and publicly known, the division may initiate fact-finding.

(2) Within three days of receipt of a petition for fact finding, the division shall submit a list of five qualified, disinterested persons to each of the parties to the dispute.

(3) Within five days of receipt of the list, the parties shall select a fact finder by having the petitioner strike two names and then the other party strike two names. The remaining name is that of the fact finder.

(4) The parties shall immediately notify the division of the name of the fact finder. The board shall notify the fact finder and request him to immediately establish dates and places of hearings.

(5) Within 20 days from his notification by the division, the fact finder shall make written findings of fact and recommendations for resolution of the dispute. The findings shall be served on both parties and a copy sent to the division.

(6) The fact finder may request the division to make the report public five days after the parties are served with the findings.

(7) Fifteen days after the parties are served the division shall provide that the report is open to public inspection.

(8) The fact finder shall submit his costs and fees to the division which shall send copies of an invoice to both parties on which they will be billed for one-third of the total. The parties shall pay the division within five days and the division shall forward the total amount to the fact finder.

49. ARBITRATION (1) The parties may, at any period in the negotiations, agree to submit the issues to binding arbitration.

(2) Both parties shall jointly notify the division in writing of this decision and of the identity of the arbitrator.

(3) The parties may petition the division to assist in the selection of the arbitrator in accordance with rule 46

(4) The arbitrator shall render a decision within 30 days of his appointment.

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

IN THE MATTER OF THE AMENDMENT) NOTICE OF PROPOSED
OF RULE 24.26.106 SPECIFYING) AMENDMENT OF RULE 24.26.106
THE PROCEDURE FOR MAKING) (Motions before the Board
MOTIONS TO THE BOARD OF) of Personnel Appeals) NO
PERSONNEL APPEALS) PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On or about October 1, 1979, the Board of Personnel Appeals proposes to amend Rule 24.26.106, which now provides that all motions other than those made during a hearing shall be made in writing and submitted to the Board.
2. The amended rule would state the requirements that must be met before a motion for postponement would be granted and require that a higher standard of good cause be shown before requests for postponement made within the three days immediately preceding the date of the hearing or conference would be granted. The rule as amended would read as follows (new matter underlined):

24.26.106 MOTIONS (1) All motions other than those made during a hearing shall be made in writing and submitted to the board. They shall briefly state the relief sought, and shall be accompanied by affidavits setting forth the grounds upon which they are based. The moving party shall serve a copy of all motions on all other parties and shall file with the board the original with proof of service. Answering affidavits, if any, must be served on all parties and the original thereof, together with proof of service, shall be filed with the board within five days after service of the moving papers, unless the board directs otherwise. The board may decide to hear oral argument or testimony thereon.

(2) Motions for postponements of hearing or conference scheduled by the division will not be granted unless good and sufficient cause is shown and the following requirements are met:

(a) The request must be in writing directed to the Administrator or hearing examiner.

(b) The grounds for the request must be set forth in detail.

(c) The requesting party must specify alternative dates for rescheduling the hearing or conference.

(d) The position of all parties must be ascertained in advance by the requesting party and set forth in the request.

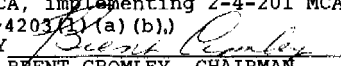
(e) Copies of the request must be served contemporaneously on all parties, and that fact must be noted on the request.

(f) The request must be signed by the person making it.

(3) Except for good cause shown, no request for postponement will be granted on any of the three days immediately proceeding the date of the hearing or conference.

3. The Board of Personnel Appeals proposes the change to notify the parties of the requirements for requesting postponement of a scheduled hearing or conference and the fact that a request for postponement will not be granted absent a showing of good cause. Last minute postponements of hearings makes it difficult for this Board to consolidate its travel and is costly in staff time in rescheduling.
4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to Jerry L. Painter, Staff Attorney, Board of Personnel Appeals, Box 202, Capitol Station, Helena, Montana 59601. Written comments in order to be considered must be received by not later than September 28, 1979.
5. If a person directly affected desires to express his/her views, or arguments orally or in writing at a public hearing, he/she must make written request for a public hearing and submit this request along with any written comments he/she has to Mr. Painter on or before September 28, 1979.
6. If the Board receives requests for a public hearing on a proposed rule amendment from twenty-five 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 Board to make the proposed rule is based on section 2-4-201 MCA, implementing 2-4-201 MCA. (82-4203(1)(a)(b), imp. 82-4203(1)(a)(b).)

BY


BRENT CROMLEY, CHAIRMAN
BOARD OF PERSONNEL APPEALS

Certified to the Secretary of State, August 21, 1979.

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

IN THE MATTER OF THE AMENDMENT)	NOTICE OF PROPOSED
OF RULE 24.26.107 HEARINGS)	AMENDMENT OF RULE
(2) SPECIFYING THE PROCEDURE)	24.26.107(2) (Exceptions
FOR MAKING EXCEPTIONS TO)	to Recommended Orders)
THE RECOMMENDED ORDER OF A)	NO PUBLIC HEARING
HEARING EXAMINER)	CONTEMPLATED

TO: All Interested Persons

1. On or about October 1, 1979, the Board of Personnel Appeals proposes to amend Rule 24.26.107(2) which now provides procedure for filing exceptions to the recommended order issued by a member of the Board or a hearing examiner.
2. The amended rule would require that specific written exceptions be filed with the Board. The rule as amended would read as follows (new matter underlined):

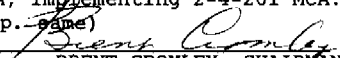
24.26.107 HEARINGS (2) If a member of the board or an examiner appointed by the board presides over the hearing, the member, or the examiner, as the case may be, shall issue and cause to be served on the parties to the proceeding findings of fact, conclusions of law and recommended order, which shall be filed with the board, and if no written exceptions specifically stating to which part of the recommended order exception is being taken are filed with this board within 20 days after service of the recommended order upon the parties, or within such further period as the board may authorize, the recommended order shall become the order of the board.

3. The Board of Personnel Appeals proposes the change to clarify the existing rule.
4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to Jerry L. Painter, Staff Attorney, Board of Personnel Appeals, Box 202, Capitol Station, Helena, Montana 59601. Written comments in order to be considered must be received by not later than September 28, 1979.
5. If a person directly affected desires to express his/her views, or arguments orally or in writing at a public hearing, he/she must make written request for a public hearing and submit this request along with any written comments he/she has to Mr. Painter on or before September 28, 1979.

6. If the Board receives requests for a public hearing on a proposed rule amendment from twenty-five 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 Administration Register.

7. The authority of the Board to make the proposed rule is based on section 2-4-201 MCA, implementing 2-4-201 MCA.
(82-4203(1)(a)(b) R.C.M., imp. ~~same~~)

BY


BRENT CROMLEY, CHAIRMAN
BOARD OF PERSONNEL APPEALS

Certified to the Secretary of State, August 21, 1979.

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

IN THE MATTER OF PROPOSED RULE) NOTICE OF PROPOSED RULE
ALLOWING AN INCUMBENT UNION) (Allowing Incumbent Union
TO DISAFFIRM REPRESENTATION) to Disaffirm Representation
OF A BARGAINING UNION) of a Bargaining Union)

TO: All Interested Persons

1. On or about October 1, 1979, the Board of Personnel Appeals proposes to adopt a rule which will provide a procedure for an incumbent union to disaffirm representation of a bargaining union following the filing of a petition for decertification.
2. The rule adds a procedure allowing disaffirmance of representation by the bargaining representative. The rule will read as follows:

RULE 1
Disaffirmance of Representation by Bargaining Representative. (1) After one year from the date of certification by this board or recognition by an employer as the bargaining representative and after the filing of a petition for decertification by an employee or group of employees an incumbent bargaining agent may submit to this board an affidavit of disaffirmance of representation stating it no longer desires to represent the bargaining unit in question. (2) Upon the filing of such an affidavit the bargaining representative's name shall be removed from the ballot in the decertification election. If no other bargaining representative appears on the ballot, no election shall be conducted.

3. The Board of Personnel Appeals proposes this change because presently when a decertification petition is filed and the union wants to no longer represent the unit in question this Board must still go through the expense of an election when the result is quite obvious. This rule will allow the situation to be resolved with the greatest amount of convenience to all parties involved.
4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to Jerry L. Painter, Staff Attorney, Board of Personnel Appeals, Box 202, Capitol Station, Helena, Montana 59601. Written comments in order to be considered must be received by not later than September 28, 1979.

5. If a person directly affected desires to express his/her views, or arguments orally or in writing at a public hearing, he/she must make written request for a public hearing and submit this request along with any written comments he/she has to Mr. Painter on or before September 28, 1979.
6. If the Board receives requests for a public hearing on a proposed rule amendments from twenty-five 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 Board to make the proposed rule is based on section 39-31-104 MCA, implementing 39-31-208 MCA. (59-1613(4) and 59-1606(Part 1)(3), R.C.M.)

BY

Brent Crowley
BRENT CROMLEY, CHAIRMAN
BOARD OF PERSONNEL APPEALS

Certified to the Secretary of State, August 21, 1979.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

IN THE MATTER of the Proposed)	NOTICE OF PUBLIC HEARING ON
Adoption of a rule granting)	A NEW RULE GRANTING STATE-
qualifying licensed motor)	WIDE AUTHORITY FOR THE
carriers statewide authority)	TRANSPORTATION OF BUILDINGS
to transport buildings.)	

TO: ALL INTERESTED PERSONS

1. On October 5, 1979, in the Conference Room of the Montana Public Service Commission Offices at 1227 11th Avenue, Helena, Montana at 10:00 a.m., a public hearing will be held to consider the proposed adoption of a rule granting statewide authority for the transportation of buildings.

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:

RULE 1. STATEWIDE AUTHORITY FOR TRANSPORTATION OF BUILDINGS (1) Licensed motor carriers operating under certificates specifically authorizing the transportation of buildings (or certain types of buildings) on a regional basis shall return their copies of such certificates to the Public Service Commission for reissuance granting statewide authority. These certificates must be returned no later than January 1, 1980.

(2) Other licensed motor carriers engaged in the transportation of buildings based upon a more general certificate granting authority broad enough to include transport of buildings on a regional basis may also return their copies of such certificates to the Public Service Commission. A new certificate will be issued granting statewide authority to transport buildings if the motor carrier has shown that transportation of buildings constituted a substantial part of business conducted under the old certificate for the 2-year period prior to July 1, 1979. A separate certificate will also be issued to cover the old certificate's broader authority allowing transportation of items other than buildings. This authority will be unchanged and remain on a regional basis.

(3) A "substantial part of business" is defined as revenues amounting to at least \$20,000 annually, or at least 20% per year of the total revenue derived from transportation conducted under the certificate. The motor carrier's copy of the certificate together with evidence supporting a claim of "substantial part of business" must be submitted to the Public Service Commission no later than January 1, 1980.

(4) Licensed motor carriers operating under a certificate granting authority broad enough to include the transport of buildings, but who do not establish the same as constituting a "substantial part of business" conducted under that certificate; retain the authority to transport buildings but only within the region set out in the original certificate.

(5) Any licensed motor carrier holding more than one certificate authorizing the transport of buildings on a regional basis will receive only one statewide certificate upon

reissuance of the old certificates.

(6) Mobile homes do not constitute "buildings" for the purposes of this rule.

4. Section 69-12-331, MCA, enacted by the 1979 Montana Legislature (S.B. 70; Chapter 593, Laws of 1979), mandates that the Commission shall adopt rules implementing the new law allowing statewide authority for the transportation of buildings. The proposed rule establishes the procedure for issuing new statewide certificates to replace the old regional certificates. The proposed rule also adopts a standard to be applied in determining the existence of a "substantial part of business" as that term is used in the statute.

5. Interested parties may submit their data, views, or arguments concerning the proposed adoption at the hearing, or in writing to Calvin Simshaw, 1227 11th Avenue, Helena, Montana 59601, no later than October 3, 1979.

6. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana 59601 (Telephone 449-2771) is available and may be contacted to represent consumer interests in this matter.

7. The authority for the Commission to make this rule is based on Section 69-12-331, MCA (Chapter 593, Laws of 1979).
IMP. Section 69-12-331, MCA.


GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE AUGUST 16, 1979.

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

IN THE MATTER of the Proposed) NOTICE OF PROPOSED ADOPTION
Adoption of a new rule govern-) OF A RULE GOVERNING THE
ing conduct of nurses) CONDUCT OF NURSES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 29, 1979, the Board of Nursing proposes to adopt rules governing the professional conduct of nurses.

2. The rule as proposed will read as follows:

"(1) Professional conduct for nurses is nursing behavior including acts, knowledge, and practices, which through professional experience, has become established by practicing nurses as conduct which is reasonably necessary for the protection of the public interests.

(2) Unprofessional conduct, for purposes of defining subsection (6) of Section 37-8-441 MCA is determined by the board to mean nursing behavior (acts, knowledge, and practices) which fails to conform to the accepted standards of the nursing profession and which could jeopardize the health and welfare of the people and shall include but not be limited to the following:

(a) Failing to utilize appropriate judgement in administering safe nursing practice based upon the level of nursing for which the individual is licensed.

(b) Failing to exercise technical competence in carrying our nursing care.

(c) Failing to follow policies or procedures defined in the practice situation to safeguard patient care.

(d) Failing to safeguard the patient's dignity and right to privacy.

(e) Violating the confidentiality of information or knowledge concerning the patient.

(f) Verbally or physically abusing patients.

(g) Performing procedures beyond the authorized scope of the level of nursing and/or health care for which the individual is licensed as defined by rules and regulations.

(h) Being unfit to perform because of physical or psychological impairment.

(i) Using alcohol or other drugs to the point that there is interference with job performance.

(j) Manipulating drug supplies, narcotics, or patients' records.

(k) Falsifying patients' records or intentionally charting incorrectly.

(l) Appropriating medications, supplies or personal items of the patient or agency.

(m) Violating state or federal laws relative to drugs.

- (n) Falsifying records submitted to the department.
 - (o) Intentionally committing any act that adversely affects the physical or psycho-social welfare of the patient.
 - (p) Delegating nursing care, functions, tasks and/or responsibilities to others contrary to the Montana laws governing nursing and/or to the detriment of patient safety.
 - (q) Failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of the licensed professional.
 - (r) Leaving a nursing assignment without properly notifying appropriate personnel.
 - (s) Resorting to fraud, misrepresentation or deceit in taking the licensing examination or in obtaining a license.
 - (t) Practicing professional or practical nursing as a Registered or Licensed Practical Nurse in this state without a current active Montana license or permit shall be grounds for refusing to license that individual if application is made subsequent to such conduct.
 - (u) Aiding, abetting, assisting or hiring an individual person to violate or circumvent any law or duly promulgated rule or regulation intended to guide the conduct of a nurse or any other licensed health care provider.
 - (v) Permitting or allowing another person to use his/her nursing license or permit for any purpose.
 - (w) Failing to report, through the proper channels facts known to the individual regarding the incompetent, unethical, or illegal practice of any licensed health care professional.
 - (y) Having a nursing license denied, revoked or suspended in another state for any one or more of the above.
 - (z) Having a license or certificate in a related health care discipline in Montana or another state denied, revoked or suspended for any one or more of the above."
3. It is the intent of the Board of Nursing to adopt a rule which explains what the Board considers "unprofessional conduct". In a recent Supreme Court decision - Tuma vs Board of Nursing (593P 2nd 711 - Idaho) in which the court concluded: "Given no written guidelines as to what conduct might possibly result in a suspension of her license for unprofessionalism, Nurse Tuma may very well have surmised that she was on thin ice with a particular doctor, or the medical profession in general, in suggesting to a patient alternate procedures for the treatment of cancer. But she could not know, having not ever been forewarned against so doing, that this constituted unprofessional conduct". In view of this, the Board feels that it is imperative to adopt this rule. If the rule is approved for adoption, it is

the intent of the board to include a copy of the rule with all licenses issued to all nurses.

4. Interested parties may submit their data, views or arguments concerning the proposed adoption in writing to the Board of Nursing, Lalonde Building, Helena, Montana 59601 no later than September 27, 1979.

5. If a person who is directly affected by the proposed adoption 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 Nursing, Lalonde Building, Helena, Montana 59601 no later than September 27, 1979.

6. If the Board receives requests for a public hearing on the proposed adoptions from 10 percent 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 adoption is based on section 37-8-202(2) MCA [66-1225 R.C.M. 1947] and implements section 37-8-441(6) MCA [66-1240 R.C.M. 1947].

BOARD OF NURSING
JANIE CROMWELL, R.N., PRESIDENT

BY: 

ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, August 21, 1979.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF PHYSICAL THERAPISTS

IN THE MATTER of the proposed)	NOTICE OF PUBLIC HEARING on
Repeal of 40-3.54(10)-S54030)	the proposed repeal of ARM
through 40-3.54(10)-S54045 and)	40-3.54(10)-S54030 through
the Adoption of new rules to)	ARM 40-3.54(10)-S54045 and
Implement the Physical Therapy)	the adoption of new rules to
Act.)	implement the Physical Therapy
	Act.

TO: All Interested Persons:

1. On September 25, 1979, at 10:00 a.m., a public hearing will be held in the Highway Department Auditorium, 6th and Sanders, Helena, Montana on the proposed repeal of ARM 40-3.54(10)-S54030 through ARM 40-3.54(10)-S54045 and the adoption of new rules to implement the physical therapy act.

2. The 1979 Montana Legislative Assembly enacted Chapter 491, 1979 Session Laws of Montana which generally revised the physical therapy practice act. Prior to this revision the act was administered by the Board of Medical Examiners which had adopted a total of three rules relating to physical therapy. Under the 1979 amendments, the Act is now administered by a Board of Physical Therapy Examiners. This new Board now proposes to adopt its own rules as new rules of that Board.

3. The prior physical therapy rules as adopted by the Board of Medical Examiners, and now proposed for repeal are 40-3.54(10)-S54030, -S54040 and -S54045 and are located at page 40-230 Administrative Rules of Montana.

4. The new rules as proposed will read as follows;

"(1) The Board of Physical Therapy Examiners adopts and incorporates the organizational rules of the Department of Professional and Occupational Licensing as listed in Chapter 1 of Title 40, see ARM 40-2.1-0100.

(2) The Board of Physical Therapy Examiners adopts and incorporates the procedural rules of the Department of Professional and Occupational Licensing as listed in Chapter 2 of Title 40, see ARM 40-2.2(1)-P200 through ARM 40-2.2(10)-P2390.

(3) The Board of Physical Therapy Examiners adopts and incorporates by this reference the public participation rules of the Department of Professional and Occupational Licensing as listed in Chapter 2, Sub-Chapter 14 of Title 40. See ARM 40-2.2(14)-P2400.

(4) Application Forms for licensure as a physical therapist will be provided to applicants in accordance with the requirements of section 37-11-304 MCA. In addition, the Board may, in its discretion, require statements of good moral character and references from the applicant's previous place(s) of employment.

(5) Examinations:

(a) The examination will be the professional examination

Service or another equivalent examination as the Board may in its discretion approve and adopt.

(b) The examination dates will be the first Monday in April and the first Monday in October of each year. Applicants must have their applications in the Board office at least 45 days prior to the examination date.

(c) The Board may, after review of an application, request the applicant to meet with the Board at a time designated by the Board and prior to licensure, for the purpose of conducting an oral examination.

(d) The applicant's raw score passing point shall be 1.5 standard deviation units below the national average raw score.

(6) Fees:

(a) The fees shall be as follows:

Examination	\$75.00
License	75.00
Temporary License	25.00
Renewal	25.00
Late renewal	10.00

(b) All fees are non-refundable.

(7) Renewal of license:

(a) As provided by section 37-11-309 MCA, all licenses must be renewed on or before April 1 of each year. A grace period of 6 months after the renewal deadline will automatically be extended and late renewals will be accepted upon payment of the renewal fee and the late renewal fee. Any requests for renewal made after the six month grace period will be determined on a case by case basis after review by the Board.

(b) The Board will send each licensee a first renewal notice on or before February 1, and a second notice on or before March 1 of each year. Notices will be sent to the last address which the licensee has made available to the Board. It shall be the licensee's responsibility to notify the Board immediately upon change of address. Failure to receive a renewal notice shall not constitute grounds for failure to make timely renewal.

(8) Temporary licenses:

(a) Applicants for licensure by reciprocity who are holders of a license in another state may be issued a temporary permit to practice pending licensure by the Board after an interview with at least one Board member. Said temporary permit will expire when the Board makes its final determination on licensure.

(b) Applicants for licensure by examination may be issued a temporary permit until such time as the next examination following issuance of the permit is given. After issuance of the temporary the applicant

must sit for the examination. The temporary permit shall be valid until the Board makes its final determination on licensure after reviewing the examination scores. Only one temporary permit will be issued. If the applicant fails the examination, however, he may sit for the next examination with no limit on the number of times he may take it.

However, a temporary license will not be renewed.

(c) The Board in its discretion may renew or extend a temporary permit in cases of emergencies.

(9) Whereas section 37-11-321 (3) MCA sets out 'immoral or unprofessional conduct' as cause for the suspension or revocation of license, the Board herein adopts the Code of Ethics of the American Physical Therapy Association as its standards of professional conduct for purposes of determining cause under the aforementioned statutory provision. A copy of said Code of Ethics is on file in the Board office, Lalonde Building, Helena, Montana.

(10) The Board of Physical Therapy Examiners will receive all complaints which are made in writing and which are directed towards a licensed physical therapist or an unlicensed person practicing physical therapy. The Board will screen the complaints and make further investigation where it determines that merit exists. The Board requests and expects cooperation from the State Physical Therapy Association whenever investigation requires the same and wherever it can be offered or extended.

(11) Whereas section 37-11-101 MCA creates and defines physical therapy students, physical therapy assistants, and physical aides, the Board interprets such categories as exempt from licensure as physical therapists so long as the supervision requirements stated in that section are strictly adhered to. Such supervision requirements include also those imposed by section 6, Chapter 491 Session Laws of 1979.

(12) The meetings of the Board will be scheduled for the second Tuesday in May and the second Tuesday in November of each year. The Board may schedule such other meetings as the need may arise. "

5. Interested persons may present their data, views or arguments either orally or in writing, at the hearing. Any person planning on attending the hearing should please advise the Board in writing no later than September 15, 1979.


6. The Board or its designee will preside over and conduct the hearing.

7. The authority of the Board to make the proposed repeal and adoption is based on section 37-11-201 MCA(66-2514 R.C.M.

1947) and implements sections 37-11-201, 37-11-202, 37-11-303
37-11-307, 37-11-308, 37-11-309, 37-11-321, 37-11-101 MCA
((66-2514, 66-2515, 66-2502, 66-2505, 66-2508, 66-2510, 66-2509,
and 66-2501 R.C.M. 1947.)

BOARD OF PHYSICAL THERAPY EXAMINERS
JOE LUCKMAN, P.T., CHAIRMAN

BY:


ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, August 21, 1979.

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

IN THE MATTER of the Proposed)	NOTICE OF PROPOSED AMENDMENTS
Amendments of ARM 40-3.82(6)-)	OF ARM 40-3.82(6)-S8230 (4) &
S8230 subsections (4) and (5))	(5) DEFINITIONS, ARM 40-3.82(6)-
concerning definitions, ARM 40-) S8260 APPLICATIONS, ARM 40-	3.82(6)-S8280 EXAMINATION,
3.82(6)-S8260 concerning)	ARM 40-3.82(6)-S8290 RENEWALS,
applications, ARM 40-3.82(6)-)	ARM 40-3.82(6)-S82000
S8280 concerning examinations,)	DUPLICATE OR LOST LICENSES,
ARM 40-3.82(6)-S8290 concerning) AND ARM 40-3.82(6)-S82060	MASTER PLUMBERS; EMPLOYMENT
renewals, ARM 40-3.82(6)-S82000) OF JOURNEYMAN AND RESPONSIBIL-	ITIES THEREFORE; AND THE
concerning duplicate licenses,)	PROPOSED REPEAL OF ARM 40-3.
and ARM 40-3.82(6)-S82060 con-) 82(6)-S8270 GRANT AND ISSUE	LICENSES AND ARM 40-3.82(6)-
cerning employment of journey-) S82010 PROVISIONS TO WHOM	NOT APPLICABLE
man plumbers and the responsi-))	
bilities therefore; and the)	
proposed repeal of ARM 40-3.82)	NO PUBLIC HEARING CONTEMPLATED
(6)-S8270 concerning the grant-))	
ing and issuing of licenses and))	
ARM 40-3.82(6)-S82010 concern-))	
ing provisions to whom not)	
applicable.)	

TO: All Interested Persons:

1. On September 29, 1979, the Board of Plumbers proposes to amend rules ARM 40-3.82(6)-S8230, subsections (4) and (5) concerning definitions, ARM 40-3.82(6)-S8260 concerning applications, ARM 40-3.82(6)-S8280 concerning examinations, ARM 40-3.82(6)-S8290 concerning renewals, ARM 40-3.82(6)-S82000 concerning duplicate and lost licenses and proposes to repeal ARM 40-3.82(6)-S8270 concerning the granting and issuing of licenses and ARM 40-3.82(6)-S82010 concerning provisions to whom not applicable.

2. The proposed amendment to ARM 40-3.82(6)-S8230 deletes subsections (4) and (5) of the rule in their entirety.

3. The deletion is proposed because the definitions do not correspond to those in the statute. The Board feels there is no further need to place the correct definitions in the rules as they are contained in the statutes.

4. The proposed amendment to ARM 40-3.82(6)-S8260 amends subsections (1) and (2) and also places the qualifications required for approval of the applications in this section. The proposed changes will read as follows: (new matter underlined, deleted matter interlined)

"40-3.82(6)-S8260 APPLICATIONS (1) Application for master plumber's license or journeyman plumber's license may be made by anyone professing the qualifications set forth in 37-69-304 and 37-69-305 MCA. The application for examination shall be made to the board department,

and must be accompanied with a fee ~~required-by-law~~

as prescribed by the board.

(2) No application for examination will be considered

unless it is accompanied by the proper duly documented supporting evidence and is received 30 days prior to the examination date.

(3) The Board will accept the following qualifications:

(a) A notarized statement from an active master plumber certifying time and dates of employment by him along with copies of the applicant's employment record.

(i) Copies of applicant's time sheets and/or shop records may be required.

(b) Copy of apprenticeship completion certificate or certified statement from apprenticeship training officer.

(c) Attainment of a first degree or advance degree in an approved engineering curriculum or a baccalaureate degree in an approved engineering technology curriculum will be accepted as equivalent to 2 years of active practice.

(d) Furthermore appropriate credit will be given for the following:

(i) Graduation from an engineering technology curriculum not approved by the Board.

(ii) Completion of portions of such curriculum.

(iii) Completion of a course of study in a technical institute or other recognized educational program.

(e) Practice in the fields of steam fitting, hydronics, and industrial piping will not be considered as experience in the field of plumbing.

(f) Active practice in the field of plumbing, which includes actual working with the tools of the trade, while under the direct supervision of a licensed journeyman or master plumber, in connection with any public or private structure, building or project, when such requires the application of plumbing principals or data.

(g) Out-of-state applicants for a masters or journeyman plumber's license may provide proof of prior licensing in their home state by submitting a true copy or copies of the license(s) held along with a copy of the state or local area requirements for licensure in lieu of the above documentation. A letter of verification from the state or local licensing agency will also be required.

(4) Upon receipt and approval of an application for the journeyman or master plumber's examination, the board-department will send to the applicant an admittance card for the examination which will allow him to work as a journeyman plumber until the next examination for which he is scheduled. A master applicant shall not work as a master until such time as he successfully passes the

master's examination and a master plumber's license has been issued to him."

5. The amendment as proposed defines the qualifications required by sections 37-69-304 and 37-69-305 MCA (66-2402 and 66-2403 R.C.M. 1947). It also makes provision for a master applicant to work as a journeyman plumber until he can take an examination for the master plumber's license. The law previously required a master to carry a journeyman's license to work with the tools and an individual, particularly an out-of-state applicant would apply for both licenses, be given an admittance card to the journeyman examination, which allowed him to work as a journeyman until he took the exam. The 1979 legislature removed the dual license requirement, so that a master need not carry the journeyman license. The present rule would not allow anyone applying for master license to work if he were not already licensed in this state. This would work a hardship on those individuals applying for master plumber's licenses who were from out-of-state.

6. The repeal of ARM 40-3.82(6)-S8270 is proposed as the provisions of this rule are covered by statute under sections 37-69-305, 306 and 307 MCA (66-2402, 2404, 2405 R.C.M. 1947). The rule is proposed to be deleted in its entirety.

7. The proposed amendment to ARM 40-3.82(6)-S8280 deletes the current subsection (1), (a) and (b) in their entirety, amends subsections (c) and adds a new subsection after (c) and will read as follows: (new matter underlined, deleted matter interlined)

"40-3.82(6)-S8280 EXAMINATION --(1)--Qualifications--
(a)--For Journeyman Plumbers--A specified record of four-(4)-years experience in the field of plumbing, and of a character satisfactory to the Board--The experience requirement may be fulfilled by working four-(4)-years in any major phase of the plumbing business, approved by the Board, or by completing an apprenticeship program meeting the standards set by the Montana State Apprenticeship Council, the United States Department of Labor, Bureau of Apprenticeship and Training, or credit towards this experience requirement may be given for time spent attending trade or other schools specializing in training of value in the plumbing business and approved by the Board and satisfactory completion of the Board examination for journeyman plumbers--

(b)--For Master Plumbers--Evidence of four-(4)-years experience as a journeyman plumber, evidence of three years experience in supervisory capacities in the plumbing business, and satisfactory completion of the Board examination for Master Plumbers, testing his knowledge of the plumbing business and demonstrating his familiarity with business practices normally encountered in the

plumbing-business.

(c) ~~Application for Master Plumber's license or journeyman plumber's license may be made by anyone--professing the qualifications set forth in (a) and (b) above.~~ All applications must be submitted on forms furnished by the Board department 30 days prior to the examination. Those applications received after the deadline will be processed for the following examination. Re-examination fees must also be submitted 30 days prior to the examination.

(d) All applicants, master and journeyman will be required to successfully complete a written and practical examination before the appropriate licenses will be issued."

The remaining portions of the rule will be renumbered.

8. The deletion of subsections (a) and (b) of (1) are proposed as they did not clarify the statutes, they merely repeated it. The qualifications are spelled out in the rule ARM 40-3.82(6)-S8260. The amendment which is proposed for subsection (c) deletes the first sentence, which is now under rule 40-3.82(6)-S8260 as it pertains to applications rather than examinations. The proposed addition of a subsection (d) is a statement of what type of examination is required. The Board is now requiring all master plumber applicants to complete the practical portion as do the journeyman, because of a 1979 Legislative change, which now makes it possible for a master to work as a journeyman without the journeyman license. The board feels that as long as a master can work with the tools, he should be required to complete the practical portion of the examination to insure to the public he is qualified to do the work.

9. The proposed amendment to ARM 40-3.82(6)-S8290 amends subsections (1) and (4) and will read as follows: [(2) and (3) remain as is] (new matter underlined, deleted matter interlined)

"40-3.82(6)-S8290 RENEWALS (1) ~~Advance-r~~Renewal notices may be mailed prior to the expiration by the department, at the discretion of the Board, to the address on file. It shall be the responsibility of the licensee to keep his current address on file with the board.

(2).....

(3).....

(4) All master and journeyman licenses expire by law one year from date of issuance of last renewal. Any licensee who fails to renew on or prior to the expiration date will be allowed 30 days from the expiration date as a late renewal grace period. If the license is not renewed on or before the expiration of the 30 days, the license will expire and in order to reinstate the license, a new application and successful completion of an examination will be required. Under no

circumstances will the licensee be allowed to work as such during that 30 day period."

10. The reason for the proposed changes is to clarify the language.

11. The proposed amendment of ARM 40-3.82(6)-S82000 will read as follows: (new matter underlined)

"40-3.82(6)-S82000 DUPLICATE AND LOST LICENSES (1)
Duplicate licenses shall be provided by the Board to persons requesting the same in writing, upon payment of the replacement fee of \$1.00."

12. The amendment is proposed to set the replacement fee and to give the board a record of why a duplicate license was issued. A verbal request leaves the board with nothing for future reference as to why the duplicate license was requested or even that one was requested.

13. ARM 40-3.82(6)-S82010 PROVISIONS TO WHOM NOT APPLICABLE is proposed for deletion in its entirety as this is now covered by the statute and need not be repeated in rule form.

14. The proposed amendments of ARM 40-3.82(6)-S82060 amends subsection (1) and deletes subsection (2) in its entirety and will read as follows: (new matter underlined, deleted matter interlined)

"40-3.82(6)-S82060 MASTER-JOURNEYMAN PLUMBERS+ EMPLOY-
MENT-OF-JOURNEYMAN-AND-RESPONSIBILITIES THEREFOR

(1) ~~A-licensed-master-may-employ-apprentice-and-journeyman-plumbers-in-the-conduct-of-his-business-and shall-be-responsible-for-assuring-that-all-work performed-by-such-employees-shall-be-compliance-with the-state-plumbing-code-~~The fact that the master plumbers assumes such responsibility for assuring that all work performed by his employees shall be in compliance with the state plumbing code shall not relieve the journeyman plumber from his own individual responsibility for the proper performance of his work as a journeyman plumber and from his individual responsibility to his license and to the public for doing plumbing work in conformance with the requirements of the state plumbing code.

~~(2)--A-master-shall-not-allow-his-name-to-be-used-by any-person,-firm,-or-corporation-for-the-purpose-of obtaining-permits,-or-for-doing-plumbing-work-under-his license,-unless-the-master-plumber-is-a-partner-of-such-- other-person-or-is-an-officer-or-employee-of-the-firm-or-the-corporation-and-has-the-authority-to-exercise supervision-and-control-over-the-operations-of-the-firm or-the-corporation-and-over-the-plumbing-work-of-the-journeyman-employees,-and-actually-engages-in-such supervision-and-control-from-time-to-time-as-need-dictates-~~"

15. The amendments are proposed to eliminate in subsection

(1) the language which is redundant to statute and to clarify the responsibilities of a journeyman plumber. The deletion of subsection (2) is proposed to eliminate language which merely repeats that which is already outlined in sections 37-69-305, 306, and 323 MCA. (66-2404, 66-2402 R.C.M. 1947)

16. There will be additional changes during recodification. These are not noticed here as they involve placing portions of rules under other rules where they would be better suited, taking all current fees, with no changes in the amounts, and placing them under one fee schedule and rearranging some of the subsections in different rules to be in a more logical order.

17. Interested parties may submit their data, views or arguments concerning the proposed amendments and repeals in writing to the Board of Plumbers, Lalonde Building, Helena, Montana 59601 no later than September 27, 1979.

18. If a person who is directly affected by the proposed amendments and repeals 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 Plumbers, Lalonde Building, Helena, Montana 59601 no later than September 27, 1979.

19. If the Board receives requests for a public hearing on the proposed amendments and repeals from 10 percent or 25 or more of those persons directly affected by the proposed amendments or repeals 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.

20. The authority of the Board to make the proposed amendments and repeals is based on section 37-69-202 MCA (66-2409 R.C.M. 1947). The proposed amendments and repeals implement sections 37-69-101, 304, 305, 306, 307, 202, and 323 MCA (66- 2401.1, 2402, 2403, 2404, 2405, 2409, and 2402 R.C.M. 1947.

BOARD OF PLUMBERS
DON KRISTENSEN, CHAIRMAN

BY: 

ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, August 21, 1979.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA


IN THE MATTER OF THE	)	NOTICE OF CANCELLATION
CANCELLATION OF	)	OF AMENDMENT OF RULE
AMENDMENT OF RULE	)	42-2.22(2)-S22000
42-2.22(2)-S22000)	
Assessment of)	
Heavy Equipment)	

TO: All Interested Persons:

1. On February 15, 1979, the Department of Revenue published notice of a proposed amendment to the rule 42-2.22(2)-S22000 concerning the assessment of heavy equipment at pages 91 and 92 of the 1979 Montana Administrative Register, issue number 3.

2. The department will take no action on the proposed amendments and will permit the 6-month time period for adoption, provided for in 2-4-305(6), MCA, to expire.

3. Because of comments received on the proposed amendments to the rule and because of changes made during the 1979 legislative session, the department has redrafted and renoticed (pages 541 and 542 of the 1979 Montana Administrative Register, issue number 11) amendments to Rule 42-2.22(2)-S22000. Consequently the department has decided to permit the 6-month period, provided for in 2-4-305(6), MCA, to expire without taking action on the amendments noticed on pages 91 and 92 of the 1979 Montana Administrative Register, issue number 3.



MARY H. CRAIG, Director
Department of Revenue

Certified to the Secretary of State August 14, 1979.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

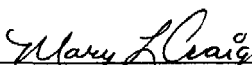
IN THE MATTER OF THE	)	NOTICE OF CANCELLATION
CANCELLATION OF	)	OF AMENDMENT OF RULE
AMENDMENT OF RULE	)	42-2.22(2)-S22010
42-2.22(2)-S22010)	
Assessment of)	
Livestock)	

TO: All Interested Persons:

1. On February 15, 1979, the Department of Revenue published notice of a proposed amendment to the rule 42-2.22(2)-S22010 concerning the assessment of livestock at pages 92 and 93 of the 1979 Montana Administrative Register, issue number 3.

2. The department will take no action on the proposed amendments and will permit the 6-month time period for adoption, provided for in 2-4-305(6), MCA, to expire.

3. Because of comments received on the proposed amendments to the rule and because of changes made during the 1979 legislative session, the department has redrafted and renoticed (pages 539 and 540 of the 1979 Montana Administrative Register, issue number 11) amendments to Rule 42-2.22(2)-S22010. Consequently the department has decided to permit the 6-month period, provided for in 2-4-305(6), MCA, to expire without taking action on the amendments noticed on pages 92 and 93 of the 1979 Montana Administrative Register, issue number 3.



MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State August 14, 1979.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

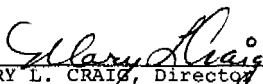
IN THE MATTER OF THE	)	NOTICE OF CANCELLATION
CANCELLATION OF	)	OF AMENDMENT OF RULE
AMENDMENT OF RULE	)	42-2.22(2)-S22040
42-2.22(2)-S22040)	
Assessment of)	
House Trailers)	

TO: All Interested Persons:

1. On February 15, 1979, the Department of Revenue published notice of a proposed amendment to the rule 42-2.22(2)-S22040 concerning the assessment of house trailers at pages 94 and 95 of the 1979 Montana Administrative Register, issue number 3.

2. The department will take no action on the proposed amendments and will permit the 6-month time period for adoption, provided for in 2-4-305(6), MCA, to expire.

3. Because of comments received on the proposed amendments to the rule and because of changes made during the 1979 legislative session, the department intends to either redraft and re-notice amendments amendments to Rule 42-2.22(2)-S22040 or to repeal the rule. Consequently the department has decided to permit the 6-month period, provided for in 2-4-305(6), MCA, to expire without taking action on the amendments noticed on pages 94 and 95 of the 1979 Montana Administrative Register, issue number 3.



MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State August 14, 1979.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

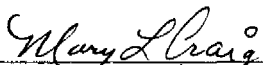
IN THE MATTER OF THE	)	NOTICE OF CANCELLATION
CANCELLATION OF	)	OF AMENDMENT OF RULE
AMENDMENT OF RULE	)	42-2.22(2)-S22150
42-2.22(2)-S22150)	
Assessment of)	
Trailers/Campers)	

TO: All Interested Persons:

1. On February 15, 1979, the Department of Revenue published notice of a proposed amendment to the rule 42-2.22(2) - S22150 concerning the assessment of trailers/campers at pages 100 through 102 of the 1979 Montana Administrative Register, issue number 3.

2. The department will take no action on the proposed amendments and will permit the 6-month time period for adoption, provided for in 2-4-305(6), MCA, to expire.

3. Because of comments received on the proposed amendments to the rule and because of changes made during the 1979 legislative session, the department intends to redraft and renote amendments to Rule 42-2.22(2)-S22150. Consequently the department has decided to permit the 6-month period, provided for in 2-4-305(6), MCA, to expire without taking action on the amendments noticed on pages 100 through 102 of the 1979 Montana Administrative Register, issue number 3.


MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State August 14, 1979.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

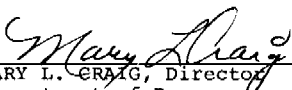
IN THE MATTER OF THE	)	NOTICE OF CANCELLATION
CANCELLATION OF	)	OF AMENDMENT OF RULE
AMENDMENT OF RULE	)	42-2.22(2)-S22160
42-2.22(2)-S22160)	
Assessment of)	
Snowmobiles and ATV's)	

TO: All Interested Persons:

1. On February 15, 1979, the Department of Revenue published notice of a proposed amendment to the rule 42-2.22(2) -S22160 concerning the assessment of snowmobiles and ATV's at page 102 of the 1979 Montana Administrative Register, issue number 3.

2. The department will take no action on the proposed amendments and will permit the 6-month time period for adoption, provided for in 2-4-305(6), MCA, to expire.

3. Because of comments received on the proposed amendments to the rule and because of changes made during the 1979 legislative session, the department intends to redraft and renote amendments to Rule 42-2.22(2)-S22160. Consequently the department has decided to permit the 6-month period, provided for in 2-4-305(6), MCA, to expire without taking action on the amendments noticed on page 102 of the 1979 Montana Administrative Register, issue number 3.


MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State August 14, 1979.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF PROPOSED AMENDMENT
AMENDMENT OF RULES	)	OF RULES 42-2.22(1)-S2200,
42-2.22(1)-S2200,	)	42-2.22(1)-S2220, 42-2.22(1)
42-2.22(1)-S2220,	)	-S2230, 42-2.22(1)-S2240,
42-2.22(1)-S2230,	)	42-2.22(2)-S2260, 42-2.22(2)
42-2.22(1)-S2240,	)	-S2270, 42-2.22(2)-S2280,
42-2.22(2)-S2260,	)	42-2.22(2)-S2290, 42-2.22(2)
42-2.22(2)-S2270,	)	-S22030, 42-2.22(2)-S22050,
42-2.22(2)-S2280,	)	42-2.22(2)-S22060, 42-2.22(2)
42-2.22(2)-S2290,	)	-S22070, 42-2.22(2)-S22110,
42-2.22(2)-S22030,	)	42-2.22(2)-S22120, 42-2.22(2)
42-2.22(2)-S22050,	)	-S22140, 42-2.22(2)-S22170,
42-2.22(2)-S22060,	)	and 42-2.22(2)-S22174 assess-
42-2.22(2)-S22070,	)	ment of various types of real
42-2.22(2)-S22110,	)	and personal property.
42-2.22(2)-S22120,	)	NO PUBLIC HEARING CONTEMPLATED
42-2.22(2)-S22140,)	
42-2.22(2)-S22170, and)	
42-2.22(2)-S22174)	
relating to the assess-)	
ment of various types of)	
real and personal)	
property.)	

TO: All Interested Parties:

1. On October 8, 1979, the Department of Revenue proposes to amend the above-listed rules relating to the assessment of various types of real and personal property.

2. The rules as proposed to be amended can be found in the Montana Administrative Register as discussed in paragraph 3 below.

3. On February 15, 1979, the Department of Revenue noticed the proposed amendment of the above-listed rules in the Montana Administrative Register. On August 14, 1979, the Department amended the rules, either as initially proposed or as revised to reflect comments received on the proposals. Because of amendments to section 2-4-305, MCA, (made during the 1979 legislative session), requiring publication of notice of amendments within 6 months of initial notice, the validity of the amendments may be subject to challenge. Due to this uncertainty, the Department has decided to renounce the amendments and readopt the amendments so as to comply with the 6-month requirement. The rules, as a whole, are lengthy, and the department has decided to provide references to the text to be adopted rather than to set out the text in full. To facilitate this approach, the notices of amendment have been published in the Rules Section of this issue of the Register. The rationale, authority, and implementing sections for each rule change can be found in the original notices, found in issue no. 3, and in the notices of amendment, found in this issue. For convenience the rules are set out below individually:

42-2.22(1)-S2200 MARSHALL VALUATION SERVICE: To be amended as initially proposed (page 106, 1979 MAR, issue no. 3); noticed: page 106, 1979 MAR, issue no. 3, amendment adopted: page 984 , 1979 MAR, this issue.

42-2.22(1)-S2220 ASSESSMENT OF CITY AND TOWN LOTS AND IMPROVEMENTS: To be amended as initially proposed (page 107, 1979 MAR, issue no. 3); noticed: page 107, 1979 MAR, issue no. 3, amendment adopted: page 985 , 1979 MAR, this issue.

42-2.22(1)-S2230 ASSESSMENT OF TIMBER FOR CERTAIN COUNTIES: To be amended as initially proposed (pages 107 through 128, 1979 MAR, issue no. 3); noticed: pages 107 through 128, 1979 MAR, issue no. 3, amendment adopted: page 986 , 1979 MAR, this issue.

42-2.22(1)-S2240 ASSESSMENT OF TIMBER FOR ALL COUNTIES EAST OF THE CONTINENTAL DIVIDE INCLUDING DEER LODGE AND SILVER BOW COUNTIES: To be amended as initially proposed (pages 129 through 132, 1979 MAR, issue no. 3); noticed: pages 129 through 132, 1979 MAR, issue no. 3, amendment adopted: page 987 , 1979 MAR, this issue.

42-2.22(2)-S2260 ASSESSMENT OF AIRCRAFT: To be amended as initially proposed (page 88, 1979 MAR, issue no. 3); noticed: page 88, 1979 MAR, issue no. 3, amendment adopted page 988, 1979 MAR, this issue.

42-2.22(2)-S2270 ASSESSMENT OF BILLBOARDS: To be amended as revised (pages 989 and 990 , 1979 MAR, this issue); noticed: pages 88 and 89, 1979 MAR, issue no. 3, amendment adopted pages 989 and 990 , 1979 MAR, this issue.

42-2.22(2)-S2280 ASSESSMENT OF BOWLING ALLEYS: To be amended as revised (pages 991 and 992 , 1979 MAR, this issue); noticed: pages 89 and 90, 1979 MAR, issue no. 3, amendment adopted: pages 991 and 992, 1979 MAR, this issue.

42-2.22(2)-S2290 ASSESSMENT OF UNPROCESSED AGRICULTURAL PRODUCTS ON THE FARM: To be amended as initially proposed (pages 90 and 91, 1979 MAR, issue no. 3); noticed: pages 90 and 91, 1979 MAR, issue no. 3, amendment adopted: page 993 , 1979 MAR, this issue.

42-2.22(2)-S22030 ASSESSMENT OF MOBILE HOMES: To be amended as initially proposed (pages 93 and 94, 1979 MAR, issue no. 3); noticed: pages 93 and 94, 1979 MAR, issue no. 3, amendment adopted: page 994 , 1979 MAR, this issue.

42-2.22(2)-S22050 ASSESSMENT OF FARM MACHINERY: To be amended as revised (pages 995 and 996 , 1979 MAR, this issue); noticed: pages 95 and 96, 1979 MAR, issue no. 3, amendment adopted: pages 995 and 996 , 1979 MAR, this issue.

42-2.22(2)-S22060 ASSESSMENT OF AUTOMOBILES: To be amended as revised (pages 997 through 999, 1979 MAR, this issue); noticed: pages 96 and 97, 1979 MAR, issue no. 3, amendments adopted: pages 997 through 999, 1979 MAR, this issue.

42-2.22(2)-S22070 ASSESSMENT OF OIL FIELD MACHINERY AND SUPPLIES: To be amended as initially proposed (page 97, 1979 MAR, issue no. 3); noticed: page 97, 1979 MAR, issue no. 3, amendments adopted: page 1000, 1979 MAR, this issue.

42-2.22(2)-S22110 ASSESSMENT OF TELEVISION CABLE SYSTEM: To be amended as initially proposed (pages 97 and 98, 1979 MAR, issue no. 3); noticed: pages 97 and 98, 1979 MAR, issue no. 3, amendments adopted: page 1001, 1979 MAR, this issue.

42-2.22(2)-S22120 ASSESSMENT OF TRUCKS AND COMMERCIAL TRAILERS: To be amended as revised (pages 1002 and 1003, 1979 MAR, this issue); noticed: pages 98 and 99, 1979 MAR, issue no. 3, amendments adopted: pages 1002 and 1003, 1979 MAR, this issue.

42-2.22(2)-S22140 ASSESSMENT OF BOATS AND MOTORS: To be amended as revised (pages 1004 through 1006, 1979 MAR, this issue); noticed: pages 99 and 100, 1979 MAR, issue no. 3, amendments adopted: pages 1004 through 1006, 1979 MAR, this issue.

42-2.22(2)-S22170 ASSESSMENT OF MOTORCYCLES: To be amended as revised (pages 1007 through 1009, 1979 MAR, this issue); noticed: pages 102 and 103, 1979 MAR, issue no. 3, amendments adopted: pages 1007 through 1009, 1979 MAR, this issue.

42-2.22(2)-S22174 ASSESSMENT OF SKI LIFT EQUIPMENT: To be amended as initially proposed (pages 103 through 105, 1979 MAR, issue no. 3); noticed: pages 103 through 105, 1979 MAR, issue no. 3) amendments adopted: page 1010, 1979 MAR, this issue.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing no later than October 1, 1979 to:


Laurence Weinberg
Staff Attorney
Legal Division
Department of Revenue
Mitchell Building
Helena, Montana 59601
(406) 449-2852

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 Laurence Weinberg at the address given in paragraph 4 no later than October 1, 1979.

6. If the Department receives requests for a public hearing on the proposed amendments from 25 or more persons who are directly affected by the proposed amendments or from the Revenue Oversight Committee, a hearing will be held at a time and place to be noticed at a later date in the Montana Administrative Register.

7. Authority to make the amendments is given by section 15-1-201, MCA. The amendments implement numerous sections of Title 15. The implementing sections can be found in the notices of amendment in this issue of the Register (see paragraph 3 of this notice). The amendments would be effective the day after the notice of amendment is published in the Rules Section of the Montana Administrative Register and would apply to tax years beginning after December 31, 1978.


MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State August 20 , 1979.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF PROPOSED ADOPTION
of a rule relating to a New)	OF A RULE - NEW TO OLD
to Old Numbering Table for)	NUMBERING TABLE
Administrative Rules of)	
Montana)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On September 29, 1979, the Secretary of State proposes to adopt a rule relating to a new to old numbering table.
2. The proposed rule provides as follows:

RULE I NEW TO OLD NUMBERING TABLE (1) This table indicates the new three-part rule number assigned to a rule in the Administrative Rules of Montana (ARM). The new rule numbers will be listed in a column on the left side of the page in ascending order, with the old rule number which was assigned to the rule or subsections of a rule before recodification, listed in a column on the right side of a page.

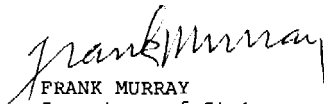
(2) This table must be submitted each replacement page scheduled date for all rules recodified and refiled on that date. In June 1980, each department will compile a table indicating all the new rule numbers in ascending order in their title and indicating the old numbers assigned before recodification. This table will be published and inserted in ARM.

3. This rule is proposed to facilitate locating a rule in ARM that is listed under the new numbering method and will aid this office in accounting for all recodified rules.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Mr. Leonard C. Larson, Room 202, Capitol Building, Helena, Montana 59601, no later than September 27, 1979.

5. The authority and implementing section is based on Sec. 2-4-306 MCA (Sec. 82-4204(2) R.C.M. 1947).

Dated this 20th day of August, 1979


FRANK MURRAY
Secretary of State

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

IN THE MATTER of the adoption) NOTICE OF ADOPTION OF TEMPORARY
of a temporary emergency rule) EMERGENCY RULES RELATING TO
on the sale and use of aquatic) AQUATIC HERBICIDES. NO PUBLIC
herbicides.) HEARING CONTEMPLATED.

TO: ALL INTERESTED PARTIES:

(1)(a) A number of fish kills have been reported to the department for investigation recently. The source of the fish kills has been stream contamination caused by herbicide applications made to irrigation water systems in the state. The improper application of aquatic herbicides has resulted in significant short term stream contamination, the total destruction of fish populations in certain areas, and present a danger of possible contamination of domestic water supplies.

(b) The detrimental effects to state waters and fish resulted from the person making the herbicide application failing to follow the pesticide label directions, instructions, and cautions; and in failing to determine and verify that the irrigation system to which the application was being made was of adequate integrity to contain the treated water, and that all irrigation regulation gates, culverts, flumes and related structures were in proper adjustment and repair to prevent the introduction of treated waters into state water.

(c) The contamination of state waters by an aquatic herbicide constitutes an imminent peril to public health, welfare, safety, and to the environment.

(d) In order to protect the public health, and the environment from the toxic effects of improperly applied pesticides the department hereby declares an emergency, and promulgates this emergency rule under authority of 80-8-105(3)(a)(b) and (4) MCA and section 2-4-303 MCA.

(2) Now therefore the department is, by the adoption of this emergency rule, suspending immediately, the sale and/or application of any aquatic herbicides or any chemical intended for the control or remission of aquatic vegetation in any irrigation system or water conveyance within the state of Montana. The sale of, exchange of, or the giving away of such chemical pesticides by any person whether licensed or not to another person whether licensed or not is prohibited. The use and/or application of an aquatic herbicide into any irrigation system by any person is hereby prohibited in the state.

(3) The department recognizes that agricultural producers, irrigation districts, water companies or other individuals may experience significantly serious problems with the distribution of water within a particular irrigation system as a result of aquatic vegetation restricting the flow of water. Therefore the department will allow the use of aquatic herbicides or chemicals under the following conditions.

Montana Administrative Register

16-8/30/79

(a) That any person desiring the use of an aquatic herbicide shall contact the Department of Agriculture in Helena by correspondence or telephone (449-2944) 48 hours prior to such proposed application.

(b) That the person substantiates to the department that treatment of the irrigation system is required to insure the continued production of an agricultural crop.

(c) That the person fully understands and asserts to the department that all labels and labeling directions for the given pesticide will be strictly complied with, in detail throughout the use, and application of the herbicide, and the storage, transportation and disposal of the pesticide container.

(d) That the person who will do the application has made a detailed and proper investigation and personally observed and determined that all gates, culverts and other irrigation structures are properly maintained and in good repair and condition and properly adjusted to prevent any of the herbicide from contaminating any waters within the state.

(e) That the person making the application has consulted with the Montana Department of Fish, Game, and Parks, if the herbicide label or labeling requires such consultation; the required consultation shall be accomplished as early as possible prior to any application to allow the Department of Fish, Game, and Parks to make timely recommendation to the person proposing to apply the herbicide and to the Department of Agriculture.


(f) That the person making the application has calculated the flow of the waters in the irrigation system and has determined the correct and proper amount of the herbicide to be applied to the irrigation system.

(g) That the person on whose land the application is to be made agrees to allow department personnel or their representatives to make on site observations of irrigation system prior to, during or after the application of the aquatic herbicide.

(h) That the person applying agrees to follow completely all state and federal laws, regulations and rules when using or applying the aquatic herbicide or chemical.

(4) Sale of aquatic herbicide to any person or individual applicator by a pesticide dealer, retailer, pesticide registrant or distributor or any other person will be allowed only after the above conditions are agreed to by the individual applicator. The department will notify the seller that such a sale is allowed.

(5) This temporary emergency rule is effective August 13, 1979, and will remain effective for 120 days. The department in this time period will be reviewing the use and application of aquatic herbicides to determine if new/or revised rules on aquatic herbicides is necessary and essential to prevent future adverse effects to people and the environment. The department hereby solicits the comments, advice or recommendations of the public throughout the 120 days. Persons may submit their views in writing to Gary Gingery, Administrator, Environmental Management Division, Agriculture/Livestock Building, Capitol Station, Helena, MT 59601.


W. Gordon McOmber, Director

Certified to the Secretary of State August 13, 1979

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

IN THE MATTER of the adoption)	NOTICE OF ADOPTION OF TEMPORARY
of a temporary emergency rule)	EMERGENCY RULES RELATING TO
on the sale and use of aquatic) AQUATIC HERBICIDES. NO PUBLIC	
herbicides.)	HEARING CONTEMPLATED.

TO: ALL INTERESTED PARTIES:

(1) (a) A number of fish kills have been reported to the department for investigation recently. The source of the fish kills has been stream contamination caused by herbicide applications made to irrigation water systems in the state. The improper application of aquatic herbicides has resulted in significant short term stream contamination, the total destruction of fish populations in certain areas, and present a danger of possible contamination of domestic water supplies.

(b) The detrimental effects to state waters and fish resulted from the person making the herbicide application failing to follow the pesticide label directions, instructions, and cautions; and in failing to determine and verify that the irrigation system to which the application was being made was of adequate integrity to contain the treated water, and that all irrigation regulation gates, culverts, flumes and related structures were in proper adjustment and repair to prevent the introduction of treated waters into state water.

(c) The contamination of state waters by an aquatic herbicide constitutes an imminent peril to public health, welfare, safety, and to the environment.

(d) In order to protect the public health, and the environment from the toxic effects of improperly applied pesticides the department hereby declares an emergency, and promulgates this emergency rule under authority of 80-8-105(3)(a)(b) and (4) MCA and section 2-4-303 MCA.

(2) Now therefore the department is, by the adoption of this emergency rule, suspending immediately, the sale and/or application of any aquatic herbicides or any chemical intended for the control or remission of aquatic vegetation in any irrigation system or water conveyance within the state of Montana. The sale of, exchange of, or the giving away of such chemical pesticides by any person whether licensed or not to another person whether licensed or not is prohibited. The use and/or application of an aquatic herbicide into any irrigation system by any person is hereby prohibited in the state.

(3) The department recognizes that agricultural producers, irrigation districts, water companies or other individuals may experience significantly serious problems with the distribution of water within a particular irrigation system as a result of aquatic vegetation restricting the flow of water. Therefore the department will allow the use of aquatic herbicides or chemicals under the following conditions.

Montana Administrative Register

16-8/30/79

(a) That any person desiring the use of an aquatic herbicide shall contact the Department of Agriculture in Helena by correspondence or telephone (449-2944) 48 hours prior to such proposed application.

(b) That the person substantiates to the department that treatment of the irrigation system is required to insure the continued production of an agricultural crop.

(c) That the person fully understands and asserts to the department that all labels and labeling directions for the given pesticide will be strictly complied with, in detail throughout the use, and application of the herbicide, and the storage, transportation and disposal of the pesticide container.

(d) That the person who will do the application has made a detailed and proper investigation and personally observed and determined that all gates, culverts and other irrigation structures are properly maintained and in good repair and condition and properly adjusted to prevent any of the herbicide from contaminating any waters within the state.

(e) That the person making the application has consulted with the Montana Department of Fish, Game, and Parks, if the herbicide label or labeling requires such consultation; the required consultation shall be accomplished as early as possible prior to any application to allow the Department of Fish, Game, and Parks to make timely recommendation to the person proposing to apply the herbicide and to the Department of Agriculture.

(f) That the person making the application has calculated the flow of the waters in the irrigation system and has determined the correct and proper amount of the herbicide to be applied to the irrigation system.

(g) That the person on whose land the application is to be made agrees to allow department personnel or their representatives to make on site observations of irrigation system prior to, during or after the application of the aquatic herbicide.

(h) That the person applying agrees to follow completely all state and federal laws, regulations and rules when using or applying the aquatic herbicide or chemical.

(4) Sale of aquatic herbicide to any person or individual applicator by a pesticide dealer, retailer, pesticide registrant or distributor or any other person will be allowed only after the above conditions are agreed to by the individual applicator. The department will notify the seller that such a sale is allowed.

(5) This temporary emergency rule is effective August 13, 1979, and will remain effective for 120 days. The department in this time period will be reviewing the use and application of aquatic herbicides to determine if new/or revised rules on aquatic herbicides is necessary and essential to prevent future adverse effects to people and the environment. The department hereby solicits the comments, advice or recommendations of the public throughout the 120 days. Persons may submit their views in writing to Gary Ginger, Administrator, Environmental Management Division, Agriculture/Livestock Building, Capitol Station, Helena, MT 59601.


W. Gordon McOmber, Director

Certified to the Secretary of State August 13, 1979

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
of Rule 12-2.2(14)-P2070 re-) RULE 12-2.2(14)-P2070
lating to the sale or dis-) REGARDING SALE OR DIS-
tribution of license lists) TRIBUTION OF LICENSE
) LISTS

TO: All Interested Persons:

1. On June 28, 1979, the Fish and Game Commission published notice of a proposed amendment of a rule concerning department policy for the sale or distribution of hunting, fishing, and trapping license and other department lists on page 614 of the 1979 Montana Administrative Register, issue No. 12.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The commission has amended the 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.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the repeal) NOTICE OF REPEAL OF RULE
of Rule 12-2.10(14)-S10200) 12-2.10(14)-S10200
relating to the annual) RELATING TO THE ANNUAL
Yellowstone boat float) YELLOWSTONE BOAT FLOAT

TO: All Interested Persons:

1. On June 28, 1979, the Fish and Game Commission published notice of a proposed repeal of a rule requiring the wearing of personal flotation devices during the annual Yellowstone boat float on page 617 of the 1979 Montana Administrative Register, issue No. 12.

2. The agency has repealed the rule as proposed.

3. A comment in opposition was received from Ms. Urana Clarke of Livingston, Montana. There not being sufficient comment to require a public hearing, the repeal was effected. The action was taken because participants in the boat float feel the requirement of personal flotation devices is unduly restrictive of their activities.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amend-	)	NOTICE OF AMENDMENT OF
ment of Rule 12-2.10(14)-S10190	)	RULE 12-2.10(14)-S10190
relating to water safety	)	RELATING TO WATER
regulations	)	SAFETY REGULATIONS

TO: All Interested Persons:

1. On June 28, 1979, the Fish and Game Commission published notice of a proposed amendment of a rule concerning water safety regulations on page 631 of the 1979 Montana Administrative Register, issue No. 12.

2. The agency has amended the rule as proposed.

3. Comments or testimony were received as follows:

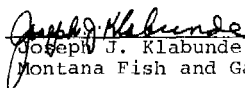
(1) One petition requesting the proposed amendment be modified to permit up to 7-1/2 horsepower motors for use on the reservoir; 96 signatures, some in duplicate and triplicate, were received in support of this petition. The apparent reason for this petition was the feeling that high-speed boating activities could take place with the 10 horsepower limitation in effect. The commission denied this request as any degrading effect on the banks of the reservoir will not be significantly increased by the 10 horsepower limitation and that 10 horsepower is not sufficient power for high-speed motorboat activities.

(2) Questionnaires were distributed and returned asking for comment or opinion of the area residents as to the proposed amendment; 86 total responses were received and 2 additional comments by telephone in response to the questionnaire; 31 preferred the 10 h.p. maximum limit, 13 preferred 5-1/2 h.p. maximum, and 15 preferred to continue with a no-motor limitation. Under a separate listing for ideas or comments, 15 stated they wanted no limit on horsepower; 7 preferred a horsepower limit of between 35 h.p. and 50 h.p.; and 9 preferred a no-wake speed for any motorboat operation.

The commission has amended the rule to include South Sandstone Reservoir in Fallon County in waters that allow motor-propelled watercraft of 10 horsepower or under. The reasons for the modification are (a) the banks of South Sandstone Reservoir have stabilized to the extent that wave action by low-horsepowered motorboats will not cause erosion and break-down, and (b) to provide another form of recreational activity on the reservoir by fishermen and other boaters.

The commission requested that the department monitor activities on the reservoir as a result of this action and

report on the effect of this amendment at the end of the next boating season.



Joseph J. Klabunde, Chairman
Montana Fish and Game Commission

Certified to Secretary of State August 20, 1979

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF MEDICAL EXAMINERS

IN the matter of the amendment)	NOTICE OF AMENDMENT OF ARM
of ARM 40-3.54(18)-S54100)	40-3.54(18)-S54100 EMERGENCY
concerning emergency medical)	MEDICAL TECHNICIANS - BASIC
technicians - basis)	

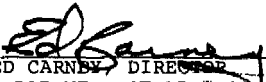
TO: All Interested Persons:

1. On July 12, 1979, the Board of Medical Examiners published a notice of a proposed amendment of ARM 40-3.54(18)-S54100 to add a new subsection regarding application, examination and recertification fees for emergency medical technicians - basic at pages 664 and 665, 1979 Administrative Register, issue number 13.

2. The Board has amended the rule exactly as proposed.

3. No comments or testimony were received. The Board has amended the rule because the expenses of administering the application and examination are incurred upon receipt of the application and therefore represents an expenditure to the Board whether the applicant takes the examination or completes the licensing process. Many applicants initiate the application for examination, which is then fully processed, but at the time the examination is scheduled, the applicant fails to appear. The expenses are incurred and must be paid by the Board of Medical Examiners even if this happens.

BOARD OF MEDICAL EXAMINERS
JOHN C. SEIDENSTICKER, M.D.
PRESIDENT

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

Certified to the Secretary of State, August 21, 1979.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF ADOPTION OF
ADOPTION of Rule 42-2.12(6)-)		Catering Endorsement
512125 relating to	)	42-2.12(6)-512125
Catering Endorsement)	

TO: All Interested Persons:

(1) On June 28, 1979, the Department of Revenue published notice of the proposed adoption of a rule regarding the catering endorsement to the All-beverage liquor license at pages 645-646 of the 1979 Montana Administrative Register, Issue Number 12.


(2) The Department has adopted the rule as originally noticed with the following change:

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

(3) The Montana Tavern Association and other individuals approved at the public hearing held on July 18, 1978. The Association concurred in the adoption of the rule including the amendment made by the Department to add receptions to the list of events. The other individuals present had questions or comments concerning the general application of the catering endorsement to the All-beverage license. For example, there were questions raised as to whether local government could require a fee for each catered event and the bidding process used by local government to allow catered events. These inquiries were either beyond the scope of the rule or the Department's authority.

(4) No other written or oral comments were received at the hearing or otherwise.

DEPARTMENT OF REVENUE


MARY D. CRAIG, Director

Certified to the Secretary of State 8/20/79

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA


IN THE MATTER OF THE	)	NOTICE OF AMENDMENT OF
AMENDMENT OF RULE	)	Rule 42-2.22(1)-S2200
42-2.22(1)-S2200)	
Marshall Valuation)	
Service)	

TO: All Interested Persons:

1. On February 15, 1979, the Department of Revenue published notice of a proposed amendment to the rule 42-2.22(1)-S2200 concerning appraisal manuals to be used in Montana at page 106 of the 1979 Montana Administrative Register, issue number 3.

2. The department has amended the rule as proposed.

3. No comments or testimony were received. The department has amended the rule to implement the requirement imposed by law that uniform methods of appraisal be established in Montana. Authority for the rule is given by 15-1-201, MCA. The rule implements 15-7-103, MCA. The rule is effective August 31, 1979, and applies to tax years beginning after December 31, 1978.


MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State August 14, 1979.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

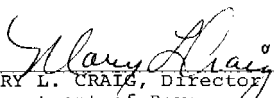
IN THE MATTER OF THE	)	NOTICE OF AMENDMENT OF
AMENDMENT OF RULE	)	Rule 42-2.22(1)-S2220
42-2.22(1)-S2220)	
Assessment of City and)	
Town Lots and Improve-)	
ments)	

TO: All Interested Persons:

1. On February 15, 1979, the Department of Revenue published notice of a proposed amendment to the rule 42-2.22(1)-S2220 concerning the appraisal of city and town lots and improvements at page 107 of the 1979 Montana Administrative Register, issue number 3.

2. The department has amended the rule as proposed.

3. No comments or testimony were received. The department has amended the rule because of changes made by Chapter 566, Laws of 1977 (House Bill 70) in the treatment of property taxes, specifically the elimination of the term assessed value in favor of the term market value. Authority for the rule is given by 15-1-201, MCA. The rule implements 15-6-112, 15-6-115, 15-6-116, 15-6-119, MCA, (now repealed) and 15-7-101, MCA, for tax years beginning after December 31, 1978, and 15-6-134, 15-6-135, and 15-7-101, MCA, for tax years beginning after December 31, 1979. The rule is effective August 31, 1979, and applies to tax years beginning after December 31, 1978.


MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State August 14, 1979.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

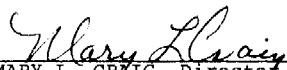
IN THE MATTER OF THE	)	NOTICE OF AMENDMENT OF
AMENDMENT OF RULE	)	Rule 42-2.22(1)-S2230
42-2.22(1)-S2230)	
Assessment of Timber)	
for Certain Counties)	

TO: All Interested Persons:

1. On February 15, 1979, the Department of Revenue published notice of a proposed amendment to the rule 42-2.22(1)-S2230 concerning the assessment of timber for certain counties at pages 107 through 128 of the 1979 Montana Administrative Register, issue number 3.

2. The department has amended the rule as proposed.

3. No comments or testimony were received. The department has amended the rule because the department is now responsible for the appraisal and assessment of all property in Montana and for developing a uniform method for such appraisal and assessment. This rule, originally adopted by the State Board of Equalization, has been rewritten to reflect the department's responsibilities. Authority for the rule is given by 15-1-201, MCA. The rule implements 15-7-103, MCA. The rule is effective August 31, 1979, and applies to tax years beginning after December 31, 1978.


MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State August 14, 1979.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

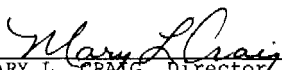
IN THE MATTER OF THE	)	NOTICE OF AMENDMENT OF
AMENDMENT OF RULE	)	Rule 42-2.22(1)-S2240
42-2.22(1)-S2240)	
Assessment of Timber)	
for All Counties East)	
of the Continental Divide)		
Including Deer Lodge and)		
Silver Bow Counties)	

TO: All Interested Persons:

1. On February 15, 1979, the Department of Revenue published notice of a proposed amendment to the rule 42-2.22(1)-S2240 concerning the assessment of timber for all counties east of the continental divide, including Deer Lodge and Silver Bow Counties at pages 129 through 132 of the 1979 Montana Administrative Register, issue number 3.

2. The department has amended the rule as proposed.

3. No comments or testimony were received. The department has amended the rule because the department is now responsible for the appraisal and assessment of all property in Montana and for developing a uniform method for such appraisal and assessment. This rule, originally adopted by the State Board of Equalization, has been rewritten to reflect the department's responsibilities. Authority for the rule is given by 15-1-201, MCA. The rule implements 15-7-103, MCA. The rule is effective August 31, 1979, and applies to tax years beginning after December 31, 1978.


MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State August 14, 1979.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

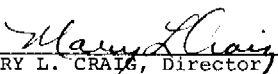
IN THE MATTER OF THE	)	NOTICE OF AMENDMENT OF
AMENDMENT OF RULE	)	Rule 42-2.22(2)-S2260
42-2.22(2)-S2260,)	
Assessment of Aircraft)	

TO: All Interested Persons:

1. On February 15, 1979, the Department of Revenue published notice of a proposed amendment to the rule 42-2.22(2)-S2260 concerning assessment of aircraft at page 88 of the 1979 Montana Administrative Register, issue number 3.

2. The department has amended the rule as proposed.

3. No comments or testimony were received. The department has amended the rule because of changes made by Chapter 566, Laws of 1977 (House Bill 70) in the treatment of property taxes, specifically the elimination of the term assessed value in favor of the term market value. Authority for the rule is given by 15-1-201, MCA. The rule implements 15-6-113, MCA, (now repealed) for tax years beginning after December 31, 1978, and 15-6-138, MCA, for tax years beginning after December 31, 1979. The rule is effective on August 31, 1979, and applies to tax years beginning after December 31, 1978.



MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State August 14, 1979.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE) NOTICE OF AMENDMENT OF
AMENDMENT OF RULE) Rule 42-2.22(2)-S2270
42-2.22(2)-S2270)
Assessment of Billboards)

TO: All Interested Persons:

1. On February 15, 1979, the Department of Revenue published notice of a proposed amendment to the rule 42-2.22(2)-S2270 concerning the assessment of billboards at pages 88 and 89 of the 1979 Montana Administrative Register, issue number 3.

2. The department has amended the rule with the following changes (added language capitalized and underlined):

42-2.22(2)-S2270 ASSESSMENT OF BILLBOARDS (1) ~~The minimum assessed value of billboards shall be according to the schedule herein adopted and incorporated by the Department of Revenue by reference. The billboard assessment schedule may be reviewed in this Department or purchased from this Department at cost.~~ average market value of billboards shall be determined using a depreciation table established by the Department of Revenue. This is a ten-year table and reflects the average life of these properties. WILL BE DETERMINED USING THE DEPRECIATION SCHEDULE AND TREND FACTOR ANALYSIS IN SUBSECTION (2).

(2) (A) IN ORDER TO ARRIVE AT MARKET VALUE, THE ORIGINAL COST OF THE PROPERTY WILL BE TRENDED ANNUALLY TO REFLECT CHANGES IN PRICE INDICES PUBLISHED BY THE BUREAU OF LABOR STATISTICS.

(B) THE FOLLOWING 10-YEAR DEPRECIATION SCHEDULE WILL BE USED TO DETERMINE THE AVERAGE MARKET VALUE OF BILLBOARDS:

<u>AGE</u>	<u>DEPRECIATION</u>
1 YEAR OLD	80%
2 YEARS OLD	70%
3 YEARS OLD	65%
4 YEARS OLD	60%
5 YEARS OLD	50%
6 YEARS OLD	45%
7 YEARS OLD	37%
8 YEARS OLD	30%
9 YEARS OLD	25%
10 YEARS OLD AND OLDER	20%

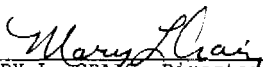
~~(2)~~ (3) This rule ~~would be~~ IS effective for tax years beginning after December 31, 1978.

3. Comments were received from the legislative Administrative Code Committee requesting that the depreciation schedule be included in the rule text rather than be referenced to a table established by the department. Accordingly, the rule has been rewritten to reflect the Committee's request.

In response to requests to indicate that the department utilizes trend factor analysis in the determination of market value, subsection (1) has been rewritten and a new subsection

(2) (a) has been added. The department will adopt figures for the trend factor analysis each year by adopting a rule and then subsequently amending a rule in this regard. The trending rule is being prepared and will be noticed in the Montana Administrative Register upon approval by the Director. Inasmuch as the trending rule will be amended each year, it was considered more efficient to write a separate rule for trending rather than to include trending figures in the rules pertaining to particular types of property.

The department has amended the rule because of changes made by Chapter 566, Laws of 1977 (House Bill 70) in the treatment of property taxes, specifically the elimination of the term assessed value in favor of the term market value. Authority for the rule is given by 15-1-201, MCA. The rule implements 15-6-110, MCA, (now repealed) for tax years beginning after December 31, 1978, and 15-6-139, MCA, for tax years beginning after December 31, 1979. The rule is effective on August 31, 1979, and applies to tax years beginning after December 31, 1978.


MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State August 14, 1979.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF AMENDMENT OF
AMENDMENT OF RULE	)	Rule 42-2.22(2)-S2280
42-2.22(2)-S2280)	
Assessment of Bowling)	
Alleys)	

TO: All Interested Persons:

1. On February 15, 1979, the Department of Revenue published notice of a proposed amendment to the rule 42-2.22(2)-S2280 concerning the assessment of bowling alleys at pages 89 and 90 of the 1979 Montana Administrative Register, issue number 3.

2. The department has amended the rule with the following changes (added language capitalized and underlined):

~~42-2.22(2)-S2280 ASSESSMENT OF BOWLING ALLEYS {1}-In determining the minimum assessed value of combination automatic pin spoters and lanes, the base value shall be \$6,400. After the first year the value shall be \$4,670, after the second year the value shall be \$3,650, after the third year the value shall be \$3,010, after the fourth year the value shall be \$2,560, after the fifth year the value shall be \$2,175, after the sixth year the value shall be \$1,920, after the seventh year the value shall be \$1,665, after the eighth year the value shall be \$1,475, after the ninth year the value shall be \$1,345, after the tenth year and over the value shall be \$1,200.~~

~~The minimum assessed value of lanes only shall be a base price of \$4,000. After one year the value shall be \$2,920, after two years \$2,280, after three years \$1,880, after four years \$1,600, after five years \$1,360, after six years \$1,200, after seven years \$1,040, after eight years \$920, after nine years \$840, after ten years \$800, with a minimum of \$500.~~

~~(1) The average market value of bowling alleys and equipment shall be determined using a depreciation table established by the Department of Revenue. This is a ten year table and reflects the average life of these properties. WILL BE DETERMINED USING THE DEPRECIATION SCHEDULE AND TREND FACTOR ANALYSIS IN SUBSECTION (2).~~

~~(2) (A) IN ORDER TO ARRIVE AT MARKET VALUE, THE ORIGINAL COST OF THE PROPERTY WILL BE TRENDED ANNUALLY TO REFLECT CHANGES IN PRICE INDICES PUBLISHED BY THE BUREAU OF LABOR STATISTICS.~~

~~(B) THE FOLLOWING 10-YEAR DEPRECIATION SCHEDULE WILL BE USED TO DETERMINE THE AVERAGE MARKET VALUE OF BOWLING ALLEYS AND EQUIPMENT:~~

<u>AGE</u>	<u>DEPRECIATION</u>
1 YEAR OLD	80%
2 YEARS OLD	70%
3 YEARS OLD	65%
4 YEARS OLD	60%
5 YEARS OLD	50%

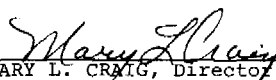
6 YEARS OLD	45%
7 YEARS OLD	37%
8 YEARS OLD	30%
9 YEARS OLD	25%
10 YEARS OLD AND OLDER	20%

(2) (3) This rule ~~would be~~ IS effective for tax years beginning after December 31, 1978.

3. Comments were received from the legislative Administrative Code Committee requesting that the depreciation schedule be included in the rule text rather than be referenced to a table established by the department. Accordingly the rule has been rewritten to reflect the Committee's request.

In response to requests to indicate that the department utilizes trend factor analysis in the determination of market value, subsection (1) has been rewritten and a new subsection (2)(a) has been added. The department will adopt figures for the trend factor analysis each year by adopting a rule and then subsequently amending a rule in this regard. The trending rule is being prepared and will be noticed in the Montana Administrative Register upon approval by the Director. Inasmuch as the trending rule will be amended each year, it was considered more efficient to write a separate rule for trending rather than to include trending figures in the rules pertaining to particular types of property.

The department has amended the rule because of changes made by Chapter 566, Laws of 1977 (House Bill 70) in the treatment of property taxes, specifically the elimination of the term assessed value in favor of the term market value. Authority for the rule is given by 15-1-201, MCA. The rule implements 15-6-110, MCA, (now repealed) for tax years beginning after December 31, 1978, and 15-6-139, MCA, for tax years beginning after December 31, 1979. The rule is effective August 31, 1979, and applies to tax years beginning after December 31, 1978.


MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State August 14, 1979.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE)
AMENDMENT OF RULE)
42-2.22(2)-S2290)
Assessment of Unprocessed)
Agricultural Products on)
the Farm

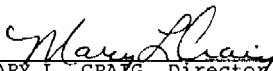
NOTICE OF AMENDMENT OF
Rule 42-2.22(2)-S2290

TO: All Interested Persons:

1. On February 15, 1979, the Department of Revenue published notice of a proposed amendment to the rule 42-2.22(2)-S2290 concerning the assessment of unprocessed agricultural products on the farm at pages 90 and 91 of the 1979 Montana Administrative Register, issue number 3.

2. The department has amended the rule as proposed.

3. No comments or testimony were received. The department has amended the rule because of changes made by Chapter 566, Laws of 1977 (House Bill 70) in the treatment of property taxes, specifically the elimination of the term assessed value in favor of the term market value. Authority for the rule is given by 15-1-201, MCA. The rule implements 15-6-118, MCA (now repealed) for tax years beginning after December 31, 1978, and 15-6-136, MCA, for tax years beginning after December 31, 1979. The rule is effective August 31, 1979, and applies to tax years beginning after December 31, 1978.


MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State August 14, 1979.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF AMENDMENT OF
AMENDMENT OF RULE	)	Rule 42-2.22(2)-S22030
42-2.22(2)-S22030)	
Assessment of Mobile)	
Homes)	

TO: All Interested Persons:

1. On February 15, 1979, the Department of Revenue published notice of a proposed amendment to the rule 42-2.22(2)-S22030 concerning the assessment of mobile homes at pages 93 and 94 of the 1979 Montana Administrative Register, issue number 3.

2. The department has amended the rule as proposed.

3. Comments were received from the legislative Administrative Code Committee requesting that the schedule referred to in subsection (1) be included in the rule text. The department has determined that in this case inclusion of the schedule would not be appropriate because of its length (the schedule includes detailed instructions on the determination of market value of mobile homes) and because the schedule has been in effect for several years without publication in the rules and without comment by those affected.

The department has amended the rule because of changes made by Chapter 566, Laws of 1977 (House Bill 70) in the treatment of property taxes, specifically the elimination of the term assessed value in favor of the term market value. Authority for the rule is given by 15-1-201, MCA. The rule implements 15-6-112 and 15-6-116, MCA, (now repealed) for tax years beginning after December 31, 1978, and 15-6-134, MCA, for tax years beginning after December 31, 1979. The rule is effective August 31, 1979, and applies to tax years beginning after December 31, 1978.


MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State August 14, 1979.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF AMENDMENT OF
AMENDMENT OF RULE	)	Rule 42-2.22(2)-S22050
42-2.22(2)-S22050)	
Assessment of Farm)	
Machinery)	

TO: All Interested Persons:

1. On February 15, 1979, the Department of Revenue published notice of a proposed amendment to the rule 42-2.22(2)-S22050 concerning the assessment of farm machinery at pages 95 and 96 of the 1979 Montana Administrative Register, issue number 3.

2. The department has amended the rule with the following changes (added language capitalized and underlined):

42-2.22(2)-S22050 ASSESSMENT OF ~~TRACTOR-AND-FARM-EQUIPMENT~~ FARM MACHINERY AND EQUIPMENT (1) ~~The assessed value of tractors and farm equipment shall be the loan value~~ average market value of large farm machinery shall be the average resale price of such property shown in "Official Guide Tractors and Farm Equipment", Spring Edition of the year of assessment, NRFEA Publications, Inc., 2340 Hampton, St. Louis, Missouri 63139. This guide may be reviewed in the Department or purchased from the publisher.

(2) ~~Farm machinery not listed in the above publication including but not limited to, farm irrigation systems, shall be assessed from a schedule based upon a fifteen year life depreciation to a minimum of nineteen percent (19%) of original cost, if still in use, times a seventy percent (70%) loan value. If the above named publication cannot be used to value these properties, then a schedule established by the Department of Revenue shall be used to determine the average market value. This schedule may be reviewed in the Department or purchased from the Department at cost.~~ THE AVERAGE MARKET VALUE OF FARM MACHINERY WILL BE DETERMINED USING THE DEPRECIATION SCHEDULE AND TREND FACTOR ANALYSIS IN SUBSECTION (3).

(3) ~~The average market value of other farm machinery which includes but is not limited to, farm irrigation systems, shall be determined using a schedule established by the Department of Revenue. This schedule may be reviewed in the Department or purchased from the Department at cost.~~ (A) IN ORDER TO ARRIVE AT MARKET VALUE, THE ORIGINAL COST OF THE PROPERTY WILL BE TRENDED ANNUALLY TO REFLECT CHANGES IN PRICE INDICES PUBLISHED BY THE BUREAU OF LABOR STATISTICS.

(B) THE FOLLOWING 15-YEAR DEPRECIATION SCHEDULE WILL BE USED TO DETERMINE THE AVERAGE MARKET VALUE OF FARM MACHINERY THAT CANNOT BE VALUED AS PROVIDED IN SUBSECTION (1):

<u>AGE</u>	<u>DEPRECIATION</u>
1 YEAR OLD	83%
2 YEARS OLD	72%
3 YEARS OLD	63%
4 YEARS OLD	54%

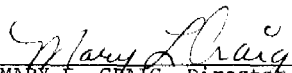
5 YEARS OLD	45%
6 YEARS OLD	37%
7 YEARS OLD	33%
8 YEARS OLD	29%
9 YEARS OLD	26%
10 YEARS OLD	23%
11 YEARS OLD	20%
12 YEARS OLD	18%
13 YEARS OLD	16%
14 YEARS OLD	14%
15 YEARS OLD AND OLDER	12%

(4) This rule ~~would be~~ IS effective for tax years beginning after December 31, 1978.

3. Comments were received from the legislative Administrative Code Committee requesting that the depreciation schedule be included in the rule text rather than be referenced to a table established by the department. Accordingly the rule has been rewritten to reflect the Committee's request. Because the schedule is included, because of the added reference to the trend factor analysis, and because all farm machinery is now treated under 15-6-138, MCA, the adjective "large" has been deleted from subsection (1) and the text of subsection (2) has been simplified.

In response to requests to indicate that the department utilizes trend factor analysis in the determination of market value subsections (2) and (3) have been rewritten. The department will adopt figures for the trend factor analysis each year by adopting and then subsequently amending a rule in this regard. The trending rule is being prepared and will be noticed in the Montana Administrative Register upon approval by the Director. Inasmuch as the trending rule will be amended each year, it was considered more efficient to write a separate rule for trending rather than to include trending figures in the rules pertaining to particular types of property.

The department has amended the rule on assessment of farm machinery because of changes made by Chapter 566, Laws of 1977 (House Bill 70) in the treatment of property taxes, specifically the elimination of the term assessed value in favor of the term market value. Authority for the rule is given by 15-1-201, MCA. The rule implements 15-6-109 and 15-6-113, MCA, (now repealed) for tax years beginning after December 31, 1978, and 15-6-138, MCA, for tax years beginning after December 31, 1979. The rule is effective August 31, 1979, and applies to tax years beginning after December 31, 1978.


MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State August 14, 1979.

16-9/30/79

Montana Administrative Register

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE) NOTICE OF AMENDMENT OF
AMENDMENT OF RULE) Rule 42-2.22(2)-S22060
42-2.22(2)-S22060)
Assessment of Automobiles)

TO: All Interested Persons:

1. On February 15, 1979, the Department of Revenue published notice of a proposed amendment to the rule 42-2.22(2)-S22060 concerning the assessment of automobiles at pages 96 and 97 of the 1979 Montana Administrative Register, issue number 3.

2. The department has amended the rule with the following changes (added language capitalized and underlined):

42-2.22(2)-S22060 ASSESSMENT OF AUTOMOBILES (1) The minimum-assessed-value average market value of automobiles shall be the average loan retail value of such property as shown in N.A.D.A. Official Used Car Guide, Mountain States January Edition of the year of assessment, National Automobile Dealers Used Car Guide, 200-OK-Street-Northwest-Washington, D.C.-20006 8400 WESTPARK DR., MCCLEAN, VIRGINIA 22102. This guide may be reviewed in the Department or purchased from the publisher.

(2) If the above named publication cannot be used to value these properties, then a schedule established by the Department of Revenue shall be used to determine the average market value. This schedule may be reviewed in the Department or purchased from the Department at cost. THE AVERAGE MARKET VALUE WILL BE DETERMINED USING THE CHART IN SUBSECTION (3).

(3) THE FOLLOWING CHART WILL BE USED TO DETERMINE THE AVERAGE MARKET VALUE OF AUTOMOBILES THAT CANNOT BE VALUED UNDER SUBSECTION (1) (ALL ENTRIES ARE IN DOLLARS):

VALUE LAST YR. IN GUIDE	V A L U E I N S U C C E E D I N G Y E A R S									
	1ST YEAR	2ND YEAR	3RD YEAR	4TH YEAR	5TH YEAR	6TH YEAR	7TH YEAR	8TH YEAR	9TH YEAR	10TH YEAR AND LATER
100	75	75	75	75	75	75	75	75	75	75
125	95	75	75	75	75	75	75	75	75	75
150	115	85	75	75	75	75	75	75	75	75
175	130	100	75	75	75	75	75	75	75	75
200	150	110	85	75	75	75	75	75	75	75
225	170	125	95	75	75	75	75	75	75	75
250	190	140	105	80	75	75	75	75	75	75
275	205	155	115	90	75	75	75	75	75	75
300	225	170	125	95	75	75	75	75	75	75
325	245	180	135	105	80	75	75	75	75	75
350	265	195	150	110	85	75	75	75	75	75
375	280	210	160	120	90	75	75	75	75	75

VALUE LAST YR. IN GUIDE	V A L U E I N S U C C E E D I N G Y E A R S									
	1ST YEAR	2ND YEAR	3RD YEAR	4TH YEAR	5TH YEAR	6TH YEAR	7TH YEAR	8TH YEAR	9TH YEAR	10TH YEAR AND LATER
425	320	240	180	135	95	75	75	75	75	75
450	340	250	190	145	110	80	75	75	75	75
475	355	265	200	150	115	85	75	75	75	75
500	375	280	210	160	120	90	75	75	75	75
525	395	295	220	170	125	95	75	75	75	75
550	415	310	230	175	130	100	75	75	75	75
575	430	320	240	185	140	105	80	75	75	75
600	450	335	250	190	145	110	85	75	75	75
625	470	350	260	200	150	115	90	75	75	75
650	490	365	275	210	155	115	90	75	75	75
675	505	380	285	215	160	120	95	75	75	75
700	525	390	295	225	170	125	100	75	75	75
725	545	405	305	230	175	130	100	80	75	75
750	560	420	315	240	180	135	105	85	75	75
775	580	435	325	250	185	140	110	85	75	75
800	600	450	335	255	190	145	110	90	75	75
825	620	460	345	265	200	150	115	90	75	75
850	640	475	355	270	205	155	120	95	75	75
875	655	490	370	280	210	160	125	95	75	75
900	675	505	380	290	215	160	125	100	75	75
925	695	520	390	295	220	165	130	100	75	75
950	715	530	400	305	230	170	135	105	80	75
975	730	545	410	310	235	175	135	105	80	75
1000	750	560	420	320	240	180	140	110	85	75

~~(3)~~ (4) This rule ~~would be~~ IS effective for tax years beginning after December 31, 1978.

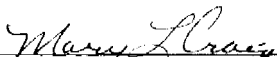
3. Comments were received from the legislative Administrative Code Committee requesting that the schedule referred to in subsection (2) of the rule be included in the rule text rather than be referenced to a table established by the department. Accordingly the rule has been rewritten to reflect the Committee's request.

The address to write to receive the N.A.D. Used Car Guide has been updated.

The department has amended the rule because of changes made by Chapter 566, Laws of 1977 (House Bill 70) in the treatment of property taxes, specifically the elimination of the term assessed value in favor of the term market value. Authority for the rule is given by 15-1-201, MCA. The rule implements 15-6-110, MCA, (now repealed) for tax years beginning after December 31, 1978, and 15-6-139, MCA, for tax years beginning after December 31, 1979. The rule is effective on August 31, 1979, and applies to tax years beginning after December 31, 1978.

16-8/30/79

Montana Administrative Register



MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State August 14, 1979.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF AMENDMENT OF
AMENDMENT OF RULE	)	Rule 42-2.22(2)-S22070
42-2.22(2)-S22070)	
Assessment of Oil Field)	
Machinery and Supplies)	

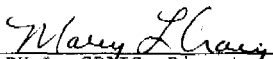
TO: All Interested Persons:

1. On February 15, 1979, the Department of Revenue published notice of a proposed amendment to the rule 42-2.22(2)-S22070 concerning the assessment of oil field machinery and supplies at page 97 of the 1979 Montana Administrative Register, issue number 3.

2. The department has amended the rule as proposed.

3. Comments were received from the legislative Administrative Code Committee requesting that the schedule referred to in subsection (1) be included in the rule text. The department has determined that in this case inclusion of the schedule would not be appropriate because of its length (the schedule includes detailed instructions on the determination of market value of oil field machinery and supplies) and because the schedule has been in effect for several years without publication in the rules and without comment by those affected.

The department has amended the rule because of changes made by Chapter 566, Laws of 1977 (House Bill 70) in the treatment of property taxes, specifically the elimination of the term assessed value in favor of the term market value. Authority for the rule is given by 15-1-201, MCA. The rule implements 15-6-111, MCA, (now repealed) for tax years beginning after December 31, 1978, and 15-6-138, MCA, for tax years beginning after December 31, 1979. The rule is effective August 31, 1979, and applies to tax years beginning after December 31, 1978.


MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State August 14, 1979.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

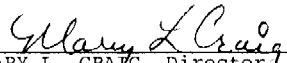
IN THE MATTER OF THE	)	NOTICE OF AMENDMENT OF
AMENDMENT OF RULE	)	Rule 42-2.22(2)-S22110
42-2.22(2)-S22110)	
Assessment of Television)	
Cable System)	

TO: All Interested Persons:

1. On February 15, 1979, the Department of Revenue published notice of a proposed amendment to the rule 42-2.22(2)-S22110 concerning the assessment of television cable systems at pages 97 and 98 of the 1979 Montana Administrative Register, issue number 3.

2. The department has amended the rule as proposed.

3. No comments or testimony were received. The department has amended the rule because of changes made by Chapter 566, Laws of 1977 (House Bill 70) in the treatment of property taxes, specifically the elimination of the term assessed value in favor of the term market value. Authority for the rule is given by 15-1-201, MCA. The rule implements 15-6-108, MCA, (now repealed) for tax years beginning after December 31, 1978, and 15-6-140, MCA, for tax years beginning after December 31, 1979. The rule is effective August 31, 1979, and applies to tax years beginning after December 31, 1978.



MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State August 14, 1979.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF AMENDMENT OF
AMENDMENT OF RULE	)	Rule 42-2.22(2)-S22120
42-2.22(2)-S22120)	
Assessment of Trucks)	
and Commercial Trailers)	

TO: All Interested Persons:

1. On February 15, 1979, the Department of Revenue published notice of a proposed amendment to the rule 42-2.22(2)-S22120 concerning the assessment of trucks and commercial trailers at pages 98 and 99 of the 1979 Montana Administrative Register, issue number 3.

2. The department has amended the rule with the following changes (added language capitalized and underlined):

42-2.22(2)-S22120 ASSESSMENT OF ~~TRUCKS-AND-COMMERCIAL TRAILERS~~ LARGE TRUCKS WHICH HAVE A RATED CAPACITY OVER 1 1/2 TONS AND COMMERCIAL TRAILERS (1) ~~The minimum assessed value of trucks and trailers shall be in accordance with the Truck and Commercial Trailer Schedule, herein adopted and incorporated by the Department of Revenue by reference. This schedule may be reviewed in the Department or purchased from the Department at cost.~~ The average market value for large trucks, those rated over 1 1/2 tons, shall be the average retail values of such property as shown in the "Truck Bluebook Official Used Truck Valuation," January first edition of the year of assessment, National Market Report, Inc., 900 South Wabash Ave., Chicago, Illinois 60600. This guide may be reviewed in the Department or purchased from the publisher.

(2) ~~If the above named publication cannot be used to value these properties, then a schedule established by the Department of Revenue shall be used to determine the average market value. This schedule may be reviewed in the Department or purchased from the Department at cost.~~ THE AVERAGE MARKET VALUE WILL BE DETERMINED USING THE DEPRECIATION SCHEDULE IN SUBSECTION (3).

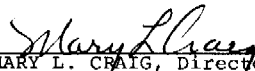
(3) THE FOLLOWING 10-YEAR DEPRECIATION SCHEDULE WILL BE USED TO DETERMINE THE AVERAGE MARKET VALUE OF LARGE TRUCKS THAT CANNOT BE VALUED UNDER SUBSECTION (1) AND OF COMMERCIAL TRAILERS.

AGE	DEPRECIATION
1 YEAR OLD	80%
2 YEARS OLD	70%
3 YEARS OLD	65%
4 YEARS OLD	60%
5 YEARS OLD	50%
6 YEARS OLD	45%
7 YEARS OLD	37%
8 YEARS OLD	30%
9 YEARS OLD	25%
10 YEARS OLD AND OLDER	20%

~~{3} (4) The average market value of commercial trailers shall be in accordance with the schedule established by the Department of Revenue. This schedule may be reviewed in the Department or purchased from the Department at cost. WILL BE DETERMINED USING THE DEPRECIATION SCHEDULE IN SUBSECTION (3).~~
~~{4} (5) This rule would be IS effective for tax years beginning after December 31, 1978.~~

3. Comments were received from the legislative Administrative Code Committee requesting that the depreciation schedule be included in the rule text rather than be referenced to a table established by the department. Accordingly the rule has been rewritten to reflect the Committee's request.

The department has amended the rule because of changes made by Chapter 566, Laws of 1977 (House Bill 70) in the treatment of property taxes, specifically the elimination of the term assessed value in favor of the term market value. Authority for the rule is given by 15-1-201, MCA. The rule implements 15-6-108 and 15-6-110, MCA, (now repealed) for tax years beginning after December 31, 1978, and 15-6-139 and 15-6-140, MCA, for tax years beginning after December 31, 1979. The rule is effective August 31, 1979, and applies to tax years beginning after December 31, 1978.


MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State August 14, 1979.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF AMENDMENT OF
AMENDMENT OF RULE	)	Rule 42-2.22(2)-S22140
42-2.22(2)-S22140)	
Assessment of Boats)	
and Motors)	

TO: All Interested Persons:

1. On February 15, 1979, the Department of Revenue published notice of a proposed amendment to the rule 42-2.22(2)-S22140 concerning the assessment of boats and motors at pages 99 and 100 of the 1979 Montana Administrative Register, issue number 3.

2. The department has amended the rule with the following changes (added language capitalized and underlined):

42-2.22(2)-S22140 ASSESSMENT OF BOATS AND MOTORS (1) The minimum-assessed average market value of outboard boats shall be the low-book-value suggested retail price of such property in the "Official Outboard Boat Trade In Guide Bluebook", January Edition of the year of assessment, ABOS Marine Publications Division, Intertec Publishing Corporation, 1014 Wyandotte, Kansas City, Missouri 64105. This bluebook may be reviewed in the Department or purchased from the publisher.

(2) The minimum-assessed average market value of outboard motors shall be the low-book-value suggested retail price of such property in the "Official Outboard Motor Trade In Guide Bluebook", January Edition of the year of assessment, ABOS Marine Publications Division, Intertec Publishing Corporation, 1014 Wyandotte, Kansas City, Missouri 64105. This bluebook may be reviewed in the Department or purchased from the publisher.

(3) The minimum-assessed average market value of inboard/outboard boats shall be the low-book-value suggested retail price of such property as shown in the "Official Inboard/Outboard Boat Trade In Guide Bluebook", January Edition of the year of assessment, ABOS Marine Publications Division, Intertec Publishing Corporation, 1014 Wyandotte, Kansas City, Missouri 64105. This bluebook may be reviewed in the Department or purchased from the publisher.

(4) The average market value of sailboats shall be the suggested retail price as shown in the "Official Sailboat Trade In Guide Bluebook", January Edition of the year of assessment, ABOS Marine Publishing Division, Intertec Publishing Corporation, 1014 Wyandotte, Kansas City, Missouri 64105. This bluebook may be reviewed in the Department or purchased from the publisher.

(5) If the above-named publications do not value these properties, then a depreciation schedule established by the Department of Revenue shall be used to determine the average market value for them--This schedule may be reviewed in the Department or purchased from the Department at cost. THE AVERAGE MARKET VALUE WILL BE DETERMINED USING THE CHART IN SUBSECTION (6).

(6) THE FOLLOWING CHART WILL BE USED TO DETERMINE THE AVERAGE MARKET VALUE OF BOATS AND MOTORS THAT CANNOT BE VALUED UNDER SUBSECTIONS (1) THROUGH (4) (ALL ENTRIES ARE IN DOLLARS):

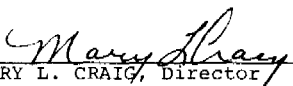
VALUE LAST YR. IN GUIDE	V A L U E I N S U C C E E D I N G Y E A R S									
	1ST YEAR	2ND YEAR	3RD YEAR	4TH YEAR	5TH YEAR	6TH YEAR	7TH YEAR	8TH YEAR	9TH YEAR	10TH YEAR AND LATER
100	75	75	75	75	75	75	75	75	75	75
125	95	75	75	75	75	75	75	75	75	75
150	115	85	75	75	75	75	75	75	75	75
175	130	100	75	75	75	75	75	75	75	75
200	150	110	85	75	75	75	75	75	75	75
225	170	125	95	75	75	75	75	75	75	75
250	190	140	105	80	75	75	75	75	75	75
275	205	155	115	90	75	75	75	75	75	75
300	225	170	125	95	75	75	75	75	75	75
325	245	180	135	105	80	75	75	75	75	75
350	265	195	150	110	85	75	75	75	75	75
375	280	210	160	120	90	75	75	75	75	75
400	300	225	170	130	95	75	75	75	75	75
425	320	240	180	135	95	75	75	75	75	75
450	340	250	190	145	110	80	75	75	75	75
475	355	265	200	150	115	85	75	75	75	75
500	375	280	210	160	120	90	75	75	75	75
525	395	295	220	170	125	95	75	75	75	75
550	415	310	230	175	130	100	75	75	75	75
575	430	320	240	185	140	105	80	75	75	75
600	450	335	250	190	145	110	85	75	75	75
625	470	350	260	200	150	115	90	75	75	75
650	490	365	275	210	155	115	90	75	75	75
675	505	380	285	215	160	120	95	75	75	75
700	525	390	295	225	170	125	100	75	75	75
725	545	405	305	230	175	130	100	80	75	75
750	560	420	315	240	180	135	105	85	75	75
775	580	435	325	250	185	140	110	85	75	75
800	600	450	335	255	190	145	110	90	75	75
825	620	460	345	265	200	150	115	90	75	75
850	640	475	355	270	205	155	120	95	75	75
875	655	490	370	280	210	160	125	95	75	75
900	675	505	380	290	215	160	125	100	75	75
925	695	520	390	295	220	165	130	100	75	75
950	715	530	400	305	230	170	135	105	80	75
975	730	545	410	310	235	175	135	105	80	75
1000	750	560	420	320	240	180	140	110	85	75

46) (7) This rule ~~would-be~~ IS effective for tax years beginning after December 31, 1978.

3. Comments were received from the legislative Administrative Code Committee requesting that the schedule referred to in subsection (5) of the rule be included in the rule text rather than be referenced to a table established by the department.

Accordingly the rule has been rewritten to reflect the Committee's request.

The department has amended the rule because of changes made by Chapter 566, Laws of 1977 (House Bill 70) in the treatment of property taxes, specifically the elimination of the term assessed value in favor of the term market value. Authority for the rule is given by 15-1-201, MCA. The rule implements 15-6-113, MCA, (now repealed) for tax years beginning after December 31, 1978, and 15-6-138, MCA, for tax years beginning after December 31, 1979. The rule is effective August 31, 1979, and applies to tax years beginning after December 31, 1978.


MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State August 14, 1979.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE)
AMENDMENT OF RULE)
42-2.22(2)-S22170)
Assessment of Motorcycles)

NOTICE OF AMENDMENT OF
Rule 42-2.22(2)-S22170

TO: All Interested Persons:

1. On February 15, 1979, the Department of Revenue published notice of a proposed amendment to the rule 42-2.22(2)-S22170 concerning the assessment of motorcycles at pages 102 and 103 of the 1979 Montana Administrative Register, issue number 3.

2. The department has amended the rule with the following changes (added language capitalized and underlined):

42-2.22(2)-S22170 ASSESSMENT OF MOTORCYCLES (1) The minimum-assessed average market value for motorcycles shall be the low-book-value suggested retail price of such property as shown in the "Official Motorcycle and Mini-Bike Trade-In Publications Division, Intertec Publishing Corporation, 1014 Wyandotte, Kansas City, Missouri ~~64015~~ 64105. This guide may be reviewed in the Department or purchased from the publisher.

(2) If the above-named publication does not value the property, then a depreciation schedule established by the Department of Revenue shall be used to value the property. This schedule may be reviewed at the Department or purchased from the Department at cost. THE AVERAGE MARKET VALUE WILL BE DETERMINED USING THE CHART IN SUBSECTION (3).

(3) THE FOLLOWING CHART WILL BE USED TO DETERMINE THE AVERAGE MARKET VALUE OF MOTORCYCLES THAT CANNOT BE VALUED UNDER SUBSECTION (1) (ALL ENTRIES ARE IN DOLLARS):

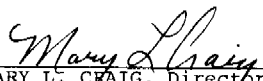
VALUE LAST YR. IN GUIDE	V A L U E I N S U C C E E D I N G Y E A R S									
	1ST YEAR	2ND YEAR	3RD YEAR	4TH YEAR	5TH YEAR	6TH YEAR	7TH YEAR	8TH YEAR	9TH YEAR	10TH YEAR AND LATER
100	75	75	75	75	75	75	75	75	75	75
125	95	75	75	75	75	75	75	75	75	75
150	115	85	75	75	75	75	75	75	75	75
175	130	100	75	75	75	75	75	75	75	75
200	150	110	85	75	75	75	75	75	75	75
225	170	125	95	75	75	75	75	75	75	75
250	190	140	105	80	75	75	75	75	75	75
275	205	155	115	90	75	75	75	75	75	75
300	225	170	125	95	75	75	75	75	75	75
325	245	180	135	105	80	75	75	75	75	75
350	265	195	150	110	85	75	75	75	75	75
375	280	210	160	120	90	75	75	75	75	75
400	300	225	170	130	95	75	75	75	75	75
425	320	240	180	135	95	75	75	75	75	75
450	340	250	190	145	110	80	75	75	75	75
475	355	265	200	150	115	85	75	75	75	75

VALUE LAST YR. IN GUIDE	V A L U E I N S U C C E E D I N G Y E A R S									
	1ST YEAR	2ND YEAR	3RD YEAR	4TH YEAR	5TH YEAR	6TH YEAR	7TH YEAR	8TH YEAR	9TH YEAR	10TH YEAR AND LATER
500	375	280	210	160	120	90	75	75	75	75
525	395	295	220	170	125	95	75	75	75	75
550	415	310	230	175	130	100	75	75	75	75
575	430	320	240	185	140	105	80	75	75	75
600	450	335	250	190	145	110	85	75	75	75
625	470	350	260	200	150	115	90	75	75	75
650	490	365	275	210	155	115	90	75	75	75
675	505	380	285	215	160	120	95	75	75	75
700	525	390	295	225	170	125	100	75	75	75
725	545	405	305	230	175	130	100	80	75	75
750	560	420	315	240	180	135	105	85	75	75
775	580	435	325	250	185	140	110	85	75	75
800	600	450	335	255	190	145	110	90	75	75
825	620	460	345	265	200	150	115	90	75	75
850	640	475	355	270	205	155	120	95	75	75
875	655	490	370	280	210	160	125	95	75	75
900	675	505	380	290	215	160	125	100	75	75
925	695	520	390	295	220	165	130	100	75	75
950	715	530	400	305	230	170	135	105	80	75
975	730	545	410	310	235	175	135	105	80	75
1000	750	560	420	320	240	180	140	110	85	75

~~(3)~~ (4) This rule ~~would be~~ IS effective for tax years beginning after December 31, 1978.

3. Comments were received from the legislative Administrative Code Committee requesting that the schedule referred to in subsection (2) of the rule be included in the rule text rather than be referenced to a table established by the department. Accordingly the rule has been rewritten to reflect the Committee's request.

The department has amended the rule because of changes made by Chapter 566, Laws of 1977 (House Bill 70) in the treatment of property taxes, specifically the elimination of the term assessed value in favor of the term market value. Authority for the rule is given by 15-1-201, MCA. The rule implements 15-6-113, MCA, (now repealed) for tax years beginning after December 31, 1978, and 15-6-138, MCA, for tax years beginning after December 31, 1979. The rule is effective August 31, 1979, and applies to tax years beginning after December 31, 1978.


 MARY L. CRAIG, Director
 Department of Revenue

16-8/30/79

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Certified to the Secretary of State August 14, 1979.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

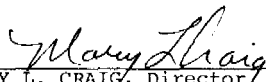
IN THE MATTER OF THE	)	NOTICE OF AMENDMENT OF
AMENDMENT OF RULE	)	Rule 42-2.22(2)-S22174
42-2.22(2)-S22174)	
Assessment of Ski Lift)	
Equipment)	

TO: All Interested Persons:

1. On February 15, 1979, the Department of Revenue published notice of a proposed amendment to the rule 42-2.22(2)-S22174 concerning the assessment of ski lift equipment at pages 103 through 105 of the 1979 Montana Administrative Register, issue number 3.

2. The department has amended the rule as proposed.

3. No comments or testimony were received. The department has amended the rule because of changes made by Chapter 566, Laws of 1977 (House Bill 70) in the treatment of property taxes, specifically the elimination of the term assessed value in favor of the term market value. Authority for the rule is given by 15-1-201, MCA. The rule implements 15-6-111, MCA, (now repealed) for tax years beginning after December 31, 1978, and 15-6-138, MCA, for tax years beginning after December 31, 1979. The rule is effective August 31, 1979, and applies to tax years beginning December 31, 1978.


MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State August 14, 1979.

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

In the matter of the amendment	)	NOTICE OF AMENDMENT
of Rule 46-2.10(14)-S10980(1)(b)	)	OF RULE 46-2.10(14)-
Procedure Followed in Processing	)	S10980(1)(b)
Application.)	

TO: All Interested Persons

1. On July 12, 1979, the Department of Social and Rehabilitation Services published notice of a proposed amendment of Rule 46-2.10(14)-S10980(1)(b) pertaining to procedure followed in processing applications for aid to dependent children assistance at page 669 of the 1979 Montana Administrative Register, issue number 13.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The rule is being amended to delete subsections that were eliminated by the 1979 Montana Legislature. Sections 3 and 4, Ch. 450, L. 1979, eliminated residency requirement for state or county financial participation. Ch. 612, L. 1979 has enacted a statutory procedure for obtaining support from absent parents so subsection (1)(b)(viii)(ab), (ac) and (ae) are no longer applicable and therefore deleted.

4. The authority of the Department to make the amendment is based on Section 53-4-212, MCA, (71-503, R.C.M.). The amendment implements Title 53, Chapter 4, Part 2, MCA (Title 71, Chapter 5, R.C.M.).

Keith P. Colbo
Director, Social and Rehabilitation
Services

Certified to the Secretary of State August 20, 1979.

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

In the matter of the adoption	)	NOTICE OF ADOPTION OF
of rule 46-2.10(14)-S11211 per-	)	RULE 46-2.10(14)-S11211
taining to property limitations	)	AND REPEAL OF RULE
and the repeal of rule	)	46-2.10(14)-S11210.
46-2.10(14)-S11210.)	

TO: All Interested Persons

1. On July 12, 1979, the Department of Social and Rehabilitation Services published notice of a proposed adoption of Rule 46-2.10(14)-S11211 and repeal of 46-2.10(14)-S11210 pertaining to property limitations at page 672 of the 1979 Montana Administrative Register, issue number 13.

2. The agency has adopted and repealed the rules as proposed.

3. No comments or testimony were received. The Department has adopted the new rule to completely revise the Department's eligibility limitations on property owned by applicants for or recipients of AFDC. It is intended to replace ARM 46-2.10(14)-S11210 which is being repealed.

4. The proposed rule achieves five major objectives:

I. It makes equity the basis for valuing property owned by members of an AFDC household unit. This change formally establishes by regulation the Department's informal interpretation of the existing rule. It also has the desirable effect of updating current property limitation ceilings for the impact of inflation.

II. It clarifies the meaning of "currently available" property by setting a standard of practical liquidity for market value.

III. It simplifies the administration of the property limitations by removing unnecessary distinctions between real and personal property. In the past, these distinctions had presented problems in appropriately excluding mobile homes, which are personalty, under the real property standard for houses.

IV. It eliminates any ceiling for the first vehicle kept by the household unit for transportation. This change again recognizes the impact of inflation. In addition, it reduces the incentive for recipients to maintain a low equity value in a car or truck rather than paying off the financing used to acquire a vehicle.

V. It brings AFDC property limitations into harmony with similar limitations for other assistance programs (Food Stamps, Medicaid) thus easing administration.

Keith F. Cobb

Director, Social and Rehabilitation Services

Certified to the Secretary of State August 20, 1979.

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

In the matter of the amendment) NOTICE OF AMENDMENT
of Rule 46-2.10(14)-S11230 per-) OF RULE 46-2.10(14)-
taining to residency requirements.) S11230

TO: All Interested Persons

1. On July 12, 1979, the Department of Social and Rehabilitation Services published notice of a proposed amendment to Rule 46-2.10(14)-S11230 pertaining to residency requirements for state or county financial responsibility at page 668 of the 1979 Montana Administrative Register, issue number 13.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The amendment responds to changes in state law made by the Montana Legislature. Sec. 4, Ch. 450, L. 1979, removes the requirement that the department pay the county share of public assistance for one year. Subsections 2 through 6 are deleted because they repeat statutory language.

Keith P. Colbo

Director, Social and Rehabilitation Services

Certified to the Secretary of State August 20, 1979.

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

In the matter of the repeal of	)	NOTICE OF THE REPEAL
rule 46-2.10(18)-S11450 pertaining	)	OF RULE 46-2.10(18)-
to reimbursement for skilled	)	S11450
nursing and intermediate care)	
services.)	

TO: All Interested Persons:

1. On July 12, 1979, the Department of Social and Rehabilitation Services published notice of a proposed repeal of Rule 46-2.10(18)-S11450 pertaining to nursing home care provider reimbursement at page 671 of the 1979 Montana Administrative Register, issue number 13.

2. The agency has repealed the rule as proposed.

3. No comments or testimony were received. The agency repealed this rule because the agency has adopted new nursing home reimbursement rules that are currently in effect and which supersede this rule. The new reimbursement rules as adopted were published in the Montana Administrative Register, issue No. 6, 1979, pages 333 through 358, and can be found in the Administrative Rules of Montana on pages 46-94.7H through 46-94.7Z.

Keith P. Collo

Director, Social and Rehabili-
tation Services

Certified to the Secretary of State August 20, 1979.

VOLUME NO. 38

OPINION NO. 31

COUNTIES - Sources of funding for district courts;
COURTS, DISTRICT - Six mill levy, definition of "district court costs";
COURTS, DISTRICT - Finance, use of general revenues to supplement six mill levy;
DEPARTMENT OF ADMINISTRATION - Responsibilities for Emergency Assistance grants where funds not appropriated;
MONTANA CODES ANNOTATED - Sections 7-6-2351, 7-6-2352, 7-6-2501 (16-1015, R.C.M. 1947), 7-6-2511.

- HELD:
1. The term "district court costs" in Chapter 692, Laws of 1979, comprises the cost of family court services, public defense services, district court support personnel, and jury and witness fees.
 2. The six mill levy created by Chapter 692, Laws of 1979, is not the exclusive funding mechanism for district court programs.
 3. The Department of Administration is not obligated to make emergency grants where no funds are appropriated to the department for that specific purpose.

7 August 1979

Mr. David M. Lewis, Director
Department of Administration
S.W. Mitchell Building
Helena, Montana 59601

J. Fred Bourdeau, Esq.
Cascade County Attorney
Cascade County Courthouse Building
Great Falls, Montana 59401

Dear Sirs:

You have individually requested my opinion regarding the following related questions:

1. What costs and charges are comprised in the term "district court costs" under Chapter 692, Laws of Montana 1979?

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2. Is the six mill levy provided under Chapter 692 the exclusive source of funding for district court operations?
3. Is the Department of Administration obligated to make emergency grants to counties under Chapter 692 where the legislature has appropriated no money for that purpose?
4. May the Department of Administration make emergency grants under a supplemental appropriation approved by the Office of Budget and Program Planning and the Governor?

Section 1 of Chapter 692, to be codified at 7-6-2511 and 7-6-2351, MCA, authorizes first and second class counties to assess a levy of up to six mills against the taxable property in the county to defray "district court costs." The statute expressly includes "salaries and benefits for court clerks, court reporters, youth probation officers, and other employees of the district court" as "district court costs." Section 2 of Chapter 692, to be codified at 7-6-2352, MCA, allows the Department of Administration ("the department") to make grants to the counties "from funds appropriated to the department for that purpose," to provide "emergency assistance."

Your first question has been framed in the context of whether the following expenses are within the scope of Chapter 692: (1) Family court services; (2) public defender programs; (3) personal staff and support personnel for district judges; and (4) jury and witness fees. I conclude that these expenses are "district court costs" within the meaning of the statutes.

Counties are statutorily responsible for a wide variety of costs and expenses relating to district court operations. See 37 OP. ATT'Y. GEN. NO. 37 (1977). These costs and expenses have been a continuing concern to county commissioners and state legislators, since district courts may compel the counties to fund programs and positions necessary to allow the district court to fully exercise its jurisdiction. Board of Commissioners v. Eleventh Judicial District Court, ___ Mont. ___, 36 St. Rptr. 1231 (1979). Chapter 692 authorizes a six mill levy to allow counties to meet these burdens. It is my opinion that costs and charges

assessed against a county by virtue of the existence of the district court and the conduct of district court proceedings fall within the term "district court costs" in Chapter 692.

Gauged against this standard, the costs and expenses about which you inquire are clearly within the scope of the statute. Support personnel for family court services are a reasonable and necessary aid to the full exercise of the district court's jurisdiction. The Supreme Court so held in the Board of Commissioners case. Likewise, public defense costs, whether incurred through random selection of practicing lawyers to represent indigent defendants or through funding of some sort of public defender's office, are a statutorily and constitutionally mandated cost of criminal litigation in the district court. See State v. Allies, Mont., 36 St. Rptr. 820 (1979). If court clerks and court reporters are treated as "employees of the district court," it cannot seriously be argued that support personnel such as secretaries or law clerks are not similarly situated. Finally, the payment of per diem and expenses for jurors, sections 3-15-201 through 204, MCA (25-401, 402, 403, 405, R.C.M. 1947) and witnesses, sections 26-2-501 through 510, MCA (25-404, 409 through 413, 218 through 220, R.C.M. 1947) are statutorily mandated costs of the operation of the district court. To the extent these fees are not recoverable from the parties as court costs, section 25-10-201, MCA (93-8618, R.C.M. 1947), they are included in the "district court costs" to be funded under Chapter 692.

The broad spectrum of functions performed by the offices included by example in Chapter 692 -- "court clerks, court reporters, youth probation officers" -- supports the conclusion that the legislature intended a similarly broad scope for the statute. The covered expenses include the costs associated with the clerk of court, an elected officer, the court reporter, an appointed officer who might technically be described as a "support person", and of youth probation officers, whose social service functions are closely akin to those performed by family court services staff. It is therefore clear that the legislature intended Chapter 692 to provide a funding mechanism for the broad range of expenses which arise from district court operations.

The second question raised by your inquiries is whether the six mill levy provided in Chapter 692 is the exclusive vehicle for funding of district court operations, or, put

another way, whether the counties may supplement the revenue raised by the six mill levy with appropriations from the revenue raised by the all-purpose levy provided in section 7-6-2501, MCA (16-1015, R.C.M. 1947). The legislature did not intend Chapter 692 to operate as a ceiling or limit on county expenditures for district court operations, but rather intended to provide an additional or supplementary funding source. It is therefore my opinion that the counties may fund their district court operations from revenue raised by the six mill levy supplemented by appropriations from other revenue sources, such as the all-purpose levy provided in section 7-6-2501, MCA.

Chapter 692 is drafted in permissive, rather than mandatory terms. Section (1) (7-6-2511, MCA) provides that "the governing body of each county may levy and collect a tax." (Emphasis added). The statute places no obligation on the counties to fund their district court operations through the six mill levy. The title of SB 463, enacted as Chapter 692, evidences no intent to limit expenditures by making the six mill levy an exclusive funding source. The title discloses that Chapter 692 is an act to provide a mill levy and to allow emergency grants to the counties from the state. Any implication of a limitation on spending from the mere provision of a funding source could bring the statute into conflict with the constitutional requirement that the subject of a bill be "clearly expressed in its title," Article 5, Section 11(3), 1972 Mont. Const. The decision of the Montana Supreme Court in Board of Railroad Commissioners v. Gamble-Robinson Co., 111 Mont. 441, 448, 111 P.2d 306 (1941), requires that statutes should be construed to avoid such a result. I therefore conclude that the six mill levy is not an exclusive funding source, but rather provides a source which may be supplemented by other revenues.

Your third inquiry relates to section 2 of Chapter 692 (7-6-2352, MCA), which provides emergency grants to cover expenditures not included in the budget. I have been informed by the Department of Administration that no funds were appropriated by the legislature to finance such grants. Your question is whether the department is nevertheless obligated to make grants to counties which qualify. I conclude that it is not. The statute provides as follows:

(1) The department of administration may make grants to the governing body of a county for the district courts for emergency assistance, as provided in this section. The grants are to be

made from funds appropriated to the department for that purpose.

* * *

(Emphasis added).

The statute is clear on its face in providing that the department may make grants only from funds specifically appropriated for that purpose. If no such funds are provided, the department is under no obligation to make grants, and in fact would by negative implication be precluded from doing so.

Finally, you inquire whether the department may make grants from funds provided by a budget amendment approved by the Office of Budget and Program Planning and the Governor but which will not be submitted to the legislature until 1981. Nothing in the statute would prohibit this practice. However, supplemental appropriations are generally approved by the Governor in emergency situations, where unanticipated occurrences create a shortfall in appropriated funds. As that determination is within the purview of the decisions to be made by the governor's budget office, I express no opinion as to whether the failure of the legislature to fund the emergency grant program constitutes an emergency which would move the Governor to approve such a request.

THEREFORE, IT IS MY OPINION:

1. The term "district court costs" in Chapter 692, Laws of 1979, comprises the cost of family court services, public defense services, district court support personnel, and jury and witness fees.
2. The six mill levy created by Chapter 692, Laws of 1979 is not the exclusive funding mechanism for district court programs.
3. The Department of Administration is not obligated to make emergency grants where no funds are appropriated to the department for that specific purpose.

Very truly yours,


MIKE GREELY
Attorney General

MG/CT/dc

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VOLUME NO. 38

OPINION NO. 32

BATTERED SPOUSES AND DOMESTIC VIOLENCE GRANT PROGRAM -
Administration - Collection of Fees;
CLERK OF THE DISTRICT COURT - Marriage license fees;
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES -
Administration of battered spouses and domestic violence
grant program;
MARRIAGE LICENSE - Fee increase - disposition of fee.
MONTANA ADMINISTRATIVE CODES - Sections 25-1-201, 40-1-202,
Chapter 677.

- HELD: 1. In Chapter 677, section 2, Laws of Montana (1979),
the phrase "county costs of administration" refers
only to the processing of marriage licenses and
not to the administration of the battered spouses
and domestic violence grant program.
2. The term "general fund" as it appears in Chapter
677, etc., refers to the state general fund.
3. Only sixteen dollars of the twenty five dollar
marriage license fee is subject to the provisions
of section 25-1-201(2), MCA.
4. The sixteen dollars must be deposited as follows:
(1) \$9.60 remitted directly to the State and, (2)
\$6.40 in the county general fund.

9 August 1979

Charles A. Graveley, Esq.
Lewis & Clark County Attorney
Lewis & Clark County Courthouse
Helena, Montana 59601

Dear Mr. Graveley:

You asked for my opinion on the following questions
concerning Chapter 677, Laws of Montana (1979):

1. Does the phrase "county costs of administra-
tion" in section 2 refer to the processing of
marriage licenses or to the administration of
the battered spouse and domestic violence
grant program?

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2. Does the term "general fund" in section 2 refer to the state general fund or to the county general fund?
3. What portion, if any, of the twenty five dollar fee provided for in section 6 is subject to the provisions of section 25-1-201(2), MCA?
4. How is the marriage license fee to be deposited?

Chapter 677, Laws of Montana (1979), was enacted during the past legislative session to provide a battered spouses and domestic violence grant program administered by the Department of Social and Rehabilitation Services. The legislative history of House Bill 868, subsequently passed as Chapter 677, indicates that the legislature intended to establish a self-sufficient program for assistance to victims of domestic violence. Chapter 677, section 2(1) provides:

FUNDING. (1) Revenue from the marriage license fee is the primary source of funding for the battered spouses and domestic violence program. Sixteen dollars of the marriage license fee is to be retained by the county in which the fee is collected to defray the county costs of administration and \$9 of the marriage license fee is to be deposited in the general fund.

The title and text of the law state clearly that the program is to be administered by the State Department of Social and Rehabilitation Services. Since the county does not administer the battered spouses and domestic violence grant program, "county costs of administration" refers only to the costs of processing marriage licenses.

Section 7, of Chapter 677 appropriates \$72,000 to the Department of Social and Rehabilitation Services. The committee minutes show that the appropriation was based on an average of 8,000 marriage licenses per year at a surcharge of nine dollars per license. Nine dollars must be deposited in the state general fund to insure that the program is entirely funded by the surcharge. Consequently, the term "general fund" in section 2(1) refers to the state general fund.

Currently section 25-1-201, MCA, provides a plan by which fees collected by the county are apportioned and distributed

to the state and county. Section 25-1-201(2), MCA, provides:

(2) Forty percent of all fees collected by the clerk of the district court shall be deposited in and credited to the general fund of the county. The remaining portion of the fees shall be remitted to the state to be deposited as provided in 19-5-404.

Your third question concerns how much of the marriage license fee must be distributed pursuant to that section. Section 25-1-201(1)(m), MCA, provides for a marriage license fee of fifteen dollars. While Chapter 677 did not amend that section, it did amend section 40-1-202, MCA to provide for a marriage license fee of twenty five dollars. Thus the two provisions now conflict.

When interpreting legislation, the intention of the legislature is to be pursued if possible. State ex rel. Krona v. Holmes, 114 Mont. 372, 376, 163 P.2d 22 (1943). Acts relating to the same subject should be construed together in order to give effect to all if possible. Belote v. Bakken, 139 Mont. 43, 46, 359 P.2d 372 (1961). Where a more recent statute conflicts with an earlier one, the conflicting provisions of the earlier statute are repealed. State v. Mangan, 151 Mont. 558, 564, 445 P.2d 565 (1968). In light of the above rules of construction, there is only one possible construction of sections 40-1-202 and 25-1-201. The provision in Chapter 667, section 6, which amended section 40-1-202 by raising the fee from fifteen dollars to twenty five dollars is not wholly subject to the provisions of section 25-1-201(2). As the legislative history indicates, nine dollars must be sent directly to the state general fund and is exempt from the provisions of section 25-1-201(2). This leaves sixteen dollars which is subject to the provisions of 25-1-201(2).

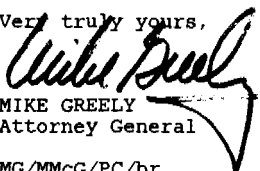
Under the provisions of section 25-1-201(2), MCA, the sixteen dollars is divided into two portions as follows:

1. Forty percent (\$6.40) deposited in and credited to the county general fund.
2. Sixty percent (\$9.60) is remitted to the State for deposit as provided in section 19-5-404, MCA.

THEREFORE, IT IS MY OPINION:

1. In Chapter 677, section 2, Laws of Montana (1979), the phrase "county costs of administration" refers only to the processing of marriage licenses and not to the administration of the battered spouses and domestic violence grant program.
2. The term "general fund" as it appears in Chapter 677, etc., refers to the state general fund.
3. Only sixteen dollars of the twenty five dollar marriage license fee is subject to the provisions of section 25-1-201(2), MCA.
4. The sixteen dollars must be deposited as follows: (1) \$9.60 remitted directly to the State and, (2) \$6.40 in the county general fund.

Very truly yours,



MIKE GREELY
Attorney General

MG/MMcG/PC/br

VOLUME NO. 38

OPINION NO. 33

OPEN MEETINGS - Quasi judicial bodies, deliberations after public hearings;
RIGHT-TO-KNOW - Open meetings, quasi judicial bodies, deliberations after public hearings;
ADMINISTRATIVE LAW - Quasi judicial bodies, open meetings, deliberations after public hearings;
MONTANA CONSTITUTION, Article II, Section 9.
MONTANA CODES ANNOTATED - Sections 2-3-201, 2-3-203, 49-2-501 et seq., 49-2-505(2),

HELD: The deliberations of the Human Rights Commission following a contested case hearing are subject to the Montana Open Meeting Act. They must be open to the public unless the presiding officer determines that the discussion relates to a matter of individual privacy, and that the demands of individual privacy clearly exceed the merits of public disclosure.

14 August 1979

Karen Townsend, Chairperson
Montana Human Rights Commission
Power Block
Helena, Montana 59601

Dear Ms. Townsend:

You have requested my opinion on the following question:

May the Human Rights Commission lawfully close to the public its deliberations on contested cases after the cases have been heard in an open public hearing?

The Human Rights Commission is charged with the duty of conducting hearings upon and disposing of complaints alleging a prohibited discriminatory practice. Section 49-2-501 et seq., MCA. These hearings are contested cases under the Montana Administrative Procedure Act. Sections 49-2-505(2), 2-4-601 et seq., MCA.

The Montana Open Meetings Act broadly intends that "actions and deliberations of all public agencies ... be conducted openly," and that its provisions be "liberally construed."

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Section 2-3-201, MCA. Since the Act applies to meetings of all "governmental bodies, boards, bureaus, commissions, or agencies of the state" (emphasis added), the Human Rights Commission is subject to its provisions and must open all of its meetings unless one of the Act's exceptions applies. Section 2-3-203, MCA.

Section 2-3-203(2), MCA, allows the presiding officer of a meeting to close it during the time the discussion relates to matters of individual privacy when a determination is made that the "demands of individual privacy clearly exceed the merits of public disclosure." See also, Montana Constitution, Article II, §9. The right of individual privacy may be waived, however, by the individual involved, and in that instance the meeting must be opened. Considering the nature of the cases heard by the Commission, it is likely that there are many instances in which the deliberations could be closed on this basis. The Act, however, does not allow a blanket policy in this regard. Each case must be considered individually.

You have raised the question of whether, notwithstanding the fact that the Open Meetings Act on its face applies to the Commission, its deliberations should be exempted therefrom because they are akin to the deliberations of a jury or an appellate court. This issue has not been litigated in any reported decisions in Montana. There is no general consensus among those jurisdictions in which the question has arisen.

Several states have specific exemptions in their open meeting laws for judicial proceedings, see, e.g., Appeal of Emmanuel Baptist Church, 364 A.2d 536 (Comm. Ct. Pa. 1976), while in others the judicial exemption is implied by the courts. See Canney v. Board, 278 So.2d 260 (Fla. 1963). The issue addressed in these cases is whether quasi judicial deliberations are within the judicial exemption. While there is no such express or judicially created exemption in Montana, it can be presumed that one would probably be found by our Court in the proper case. The better reasoned of the opinions on this issue hold that quasi-judicial status means only that the body is acting under constitutional strictures imposed upon administrative boards, and not that these boards have become part of the judiciary. Canney, supra, 278 So.2d at 263; Appeal of Emmanuel Baptist Church, supra, 364 A.2d at 540. Construing the quasi-judicial bodies to be judicial bodies, it is held, would violate the doctrine of separation of powers since these administrative agencies are usually creatures of and under the control of the legisla-

ture. Id. The argument in favor of full public accountability is held to be even stronger when the board involved is appointed and not elected. Appeal of Emmanuel Baptist Church, supra.

Other courts, however, have flatly held that quasi-judicial proceedings are entitled to the same exemptions from open meetings laws as appellate courts. Arizona Press Club v. Arizona Board of Tax Appeals, 558 P.2d 697 (Ariz. 1976); Stillwater S&L Board, 534 P.2d 9 (Okla. 1975); State v. State Career Service, 320 So.2d 846 (Fla. App. 1978). The State Career Service case is directly contra to Canney, supra, a prior decision of that state's supreme court, and reaches that result without even citing Canney. Therefore, its precedential value is doubtful. Unless the legislature or the courts in Montana are inclined to adopt an exemption from the express provisions of our Open Meeting Act for quasi-judicial deliberations, I am unwilling to create that exemption here.

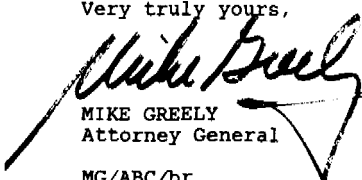
One major concern that the courts have, as demonstrated by the dissent in Canney, 278 So.2d at 264, is that any determination of individual rights in a quasi-judicial proceeding should, as a matter of due process, be conducted in a "judicial atmosphere." This would entail quasi-judicial bodies conducting open hearings and secret deliberations and then issuing public decisions under the applicable administrative procedure act. See Stillwater S&L, supra. Our Open Meeting Act specifically addresses this problem by allowing the closure of any proceeding in which the individual's right to privacy outweighs the public's right to know. In such cases, which may be common before the Human Rights Commission, the attributes of a "judicial atmosphere" can be preserved. In the case of other quasi-judicial bodies which consider questions of broader public impact, the expansive intent in our Constitution and statutes favoring public disclosure can be preserved. If this inhibits frank discussion of views and issues by board members, that is a price demanded by our Constitution and our legislature so that the people of Montana do not "abdicate their sovereignty to the agencies which serve them."

THEREFORE, IT IS MY OPINION:

The deliberations of the Human Rights Commission following a contested case hearing are subject to the Montana Open Meeting Act. They must be open to the

public unless the presiding officer determines that the discussion relates to a matter of individual privacy, and that the demands of individual privacy clearly exceed the merits of public disclosure.

Very truly yours,



MIKE GREELY
Attorney General

MG/ABC/br

VOLUME NO. 38

OPINION NO. 34

MUNICIPAL CORPORATIONS - General obligation bonds: power to pay for assistance; source of payments for assistance;
MUNICIPAL GENERAL OBLIGATION BONDS - Proceedings and negotiations: payment of fees for assistance;
MONTANA CODE ANNOTATED - Section 7-7-4254(3).

- HELD: 1. Section 7-7-4254(3), MCA, prohibits a municipality from paying a consultant for assistance or advice in any of the matters set forth in Title 7, chapter 7, part 42, of the Montana Code Annotated, relating to the issuance and sale of specific general obligation bonds.
2. Section 7-7-4254(3), MCA, does not prohibit a municipality from paying a consultant for assistance in matters involving the overall financial operation of the municipality, so long as the consultation is not limited to a single bond issuance and sale and does not involve participation in specific bond proceedings.
3. The prohibition in section 7-7-4254(3) is not limited to payment from the actual bond proceeds, but includes all funds of the municipality.

15 August 1979

Robert Knopp
City Attorney
Lewistown, Montana 59457

J. Robert Planalp, Esq.
City Attorney
411 East Main Street
P.O. Box 640
Bozeman, Montana 59715

Gentlemen:

You have requested my opinion on the following question:

Whether section 7-7-4254(3), MCA (section 11-2315, R.C.M. 1947), prohibits a municipality from hiring a consultant to aid in the preparation of financial documents and analyses relating to the issuance and sale of general obligation bonds.

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Section 7-7-4254(3), MCA, which pertains to municipal general obligation bonds, provides: "No attorneys' fees or brokerage or other fees or commissions of any kind shall be paid to any person or corporation for assisting in the proceedings, in the preparation of the bonds, or in negotiating the sale thereof." The statute clearly prohibits payment of an attorney or bond consultant for any participation in specific municipal bond proceedings, whether in the stages preparatory to issuance of the bonds or in the stages involving sale of the bonds after issuance. Therefore, all portions of the process of bond issuance and sale set forth in Title 7, Chapter 7, part 42, of the Montana Code Annotated and all matters relating to a specific bond proceeding must be performed by the municipality without the aid of compensated financial advisers.

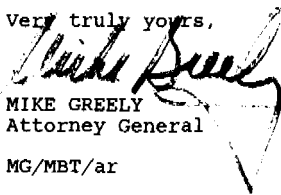
There are, however, certain functions generally connected with municipal bonds that do not necessarily fall within the proscription of section 7-7-4254(3). For instance, the preparation of a financial analysis or rating for a municipality may be an ongoing process of importance and applicability to the overall operation of the municipal corporation. As stated earlier, section 7-7-4254(3) prohibits retained assistance in bond proceedings, preparation, and negotiation for sale; however, it does not appear to prevent a municipality from paying for general financial consultation that may be collaterally beneficial to the marketability of general obligation bonds. It is therefore my opinion that matters involving the overall financial operation and status of a municipality may be undertaken by retained consultants, so long as they are not limited to a single bond issuance and sale or to specific bond proceedings.

You have also asked whether the proscription of section 7-7-4254(3) is limited to payment of consultants out of the actual bond proceeds -- that is, whether payment for the activities enumerated in the statute may legally be made from the general fund of the municipality. Section 7-7-4254(3) makes no mention of the source of payment and provides no exceptions based on the fund from which the payment is made. It is a flat prohibition of compensated assistance in bond proceedings, preparation, and negotiation for sale.

THEREFORE, IT IS MY OPINION:

1. Section 7-7-4254(3), MCA, prohibits a municipality from paying a consultant for assistance or advice in any of the matters set forth in Title 7, Chapter 7, part 42, of the Montana Code Annotated, relating to the issuance and sale of specific general obligation bonds.
2. Section 7-7-4254(3), MCA, does not prohibit a municipality from paying a consultant for assistance in matters involving the overall financial operation of the municipality, so long as the consultation is not limited to a single bond issuance and sale and does not involve participation in specific bond proceedings.
3. The prohibition in section 7-7-4254(3) is not limited to payment from the actual bond proceeds, but includes all funds of the municipality.

Very truly yours,



MIKE GREELY
Attorney General

MG/MBT/ar

VOLUME NO. 38

OPINION NO. 35

COUNTY COMMISSIONERS - Authority of county commissioners to fix salaries or wages of county employees;
COUNTY OFFICERS AND EMPLOYEES - Authority of county commissioners to fix salaries or wages of county employees;
MONTANA CODES ANNOTATED - Title 7, Chapter 6, Part 23.

HELD: In budgeting, the board of county commissioners may fix and determine specific wages and salaries pursuant to their authority to adjust and revise line item amounts in the proposed budget. Where the Board has previously adopted a resolution limiting yearly salary and wage increases to five percent and they adopt a general budget for salaries and wages without individual salary detail, salary and wage increases of county employees cannot exceed the 5% amount established. A county official has no authority to increase his or her employees individual salaries in excess of the 5% limitation even if greater increases could be accommodated within the total salary budget established for that office.

16 August 1979

Rae V. Kalbfleisch
Toole County Attorney
Toole County Courthouse
Shelby, Montana 59474

Dear Mr. Kalbfleisch:

You have requested my opinion on the following question:

Does the Board of County Commissioners of Toole County have the authority to establish a 5% annual wage increase limitation for all county employees.

The county budgeting process is provided for by statute in Title 7, Chapter 6, Part 23, MCA. The steps of this process relevant to your question are as follows:

1. Each county official in charge of an office annually files with the Clerk and Recorder detailed and itemized estimates of all expenses required by the office. Section 7-6-2311(1), MCA.

2. The clerk and recorder prepares a complete expenditure program. Section 7-6-2313, MCA. Salaries and wages are one of the classifications of expenses of this program. Section 7-6-2314(1)(a). Each salary in this class must be set forth separately. Section 7-6-2314(2)(a), MCA.
3. The Board of County Commissioners considers the budget in detail and makes any advisable revisions, reductions, additions or changes. The result of this process is a preliminary budget. Section 7-6-2315(2).
4. The budget, as finally determined by the Board, sets out each item for which expenditure or appropriation is authorized. Section 7-6-2320(1), MCA. The budget is approved and adopted by resolution. Section 7-6-2320(2).

Under section 7-6-2315(2), MCA, the Board may revise and change any amounts in the proposed budget. That authority extends to "details" of the budget, including line item amounts for individual salaries and wages. Thus the board has authority to fix or limit wages and salaries of county employees.

Your request for an opinion arose, however, because the Toole County treasurer's budget for the 1979 fiscal year was submitted to and approved by the county commissioners without any line item specification of salaries as required by section 7-6-2314(2)(a); rather, the treasurer's budget contained an amount only for the general class of salaries and wages for her office. The treasurer thereafter asserted that she should be allowed to increase the salaries and wages of individual employees in her office so long as the total salaries and wages do not exceed the budgeted amount for that class. The individual raises she proposes to submit would exceed a 5% limitation on yearly increases of salary and wages of county employees which was fixed by the Toole County commissioners in a formal resolution adopted prior to the 1979 fiscal year budget. The Board of County Commissioners has broad rule making authority under Section 7-5-2102, MCA, which provides,

"The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to make and

enforce such rules for its government, the preservation of order and the transaction of business as may be necessary.

Whether or not the use of this general rulemaking authority by the commissioners in adopting the 5% limitation was appropriate in light of the line item requirements for salaries need not be addressed. The 5% rule, at minimum, refutes any contention that in adopting the treasurer's budget the Board intended to approve any salary or wage increase in excess of 5%. The budget must be deemed as approved subject to the 5% limitation. While the Board could have provided for increases in excess of 5% by approving specific individual salary levels in the fiscal 1979 budget, a variance from the 5% guideline cannot be implied from approval of a general, non-detailed amount fixed for salaries in the treasurer's budget. The maximum salary or wage approved for each individual employee of the treasurer is limited to a 5% increase over the salary or wage for the previous year.

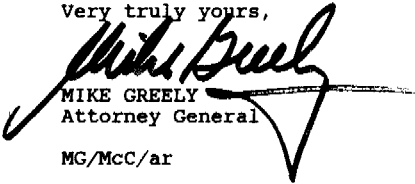
I am aware that there is a factual dispute as to whether the board of county commissioners agreed, in July, 1978 meeting with the treasurer, to allow increases in excess of 5% for her employees. However, there are no formal minutes of such a meeting, and no formal resolution was adopted. Such agreement, even if made, is no substitute for formal action of the Board and cannot nullify the specific limitation previously adopted with respect to salaries and wages.

IT IS THEREFORE MY OPINION:

In budgeting, the board of county commissioners may fix and determine specific wages and salaries pursuant to their authority to adjust and revise line item amounts in the proposed budget. Where the Board has previously adopted a resolution limiting yearly salary and wage increases to five percent and they adopt a general budget for salaries and wages without individual salary detail, salary and wage increases of county employees cannot exceed the 5% amount established. A county official has no authority to increase his or her employees individual salaries in excess of the 5%

limitation even if greater increases could be accommodated within the total salary budget established for that office.

Very truly yours,



MIKE GREELY
Attorney General

MG/MCC/ar

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