

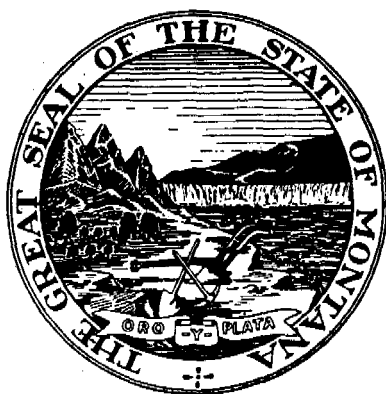
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# **MONTANA ADMINISTRATIVE REGISTER**

1979 ISSUE NO. 19  
PAGES 1148-1261



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.

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 19

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BEFORE THE FISH AND GAME COMMISSION  
OF THE STATE OF MONTANA

In the matter of the repeal of) NOTICE OF PUBLIC HEARING  
Rule 12-2.10(2)-S1060 relating) FOR REPEAL OF A RULE  
to hunting season opening dates) RELATING TO OPENING DATES

TO: All Interested Persons:

1. On November 3 , 1979, a public hearing will be held in the department building, 1420 E 6 Ave., Helena, Mt. to consider the repeal of a rule which sets the opening dates for hunting season.

2. The rule proposed to be repealed can be found on page 12-30 of the Administrative Rules of Montana.

3. The rule provides as follows:

12-2.10(2)-S1060 OPENING DATES (1) The commission policy on opening dates shall be as follows:

(a) General big game season -- first Sunday following October 16.

1971 -- October 17	1977 -- October 23
1972 -- October 22	1978 -- October 22
1973 -- October 21	1979 -- October 21
1974 -- October 20	1980 -- October 19
1975 -- October 19	1981 -- October 18
1976 -- October 17	

(b) Antelope season -- One week preceding the big game season.

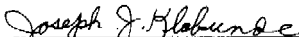
(c) Back country season -- September 15. (History: Sec. 87-1-304 MCA; IMP, 87-1-304 MCA; Eff. 12/31/72.)

4. The commission proposes to amend this rule in order to facilitate wildlife management decisions and to provide the capability for opening the general big game season in a split fashion across the state. General big game hunting in the eastern part of the state should open at a later date than big game hunting in the west. The present rule does not provide this flexibility. The opening dates will be set annually after this repeal.

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

6. F. Woodside Wright has been designated to preside over and conduct the hearing.

7. The authority of the agency to repeal the rule is based on Section 87-1-304 MCA and implements the same section.

  
\_\_\_\_\_  
Joseph J. Klabunde, Chairman  
Montana Fish and Game Commission

Certified to Secretary of State September 25 , 1979

19-10/11/79

MAR Notice No. 12-2-81

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

In the matter of the adoption )	NOTICE OF PUBLIC HEARING
of rules establishing procedure )	FOR ADOPTION OF RULES
and criteria for certificate of )	RELATING TO CERTIFICATE
need review and reporting )	OF NEED REVIEW FOR HEALTH
requirements for health care )	CARE FACILITIES
facilities )	

TO: All Interested Persons

1. On November 8, 1979, at 10:00 a.m., a public hearing will be held in the auditorium of the Scott Hart Building, 303 Roberts, Helena, Montana, to consider the adoption of rules which establish procedure and criteria for review of applications for certificate of need of health care facilities and require reporting by such facilities.

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

3. The proposed rules provide as follows:

Rule 1. Definitions For the purpose of this rule:

(1) "Capital expenditure" means any purchase or transfer of money or any property of value, or any enforceable promise or agreement to purchase or to transfer money or any property of value, incurred by or on behalf of a person for any of the activities stated in 50-5-301, MCA, and includes the values of facilities and equipment obtained under donation, lease or comparable arrangements as though such items had been acquired by purchase.

(2) "Develop" means to undertake activities which upon completion will result in the offering of a new institutional health service, or the incurring of a financial obligation in relation to the offering of such a service.

(3) "Health service" means major subdivisions, as determined by the department, within diagnostic, therapeutic or rehabilitative areas of care that may be provided by a health care facility. Specific treatments, tests, procedures or techniques in the provisions of care do not, by themselves, constitute a health service for this definition.

(a) Included in the term "health service" shall be radiological diagnostic health services offered in, at, through, by or on behalf of a health care facility including services offered in space leased or made available to any person by a health care facility which are provided by any computed tomographic scanning equipment.

(b) Exception to (a) shall be the addition to or replacement of the same service when the capital expenditure for such addition or replacement is less than \$150,000. For the purpose of this subparagraph, a CT head scanner and a CT body scanner do not provide the same service, and a CT fixed scanner and a CT mobile scanner do not provide the same service.

(c) "Deletion of a health service" means the elimination or reduction in scope of a health service offered in or through a health care facility.

(4) "Enforceable capital expenditure commitment" means an obligation incurred by or on behalf of a health care facility when:

(a) An enforceable contract is entered into by such facility or its agent for the construction, acquisition, lease or financing of a capital asset; or

(b) A formal internal commitment of funds by such a facility for a force account expenditure which constitutes a capital expenditure; or

(c) In the case of donated property, the date on which the gift vested.

(5) "Service area" for the purpose of this rule means one of the subareas designated in figure 1. (see following page)

Rule II. Submission of application for certificate of need

(1) Any person proposing an activity subject to review under Section 50-5 - 301, MCA, shall submit to the department a letter of intent as a prerequisite to filing an application for a certificate of need, except a health maintenance organization is excluded from submitting a letter of intent or application for a certificate of need for feasibility surveys or planning which are funded under 42 U.S.C. 246. The letter of intent must contain the following information:

(a) A brief narrative summary of the proposal, including statements on whether the proposal will affect bed capacity of the facility, or changes in services;

(b) An itemized estimate of proposed capital expenditure including a proposed equipment list with a description of each item which will be purchased to implement the proposal;

(c) Methods and terms of financing the proposal;

(d) Effects of the proposal on the cost of patient care in the service area affected;

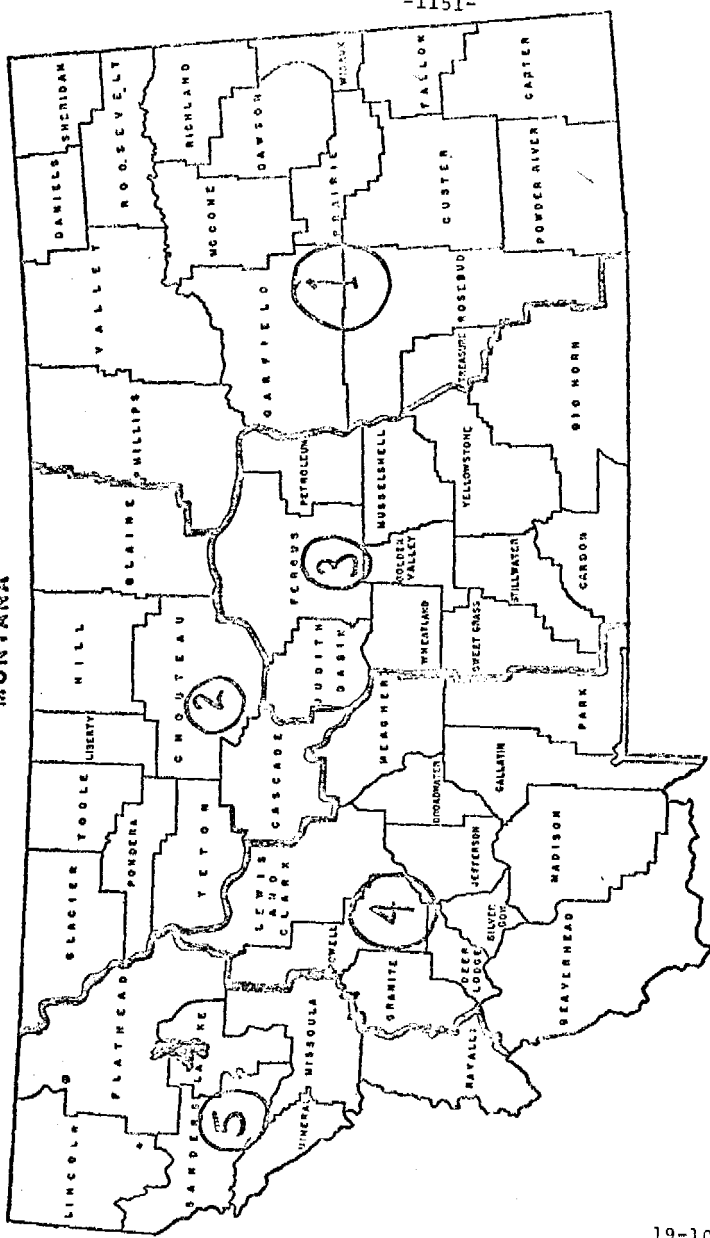
(e) Projected dates for commencement and completion of the proposal; and

(f) The proposed geographic area to be served.

(2) Within thirty calendar days after the receipt of the letter of intent, the department shall notify, in writing, the applicant whether or not the activity proposed in the letter is subject to review under Section 50-5-301, MCA. If the department determines the activity is subject to review, it shall supply an application form to the applicant submitting the letter of intent. The application must be mailed to the department within ninety days of receiving it. Failure to file the application form within ninety days requires the process to begin again with the filing of another letter of intent.



MONTANA



(a) In determining when a capital expenditure for equipment is over \$150,000, the department will review the list submitted by the applicant pursuant to Rule II(2)(b)(ix) and will aggregate the total cost for each item of equipment obligated for or purchased within a health care facility's fiscal year for a program, service or plan.

(b) The application shall contain at a minimum, the following information in such form as specified by the department:

- (i) Classification of applicant.
  - (ii) General information regarding present facility and the service area.
  - (iii) Description of proposed project.
  - (iv) Personnel requirements of proposed project.
  - (v) Construction aspects of the proposed project.
  - (vi) Justification of need of proposed project.
  - (vii) Financial and economic feasibility of proposed project.
  - (viii) Provision for cost containment of proposed project.
  - (ix) Equipment list including estimated cost of each item.
- (c) The original and one copy of the application must be submitted to the department.

(3) Within fifteen calendar days from the date that the department receives the application, the department shall determine whether or not the application is complete.

(a) If the application is determined to be complete, the department shall notify the applicant in writing that the application is accepted as complete.

(b) If the application is determined to be incomplete, the department shall notify the applicant in writing by mail of the incompleteness and of the specific information that is necessary to complete the application. Once the department determines the application is complete, the department shall notify the applicant in writing that the application is accepted as complete.

(c) An application may be changed any time prior to the department's declaration that the application is complete. Change in intent of the application or impact on the financial feasibility of the proposed project after the department's declaration requires the process to begin again with the filing of another letter of intent.

#### Rule III. Review Procedures

(1) The department shall approve, approve with conditions, or deny the application, unless the applicant agrees to a longer period, in writing, within ninety calendar days after a notice of acceptance of the completed application has been published in a newspaper of general circulation within the service area affected by the application. In the case of a review of a new institutional health service proposed by a health maintenance organization the review

cycle shall begin on the date the application is received by the department and shall not extend beyond 90 calendar days.

(2) A notice of acceptance shall be mailed to the applicant, an agency qualified as a health systems agency pursuant to 42 USC §300ℓ Health Service Act, health care facilities and health maintenance organizations located in the service area and rate review agencies in the state. Contiguous health systems agencies qualified pursuant to 42 USC §300ℓ will be notified if the service area borders one of the surrounding states. The notice of acceptance shall be published in a newspaper of general circulation in the service area affected.

(3) A notice of acceptance of an application shall include:

- (a) Review period schedule;
  - (b) The date by which a request for an informational hearing must be mailed;
  - (c) The manner in which notification will be provided of the time and place of an informational hearing so requested, and
  - (d) The manner in which the hearing will be conducted.
- (4) An affected person may during the 90 calendar days review period request a public informational hearing pursuant to Rule IV.

(5) An agency qualified as a health systems agency pursuant to 42 USC §300ℓ shall be given the opportunity to provide the department with recommendations on the application within 60 calendar days from the beginning of the review period unless another period of time has been agreed to, in writing, by the health systems agency and the department. In case of an application by a health maintenance organization, health systems agency reviews may not extend beyond 60 days.

(6) If the recommendations are not received within the prescribed period of time the department is not required to consider the recommendations.

(7) If the department fails to issue a decision within the ninety calendar days, or the longer period of time agreed upon by the applicant, a certificate of need shall not be issued.

(8) If the certificate of need is issued with conditions, the conditions must be directly related to the project under review.

(9) The decision of the department through written findings of fact and conclusions of law shall be mailed to the applicant and any agency qualified as a health systems agency pursuant to 42 USC §300ℓ and shall be made available to others upon request for cost. In the case of reviews of new institutional health services proposed by a health maintenance organization, the department shall send copies of the department's written findings and decision to Region VIII office of the Department of Health, Education and Welfare at the time the applicant is notified of the Department's decision.

(10) If the department's decision is not consistent with the plans or does not concur with the recommendations of an agency qualified as a health systems agency pursuant to 42 USC §300 ~~l~~ the department shall submit a written detailed statement of the reasons for the inconsistencies to the health systems agency.

(11) If the decision of the department is to issue a certificate of need, a certificate of need will be issued within 30 calendar days after the distribution of the department's decision unless a request for a reconsideration hearing has been received by the department or a written notice of appeal has been filed with the board.

(12) The duration of the certificate of need shall be 12 months, unless the provision of section 50-5-305(1), MCA, has been met or unless the applicant has submitted to the department a request in writing for an extension of 6 months based on good cause at least 30 calendar days before the expiration date of the certificate of need. The request shall be accompanied by an affidavit signed by the requestor verifying all information is true and correct. The department will make its decision regarding the extension request and notify the applicant by certified mail within 15 calendar days after receiving the request. An extension of a certificate of need shall not exceed 6 months.

(a) "Good cause" for this subsection shall include but not be limited to emergency situations which prevent the recipient of the certificate of need from obtaining necessary financing, commencing construction, or implementing a new service.

(13) The applicant shall report to the department any increase in the cost of an approved project in excess of \$150,000 or 15 percent of the approved budget for the project, whichever is less. The department may require an additional certificate of need on the increased cost.

Rule IV. Informational hearing

(1) During the course of the 90 day review period an affected person may request a public hearing by writing to the department.

(2) This request must be received by the department within 15 calendar days after the date of notification of acceptance of the completed application in the newspaper.

(3) Notice of the public hearing shall be given at least twenty calendar days prior to the public hearing by the following means:

(a) Written notice will be sent by certified mail to the applicant, an agency qualified as health systems agency pursuant to 42 USC §300 ~~l~~ , the health care facilities and health maintenance organizations in the service area to be served by the proposal, and agencies which establish rates.

(b) Notice to all other affected persons will be by

newspaper advertisement.

(c) The notice shall indicate:

(i) Date of the hearing;

(ii) Time of the hearing;

(iii) Location of the hearing; and

(iv) The person to send written comments prior to the hearing if unable to attend the hearing.

(d) Any person may comment during the hearing and all comments made at the hearing shall be recorded and retained by the department.

Rule V. Criteria and Findings

(1) A certificate of need shall not be issued unless the department determines there is a need for the proposed new institutional health service. Criteria listed in section 50-5-304, MCA, and the following will be considered by the department in making its decision:

(a) In the case of an application proposing a construction project, the probable impact that the costs of the proposed construction, including the costs and methods of energy conservation will have on the costs of providing health services.

(b) In the case of an application proposing the deletion of a health service, the need that the population presently serviced has for the service, the extent to which that need will be met adequately by alternative arrangements proposed, and the effect of the deletion on the ability of the population served to obtain needed service.

(c) In the case of an application proposing a new institutional health service:

(i) The equal access the medically underserved population, as well as all other population within the service area, will have to the proposed new institutional health service; and

(ii) The effect the proposed new institutional health service will have on energy conservation.

(2) In the case of any proposed new inpatient health care facility or inpatient health care service, the department will make the following determinations:

(a) The efficiency and appropriateness of the use of existing inpatient facilities providing inpatient services similar to those proposed;

(b) That superior alternatives to such inpatient service in terms of cost efficiency, and appropriateness do not exist or that the development of such alternatives is not practicable;

(c) That, in the case of new construction, alternatives to new construction such as modernization or sharing arrangements have been considered and have been implemented to the maximum extent practicable;

(d) That patients will experience problems including, but not limited to, cost, availability, or accessibility in obtaining inpatient care of the type proposed in the absence of the proposed new service;

(e) That, in the case of the proposal for the addition of long-term care beds, consideration has been given to the relationship of this addition to the plans of other agencies, including home health services, responsible for either providing or financing long-term care; and

(f) That the department has considered the efficiency and appropriateness of the proposal and the potential impact the capital and operating costs of the proposal may have on patient charges.

(3) In the case of an application proposing the formation of a health maintenance organization for which assistance may be provided under 42 USC §300e the following criteria shall apply:

(a) The needs of enrolled members and reasonably anticipated new members of the health maintenance organization or proposed health maintenance organization for the new institutional health services proposed to be provided by the organization;

(b) The availability in a cost-effective and reasonable manner consistent with the basic method of a health maintenance organization or proposed health maintenance organization, of the proposed new institutional health service from other health care facilities. In assessing the availability of these health services from these health care facilities, the department shall consider only whether the services from these providers:

(i) Would be available under a contract of at least five years duration,

(ii) Would be available and conveniently accessible through physicians and other health professionals associated with the health maintenance organization or proposed health maintenance organization,

(iii) Would cost no more than if the services were provided by the health maintenance organization or the proposed health maintenance organization, and

(iv) Would be available in a manner which is administratively feasible to the health maintenance organization or proposed health maintenance organization.

(4) In the case of an application from a health maintenance organization, a certificate of need shall not be denied with respect to such proposal when:

(a) The department has granted a certificate of need which authorized development of a service or expenditure in preparation for such offering or development or otherwise made a finding that such development or expenditure is needed;

(b) When the proposal of the health maintenance organization is consistent with the basic objectives, time schedules, and plans of the previously approved application; and

(c) When denial would be based solely upon the fact there is a health maintenance organization in the same area or the services being reviewed are not discussed in health plans developed for the health service area.

(5) The department shall not deny a certificate of need with respect to the services proposed to be offered by a health maintenance organization for which assistance may be provided under 42 USC §300e unless the department determines that the service is:

(a) Not needed by the enrolled or reasonably anticipated new members of the health maintenance organization or proposed health maintenance organization; and

(b) Available from non-health maintenance organization providers or other health maintenance organizations in a reasonable and cost-effective manner which is consistent with the basic methods of operation of the health maintenance organization under 42 USC §300e.

(6) In the case of a new institutional health service which is proposed to be provided by or through a health maintenance organization for which assistance may be provided under 42 USC §300e and which includes in the proposal the construction, development or establishment of a new inpatient health care facility, the department shall determine whether utilization of the facility by members of the applicant will account for at least 75 percent of the projected annual inpatient days, as determined in accordance with the recommended occupancy levels under the applicable health systems plan, and furthermore:

(a) If the department determines that these members will account for less than 75 percent of these patient days, it shall review the proposal in accordance with the provision of section 50-5-304, MCA, and subsections (1) (2) and (3) of the rule, or

(b) If the department determines that these members will account for 75 percent or more of the patient days, it shall review the proposal in accordance with subsections (3) (4) and (5) of this rule.

Rule VI. Appeal procedures

(1) The applicant or an agency qualified as the health systems agency pursuant to 42 USC §300f may request a reconsideration hearing before the department. Any other affected person may request a reconsideration hearing only for "good cause".

(a) For the purpose of this rule "good cause" exists if the requestor:

(i) Presents significant relevant information not previously considered by the department; or

(ii) demonstrates that there have been significant changes in factors or circumstances relied upon by the department in reaching its decision; or

(iii) demonstrates the department has failed to follow procedural requirements in reaching its decision.

(b) The request must be received in writing within 30 calendar days after the department's decision has been issued and state facts constituting the alleged "good cause".

(c) The department has 7 calendar days from receipt of the request in which to determine if "good cause" has been demonstrated, and shall notify the requestor, in writing, of its decision. If the department determines "good cause" exists, a contested case hearing shall be held within 30 calendar days after receipt of the request in accordance with the Montana Administrative Procedure Act and rules implementing it.

(i) Notice of the contested case hearing shall be sent to the person requesting the hearing, the applicant, any agency qualified as a health systems agency pursuant to 42 USC §300ℓ and any other affected person upon request.

(ii) Contents of the notice shall conform to the requirements of the Montana Administrative Procedure Act and its implementing rules.

(d) The department shall make written findings of fact and conclusions of law which state the basis for its decision within 45 calendar days after the conclusion of the hearing. These findings of fact and conclusions of law shall be sent to the person requesting the hearing, the applicant, and the agency qualified as the health systems agency pursuant to 42 USC §300ℓ. Any other affected person upon request may receive a copy of these findings for cost.

(e) The decision of the department following the reconsideration hearing shall be considered the department's final decision for the purpose of appealing the decision.

(2) An aggrieved applicant or an agency qualified as a health systems agency pursuant to 42 USC §300ℓ may appeal the department's final decision to the board by filing with the board a notice of appeal, in writing, within 30 calendar days after the department's final decision has been mailed to the parties described in subsection (1)(d).

(3) The appeal shall be held within 30 calendar days after receipt of the notice of appeal and shall be conducted in accordance with the Administrative Procedure Act and its implementing rules.

(4) The decision of the board shall be made in writing within 45 calendar days after the conclusion of the hearing. These findings shall be sent to the applicant, the department and the agency qualified as the health systems agency pursuant to 42 USC §300ℓ. Any other affected person upon request may receive a copy of this decision for cost. The



board, in accordance with the reasons found in section 2-4-704, MCA, may affirm the department's decision, remand the application to the department for further proceedings, reverse the department's decision or modify the department's decision. The decision of the board shall be considered final.

Rule VII. Abbreviated Review

(1) If the application does not significantly impact cost or utilization of health care, the department may conduct an abbreviated review of the project.

(2) The following activities may qualify for an abbreviated review:

(a) Decrease in bed capacity of a health care facility which will not have an adverse impact on the delivery of health care in the service area.

(b) Decrease in services provided by a health care facility which will not have an adverse impact on the delivery of health care in the service area.

(c) Equipment replacement which would not expand the health care service offered by the health care facility.

(d) Alterations or improvements of a health care facility which are necessary to bring the facility into compliance with federal or state licensure or certification requirements, federal or state fire and life safety requirements, or local building codes.

(e) Licensure change from one category of nursing care to another.

(f) Expansion of a geographic service area of a home health agency providing it does not expand into an existing home health service area.

(3) The applicant must file a letter of intent with the department requesting an abbreviated review of the proposal with justification for the request.

(4) Within 15 calendar days of receipt of the letter of intent, the department shall decide whether the application shall be considered eligible for an abbreviated review. If the department decides that additional information is necessary to make its decision, the department shall notify the applicant in writing of the specific information necessary to make its decision.

(5) If the department determines there is a need for the project, and after taking into consideration recommendations from the agency qualified as a health systems agency pursuant to 42 USC §300ℓ, the department shall issue its decision within 25 calendar days from the beginning of the review period.

(6) The department's decision shall be sent by certified mail to the applicant and the agency qualified as the health systems agency pursuant to 42 USC §300ℓ. All other affected persons shall be notified by newspaper advertisement.

Rule VIII. Reports

(1) All health care facilities shall provide to the department, upon its request, information necessary for health planning and resource development.

(2) This information will be provided upon request to the public at cost.

(3) Status reports describing the implementation of an approved project shall be submitted to the department every six months after the date of the issuance of the certificate of need and upon completion of the project. These reports shall include:

(a) Information regarding the steps taken to acquire funding for the project;

(b) The types of obligations incurred;

(c) The percentage of the project completed;

(d) The problems encountered by the applicant regarding the project;

(e) The effect these problems may have on the projected completion date; and

(f) Project cost and any changes in project being considered.

(4) The department shall publish annually a public report of its activities which shall include:

(a) Certificate of need reviews conducted including the status of the reviews;

(b) Certificate of need reviews completed since the last published report; and

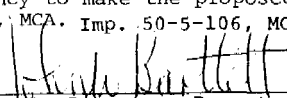
(c) General statements of the findings and decisions made in the course of the completed reviews.

4. The department is proposing these rules in order to implement the statutes relating to certificate of need review which were added and amended during the 1979 Legislature (Title 50, Chapter 5, MCA), to ensure that all federal requirements for such review have been met, and to generate the reporting from health care facilities needed for health planning and resource development.

5. Interested persons may present their data, views, or arguments either orally or in writing, at the hearing or prior to it by contacting Robert Solomon, Cogswell Building, Department of Health and Environmental Sciences, Helena, Montana 59601 (phone 449-3444).

6. Robert Solomon 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 50-5-103, MCA. Imp. 50-5-106, MCA, and Title 50, Chapter 5, Part 3.

  
Deputy Director, Department of  
Health and Environmental Sciences

Certified to the Secretary of State October 2, 1979.

19-10/11/79

MAR Notice No. 16-2-116

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

In the matter of the amendment )	NOTICE OF PROPOSED
of Rule 16-2.2(1)-P200, Model )	AMENDMENT OF RULE
Procedural Rules. )	16-2.2(1)-P200
	MODEL PROCEDURAL RULES
	NO PUBLIC HEARING
	CONTEMPLATED

TO: All Interested Persons

1. On November 20, 1979, at 10:00 a.m. the Board and the Department of Health and Environmental Sciences will file with the Secretary of State of the State of Montana a notice to amend rule 16-2.2(1)-P200, which adopts the Attorney General's model procedural rules by reference.

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

16-2.2(1)-P200 MODEL PROCEDURAL RULES. (1) The Department of Health and Environmental Sciences has herein adopted and incorporated the The Attorney General's model procedural rules, MAC-1-1-6(2)-P640 through MAC-1-1-6(2)-P6320, but has modified MAC-1-1-6(2)-P660 to incorporate requirements of statutes administered by the department.

MAC-1-1-6(2)-P660 is modified by the addition of the following as noticed on pages 882 through 921 of the 1979 Montana Administrative Register, Issue Number 16, are hereby adopted by reference, with the exception of 1.3.207 (corrected from 1.6.207, which appears in the notice), which is modified by changing the number of paragraph (3) to (4) and adding a new paragraph (3) as follows:

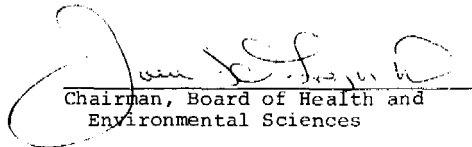
(3) Additional requirements:

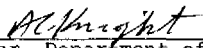
- (a) same text
- (b) same text
- (c) same text
- (d) same text
- (e) same text

3. The rule is proposed to be amended to incorporate amendments made by the Attorney General to the model procedural rules for all state agencies.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Robert Solomon, Cogswell Building, Department of Health and Environmental Sciences, Helena, Montana 59601 (phone: 449-3444), no later than November 12, 1979.

5. The authority of the department and the board to make the proposed amendment is based on section 2-4-201, MCA. Imp. 2-4-201, MCA.

  
Chairman, Board of Health and  
Environmental Sciences

  
Director, Department of Health and  
Environmental Sciences

Certified to the Secretary of State October 2, 1979.

BEFORE THE DEPARTMENT OF INSTITUTIONS  
OF THE STATE OF MONTANA  
ALCOHOL AND DRUG DIVISION

IN THE MATTER of the	)	Notice of Proposed Adoption
Proposed Adoption of New	)	of New ARM Rules regarding
ARM Rules 20.3.201,	)	guidelines to County
20.3.205 and 20.3.210	)	Commissioners for County
	)	Drug and Alcohol Plans for
	)	FY 1981.
	)	
	)	PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On November 30, 1979, the Department of Institutions proposes to adopt new ARM rules concerning guidelines for County Alcohol and Drug plans.

2. The proposed rules provide as follows:

Rule I - SUBMISSION DATE.

County alcohol and drug plans are to be submitted to the Department of Institutions by 5:00 p.m., December 31. If plan is not received by December 31 the county is not eligible for alcohol tax funds generated under Section 53-24-206 MCA.

Rule II - APPROVAL DATE.

All county alcohol and drug plans must be approved by June 30. If plan is not approved by June 30 the county is not eligible to receive alcohol tax funds generated under Section 53-24-206 MCA.

Rule III - CONTENT OF COUNTY PLANS

A. County Identification Form Plans may include more than one county but an identification form must be completed for each county included in the plan. Line 4 (Signature of Approving County Officials) must be signed by county commissioners from each county.

B. Description of Service Area and County Planning Process. Each county must describe management, administration and planning process of alcohol and drug services.

C. Analysis of County. County(ies) must analyze and describe the extent of their alcohol and drug problem, a description of programs or services offered by alcohol and drug programs which meet treatment needs of special populations (minorities, women, youth, aged) must be included for each county.

D. Treatment and Rehabilitation. County(ies) must list the names and services provided by existing alcohol and drug programs within county(ies). If all service components

(outpatient, intermediate, inpatient, detox, transitional living) are not available within county(ies) service area, provisions must be made to obtain these services.

E. FY 81 County Action Strategy. County(ies) must list programs to receive alcohol tax monies during next fiscal year, and determine what services each will provide and estimate allocation of county funds for each program. County(ies) must describe how each program was chosen and explain how services provided by each program meet identified county needs. A justification is required for any duplication of services.

F. Third Party Payments and Fees for Services. County(ies) must describe activities in exploring third party reimbursements and client fees for services, as well as other sources of income, for financing alcohol and drug programs.

G. County and Local Service Provider Coordination With Other Agencies. County(ies) must describe county and local alcohol and drug service provider coordination with Mental Health, Vocational Rehabilitation, Local Job Service and School Systems and develop an action plan for resolving any coordination problems.

H. Prevention. County(ies) must assess and describe alcohol and drug prevention services available within the service area.


I. Criminal Justice. County(ies) must describe cooperative arrangements the county and/or alcohol and drug service providers have with the criminal justice system (law enforcement, judicial, corrections) and develop an action plan to resolve any problem. County(ies) must also list all DWI court schools within service area.

3. Due to length involved in these proposed rules it is not feasible at this time to publish them in their entirety. However, interested persons may receive copies of the proposed draft of the rules by writing Michael A. Murray, Administrator, Alcohol and Drug Abuse Division, Department of Institutions, 1539 11th Avenue, Helena, Montana 59601.

4. On November 1, 1979 at 10:00 a.m., a public hearing will be held in the conference room of the central office of the Department of Institutions, 1539 11th Avenue, Helena, Montana, before Nick A. Roterling, Legal Counsel for the Department of Institutions as Hearings Officer.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. The Department will accept written comments up to November 8, 1979 as well as any questions on the proposed new rules which should be directed to Nick A. Roterling, Legal Counsel, Department of Institutions, 1539 11th Avenue, Helena, Montana 59601.

6. The authority to make these proposed new rules is based upon Section 53-24-203 MCA, Section 53-24-204 MCA, Section 53-24-207 MCA and Section 503-24-208 MCA.

  
LAWRENCE M. ZANTO, Director  
Department of Institutions

Certified to the Secretary of State, October 2, 1979.

BEFORE THE BOARD OF LIVESTOCK  
STATE OF MONTANA

In the matter of the repeal )	NOTICE OF PROPOSED REPEAL OF
of ARM 32-2.6A(110)-S6570 )	ARM 32-2.6A(110)-S6570 AND
and 32-2.6A(110)-S6580 re-	32-2.6A(110)-S6580
to activities of renderers )	
and rendering plants. )	(Rendering Rules)
)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On or after November 11, 1979 the Department of Livestock proposes to repeal rules 32-2.6A(110)-S6570, INFECTIOUS CONTAGIOUS DISEASE SHALL BE REPORTED, and 32-2.6A(110)-S6580 FOOD ANIMALS relating to activities of rendering plant.

2. The rules proposed to be repealed are found on page 32-102 of the Administrative Rules of Montana.

3. The department proposes to repeal these rules because during the recodification process it has been determined that they unnecessarily repeat statutory language and thus are in violation of Section 2-4-305(2) MCA.

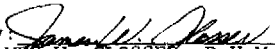
4. Interested parties may submit their data, views, and arguments concerning the proposed repeals in writing to James W. Glosser, D.V.M., Administrator & State Veterinarian, Department of Livestock, Capitol Station, Helena, Montana, 59601 no later than November 11, 1979.

5. If a person who is directly affected by the proposed repeal of rules 32-2.6A(110)-S6570 and 32-2.6A(110)-S6580 wishes to express his data, views, and arguments orally or in writing at a public hearing he must make written request for hearing and submit that request along with any written comments he has to James W. Glosser, D.V.M. no later than November 11, 1979.

6. If the department receives request for a public hearing on the proposed repeal from more than 10% or 25 or more persons directly affected, 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. 10% of those persons directly affected is determined to be 1 person based on the number of licensed rendering plants in Montana.

7. The authority of the department to repeal these rules is based on section 81-2-102 MCA.

  
ROBERT G. BARTHELMLESS  
Chairman, Board of Livestock

By   
JAMES W. GLOSSER, D.V.M.  
Administrator &  
State Veterinarian

Certified to the Secretary of State October 2, 1979.

19-10/11/79

MAR NOTICE NO. 32-2-55



BEFORE THE BOARD OF LIVESTOCK  
STATE OF MONTANA

In the matter of the amend- ) NOTICE OF PROPOSED AMENDMENT  
ment of rule 32-2.10(10)- ) OF RULE 32-2.10(10)-S10030  
S10030 relating to the loca- )  
tion of livestock market ) (Location Of Market Inspectors)  
inspectors. ) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On or after November 11, 1979 the department of livestock proposes to amend rule 32-2.10(10)-S10030, MARKET LOCATIONS, relating to the location of livestock market inspectors.

2. The rule as proposed to be amended provides as follows: (stricken language interlined and added language underlined)

32-2.10(10)-S10030 MARKET LOCATIONS WHERE LIVESTOCK CAN BE SHIPPED BY RAIL WITHOUT PRIOR INSPECTION {i} The following markets are designed as points where Montana stock inspectors are located and to which cattle shall be shipped DIRECT by railroad subject to brand inspection at destination, providing shipper's tally and agreement is filed by shipper at time cattle are loaded:

{a} (1) Baker, Montana: Baker Livestock Auction, Inc.; Montana Stock Inspector, Box 310, Baker, Montana 59313.

{b} (2) Billings, Montana:

{i} {a} Billings Livestock Commission, Co., Inc.; Montana Stock Inspector, Box 1413, Billings, Montana 59103.

{ii} {b} Public Auction Yards; Montana Stock Inspector, Box 1413, Billings, Montana 59103.

{e} (3) Bozeman, Montana: Bozeman Livestock Market Center; Montana Stock Inspector, Box 424 417, Bozeman, Montana 59715.

{d} (4) Butte, Montana: Montana Livestock Auction, Inc.; Montana Stock Inspector, Box 3267, Butte, Montana 59701.

(5) Chinook, Montana: Bear Paw Livestock Auction; Montana Stock Inspector, Box 609, Chinook, Montana 59523.

{e} (6) Dillon, Montana: Dillon Livestock Market; Montana Stock Inspector, Box 245, Dillon, Montana 59725.

{f} (7) Glasgow, Montana: Glasgow Livestock Sales Co., Inc.; Montana Stock Inspector, Box 202 461, Glasgow, Montana 59230.

{g} (8) Glendive, Montana: Glendive Livestock Sales Co.; Montana Stock Inspector, Box 1227, Glendive, Montana 59230.

{h} (9) Great Falls, Montana:

{a} Great Falls Livestock Market Center; Montana

Stock Inspector, Box 1042, Great Falls, Montana 59401.

(b) Western Livestock Auction; Montana Stock Inspector, Box 1042, Great Falls, Montana 59401.

(i) Hamilton, Montana: Hamilton Livestock Auction, Inc.; Montana Stock Inspector, Box 748, Missoula, Montana 59801.

(j) Havre, Montana: Havre Livestock Commission Co.; Montana Stock Inspector, Box 362, Havre, Montana 59501.

(k) (10) Kalispell, Montana: Kalispell Livestock Auction; Montana Stock Inspector, Box 984, Kalispell, Montana 59901.

(l) (11) Lewistown, Montana: Central Montana Auction, Inc.; Montana Stock Inspector, Box 938, Lewistown, Montana 59457.

(m) (12) Miles City, Montana: Miles City Saleyards Co.; Montana Stock Inspector, Box 372, Miles City, Montana 59301.

(n) (13) Missoula, Montana: Missoula Livestock Auction, Co.; Montana Stock Inspector, Box 748 8472, Missoula, Montana 59801.

(o) (14) Shelby, Montana: Shelby Stockyards Co., Inc.; Montana Stock Inspector, Box 104, Shelby, Montana 59474.

(p) (15) Sidney, Montana: Sidney Livestock Market Center; Montana Stock Inspector, Box 368, Sidney, Montana 59270.

(q) Siox City, Iowa: Union Steek Yards, 320 Exchange Building; Montana Stock Inspector, Box 714, Siox City, Iowa 51102.

3. The rule is proposed to be amended to respond to changes in the location or addresses of some markets where livestock market inspection by the department of livestock is maintained.

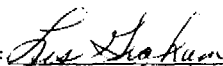
4. Interested parties may submit their data, views, or arguments concerning proposed amendment in writing to Les Graham, Administrator, Brands-Enforcement Division, Department of Livestock, Capitol Station, Helena, Montana, 59601 no later than November 11, 1979.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views, or arguments orally or in writing at a public hearing he must make written request for a hearing and submit this request along with any written comments he has to Mr. Graham no later than November 11, 1979.

6. As the number of persons directly affected by this rule exceeds 250, if the department receives request for a public hearing on the proposed amendment from 25 or more persons who are directly affected by it, or from the Administrative Code Committee of the legislature, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority of the department to make the proposed amendment is based on section 81-3-202 MCA and implement section 81-3-212 MCA.

  
ROBERT G. BARTHELMESS *by Les Graham*  
Chairman, Board of Livestock

By:   
LES GRAHAM, Administrator  
Brands-Enforcement Division

Certified to the Secretary of State October 2, 1979

BEFORE THE BOARD OF LIVESTOCK  
STATE OF MONTANA

In the matter of the adop- ) NOTICE OF PUBLIC HEARING FOR  
tion of rules relating to ) ADOPTION OF RULE  
pull dates for milk grade A )  
pasteurized or raw milk )  
offered for sale. )

TO: All Interested Persons

1. On November 6, 1979 a public hearing will be held at 10:00 a.m. in Room 319 of the Scott Hart Building, 6th Street and Roberts Street, Helena, Montana to consider the adoption of rules relating to the pull dating of milk offered for human consumption.

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

3. The proposed rules provide as follows:

Rule I. TIME FOR PROCESSING THAT FLUID MILK MAY BE SOLD FOR HUMAN CONSUMPTION

(1) No grade A pasteurized milk may be sold, offered for sale, or otherwise disposed of for human consumption at retail or wholesale more than 14 days after pasteurization.

(2) No grade A raw milk may be sold, offered for sale, or otherwise disposed of for human consumption at retail or wholesale more than 14 days after the milk is bottled.

(3) For purposes of this rule 14 days after pasteurization or bottling means the midnight closest to 336 hours following the hour of pasteurization or bottling of the milk is completed.

Rule II. DATING OF MILK CONTAINERS TO SHOW LAST DAY OF LEGAL SALE

(1) Each container into which grade A pasteurized or grade A raw milk is placed for sale for human consumption must be marked with a pull date. The pull date will, in arabic numerals, state the month and day which is the last day the milk may be sold as set forth in rule I.

(2) The pull date numbers must be on the outside of the container and be at a location and of a size readily visible to the purchaser. For purposes of this rule the cap or label of a milk container is considered a part of the container.

Rule III. WHEN MILK OFFERED FOR SALE SUBJECT TO SEIZURE

Milk offered for sale contrary to the provisions to rules I or II may be seized and destroyed by agents of the department of livestock.

4. The purpose for proposing these rules for adoption is to assure that the quality and freshness of milk offered to the consumer is accurately reflected by the dating placed on the milk container. All processors of milk now mark their milk containers with a pull date, but the time from pasteurization or bottling to the pull date shown on the container varies from processor to processor by as much as 11 days. The consumer is thus left without adequate information as to the actual freshness of the milk being purchased. The department is proposing 14 days as the outside limit because it believes that that time provides adequately for shipment and sale and still allows the consumer, who properly handles the milk, to keep it in his own refrigerator without quick spoilage.

5. Interested persons may present their data, views, and arguments in writing by mailing them to Everett L. Tudor, Chief, Milk & Egg Bureau, Animal Health Division, Department of Livestock, Capitol Station, Helena, Montana, 59601 by November 9, 1979.

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

7. Ralph Parker, member of the board of livestock has been designated to preside over and conduct the hearing.

8. The authority of the department to make these proposed rules is based on section 81-2-102 MCA. These rules will implement that same section.

  
ROBERT G. BARTHELMESS

Chairman, Board of Livestock

By:   
JAMES W. GLOSSER, D.V.M.

Administrator & State Veterinarian

Certified to the Secretary of State October 2, 1979

BEFORE THE BOARD OF LIVESTOCK  
STATE OF MONTANA

In the matter of the repeal ) NOTICE OF PROPOSED REPEAL OF  
of ARM 32-2.6BII(1)-S620, ) ARM 32-2.6BII(1)-S620, 32-2.  
32-2.6BII(1)-S630, and ) 6BII(1)-S630, AND 32-2.6BII(2)-  
32-2.6BII(2)-S6100 relating ) S6100  
to regulations of the egg )  
industry. ) (Regulation Of Egg Industry)  
 ) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On or after November 11, 1979 the department of livestock proposes to repeal rules 32-2.6BII(1)-S620, GRADING AND CANDLING BY LICENSED GRADERS, 32-2.6BII(1)-S630, EGGS REQUIRED TO BE CANDLED, and 32-2.6BII(2)-S6100, EGG GRADERS REQUIRED TO BE LICENSED.

2. The rules proposed to be repealed are found on pages 32-187, 32-188, and 32-207 respectively of the Administrative Rules of Montana.

3. The department proposes to repeal these rules because during the recodification process it has been determined that they unnecessarily repeal statutory language and are therefore, in violation of section 2-4-305(2) MCA.

4. Interested parties may submit their data, views, and arguments concerning the proposed repeals in writing to James W. Glosser, D.V.M., Administrator & State Veterinarian, Department of Livestock, Capitol Station, Helena, Montana, 59601 no later than November 11, 1979.

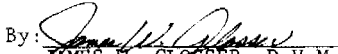
5. If a person who is directly affected by the proposed repeal of rules 32-2.6BII(1)-S620, 32-2.6BII(1)-S630, and 32-2.6BII(2)-S6100 wishes to express his data, views, and arguments orally or in writing at a public hearing he must make written request for hearing and submit that request along with any written comments he has to James W. Glosser, D.V.M. no later than November 11, 1979.

6. Since the number of persons directly affected exceeds 250, if the department receives request for a public hearing on the proposed repeals from 25 or more persons directly affected, 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 department to repeal the proposed rules is based on section 81-20-207 MCA.

  
ROBERT G. BARTHLEMESS

Chairman, Board of Livestock

By:   
JAMES W. GLOSSER, D.V.M.  
Administrator &  
State Veterinarian

Certified to the Secretary of State October 2, 1979

19-10/11/79

MAR NOTICE NO. 32-2-58

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

IN THE MATTER of the Proposed) NOTICE OF PROPOSED AMENDMENT OF  
Amendment of ARM 40-3.18(6)- ) ARM 40-3.18(6)-S18030 subsections  
S18030 subsections (2) (c) ) (2) (c) and (e) CONDUCT OF  
and (e) concerning Conduct ) BARBER COLLEGES  
of Barber Colleges )

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 10, 1979, the Board of Barbers proposes to amend ARM 40-3.18(6)-S18030 by deleting subsections (2) (c) and (e) concerning instructor requirements under CONDUCT OF BARBER COLLEGES.

2. The proposed amendment will delete subsections (2) (c) and (e) of the above stated rule, which appear at page 40-96.2 Administrative Rules of Montana, in their entirety. The remaining portions of the rule will be renumbered accordingly.

3. The board is proposing the deletion of these two subsections in compliance with the decision of the Supreme Court in the David Bell case, dated May 14, 1979, which stated in part "Any additional administrative requirements, such as those found in Sections 40-3.18(6)-S18030 (2) (c) and (e), are beyond the scope of the board's power, are therefore void and unenforceable.", a copy of which is available in the board office.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Barbers, Lalonde Building, Helena, Montana 59601, no later than November 8, 1979.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Barbers, Lalonde Building, Helena, Montana 59601 no later than November 8, 1979.

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

7. The authority of the board to make the proposed amendment is based on section 37-30-203(2) MCA and implements section 37-30-203 MCA.

BOARD OF BARBERS  
LAWRENCE SANDRETTO, PRESIDENT

BY: 

ED CARNEY, DIRECTOR  
DEPARTMENT OF PROFESSIONAL  
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, October 2, 1979.

MAR NOTICE NO. 40-18-7

19-10/11/79

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

IN THE MATTER Of the Proposed ) NOTICE OF PROPOSED ADOPTION  
Adoption of a new rule regarding) OF ARM 40.40.406 RECIPROCITY  
reciprocity licenses ) LICENSES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 10, 1979, the Board of Physical Therapy  
Examiners proposes to adopt a new rule regarding reciprocity  
licenses.

2. The rule as proposed will read as follows:

"40.40.406 RECIPROCITY LICENSES (1) Each applicant  
must have taken the Professional Examination Service  
examination in another state to be considered for  
license by reciprocity. Professional Examination Service  
scores must be reported through the Interstate  
Reporting Service. If the scores meet the criteria of  
1.5 standard deviation below the mean or higher on  
all parts, the individual will be licensed by  
reciprocity."

3. Section 37-11-307 MCA authorizes the board to license  
by reciprocity where the license was issued under laws of another  
state which were substantially equal to the requirements in  
force in Montana. The Board proposed this rule as a standard  
for determining substantial equality where examination scores  
as comparable state requirements become an issue. The 1.5  
standard deviation, as the acceptable deviation for the board's  
examination, for that reason is imposed for reciprocity purposes.

4. Interested parties may submit their data, views or  
arguments concerning the proposed adoption in writing to the  
Board of Physical Therapy Examiners, Lalonde Building, Helena,  
Montana 59601 no later than November 8, 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 Physical Therapy Examiners,  
Lalonde Building, Helena, Montana 59601, no later than November  
8, 1979.

6. If the board receives requests for a public hearing on  
the proposed adoption from 10 percent or 25 or more of those  
persons directly affected by the proposed adoption or the  
Administrative Code Committee of the Legislature, a hearing will  
be held at a later date. Notice of the hearing will be publish-  
ed in the Montana Administrative Register.

7. The authority of the board to make the proposed adop-  
tion is based on section 37-11-201 MCA and implements section  
37-11-307 MCA.


19-10/11/79

MAR Notice No. 40-40-2



-1175-

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, October 2, 1979.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF PROPOSED
ADOPTION OF RULES	)	ADOPTION OF RULES
implementing the Montana	)	implementing the
Property and Income Tax	)	Montana Property
Relief Act.	)	and Income Tax Relief Act

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 15, 1979, the Department of Revenue proposes to adopt two rules to implement the Montana Property and Income Tax Relief Act.
2. The proposed rules provide as follows:

Rule I. APPLICABILITY (1) For purposes of Chapter 698, Laws of 1979, "principal residence" means a dwelling, including a mobile home as defined in 15-24-201, MCA, and appurtenant land occupied by an applicant and not leased or rented to another by the applicant for more than 2 months during the year-long period preceding the due date for applications for relief provided in Rule II.

Rule II. APPLICATION DEADLINE (1) All completed applications for relief under Chapter 698, Laws of 1979, must be returned not later than the second Friday in December of the year for which relief is sought to the county assessor of the county wherein the property to which the relief is granted is located.

(2) Applications that are mailed to the county assessor must be postmarked not later than the second Friday in December.

3. The proposed rules implement Chapter 698, Laws of 1979, the Montana Property and Income Tax Relief Act.

Rule I addresses a problem in the drafting of the definition of the term "principal residence" in section 2, Chapter 698, Laws of 1979. The definition as it appears in the act would deny relief to all applicants who had acquired their residence during the application year and after the middle of February. This was not the intent of the legislature, and consequently the department has proposed Rule I. The language employed in Rule I reflects the language used in the Homestead Tax Relief Act passed by the 1977 Legislature and will accomplish the intent of the 1979 Legislature.

Rule II implements subsection (4) of section 4, Chapter 698, laws of 1979, and establishes the deadline for filing applications. The date selected will provide a minimum 6-week period for filing applications and will permit the Department to compute the number of applicants and the amount to be distributed to each applicant as required by section 6, Chapter 698, Laws of 1979.

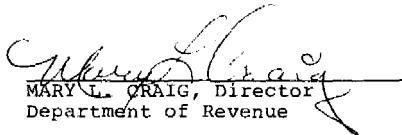
4. Interested parties may submit their data, views, or arguments concerning the proposed rules in writing no later than November 12, 1979, to:

Laurence Weinberg  
Legal Division  
Department of Revenue  
Mitchell Building  
Helena, Mt. 59601

5. If a person who is directly affected by the proposed rules 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 Laurence Weinberg at the address given in paragraph 4 above no later than November 12, 1979.

6. If the department 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 rule or from the Revenue Oversight 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 based on the number of property taxpayers in Montana.

7. Authority to make the proposed rules is given by 15-1-201, MCA, and section 4, Chapter 698, Laws of 1979. The rules implement sections 2 and 4, Chapter 698, Laws of 1979.

  
MARY L. CRAIG, Director  
Department of Revenue

Certified to the Secretary of State 10-2-79

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL	)	NOTICE OF PROPOSED REPEAL
of Rules 42-2.18(1)-S1800,	)	of Rules 42-2.18(1)-S1800,
42-2.18(1)-S1810,	)	42-2.18(1)-S1810,
42-2.18(1)-S1820,	)	42-2.18(1)-S1820,
42-2.18(2)-S18070,	)	42-2.18(2)-S18070, and
and 42-2.18(6)-S18180	)	42-2.18(6)-S18180 relating
relating to taxation of	)	to taxation of motor fuels
motor fuels.	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 1, 1979, the Department of Revenue proposes to repeal rules 42-2.18(1)-S1800, 42-2.18(1)-S1810, 42-2.18(1)-S1820, 42-2.18(2)-S18070, and 42-2.18(6)-S18180 relating to the taxation of motor fuels.

2. Rules 42-2.18(1)-S1800, 42-2.18(1)-S1810, and 42-2.18(1)-S1820 are on pages 42-122 and 42-123 of the Administrative Rules of Montana. Rule 42-2.18(2)-S18070 is on pages 42-128 and 42-129 and rule 42-2.18(6)-S18180 is on pages 42-136 and 42-137 of the Administrative Rules of Montana.

3. The department proposes to repeal these rules for the following reasons:

Rules 42-2.18(1)-S1800, 42-2.18(1)-S1810, and 42-2.18(1)-S1820 are obsolete. These rules were originally adopted by the State Board of Equalization and no longer reflect current practices. Since 1977 the Motor Fuels Division has conducted the audit referred to in rule 42-2.18(1)-S1800 with the agreement of the Highway Department. The statutes referred to in rule 42-2.18(1)-S1810 were repealed in 1977. Legislation in 1979 provides for the issuing of a single permit by the Motor Fuels Division, causing rule 42-2.18(1)-S1820 to be unnecessary.

Rule 42-2.18(2)-S18070 is duplicative of statutory language in part and is not needed. The material in subsection (1) of the rule is no longer valid due to amendments to 15-70-223, MCA, made in 1979.

Rule 42-2.18(6)-S18180 is redundant with 15-70-330, MCA, and is not needed.

4. Interested persons may submit their data, views, or arguments concerning the proposed repeals in writing no later than November 25, 1979, to:

Laurence Weinberg  
Legal Division  
Department of Revenue  
Mitchell Building  
Helena, Mt. 59601

19-10/11/79

MAR Notice No. 42-2-140

5. If a person who is directly affected by the proposed repeal of rules 42-2.18(1)-S1800, 42-2.18(1)-S1810, 42-2.18(1)-S1820, 42-2.18(2)-S18070, and 42-2.18(6)-S18180 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 Laurence Weinberg at the address given in paragraph 4 above no later than November 25, 1979.

6. If the department receives requests for a public hearing on the proposed repeals 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 directly affected has been estimated to be greater than 25 based on the number of gasoline distributors, special fuel users, and building contractors in the state.

7. Authority of the department to make the proposed repeals is given by 15-70-104, MCA. The proposals implement 2-4-305, MCA, and Chapter 600, Laws of 1979.

  
MARY V. CRAIG, Director  
Department of Revenue

Certified to the Secretary of State 10/2/79

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the adop- ) NOTICE OF THE ADOPTION OF RULE  
tion of Rule 4.6.260, Dis- ) 4.6.260, DISCONTINUING NEW  
continuing New Student ) STUDENT LOANS.  
Loans. )

TO: All interested persons

1. On June 14, 1979, the Montana Department of Agriculture published notice of a proposed adoption of a rule, concerning the discontinuance of any new student loans.

2. The agency has adopted the rule with the following changes:

RULE 4.6.260, DISCONTINUING NEW STUDENT LOANS. (1) No new student loan applications will be accepted hereafter for filing, nor will any new student loans be made or granted by the department. Hereafter any application that would have been filed with the department shall be filed with the Commissioner of Higher Education.

3. No comments or testimony were received.

  
W. Gordon McOmber, Director

Certified to the Secretary of State, October 1, 1979

BEFORE THE DEPARTMENT OF BUSINESS REGULATION  
OF THE STATE OF MONTANA

In The Matter Of The Adoption )  
Of A Rule Setting The Weight )  
Of Bread When Not In Accordance )  
With Section 30-12-401, MCA. )

NOTICE OF THE ADOPTION  
OF A RULE

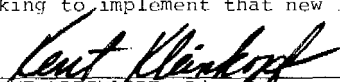
TO: All Interested Persons

1. On August 16, 1979, the Department of Business Regulation published notice of a proposed adoption of a rule concerning the weight of bread sold when not in accordance with current statutory standards at page 831 of the 1979 Montana Administrative Register, issue number 15.

2. No comments or testimony were received. The agency has adopted the rule as proposed.

3. The number of the adopted rule is: 8-2.10(3)-S1000.

4. The agency has adopted the rule to provide for the metric measurement of bread in accordance with Chapter 75, Laws of Montana, 1979, which provides for the permissive metric packaging of certain commodities. The agency has acted in response to a request for rulemaking to implement that new law.

  
KENT KLEINKOPF, Director  
Department of Business Regulation

CERTIFIED TO THE SECRETARY OF STATE October 1, 1979.

BEFORE THE BOARD OF MILK CONTROL  
OF THE STATE OF MONTANA

In The Matter Of The Amendment Of )  
Rule 8-3.14(14)-S1440(6), (b), (d), )  
(g) New (j) And (k) As It Relates )  
To Amendment Of The Distributor )  
Formula: Pricing New Products: )  
Special School Price On Low Fat )  
Milk: Reducing Distributor And )  
Retailer Margins: Increase The )  
Interval In The Distributor's )  
Formula And Method Of Computing )  
Retail Price. )  
(State Hearing April 20 and )  
21, 1979) )

NOTICE OF AMENDMENT OF  
RULE 8-3.14(14)-S1440

TO: All Interested Persons

1. On March 29, 1979, the Department of Business Regulation published Notice of a proposed amendment to Rule 8-3.14(14)-S1440(6), (b), (d), (g), and adding New (j) and (k) at page 284 of the 1979 Montana Administrative Register, issue number six (6).

2. The Agency has amended the Rule as follows:

8-3.14(14)-S1440 PRICING RULES -

(1) Authority, scope and severability.

(a) The provisions of this Official Order and prices announced pursuant thereto are Ordered in the exercise of authority delegated to the Board of Milk Control by the provisions of Section 27-407, R.C.M. 1947, as amended.

(b) Any person, subject to this Official Rule or any Price Announcement issued hereunder shall be considered in violation thereof if he or it engages in such violation in any manner, directly or indirectly, or through an agent, employee, trust, subsidiary, or affiliated company or corporation.

(c) It is the intent of the Montana Board of Milk Control that if a part of this Rule, announcement of any price issued hereunder is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this Rule or any Price Announcement issued hereunder is invalid in one or more of its applications, that part remains in effect in all valid applications that are severable from the invalid applications.



(2) Terminology. Names or products and finished product test specifications set forth in the appropriate Price Announcement are classifications for pricing purposes under the Milk Control Act only, and are not intended to interfere with or supersede applicable labeling, packaging, weights and measures, or sanitation laws or regulations.

(3) Maximum prices. Nothing contained herein shall be construed as prohibiting the payment of higher prices to producers, charging of lower hauling rates from plant-to-plant, or charging of higher wholesale and retail prices than those prices and rates fixed in this Rule or in Price Announcements issued hereunder.

(4) Contract termination.

(a) Any existing contracts with public and/or state institutions must be renegotiated in compliance with the prices ordered by the appropriate Price Announcement within ninety (90) days or on the new bid date, whichever is sooner.

(b) Any existing school contracts must be renegotiated in compliance with the appropriate Price Announcement.

(5) Prices to public and/or state institutions. Prices to be paid for fluid milk sold to public and/or state institutions in all market areas of the State are fixed by the Board of Milk Control at ninety-two (92%) of the regular wholesale price and such institutional prices are to be computed and made a part of the appropriate Price Announcement.

(6) Formula for fixing Class I Price at the producer and all resale levels.

(a) The minimum prices which shall be paid to producers by distributors in all market areas of the State shall be calculated by either applying the flexible economic formula described below or the Minnesota-Wisconsin Series plus three dollars (\$3.00) whichever price is lower. The flexible economic formula utilizes a November, 1969 Base equalling 100, an interval of 4.5 and consists of seven (7) factors.

The factors and their assigned weights are as follows:

	<u>FACTOR</u>	<u>WEIGHT</u>	<u>CONVERSION FACTOR</u>
(1)	Unemployment U.S. (6.67 (3.8 - C) + 100) .05	5%	
(2)	Unemployment MT. (6.67 (6.1 - C) + 100) .10	10%	
(3)	Weekly Wages - Total private (Revised and seasonally adjusted)	15%	.13297873
(4)	Prices Received by Farmers - MT. ('47 - '49 - 100)	15%	.15789474
(5)	Mixed Dairy Feed	20%	.32258065
(6)	Alfalfa Hay	12%	.48000000

FACTOR	WEIGHT	CONVERSION FACTOR
(7) Prices Paid by Farmers - U.S. ( '67 = 100)	23% 100%	.20720721

Note: The reported revised weekly wage - total private is seasonally adjusted by dividing each months revised figures by the following factors: Jan. - .9770; Feb. - .9760; March - .9795; April - .9838; May - .9934; June - 1.0067; July - 1.0292; August - 1.0274; Sept. - 1.0221; Oct. - 1.0135; Nov. - 1.0027; Dec. - .9887.

The following table will be used in computing producer prices:

TABLE I

Producer price determination using above formula with November, 1969 - 100 and an interval = 4.5

FORMULA INDEX	PRICE PER CWT
143.0 - 146.6	\$ 9.18
147.5 - 151.1	9.41
152.0 - 155.6	9.64
156.5 - 160.1	9.87
161.0 - 164.6	10.10
165.5 - 169.1	10.33
170.0 - 173.6	10.56
174.5 - 178.1	10.79
179.0 - 182.6	11.02
183.5 - 187.1	11.25
188.0 - 191.6	11.48
192.5 - 196.1	11.71
197.0 - 200.6	11.94
201.5 - 205.1	12.17
206.0 - 209.6	12.40
210.5 - 214.1	12.63

(b) The flexible economic formula which shall be used in calculating minimum on-the-farm wholesale and retail, jobber, wholesale, institutional and retail prices of Class I milk in all market areas of the State utilizes a November, 1969 Base equalling 100, an interval of 5.3 and consists of ~~seven~~ <sup>five</sup> (5) economic factors. It is used to calculate incremental deviations from the price which was calculated for the first quarter of 1974. The factors and their assigned weights are as follows:

FACTOR	WEIGHT	CONVERSION FACTOR
*{1} Weekly Wages - Manufacturing {MT-Revised}	25%	.1828020
*{2} Weekly Wages - Mining {MT-Revised}	7%	.0473934
*{3} Weekly Wages - Transportation & Utilities {MT-Revised}	18%	.1178628
(1) Weekly Wages - Total Private (Revised)	50%	.4351231

	FACTOR	WEIGHT	CONVERSION FACTOR
(4)	(2) Wholesale Price Index (U.S.)	28%	.2607076
(5)	(3) Pump, Paper and Allied Products (U.S.)	12%	.1142857
(6)	(4) Industrial Machinery (U.S.)	6%	.0556586
(7)	(5) Motor Vehicle and Equipment (U.S.)	4%	.0376294
		100%	

\* Amended on July 24, 1976 to use revised data rather than current data. The following table will be used in computing distributor prices-

TABLE 11

Handler incremental deviation from last official reading of present formula. (December, 1973 = 122.10; Formula Base = November, 1969, Interval = 5.3)

FORMULA INDEX	HANDLER INCREMENTAL DEVIATION	
<del>106.20</del> - <del>110.44</del>	-5	
<del>127.40</del> - <del>131.64</del>	-3	
<del>111.50</del> - <del>115.74</del>	-4	
<del>132.70</del> - <del>136.94</del>	-2	(NOTE: This chart is amended to reflect a two cent (\$.02) reduction in the distributor's margin based on a half (1/2) gallon of whole milk as ordered by the Board of Milk Control on July 24, 1976.)
<del>116.80</del> - <del>121.04</del>	-3	
<del>138.00</del> - <del>142.24</del>	-1	
<del>122.10</del> - <del>126.34</del>	-2	
<del>143.30</del> - <del>147.54</del>	0	
<del>127.40</del> - <del>131.64</del>	-1	
<del>148.60</del> - <del>152.84</del>	1	
<del>132.70</del> - <del>136.94</del>	0	
<del>153.90</del> - <del>158.14</del>	2	
<del>138.00</del> - <del>142.24</del>	1	
<del>159.20</del> - <del>163.44</del>	3	
<del>143.30</del> - <del>147.54</del>	2	(NOTE: This chart is amended to reflect a two cent (\$.02) reduction in the distributor's margin based on a half (1/2) gallon of whole milk, as ordered by the Board of Milk Control on September 15, 1979.)
<del>164.50</del> - <del>168.74</del>	4	
<del>148.60</del> - <del>152.84</del>	3	
<del>169.80</del> - <del>174.04</del>	5	
<del>153.90</del> - <del>158.14</del>	4	
<del>175.10</del> - <del>179.34</del>	6	
<del>159.20</del> - <del>163.44</del>	5	
<del>180.40</del> - <del>184.64</del>	7	
<del>164.50</del> - <del>168.74</del>	6	
<del>185.70</del> - <del>189.94</del>	8	
<del>169.80</del> - <del>174.04</del>	7	
<del>191.00</del> - <del>195.24</del>	9	
<del>175.10</del> - <del>179.34</del>	8	
<del>196.30</del> - <del>200.54</del>	10	
<del>180.40</del> - <del>184.64</del>	9	
<del>201.60</del> - <del>205.84</del>	11	
<del>185.70</del> - <del>189.94</del>	10	

FORMULA INDEX	HANDLER INCREMENTAL DEVIATION
206.90 - 211.14	12
<del>191.00 - 195.24</del>	<del>11</del>
212.20 - 216.14	13
<del>196.30 - 200.54</del>	<del>12</del>
217.50 - 221.74	14
<del>201.60 - 205.84</del>	<del>13</del>
222.80 - 227.04	15
* 228.10 - 232.34	16
233.40 - 237.64	17
238.70 - 242.94	18
244.00 - 248.24	19
249.30 - 253.54	20
254.60 - 258.84	21
259.90 - 264.14	22

(\* October, 1979 Index - 230.38)

(c) Detailed information on converting the above factors in both formulas to a current weighted value can be obtained by contacting the Milk Control Division, 805 North Main Street, Helena, Montana 59601, phone (406) 449-3163.

(d) The factors in both formulas will be converted to a weighted value as soon as practicable after the first of each month.

(e) For each 4.5 points that the weighted index advances or retreats, prices paid to producers will increase or decrease twenty-three cents (\$0.23) per hundredweight. For each officially announced increase or decrease in producer prices, the wholesale price of one half (1/2) gallon of whole milk will increase or decrease one cent (\$0.01).

(f) Prices for all other milk items are calculated by historic factors in relation to one half (1/2) gallon of whole milk. Three (3) quart containers of homo and low fat will be priced at one and one half (1 1/2) times the one half (1/2) gallon container. It is impractical to reproduce all such factors herein, but they may be obtained at the Board office, 805 North Main Street, Helena, Montana 59601, phone (406) 449-3163.

(g) Wholesale prices will be marked up fifteen percent (15%) to arrive at retail prices.

(g) The Wholesale price of a half (1/2) gallon of whole milk will be marked up eleven cents (\$0.11) to arrive at the retail prices and all other products priced accordingly.

(h) Jobber prices will be computed as a percentage of the producer-to-wholesale margin at an average of approximately seventy-eight percent (78%) of the wholesale price.

(i) On-the-farm wholesale and retail pricing:

(i) The minimum on-the-farm wholesale price for pasteurized milk sold in one (1) gallon containers or multiples thereof is the same as the regularly calculated and established jobber price.

(ii) The minimum on-the-farm price for raw milk sold in one-half (1/2) gallon containers is twenty-two cents (\$0.22) less than the regularly calculated and established retail price for pasteurized and homo in such containers.

(iii) The minimum on-the-farm price for raw milk sold in one (1) gallon containers is forty-four cents (\$0.44) less than the regularly calculated and established retail price for pasteurized and homo in such containers.

(iv) The minimum on-the-farm price for pasteurized milk sold in one-half (1/2) gallon containers is seventeen cents (\$0.17) less than the regularly calculated and established retail price for pasteurized and homo in such containers.

(v) The minimum on-the-farm price for pasteurized milk sold in one (1) gallon containers is thirty-four cents (\$0.34) less than the regularly calculated and established retail price for pasteurized and homo in such containers.

(vi) It is the intent of the Board to set minimum on-the-farm prices for only products and quantities set forth in paragraphs (i) through (v) above are neither covered nor contemplated hereby and are therefore specifically denied.

(j) Low fat chocolate two percent (2%) milk will be priced by adding the difference between whole white milk and whole chocolate milk to the price of white low fat two percent (2%) milk. Monthly Price Announcements will be amended accordingly.

(k) A special price on low fat milk and low fat chocolate milk in half (1/2) pints purchased by elementary and high schools is hereby established by applying the same differential that is used for pricing whole, homogenized milk to schools and monthly Price Announcements amended accordingly.

(7) Formula for fixing Class II price to be paid to producers.

(a) Prices paid producers for Class II milk will be the average spray process nonfat dry milk solids price per pound, f.o.b. Chicago area, as most recently reported by the United States Department of Agriculture, multiplied by 8.2 (which is the amount of solids not fat in skim milk), plus the average Chicago area butter price (Grade A, 92 Score), as most recently reported by the United States Department of Agriculture, multiplied by 4.2 (which is the amount of butter in pounds, which can be produced from one hundred (100) pounds of three point five percent [3.5%] milk), less a make allowance of eight and one half percent (8.5%). In the case of milk containing more or less than three point five percent (3.5%) butterfat, the differential to be employed in computing prices will be determined by multiplying the above-mentioned Chicago area butter price by .111 and the resulting answer from this calculation shall be rounded to nearest half cent (\$0.005).

(b) Prices paid to producers for Class II milk will be computed and announced monthly in accordance with the above formula and the price calculated during the current month will be the price paid during the succeeding month.

(8) Formula for fixing the Class III price to be paid to producers.

(a) Prices paid to producers for Class III milk will be the average Chicago area butter price (Grade A, 92 Score) as most recently reported by the United States Department of Agriculture, less ten percent (10%) and, in addition, when skim milk is utilized in this classification by any distributor, the average spray process non fat milk solids price per pound, f.o.b. the Chicago area, as most recently reported by the United States Department of Agriculture, multiplied by 8.2, less seventeen percent (17%).

(b) Price paid to producers for Class III milk will be computed and announced monthly in accordance with the above formula and the price calculated during the current month will be the price paid during the succeeding month.

(9) Freight allowances and handling charges for bulk milk involved in inter-plant transfers.

(a) The following maximum freight allowances may be charged producers of a licensed distributor or dealer, whose plant is located within Montana, on transfers of bulk milk, a major portion of which is used Class I, between distributors situated more than twenty-five (25) road miles apart, regardless of the market area of state of the receiving plant:

<u>DISTANCE</u>	<u>MAXIMUM FREIGHT ALLOWANCE</u>
25 to 50 miles	25¢
51 to 75 miles	40¢
76 to 100 miles	50¢
101 to 150 miles	60¢
151 to 200 miles	70¢
201 to 250 miles	80¢
251 to 300 miles	88¢
301 to 350 miles	95¢

(b) Nothing contained herein shall be construed as prohibiting the charging of lower freight allowances to producers of bulk milk involved in inter-plant transfers or the refusal to charge any allowance at all.

(c) Freight allowances herein permitted shall not be permitted on inter-plant transfers of bulk milk where the plants involved are situated less than twenty-five (25) road miles apart, regardless of the route selected by the involved distributors for transporting such milk.

(d) The exporting or transmitting distributor of bulk milk involved in inter-plant transfers must charge no less for said milk than the same price per hundredweight paid local producers historically supplying the importing or receiving distributor during the same pay period.

(e) Producers of bulk milk produced in one natural

marketing area and sold in another natural marketing area must be paid for their milk transferred between plants by the exporting or transmitting distributor in accordance with the official price order of the market area where produced and at the prices therein specified or fixed pursuant to statutory formula for the class or use in which it is ultimately used or sold. A freight allowance which is no more than that fixed in sub-paragraph (a) of paragraph 9 of this Rule may be deducted from such payments by the exporting or transmitting distributor.

(f) The importing or receiving distributor of bulk milk involved in inter-plant transfers must pay no less for said milk than the same price per hundredweight paid local producers historically supplying said importing distributor during the same pay period.

(10) Transportation of Milk.

(a) Definitions as used in this paragraph are as follows:

(i) Labor cost is defined as salaries, wages and payroll taxes for drivers and others.

(ii) Employee benefits cost is defined as "fringe benefits" such as hospitalization and/or life insurance, pension contributions, unemployment insurance, industrial accident insurance, sick pay, vacation pay, etc.

(iii) Rental cost is defined as the leasing of vehicles and equipment (e.g. trucks, tanks, pumps, etc.) rather than owning them.

(iv) Repairs and maintenance cost is defined as the average cost of repairs and maintenance of bulk milk tank trucks over the most recent 12 month period.

(v) Gas, diesel fuel, oil and lubricants costs are defined as those amounts actually recorded and used in bulk tank trucks on specific farm-to-plant routes.

(vi) Tire costs are defined as the average cost of tires used on bulk milk tank trucks over the most current 12 month period.

(vii) Insurance, license and tax costs are defined as the average cost of these items, recorded by specific tank truck, over the most current twelve (12) month period.

(xi) General and administrative costs are defined as follows:

(aa) Accounting, record keeping and clerical costs.

(ab) Administration and/or supervision costs.

(ac) Tank truck cleaning supplies (e.g. soaps, detergent, water, etc.).

(ad) Tank truck storage (e.g. tractors, trailers, etc.).

- (ac) Miscellaneous depreciation, repair and rental costs (e.g. shop repair equipment, fuel tanks, pumps, etc.).
- (af) Other miscellaneous items (as cost justified).
- (x) Depreciation on trucks is defined as original costs of the truck less salvage value, divided by the economic life of the truck expressed in total miles.
- (xi) Depreciation on bulk milk hauling tanks is defined as original costs of the tank less salvage value, divided by the economic life of the tank expressed in total years.
- (xii) Interest is defined as the cost of borrowed capital or, in the alternative, a return on invested capital equal to the current interest cost on borrowed capital.
- (xiii) Producer route is defined as a group of producers designated by the person, firm or corporation who transports these producers' milk from farm-to-plant, whether such hauler be a distributor or plant hauler or a contract hauler as defined (xiv), (aa) below. In designating routes, the hauler must give consideration to the similarity of hauling condition, between or among the producers so assigned, such as proximity to the plant and to each other, road conditions, frequency of haul and the economic feasibility of such grouping. The Board reserves the right to reject any or all producer routes not designated in accordance with this definition after due consideration of all the factors specified herein,
- (xiv) Haulers:
  - (aa) A contract hauler is defined as an independent person, firm or corporation, including a producer cooperative association, which owns its own transportation equipment and which contracts directly with the producers for transporting their milk from farm-to-plant subject to the provisions of this subparagraph (10).
  - (ab) A distributor or plant hauler is defined as a milk processing plant which provides transportation for hauling milk from the farm to its plant and negotiates the hauling rates for this transportation with the producers involved subject to the provisions of this subparagraph (10). This term includes all distributor or plant haulers providing such transportation regardless of whether they provide their own transportation equipment and labor or secure transportation and labor from another source.
  - (xv) Hauling rates. The term hauling rates as used in this Order means the rate charged producers for hauling milk from farm-to-plant.
  - (xvi) Driver's log is defined as a record maintained by the tank truck driver indicating:
    - (aa) Departure time from plant or other headquarters at the beginning of each run.
    - (ab) Arrival time at the plant at end of each run.
    - (ac) Total miles traveled on each run.
    - (ad) Driver's comments on road conditions, delays



of all types, on-the-road equipment failures, and other information as the driver may deem appropriate.

(xvii) Invested capital is defined as the net capital invested in hauling and allied equipment after deduction of all existing loan balances.

(b) Records.

(i) The distributor and/or contract hauler shall maintain records of hauling costs by specific truck sufficient to provide costs on the following cost items:

(aa) Labor (including summaries of mechanics' time spend on farm-to-plant vehicles).

(ab) Employee benefits.

(ac) Rental (if any).

(ad) Repairs and maintenance.

(ae) Gas, oil and other lubricants.

(af) Tires.

(ag) Insurance, licenses and taxes.

(ah) Contract services.

(ai) General and administrative.

(aj) Depreciation on trucks.

(ak) Interest.

(al) Driver's log.

(c) Producer Routes.

(i) Producer routes to establish hauling costs from farm-to-plant must be submitted to and approved by the Board's Executive Secretary prior to any petition for changes in hauling rates.

(d) Petition for Changes in Hauling Rates.

(i) Consideration of any hauling rate changes shall be initiated by the distributor or contract hauler by written petition directed to the Board of Milk Control, 805 North Main Street, Helena, Montana 59601.

(e) Determination of Hauling Costs.

(i) Hauling costs will be determined by an audit of distributor's or contract hauler's hauling cost records. Such audits shall cover a period of time sufficiently long to accurately establish current hauling costs per hundredweight. Such audit will be conducted by the Milk Control Division pursuant to the procedures provided for in this Order. When the hauler's total costs on a route by route basis have been approved by the Board of Milk Control the charges to individual producers on a specific route become a matter of negotiation between the hauler and the producer concerned. In the event that the hauler and his producers are unable to agree on the distribution of approved hauling costs among the producers concerned, the Board of Milk Control will then specify such distribution of costs based on the facts available at that time.

(ii) Products not specified. Any unassigned quantity

or new product hereafter marketed, but not specifically priced under the appropriate price announcement, will be assigned a price which will be the logical multiple or fraction of the nearest quantity or product to which a specific price has been fixed by the appropriate price announcement, until a specific price or formula for price is ordered by this Board as a result of the regular hearing procedure and based upon actual cost experience of the industry. THE BOARD OF MILK CONTROL MUST BE GIVEN THIRTY (30) DAYS WRITTEN NOTICE PRIOR TO THE INTRODUCTION OF A NEW PRODUCT IN ANY MARKET AREA.

(12) Jobber and/or independent contractor prices. Minimum prices that must be charged to jobbers and/or independent contractors by distributors for packaged milk products are set forth in the appropriate price announcement, in the column entitled "Jobber Price At Plant Dock." It is directed that, in cases where a reasonably efficient distributor transports and delivers milk products to a jobber and/or independent contractor he will add the cost of delivery to the prices listed in respective market areas concerned.

(13) Supervening federal or state law. No price established by any formula set forth in this rule shall be charged if the same be contrary to any supervening federal or state law, rule or regulation. Should any minimum prices published by this Board under this rule exceed the limitations imposed by such laws, rules or regulation, such prices shall be reduced to the extent of such excess, even though such reduction may impair a uniform or complete application of the price fixing formula, or any of the same, set out in this rule. The prices, as so modified, shall be respected and enforced as the minimum prices established under this rule.

(14) Monthly price announcements.

(a) Monthly price announcements will be issued pursuant to paragraph 6 of this rule. Producer, jobber, institutional, wholesale, retail and on-the-farm wholesale and retail prices will be uniform and identical in all market areas of the state.

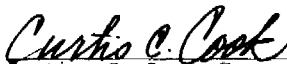
(b) In the event that recalculation of the formula indices does not indicate a change in prices, that circumstance also will be announced. (History: Sec. 81-23.302, MCA; IMP, Sec. 81-23-302; MCA; AMD, Eff. 5/7/73; AMD, Eff. 10/1/73; AMD, Eff. 12/1/73; AMD, Eff. 4/5/74; AMD, Eff. 6/5/74; AMD, Eff. 4/4/75; AMD, Eff. 2/1/76; AMD, Eff. 5/6/76; AMD, Eff. 9/5/76; AMD, Eff. 7/5/77; AMD, Eff. 11/1/79.)

3. At the public hearing, representatives of the Montana Retailers Association alleged that insufficient evidence was presented to justify a change in the Retailers Margin. The Board agrees and the Rule as adopted reflects no change in the Retailers Margin.

In addition, extensive testimony was received from witnesses for Milk Distributors in opposition to the changes.

That testimony was essentially in opposition of the evidence presented by the Board. In opposition to the evidence of the Board which suggested a decrease in the Retailers Margin. An examination of the evidence indicated that the proposed reduction in Margin was not fully justified and the reduction has been decreased to the amount presented to the final rule as adopted at the Board's meeting on September 15, 1979.

By Order Of The Milk Control  
Board



Curtiss C. Cook, Esq.  
Chairman of the Board

By: 

F. M. Kelly, Administrator  
and Executive Secretary

Certified to the Secretary of State October 2, 1979.

BEFORE THE FISH AND GAME COMMISSION  
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT  
of Rule 12-2.10(1)-S1032 ) OF RULE 12-2.10(1)-S1032  
relating to ice fishing ) ICE FISHING REGULATIONS  
regulations )

TO: All Interested Persons:

1. On May 24, 1979, the Fish and Game Commission published notice of a public hearing on a proposed amendment of a rule concerning ice fishing regulations at page 449 of the Montana Administrative Register, issue No. 10.

2. The agency has amended the rule as proposed.

3. At the public hearing on the proposed amendments, the following comments were received.

Fish & Game Warden Paul Pacini stated the proposed amendments were necessary because of the increased littering of the ice surface and subsequent shore litter; increased vandalism to the ice houses; vandalism to state property in the area; public safety problems resulting from the presence of ice shelters; the necessary time and effort by department employees to remove abandoned ice shelters in the spring; the potential for injury to persons where ice shelters have settled to the bottom of the lake; and the increased workload on the department to remove the ice shelters from the lake.

Warden Pacini requested that the rule be amended to provide that the department may remove ice shelters from the ice and should the individual owning the shelter after proper notification not claim the ice shelter, the department would destroy that shelter.

The request by Warden Pacini is noted and denied at this time based upon the lack of clear authority for the commission or department to confiscate private property for the enforcement of these rules.

Parks Manager Robert McKenna spoke in favor of the proposed amendments, for most of the reasons presented by Warden Pacini and added that most vandalism occurs during the ice fishing season; that the time necessary for clean-up was at least double, if not triple, for manhours per week for regular clean-up for the Helena Causeway, itself; and that the increased cost of vandalism in the area was of major concern to the department.

Jerry Bowerman, a resident of the area, supported the rules. He cited nighttime vandalism and theft being on the increase in the vicinity and invasion of private property and invasion of privacy that apparently resulted from misuse of the ice shelters, and many of the same reasons as Warden Pacini's. He added that misuse of the site by cars and other types of vehicles was a problem;

stressed the safety hazard where ice shelters are permitted to go through the ice during the spring thaw, and the increase in the shooting of firearms during the time ice fishing shelters are in use.

Gene Donaldson cited with concern the destruction of property and vandalism and the law enforcement difficulties in the area; and that removal of ice shelters from the area should be given a try.

Robert Carson, in opposition to the proposed amendments, agrees that there is a problem but feels there is a better method of resolving the problem, and that is to enforce the statutes and rules which are presently available; that the removal of the ice houses from the Lake Hauser area will transfer the problem to other areas and not reach the cause of the problem; that individuals moved into the area knowing of the situation at Lake Hauser or that they should have been notified by the person who sold them the land before they moved in.

Robert VanDerVere, in opposition to the amendments, commented that there will be much difficulty and it is an imposition on persons who have ice shelters to remove them from the area each day because of the high banks in and around Hauser Lake and Lake Helena and asked that provision be made for the huts to be left on the lakeshore or banks around the lakes.

The objections to this rule were noted but were overriden to the need at this time for a more vigorous and active role by the department in controlling the vandalism, theft, and disturbance in the Lake Helena and Hauser Lake area. The request of Mr. VanDerVere that provision be made for huts along the banks or lakeshore is rejected for the reason that having the huts available on the shore will do nothing to alleviate the problem but just move it from the ice surface to the shores and banks of the lakes.

The comments capsulized above were presented in a report to the Fish and Game Commission of the hearing by the presiding officer dated the 24th day of August, 1979, and available in the offices of the department for review during regular working hours. Included therewith are minutes of the public hearing on the proposed amendments.

The amendments have been adopted to decrease or eliminate the problems that surrounding landowners have encountered with vandalism and littering during the hours of darkness and also to decrease or eliminate litter and vandalism on public property, and to eliminate a source of danger to the public safety in the waters of Lake Helena and Hauser Lake.

The authority for the commission to make this rule is based upon Sections 87-1-301, 87-1-303, and 87-1-201(7).

Joseph Klabunde  
Joseph Klabunde, Chairman  
Montana Fish and Game Commission

Certified to Secretary of State 1 October 1979

[Signature]  
Reviewed and Approved  
Department of Health and  
Environmental Sciences

Oct 22 1979  
(date)

BEFORE THE FISH AND GAME COMMISSION  
OF THE STATE OF MONTANA


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

TO: All Interested Persons:

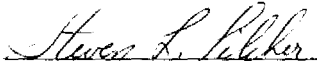
1. On May 24, 1979, the Fish and Game Commission published notice of a proposed amendment of a rule concerning water safety regulations at page 447 of the 1979 Montana Administrative Register, issue No. 10.

2. The agency has amended the rule as proposed.

3. One comment in favor, from Mr. Albert Lundborg of Helena, was received. No other testimony was submitted. In the interests of public safety it was determined that additional "no wake" zones should be established in certain bays at Canyon Ferry State Recreation Area; thus the addition of White Earth and Little Hellgate was made.

  
Joseph D. Klabunde, Chairman  
Montana Fish and Game Commission

Certified to Secretary of State 1 October, 1979

  
Reviewed and Approved  
Department of Health and  
Environmental Sciences

Sept 27, 1979  
(date)

BEFORE THE ATTORNEY GENERAL  
OF THE STATE OF MONTANA

In the Matter of the Amendments	)	NOTICE OF THE
to the Attorney General's Model	)	AMENDMENT OF THE
Rules.	)	MODEL RULES

TO: All Interested Persons

1. On August 30, 1979, the Attorney General published notice of the proposed amendment of the Attorney General's Model Rules at page 881 through 921 of the 1979 Montana Administrative Register, issue number 16.

2. The following written comments were received:

a. Joan Pauly, Staff Attorney for the Administrative Code Committee submitted a number of proposed editorial changes which were adopted and incorporated substantially as proposed.

b. William N. Jensen, an attorney in Billings, Montana, raised the question of whether there should be a model rule on rehearings in contested cases. In light of Bradco Supply Co. v. Larsen, \_\_\_ Mont. \_\_\_, 36 St.Rptr. 1506 (1979), it was determined not to adopt a general rule, but rather to allow agencies to adopt a rehearing rule as they see fit, based upon their own particular circumstances and the statute or statutes they administer.

3. The rules have been adopted with minor editorial changes but substantially as proposed. The rules are as follows:



SUB-CHAPTER 1

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

1.3.101 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(2). "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. \_\_\_\_\_.)

1.3.102 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) a notice of the proposed agency action published 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

1.3.201 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. \_\_\_\_\_.)

#### 1.3.202 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 and the requirement that its rules be published. (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. \_\_\_\_\_.)

1.3.203 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. \_\_\_\_\_.)

1.3.204 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. \_\_\_\_\_.)

1.3.205 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 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. \_\_\_\_\_.)

1.3.206 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 make a timely ruling on the petition pursuant to section 2-4-315.

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



(c) 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. \_\_\_\_\_.)

1.3.207 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) Notice of agency action must be published within 6 months of the date on which notice of the proposed action was published. 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.

(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. Section 2-4-302.

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. Section 2-4-302.

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. Section 2-4-302.

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

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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.

(C) a citation to the authority for the rule and the code section or sections being implemented.

(ii) Sample form 7: Notice of proposed adoption of a procedural rule. Sections 2-4-201, 2-4-302.

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).

(iii) Sample form 8: Notice of proposed amendment of a procedural rule. Sections 2-4-201, 2-4-302.

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).

(vi) 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: Section 2-4-302.

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; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be (16-) persons based on (17-for ex.: the 200 licensed plumbers in Montana).



7. 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. Sections 2-4-201, 2-4-302.

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. Section 2-4-302.

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; from the Administrative Code Committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be 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. Sections 2-4-412, 2-4-302.

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 of 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).

4. (12-in the case of a change, citation to the authority for the rule and the code section or sections being implemented, if different from the joint resolution).

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

By: (13-Authorized person's signature)

Certified to the Secretary of State (14-date).

(ix) Notice of public hearing when a hearing has been properly requested.

(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(3)(c) or a governmental agency or subdivision, or an association.

(C) Sample form 13: Amendment of notice of proposed adoption, amendment or repeal of a substantive rule. Section 2-4-302.

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.

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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. \_\_\_\_\_.)

1.3.208 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. \_\_\_\_\_.)

1.3.209 Rule 5 RULE MAKING, AGENCY ACTION. (1) Introduction. Thirty days after publication of notice and following receipt of the presiding 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. Section 2-4-302.

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~~ 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).

4. The authority for the rule is (14-)

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).

(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. \_\_\_\_\_.)

1.3.210 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(4)(b).

(b) Take appropriate measures to make emergency rules known to persons who may be affected by them, section 2-4-306(4)(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(4)(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. Section 2-4-303.

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. \_\_\_\_\_.)

1.3.211 Model Rule 7 RULE MAKING, BIENNIAL 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. \_\_\_\_\_.)

1.3.212 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. \_\_\_\_\_.)

1.3.213 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 2-4-601(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, or to waive formal proceedings pursuant to 2-4-603, 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. \_\_\_\_\_.)

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

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(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).

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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), or if you desire to waive formal proceedings under 2-4-603, 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. \_\_\_\_\_.)

1.3.215      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".

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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.

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. \_\_\_\_\_.)

1.3.216 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. \_\_\_\_\_.)

1.3.217 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. \_\_\_\_\_.)

1.3.218 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. \_\_\_\_\_.)

1.3.219 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. \_\_\_\_\_.)

1.3.220 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:

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- (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. \_\_\_\_\_.)

1.3.221 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. \_\_\_\_\_.)

1.3.222 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. \_\_\_\_\_.)

1.3.223 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. \_\_\_\_\_.)

1.3.224      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 decision as the agency's final order, pursuant to section 2-4-621(3). (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. \_\_\_\_\_.)

1.3.225      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 2-4-623(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 Commis-

sioner 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. \_\_\_\_\_.)

1.3.226 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. \_\_\_\_\_.)

1.3.227 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. \_\_\_\_\_.)

1.3.228 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 join 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;

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(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. \_\_\_\_\_.)

1.3.229 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. \_\_\_\_\_.)

1.3.230 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. \_\_\_\_\_.)

1.3.231 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. \_\_\_\_\_.)

1.3.232 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. \_\_\_\_\_.)

1.3.233 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. \_\_\_\_\_.)

1.3.234. 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. The authority for the Model Rules is 2-4-202, MCA.

By: 

MIKE GREELY

Attorney General



NOTICE

The following chapters of the Administrative Rules of Montana have not been recodified and refiled with the Secretary of State as scheduled by October 1, 1979, in compliance with Chapter 600, Laws of 1979, thereby suspending the rules in the chapters.

Department of Justice

Chapter 2 - Procedural Rules  
Chapter 6 - Motor Vehicles Division  
Chapter 6A - Highway Patrol Bureau  
Chapter 6AI - Driver Examination Section

BEFORE THE BOARD OF LIVESTOCK  
STATE OF MONTANA

In the matter of the amend- )	NOTICE OF THE AMENDMENT OF
ment of ARM 32-2.14(1)-S1400)	RULES 32-2.14(1)-S1400 THROUGH
through 32-2.14(1)-S1440 and)	32-2.14(1)-S1440 AND THE
the adoption of rules )	ADOPTION OF RULE 32-2.14(1)-
relating to aerial hunting )	S1415
of predatory animals )	

TO: All Interested Persons

1. On August 16, 1979 the department of livestock published notice of proposed amendments to rules 32-2.14(1)-S1400 through 32-2.14(1)-S1440 and the adoption of additional rules relating to the subject of aerial hunting of predatorial animals at page 836 of the 1979 Montana Administrative Register, Issue number 15.

2. The department of livestock has amended rules 32-2.14(1)-S1400, 32-2.14(1)-S1430, and 32-2.14(1)-S1440 as proposed.

3. As a result of the hearing and written comments received prior to it, the department has further amended rule 32-2.14(1)-S1410 and 32-2.14(1)-S1420 as follows: (New material added as result of hearing underlined and striken material as result of hearing interlined)

(a) Rule 32-2.14(1)-S1410

(1) Amended as proposed.

(2) Permits will be issued only to persons currently licensed as pilots by the federal aviation administration, who have a private pilots license as a minimum rating. An applicant must have at least 500 200 total flying hours; and including a minimum of 200 flying hours in a type of aircraft to be used for aerial hunting. Applicants and their aircraft must also meet FAA and Montana aeronautics commission requirements for aircraft and pilots.

(3) & (4) Amended as proposed.

(5) Individuals not employed by the fish & wildlife service, U.S. department of interior who engage in aerial hunting for the fish & wildlife Service on a contract basis must obtain a permit under these rules do not require a permit under these rules for those portions of the aerial hunting performed under contract with the fish & wildlife service. For that part of their aerial hunting performed with the federal chapter over land cleared for aerial hunting by the fish & wildlife service the aerial hunting signed as required by this rule and ARM 32-2.14(1)-S1420 is waived. Any person under contract with the fish & wildlife service who engages in aerial hunting in addition to that performed under contract with the fish & wildlife service must comply with these rules for those portions of the aerial hunting not performed under contract.

(b) Rule 32-2.14(2)-S1420

(1), (2), and (3) Amended as proposed.

(4) A permittee may not use an aircraft in aerial hunting until the department has been notified of that use and has received adequate identifying information about the aircraft; and the aircraft has been marked as required by ARM 32-2.14(1)-S1417.

4. The board has adopted new rule 32-2.14(1)-S1415 with the following modifications: (New material underlined and striken material interlined)

Rule 32-2.14(1)-S1415 DURATION OF PERMITS

(1) Permits will be valid for a period to be determined by the department not to exceed three years.

(2) Fees for permits will be:

(a) ~~\$9.00 for a permit issued for less than 6 months.~~

(b) ~~\$17.00 for a permit issued for 6 months to 1 year.~~

(c) ~~\$25.00 for a permit issued for more than 1 year but less than 18 months.~~

(d) ~~\$33.00 for a permit issued for 18 months to 2 years.~~

(e) ~~\$42.00 for a permit issued for more than 2 years but less than 30 months.~~

(f) ~~\$50.00 for a permit issued for 30 months to 3 years.~~

(a) \$30.00 for a permit issued for less than 1 year.

(b) \$40.00 for a permit issued for 1 year to 2 years.

(c) \$50.00 for a permit issued for 2 years to 3 years.

5. The board has chosen not to adopt proposed rule 32-2.14(1)-S1417 relating to the identifying of aircraft used in aerial hunting of predatory animals.

6. COMMENTS: Most comments received dealt with the aircraft identification proposal. Approximately 20 persons opposed the proposal on grounds that it would cost over \$1000 per aircraft to implement, would lower the resale value of the aircraft, would identify the aircraft user as a "coyote hunter" when it was not being used for aerial hunting and would be costly to remove upon the expiration of the permit. Approximately 17 persons supported the proposal, urging that without highly visible identification it would be nearly impossible to protect against trespassing. The board rejected the identification proposal on grounds that since most trespass and illegal hunting was being done by non permit pilots who wouldn't identify their aircraft, the benefits from using identification as a deterrent to illegal hunting were much less than the cost of identification.


The board reduced the minimum flying hours requirement to 200 hours in response to a comment from the Administrative Code Committee questioning whether rules on flying hours were within the scope of the department's rule making powers.

The board feels that safety is an integral part of the program and thus within its rule making powers, but has reduced the minimum requirement to the same number as the FAA requires for a commercial pilots license.

Comments were received requesting that pilots contract flying for the U.S. Fish & Wildlife Service not be required to get a permit because they were already heavily scrutinized by the Department of Interior and the federal Office of Aircraft Services (OAS). The board modified its requirement in this area to the extent that persons engaging in aerial hunting who did so solely under contract to the Fish & Wildlife Service would not need a permit. Contract pilots who also aerially hunt privately are required to obtain a permit.

A number of comments were received in opposition to the fees. As the fees were mandated by the Legislature, the Department is unable to waive them. The fee proposal was changed, however, to \$30.00 for the 1 year, \$40.00 for a 2 year, and \$50.00 for a 3 year permit to allow the Department to more effectively recover its processing costs.

  
ROBERT G. BARTHELMESS  
Chairman, Board of Livestock

By:   
LES GRAHAM, Administrator  
Brands-Enforcement Division

Certified to the Secretary of State October 2, 1979

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

In the matter of the Repeal	)	NOTICE OF REPEAL of 40-
of 40-3.54(10)-S54030	)	3.54(10)-S54030 through 40-
through 40-3.54(10)-S54045	)	3.54(10)-S54045 and the
and the adoption of new rules	)	ADOPTION of new rules
to implement the Physical Therapy	)	implementing the Physical
Act.	)	Therapy Act.

TO: All Interested Persons:

1. Notice of a public hearing on the proposed repeal of 40-3.54(10)-S54030 through 40-3.54(10)-S54045 and adoption of new rules to implement the physical therapy act was published at pages 956 through 959, 1979 Montana Administrative Register, issue number 16 on August 30, 1979.

On September 25, 1979 at 10:10 a.m., the public hearing was held in the Highway Department Auditorium, 6th and Roberts, Helena, Montana. One person appeared, Jerome Connelly, representing the Montana Physical Therapists Association. Connelly approved the rules as proposed, with the exception that he asked that a two time limit on examinations be made, that the board rather than a national examination service should provide the exam, and the board should spell out a complaint and appeal process. The board responded to his examination limitation suggestion by changing the rule as proposed to a 3 times limitation. In answer to his second concern, the board has the authority to delegate the examination and feels that the expertise and uniformity provided by examination services justifies delegation of the examination function to them. In answer to his third suggestion, the board would simply point out that complaints and appeals are covered under the board's contested case rules published and adopted under paragraph number 4. (2) of the notice.

2. No other comment or testimony were received. 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. The new board therefore repeals those 3 rules as listed above and in the notice and adopts the new rules as proposed with minor changes shown in the rules. Each numbered paragraph from paragraph 4. of the notice become separate rules and will be numbered according to new numbering system under recodification, as this new board has previously had no chapter of its own. Paragraph (12) under 4. will not be adopted. The numbering for each is as follows: (1) is assigned number 40.40.101; (2) is assigned 40.40.201; (3) is assigned 40.40.202; (4) is assigned 40.40.401; (5) is assigned 40.40.402; (6) is assigned 40.40.403; (7) is assigned 40.40.404; (8) is assigned 40.40.405; (9) is assigned 40.40.407;

(10) is assigned 40.40.407; (11) is assigned 40.40.408; and (12) is not adopted. The rules will read as follows: (new matter underlined, deleted matter interlined)

"40.40.101 ORGANIZATIONAL RULE (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~~7--see-ARM-40-3-1-0100~~.

40.40.201 PROCEDURAL RULES (1) 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~~7--see-ARM-40-2-2(1)-P200-through-ARM-40-3-3(10)-S2390~~.

40.40.202 PUBLIC PARTICIPATION (1) 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~~7-Sub-Chapter-14-of~~ Title 40.~~-See ARM-40-2-2(14)-P2400~~

40.40.401 APPLICATIONS (1) 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.

40.40.402 EXAMINATIONS (1) The examination will be the Professional Examination Service or another equivalent examination as the board may in its discretion approve and adopt.

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

(3) 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.

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

40.40.403 FEES (1) The fees shall be as follows:  
(a) Examination (for each examination taken) \$75.00

(b) License	75.00
(c) Temporary License	25.00
(d) Renewal	25.00
(e) Late Renewal	10.00
(2) All fees are non-refundable.	

40.40.404 RENEWAL OF LICENSE (1) 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.

(2) 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.

40.40.405 TEMPORARY LICENSES (1) 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.

(2) 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~~ a limit of 3 examinations inclusive of the first. However, a temporary license will not be renewed.

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

40.40.407 CODE OF ETHICS - UNPROFESSIONAL CONDUCT

(1) Whereas section 37-11-321 (3) MCA sets out 'immoral or unprofessional conduct' as a 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 59601.


40.40.408 COMPLAINT PROCEDURES (1) 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.

40.40.409 EXEMPTIONS (1) Whereas section 37-11-101 MCA creates and defines physical therapy students, physical therapy assistants, and physical therapy aides, the board interprets such catagories as exempt from licensure as physical therapists so long as the supervision requirements stated in that section are strictly adherred to. Such supervision requirements include also those imposed by Section 6, Chapter 491 Session Laws of 1979."

As stated previously, (12) of 4. is not being adopted.

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, October 2, 1979.



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

In the matter of the Repeal)	NOTICE OF REPEAL OF ARM 40-
of ARM 40-3.62(6)-S62075 )	3.62(6)-S62075 EXEMPTIONS;
concerning exemptions for )	DOMESTIC SERVANTS AND HOUSE-
domestic servants and )	KEEPERS
housekeepers )	

TO: All Interested Persons:

1. On August 16, 1979, the Board of Nursing published a notice of a proposed repeal of ARM 40-3.62(6)-S62075 concerning exemptions for domestics and housekeepers at page 837, 1979 Montana Administrative Register, issue number 15.

2. The board has repealed the rule exactly as proposed.

3. No comments or testimony were received. The board repealed the rule as it was in direct conflict with the Attorney General's opinion issued on February 15, 1977. The text of the opinion is available in the board office in the Lalonde Building, Helena, Montana.

In the matter of the adoption)	NOTICE OF ADOPTION OF A NEW RULE
of a new rule governing )	ARM 40-3.62(6)-S62120 CONDUCT
conduct of nurses )	OF NURSES

To: All Interested Persons:

1. On August 30, 1979, the Board of Nursing published a notice of a proposed adoption of a new rule governing the professional conduct of nurses at pages 953 through 955, 1979 Montana Administrative Register, issue number 16.

2. The board has adopted the rule exactly as proposed.


3. No comments or testimony were received. The board has adopted the new rule to explain what the board considers "unprofessional conduct". 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 possible 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 alternative 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 felt that it was imperative to adopt the rule. The board intends to include a copy of the rule with all licenses issued to all nurses.

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

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BY:

  
ED CARNEY, DIRECTOR  
DEPARTMENT OF PROFESSIONAL  
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, October 2, 1979.

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BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF THE AMENDMENT OF
AMENDMENT OF RULE	)	RULES 42-2.12(6)-S12055,
42-2.12(6)-S12055, schedule	)	42-2.12(6)-S12060, 42-2.12(6)
of license application	)	-S12065, and 42-2.12(6)-S12080,
processing fees -- payment;	)	relating to license application
Rule 42-2.12(6)-S12060, beer	)	processing fees, wholesale beer
wholesalers -- wholesale beer	)	licenses, sub-warehouse licenses,
license; Rule 42-2.12(6)	)	and off-premises licenses for
-S12065, sub-warehouse license)	)	grocery stores.
-- brewer's storage depot;	)	
and Rule 42-2.12(6)-S12080,	)	
off-premise license -- grocery)	)	
store.	)	

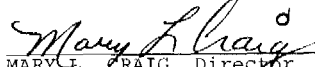
TO: All Interested Persons:

1. On July 26, 1979, the Department of Revenue published notice of proposed amendments to rule 42-2.12(6)-S12055, concerning license application processing fees; rule 42-2.12(6)-S12060, concerning wholesale beer licenses; rule 42-2.12(6)-S12065, concerning sub-warehouse licenses; and rule 42-2.12(6)-S12080, concerning off-premises licenses for grocery stores, at pages 792 through 795 of the 1979 Montana Administrative Register, issue no. 14.

2. The Department has amended the rules as proposed.

3. No comments or testimony were received concerning the proposed amendments to rules 42-2.12(6)-S12055 and 42-2.12(6) - S12080. On August 24, 1979, the Department received a written comment from the Montana Beer and Wine Wholesalers Association on the proposed amendments to rules 42-2.12(6)-S12060 and 42-2.12(6) - S12065. The comment concerned the interpretation of the rules with respect to holding separate wine distributor and beer distributor licenses. It is the Department's interpretation of the rules that a person may hold a wine distributor license, a beer distributor license, a wine distributor license and a beer distributor license (two separate licenses), or a wine and beer distributor license (one license). If a person holds a wine distributor license and a beer distributor license (two separate licenses), the person may have a warehouse for each product and a single, common sub-warehouse.

The rule concerning fees has been amended to reflect three changes made by the 1979 Legislature. Provision for wine licenses and catering endorsements have been added, and the fees themselves have been increased to reflect the extra costs imposed by the requirements that notice of issuance and transfer of licenses be published. The other rules have been amended to incorporate references to table wine as a result of Initiative 81, and Chapter 699, Laws of 1979.

  
MARY L. CRAIG, Director  
Department of Revenue

Certified to the Secretary of State 10/2/79


BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the adoption )	NOTICE OF THE ADOPTION OF
of a rule relating to a New )	A RULE 1.2.322 NEW TO OLD
to Old Numbering Table for )	NUMBERING TABLE.
Administrative Rules of )	
Montana. )	

TO: All Interested Persons

1. On August 30, 1979, the Secretary of State published notice of a proposed adoption of a rule concerning a new to old numbering table, at page 975 of the 1979 Montana Administrative Register, issue number 16.
2. The agency has adopted the rule as proposed.
3. No comments or testimony were received.

Dated this 2nd day of October 1979

  
FRANK MURRAY  
Secretary of State

19-10/11/79

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NOTICE

The following chapter of the Administrative Rules of Montana has not been recodified and refiled with the Secretary of State by October 1, 1979, thereby invalidating the rule.

Secretary of State

Chapter 1 - Organizational Rule

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF the )  
Application of the )  
Montana Beer and Wine )  
Wholesalers' Association )  
for a Declaratory Ruling )  
on the Extent of the )  
Department's Rulemaking )  
Power over Deliveries )  
of Table Wine )

DECLARATORY RULING

\* \* \* \* \*

On August 28, 1979, the Montana Beer and Wine Wholesalers' Association, hereinafter referred to as Petitioner, filed a Petition with the Department requesting a Declaratory Ruling. The Department is granted authority to make such a ruling by Section 2-4-501, MCA. The Petitioner requested that the Department construe the rule-making authority granted to it by Section 16-1-303, MCA. The construction sought by the Petitioner will allow the Department in its discretion to adopt a rule regulating the sale and distribution of table wine. The proposed language of the rule is:

"A distributor may deliver table wine to a licensed retailer only at the premises at which the retailer sells such wine to the public. A retailer may also take delivery of table wine on the distributor's premises to be sold at not more than one retail outlet."

In a previous proceeding, the Department had denied a Petition to adopt the rule. The reason given was that the rule sought was beyond the scope of the legislation allowing for the sale of table wine in grocery and drug stores.

The Montana Administrative Procedure Act places certain restrictions on agencies in the adoption of rules. Before an agency may adopt a rule, it must have a specific grant of authority. Section 2-4-301, MCA. That Section provides that:

"Except as provided in part 2, nothing in this chapter confers authority upon or augments the authority of any state agency to adopt, administer, or enforce any rule."

In the instant case, the Department has authority to make rules for carrying out the provisions of the Alcoholic Beverage Code. Section 16-1-303, MCA. But there is a second requirement which must be satisfied. That is, before a rule may be effective,

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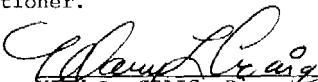
it must implement some particular section of the law. Section 2-4-305, MCA. That Section provides:

"Each rule shall include a citation to the specific grant of rule-making authority pursuant to which it or any part thereof is adopted. In addition, each rule shall include a citation to the specific section or sections in the Montana Code Annotated which the rule purports to implement."  
(Emphasis supplied)

It is this last requirement that cannot be satisfied by the rule proposed by the Petitioner. Section 16-1-303, MCA, clearly gives the Department discretion to make rules, but the rule as proposed could not implement any provision of that section or any other section of the Alcoholic Beverage Code. The rule requested would place a restriction on business transactions between a table wine wholesaler and retailer. In reviewing Initiative 81 and its amendments, Chapter 699, Laws of 1979, the Department cannot find any section which would express legislative intent to make such a restriction in the distribution of table wine.

It has long been a rule in Montana that an administrative agency cannot adopt rules beyond the scope of its authority. Montana Milk Control Bd. v. Community Creamery Co., 139 Mont. 523, 366 P.2d 151 (1961). The rule-making authority given to the Department has broad application and the statement of the legislative intent attached to Chapter 699, Laws of 1979, affirms the Department's authority to act in this area. However, the Department may still not exceed its authority. When, as in this case, an administrative agency has broad discretion to adopt legislative rules to implement sections of the Montana Code Annotated, it must act judiciously to ensure that its actions do not exceed the scope of the underlining legislation. There does not appear to be any provision upon which the Department may base a regulation which would govern the distribution of table wine between wholesaler and retailer.

Therefore, it is the holding of the Department of Revenue that while it has the power to adopt regulations concerning the sale and distribution of table wine under Section 16-1-303, MCA, the Department lacks the specific authority to adopt the proposed rule because of the absence of a section to be implemented. It would be an abuse of discretion to exercise rule-making power in the manner suggested by the Petitioner.

  
MARK L. CRAIG, Director  
Department of Revenue

Certified to the Secretary of State 10-2-79

VOLUME NO. 38

OPINION NO. 40

TAXATION AND REVENUE - Delinquent television district taxes, collection of;  
TELEVISION DISTRICTS - Taxes, method of collecting; delinquent taxes as personal obligations;  
MONTANA CODE ANNOTATED - Sections 7-13-2528, 7-13-2529.

HELD: Normal debt collection process is the proper means for enforcing collection of television district taxes.

17 September 1979

Ted Cowan, Esq.  
Sanders County Attorney  
Sanders County Courthouse  
Thompson Falls, Montana 59873

Dear Mr. Cowan:

Your predecessor in office, Mr. Robert Fletcher, requested my opinion concerning the proper means for enforcing the collection of television district taxes. The taxes in question provide funds for the construction, operation and maintenance of television and FM translator facilities serving areas of the state which have organized as television districts in accordance with Title 7, Chapter 13, Part 25, MCA, as amended by Chapter 479, Laws of Montana (1979).

A television district is a special improvement district. See Chapter 198, Laws of Montana (1961). A television district tax therefore is not a "tax" in the strict sense but a special assessment imposed to defray the cost of a specific benefit. Such assessments are justified where "the particular property charged derives a special benefit substantially commensurate with the burden imposed upon it." Parker v. Yellowstone County, 140 Mont. 538, 545, 374 P.2d 328, 331 (1962), quoting from Stettheimer v. City of Butte, 62 Mont. 297, 300, 204 P. 1039, 1040 (1922). These attributes differentiate special assessments from general real and personal property taxes. See Vail v. Custer County, 132 Mont. 205, 217, 315 P.2d 993, 1000 (1957).

A television district tax differs from other kinds of special assessments in that other assessments are commonly

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imposed against property and the statutes authorizing them usually provide that the assessments are secured by liens on the property assessed. For example, see section 7-13-2406(2), MCA (garbage and ash collection district assessments); section 7-13-2310, MCA (county water and sewer district taxes); and section 7-13-233, MCA (refuse disposal district fees). Television district taxes, however, are expressly imposed against persons, owners of residences located within the district who have not claimed an exemption under section 7-13-2529, MCA, rather than property, and there is no provision for a lien to secure payment of the tax.

Section 7-13-2528, MCA, as amended, contains the only reference to the collection of television district taxes:

(2) The budget, together with the list of such persons residing in the district and subject to the special tax after all exemptions have been allowed as provided in this part, shall be presented by September 1 to the board of county commissioners, who shall levy the tax requested by said trustees. \*\*\* In preparing the budget, the board of trustees shall ... specify the tax to be levied on property owners for these services. The tax shall be certified to the county clerk and recorder and entered on the assessment books as against such persons and collected by the county treasurer as all other taxes are collected.

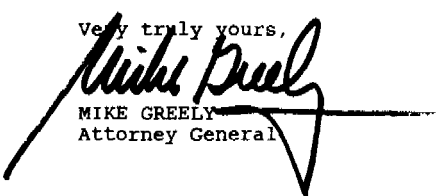
While the above statute can be read to provide direction as to the time and manner of television district tax collection, it cannot be read to authorize a special remedy, such as imposition of a lien upon assessment, to enforce collection of the tax. As a general rule a court will not insert what has been omitted in construing a statute. Dunphy v. Anaconda Company, 151 Mont. 76, 80, 438 P.2d 660, 662 (1968). Proceedings dealing with tax collection, in particular, are in invitum and must be stricti juris. Vail v. Custer County, *supra*, 132 Mont. at 212, 315 P.2d at 997.

Absent a legislative declaration that a lien exists on property owned by a person against whom television district taxes are imposed, and in view of the fact that such taxes are imposed against specific persons directly, the proper remedy for nonpayment of television district taxes should be in personam rather than in rem.

THEREFORE, IT IS MY OPINION:

Normal debt collection process is the proper means for enforcing collection of television district taxes.

Very truly yours,



MIKE GREELY  
Attorney General

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VOLUME NO. 38

OPINION NO. 42

AUDIOLOGISTS - Licensed audiologists employed by charitable or nonprofit organizations, licensing as a hearing aid dispenser;

HEARING AID DISPENSERS - License requirements, audiologists, employees of charitable or nonprofit organizations;

MONTANA CODE ANNOTATED - Sections 37-15-101, et seq., 37-16-101, et seq.

- HELD: 1. A licensed audiologist who is an employee of a charitable or nonprofit organization primarily supported by voluntary contributions may make an impression of the ear (which is expressly part of the practice of fitting and dispensing hearing aids) without being licensed as a hearing aid dispenser, based upon the exemption of section 37-16-103, MCA. As explained in 37 OP. ATT'Y GEN. NO. 60, this exemption may be enjoyed only if the hearing aids are not sold, a sale including sales at a profit, at cost, or even at a loss.
2. There is nothing in the law to prohibit a licensed audiologist from acting as an "agent" for a hearing aid dispenser, if he chooses to do so. Since an audiologist who is an employee of a charitable or nonprofit organization primarily supported by voluntary contributions is entitled to fit and dispense hearing aids, either the audiologist or the hearing aid dispenser may complete the final fitting and delivery.
3. No person may select a particular aid for any other person and force the hearing aid dispenser from whom the aid is purchased to abide by that decision. When a licensed hearing aid dispenser sells an aid he is entitled, if not obligated, to use his training and judgment to select the best aid for that client. This is expressly sanctioned by section 37-15-103(7), MCA.
4. A licensed audiologist who is an employee of a charitable or nonprofit organization primarily supported by voluntary contributions may fit an aid, whether permanently or for a trial period, without a dispenser's license. No other person not otherwise licensed or within the exemption of 37-17-103, MCA, may do so.

24 September 1979

Board of Hearing Aid Dispensers  
Montana Department of Professional  
and Occupational Licensing  
LaLonde Building  
Helena, Montana 59601

Dear Sirs:

You have requested my opinion on the following questions:

1. May a licensed audiologist, as an employee of a charitable or nonprofit organization primarily supported by charitable contributions, or any other person, not licensed as a hearing aid dispenser make an impression of the ear?
2. May a licensed audiologist, as an employee of a charitable or nonprofit organization, or any other person, act as an agent for a licensed dispenser and deliver aids, without the licensed dispenser personally doing the final fitting and delivery?
3. May a licensed audiologist, or any other person, select any special aid to be fit by a licensed dispenser, even for trial fittings?
4. May a licensed audiologist, or any other person, fit an aid, through a charitable or nonprofit organization, for a trial period without a dispenser license?

These questions and the material you attached thereto reveal two apparent areas of dispute. First is the issue of whether a licensed audiologist may fit and dispense hearing aids without obtaining a license as a hearing aid dispenser. Second, whether, when a licensed audiologist in effect prescribes a particular hearing aid for a client, the licensed hearing aid dispenser from whom the aid is purchased is bound to abide by the audiologist's evaluation.

Both the practice of audiology (section 37-15-101, et seq., MCA) and the dispensing and fitting of hearing aids (section 37-16-101, et seq. MCA) are regulated by statute in Montana.

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It is unlawful to practice either profession without a license (sections 37-15-301 and 37-16-401, MCA) and a separate board has been established for each profession to oversee licensure and trade regulation (sections 37-15-201, et seq. and 37-16-201 et seq., MCA).

The practice of audiology for which a license is required, is defined by section 37-15-102(8), MCA, as follows:

"Practice of audiology" means the application of principles, methods, and procedures of measurement, testing, appraisal, prediction, consultation, counseling, and instruction related to hearing and hearing impairment for the purpose of modifying communicative disorders involving speech, language, auditory function, including auditory behavior related to hearing impairment.

The practice of "dispensing and fitting hearing aids" for which a license is also required, is defined in section 37-16-102(5), MCA, is defined as follows:

"Practice of dispensing and fitting hearing aids" means the evaluation or measurement of the powers or range of human hearing by means of an audiometer and a visual examination of the ear and canal or by any other means devised and the consequent selection, adaption, or sale of hearing aids intended to compensate for hearing loss, including eyeglass hearing aids and their fittings, and the making of an impression of the ear but does not include batteries, cords, or accessories.

Section 37-15-103, MCA, provides a number of exemptions to the audiological license requirement; subsection 7 providing in particular:

Nothing in this chapter shall restrict any person who holds a certificate of registration in this state as a hearing aid dealer from performing those functions for which he qualifies and which are described in Title 37, chapter 16.

Thus a licensed hearing aid dispenser may clearly practice his trade free from the requirements of the audiologists' licensing statute. The exemption section of the hearing aid dispensers statute, section 37-16-103, MCA, does not specifically mention licensed audiologists, but provides:

This chapter does not apply to a person while he is engaged in the practice of fitting hearing aids if his practice is part of the academic curriculum of an institution of higher education or part of a program conducted by a public agency or by a charitable or nonprofit organization which is primarily supported by voluntary contributions, unless they sell hearing aids.

On its face, section 37-16-103, MCA, requires an audiologist to obtain a hearing aid dispensers license if he wishes to engage in the fitting and dispensing of hearing aids as part of his practice, unless he comes within one of the enumerated exceptions. I previously so held in 37 OP. ATT'Y GEN. NO. 60. The fact that the professional licensed practice of audiology does not include the licensed trade of fitting and dispensing hearing aids is reflected in the Code of Ethics adopted by the Montana Board of Speech Pathologists and Audiologists (see 40-3.101(6)-S101010, MAC).

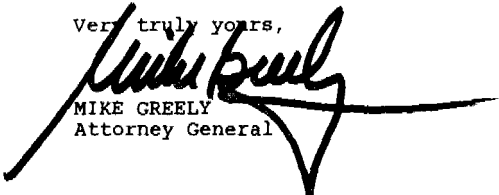
THEREFORE IT IS MY OPINION:

1. A licensed audiologist who is an employee of a charitable or nonprofit organization primarily supported by voluntary contributions may make an impression of the ear (which is expressly part of the practice of fitting and dispensing hearing aids) without being licensed as a hearing aid dispenser, based upon the exemption of section 37-16-103, MCA. As explained in 37 OP. ATT'Y GEN. NO. 60, this exemption may be enjoyed only if the hearing aids are not sold, a sale including sales at a profit, at cost, or even at a loss.
2. There is nothing in the law to prohibit a licensed audiologist from acting as an "agent" for a hearing aid dispenser, if he chooses to do so. Since an audiologist who is an employee of a charitable or nonprofit organization primarily supported by voluntary contributions is entitled to fit and dispense hearing aids, either the audiologist or the hearing aid dispenser may complete the final fitting and delivery.
3. No person may select a particular aid for any other person and force the hearing aid dispenser from whom the aid is purchased to abide by that decision. When a licensed hearing aid dispenser sells an aid he is

entitled, if not obligated, to use his training and judgment to select the best aid for that client. This is expressly sanctioned by section 37-15-103(7), MCA.

4. A licensed audiologist who is an employee of a charitable or nonprofit organization primarily supported by voluntary contributions may fit an aid, whether permanently or for a trial period, without a dispenser's license. No other person not otherwise licensed or within the exemption of 37-17-103, MCA, may do so.

Very truly yours,



MIKE GREELY  
Attorney General