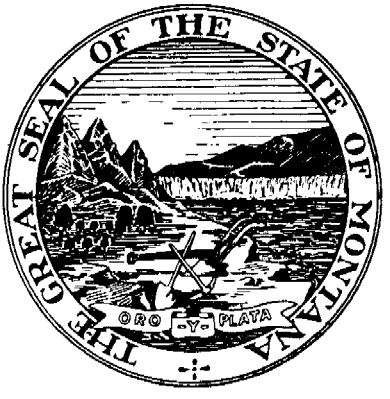
MONTANA ADMINISTRATIVE REGISTER



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Frank Murray

FRANK MURRAY
Secretary of State

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of a rule relating to regulation of travel expenses.	NOTICE OF PROPOSED ADOPTION OF A RULE (REGULATION OF TRAVEL EXPENSES) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On February 28, 1980 the Department of Administration proposes to adopt a rule providing that agencies must consider the option of utilizing state aircraft when travel is scheduled.

2. The proposed rule provides as follows:

Rule I. STATE AIRCRAFT (1) The Air Transportation Division of the Department of Community Affairs manages the state's aircraft pool, located at the Helena airport. The division maintains a variety of planes which are available for rental by state agencies. Use of state aircraft decreases travel time, and is encouraged where its use will keep total travel expenditures to a minimum. Studies have shown that in some instances it is more economical to fly via state aircraft than to drive a state vehicle. Variable factors involved in choosing a mode of transportation include the number and salary level of personnel, the length of the trip, and miles traveled. It is the state's policy to utilize the least expensive mode of transportation available. Therefore, each agency is responsible for considering the alternative of state aircraft rental when travel is scheduled. Additional information on the use of state aircraft may be obtained from the Air Transportation Division (449-2506).

3. The rule is proposed to incorporate the alternative of state aircraft into the policy rules that the least expensive mode of transportation is to be utilized by state employees.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Dave Lewis, Director, Department of Administration, Mitchell Building, Helena, Montana 59601, no later than February 26, 1980.

5. If a person who is directly affected by the proposed rule 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 Dave Lewis no later than February 26, 1980.

6. If the agency receives requests for a public hearing on the proposed rule 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 directly affected has been determined to be 500 persons based on the 5,000 state employees in Helena.

7. The authority of the Department to make the proposed rule is based on sections 2-18-501 through 2-18-503, MCA, and the rule implements sections 2-18-501 through 2-18-503, MCA.

David M Lewis

David Lewis, Director
Department of Administration

Certified to the Secretary of State January 8, 1980.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rules pertaining to the regulation of travel expenses	NOTICE OF PROPOSED AMENDMENT OF ARM 2-2.4(1)-S400, 2-2.4(1)-S410, 2-2.4(1)-S450, 2-2.4(1)-S460, 2-2.4(1)-S470, 2-2.4(1)-S490, 2-2.4(1)-S4000, 2-2.4(1)-S4050, 2-2.4(1)-S4090, and 2-2.4(1)-S4120 (REGULATION OF TRAVEL EXPENSES) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On February 28, 1980, the Department of Administration proposes to amend rules 2-2.4(1)-S400, 2-2.4(1)-S410, 2-2.4(1)-S450, 2-2.4(1)-S460, 2-2.4(1)-S470, 2-2.4(1)-S490, 2-2.4(1)-S4000, 2-2.4(1)-S4050, 2-2.4(1)-S4090, and 2-2.4(1)-S4120, relating to the reimbursement of, and accounting for travel expenses.

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

2-2.4(1)-S400 INTRODUCTION (1) same as text (found on ARM page 2-18.2).

(2) strike existing text (found on ARM page 2-18.2) and replace with the following:

Personal contact is often the most economical and practical method of achieving effective communications and associated objectives. When considering state travel the following guidelines shall be conformed to:

(a) All travel will be approved in advance by the department head or his designated representative.

(b) The number of personnel attending a given function requiring travel shall be held to the absolute minimum.

(c) Transportation shall be the most economical in terms of direct cost to the state and the employee's time away from the office. All commercial air travel shall be by the least expensive service available. Trips shall be scheduled to avoid unnecessary back-tracking and overlapping.

(d) Employees using automobiles in an approved travel status will adhere to posted speed limits and shall make every effort to maximize the benefits to the state of the travel and conserve energy. Executive order 9-79, which provides penalties for employees who violate the 55 m.p.h. speed limit, will be strictly applied.

(e) Although each state agency is encouraged to assist and support other states and organizations, Montana cannot do so at its own expense. Therefore, only travel which will benefit the state of Montana will be allowed. If another state

or organization is willing to pay travel cost for a state employee to have him lecture or provide other assistance, the applicable agency head may, at his discretion, contribute the employee's personal service cost to the project.

(f) The state of Montana will not pay an employee's travel cost to attend a function which does not benefit the state. To promote employee initiative and efforts at self-improvement, an agency head may, at his discretion, provide an employee time off with pay to participate in the desired function, provided the time off with pay conforms with the provisions of rules ARM 2-2.14(60)-S14850 through 2-2.14(60)-S14880.

(3) strike existing text in entirety (text found on page ARM 2-18.2 and 2-18.3).

2-2.4-S410 STANDARD TRAVEL ALLOWANCE SCHEDULE (1) same as text (found on ARM page 2-18.3).

(2) same as text (found on ARM page 2-18.3).

(3) same as text (found on ARM page 2-18.3).

(4) text and schedule deleted (found on ARM pages 2-18.3 and 2-18.4).

2-2.4(1)-S450 PERSONAL VEHICLES (1) ~~Standard~~ Personal Vehicle Rates:

(a) Section ~~59-801,-R.C.M.-1947,~~ 2-18-503, MCA, as amended ~~in 1975,~~ establishes two rates for personal vehicle use. ~~12 cents a mile, and 15 cents a mile.~~ Generally, reimbursement for personal vehicle use will be at 3 cents less than the rate established by the Internal Revenue Service (standard rate). If certain conditions are met, employees may receive reimbursement at a rate equal to that established by the Internal Revenue Service (high rate). The Department of Administration will periodically issue memos to agencies to alert them of changes in the mileage reimbursement rates. All employees who drive a personal vehicle on state business and are reimbursed mileage must comply with the Motor Vehicle Safety - Responsibility Act (Title 61, chapter 6, part 1, MCA) and with the mandatory liability protection provisions of Title 61, chapter 6, part 3, MCA.

(b) strike existing text in entirety (found on ARM page 2-18.5).

(2) Reimbursement at ~~12 cents a mile~~ Standard Rate. strike existing text in entirety (found in ARM page 2-18.5) and replace with the following:

A department director or designee may authorize an employee to use a personal vehicle on state business and be reimbursed for mileage at the standard rate. The director's written authorization must be attached to the agency's copy of the travel voucher to substantiate reimbursement at the standard mileage rate.

(3) Reimbursement at ~~15 Cents a Mile~~ High Rate.

(a) ~~A personal vehicle used in conducting State business may be reimbursed at 15 cents a mile~~ An employee shall be reimbursed for use of a personal vehicle at the high rate under the following conditions:

(i) A Motor Pool vehicle is not available; or

(ii) the use of a personal vehicle is considered to be in the best interest of the State.

(b) Therefore, for Helena area employees, one of two processes shall apply:

(i) same as text (found on ARM page 2-18.5).

(ii) A Division Administrator (or above), in speaking for himself or his staff, who believes that it is in the best interest of the State for a personal vehicle to be used on State business, regardless of whether or not a State vehicle is available, may contact the Department of Highways Helena Area Dispatcher and present justification for the "best interest". The Dispatcher shall decide whether or not the justification for the "best interest" is sufficient to issue the authorization. If the request is approved, the Dispatcher will prepare a Personal Vehicle Use Authorization Form in triplicate and promptly send the two copies to the employee. If not approved, the employee may either use a personal vehicle and be reimbursed at ~~12 cents a mile, (unless total miles driven is less than 25 miles per day),~~ the standard rate (with Department Director's authorization), or request the assignment of a Motor Pool Vehicle.

(4) Exemptions.

(a) The following persons are exempt from meeting the requirements of (2) and (3) above and are authorized reimbursement at ~~15 cents a mile~~ the high rate.

(i) Members of boards, commissions, committees, or advisory councils~~, who are appointed by the Governor~~.

(ii) Constitutional officers and elected officials.

(iii) Department heads appointed by the Governor.

(iv) All employees headquartered outside the Helena area.

(v) Employees driving 25 miles or less in any calendar day.

(b) This exemption does not preclude an agency from prescribing internal administrative procedures that require individuals to use agency-owned vehicles or to be reimbursed at the ~~rate of 12 cents a mile~~ standard rate. Travel Claims for the exempt classifications will, however, be processed as submitted by the approving agency for ~~the~~ reimbursement at either ~~12 cents or 15 cents a mile~~ the standard rate or the high rate.

(5) Personal Vehicle Use Authorization Form Supply. The Personal Vehicle Use Authorization Form is a three-part carbonless set (twenty-five sets to a pad) available from: Department of Administration, ~~Duplicating, State Capitol Basement,~~ Reproduction and Distribution Bureau, Old Liquor Warehouse, Helena, Montana 59601, Phone: 449-3063.

(6) example of Authorization Form deleted from text (found on ARM page 2-18.6).

2-2.4(1)-S460 MEALS (1) To be eligible for a meal reimbursement while traveling on State business, the employee must have been in a "travel status" for more than three continuous hours and be a distance of at least 15 miles from headquarters or home, whichever is closer. ~~The amount of reimbursement and the number of meals the employee is eligible for depends upon whether the duration of travel was less than 24 hours, or 24 hours or more, and the traveler's relationship with the "travel shift."~~

(2) To determine eligibility for meal reimbursement, two items must be kept in mind:

(a) the time ranges in which travel status has to occur for each meal; and

(b) the traveler's relationship with his travel shift.

2-2.4(1)-S470 MEAL REIMBURSEMENT (1) strike existing text in entirety (found on ARM page 2-18.7) and replace with the following:

(a) The time ranges determining eligibility are set by 2-18-502, MCA. In order to claim reimbursement for a meal, the employee must have been in a travel status for more than 3 continuous hours within one of the following time ranges:

Time Range	Meal Allowed
12:01 AM to 10:00 AM	Morning Meal
10:01 AM to 3:00 PM	Midday Meal
3:01 PM to 12:00 Midnight	Evening Meal

(b) It is emphasized that each time range must be considered separately when applying the more than 3-hour rule. An employee who travels from 8:00 AM to 2:00 PM receives reimbursement for the midday meal; an employee who begins travel at 12:00 noon is not eligible for reimbursement of the midday meal, even if travel exceeds 3 hours on that day.

~~(2) To determine eligibility for meal reimbursement for travel of less than 24 hours, two items must be kept in mind:~~

~~(a) The time ranges in which travel status has to occur for each meal, and~~

~~(b) The traveler's relationship with the individual's "travel shift."~~

~~(3)~~ (2) "Travel Shift" is defined as that period of time beginning one hour before an employee's regularly assigned work shift commences and ending one hour after the employee's regularly assigned work shift terminates. ~~For example:~~ (example deleted, found on ARM page 2-18.7).

~~(4)~~ (3) Meal Reimbursement - Within Travel Shift

(a)-(e) strike existing text (found on ARM pages 2-18.7 and 2-18.8).

(f) renumber accordingly.

~~(5)~~ (4) Meal Reimbursement - One Half Outside Travel Shift

(a) Employees departing within the confines of their "travel shift," but returning outside the limits are entitled to a maximum of two meal reimbursements during a 24-hour calendar day. ~~For instance, an 8:00 a.m. to 5:00 p.m. employee departs on a one day trip at 8:00 a.m. and returns that evening at 9:30 p.m. The employee is outside the "travel shift" at 6:00 p.m. Therefore, since the employee is only entitled to two reimbursable meals, the employee may claim a midday and evening meal reimbursement. If the employee had departed on the trip after 3:00 p.m. and therefore outside of the midday meal time range, the only reimbursement received would be for the evening meal.~~

(b) ~~Of course,~~ an An employee departing prior to an assigned travel shift and returning during the "travel shift" ~~(the reverse of above)~~ would also be limited to two reimbursable meals. For instance, an 8:00 a.m. to 5:00 p.m. employee would be one-half outside his assigned travel shift if travel commenced prior to 7:00 a.m. or ended after 6:00 p.m. ~~As an example, the 8:00 a.m. to 5:00 p.m. employee departs at 5:30 a.m. to reach a destination at 8:00 a.m. The employee returns to the office at 4:30 p.m. The employee is departing prior to the "travel shift" and returning during the travel shift. The allowable reimbursement consists of a morning meal and a midday meal.~~

(c) ~~The examples above utilize the typical 8:00 a.m. to 5:00 p.m. worker.~~ All other travel shifts, ~~however,~~ are subject to the above regulation with the theory, as expressed, governing the allowable reimbursement.

~~(6)~~ (5) Meal Reimbursement - Outside Travel Shift

(a) Eligibility for meal reimbursement when travel is totally outside the confines of the travel shift, ~~but less than 24 hours in duration,~~ is governed strictly by the time ranges for each meal. ~~according to the following chart.~~ (strike chart, found on ARM page 2-18.9).

(b) For example, an 8:00 a.m. to 5:00 p.m. employee that departs at 6:00 a.m. and returns at 10:00 p.m. qualifies for reimbursement of all three meals.

(6) When travel exceeds 24 hours and departure time or return time falls within the employee's travel shift, reimbursement is subject to the one-half outside travel shift rules which, in essence, limit the traveler to no more than two meals on those days.

(7) strike text and schedule (found on ARM page 2-18.9).

2-2.4(1)-S490 LODGING (1) Lodging - Receiptable:

(a) Employees shall be reimbursed for their actual out-of-pocket lodging expenses up to a ~~maximum of $16 a night In-State and $37 a night Out-of-State,~~ the maximum amounts set by 2-18-501, MCA, for In-State and Out-of-State travel. Lodg-

ing in those areas specifically designated as high cost cities will be reimbursed at actual cost. The Department of Administration will issue a memo at the beginning of each fiscal year designating those high cost cities which qualify for reimbursement of lodging at actual cost. In order to claim lodging reimbursement of this nature, a bona fide, original copy of a receipt from a licensed lodging facility must be attached to the Travel Expense Voucher (Form DA-101) and retained by the agency. ~~sent to the Accounting Division.~~ Other receipts, such as credit card receipts, are not acceptable.

(b) If an employee is traveling with his/her non-State employee spouse, the lodging rate claimed must reflect only the rate for one person. The one-occupant rate should be noted and marked as such on the receipt.

(2) Lodging - Non-Receiptable. If an employee stays in a non-receiptable facility (i.e., friends, relatives, camper, trailer) or fails to obtain a receipt, the reimbursement is ~~$7 a night.~~ the amount set by 2-18-501, MCA for non-receipted lodging.

(3) Lodging - Provided

(a) In some instances, lodging is provided to the employee, but no charge is assessed directly. For these instances, lodging expense cannot be claimed by the employee. Examples of this are:

(i) Industry or government seminars where lodging is provided "on campus."

(ii) Lodging is included in the registration fee.

(iii) A cabin is provided for backwoods work.

2-2.4(1)-S4000 MISCELLANEOUS (1) same as text (found on ARM pages 2-18.10 and 2-18.11).

(2) Examples of allowable miscellaneous expenses include: needed working supplies purchased on an emergency basis; taxi fares; business telephone calls; etc. Miscellaneous expenses do not include such items as tips or taxes on meals or lodging ~~and tips~~.

2-2.4(1)-S4050 SPECIAL IN-LIEU ALLOWANCES (1) An employee may wish to use other than the most economical and expeditious mode of transportation to complete a travel-oriented work assignment. For example: An employee is required to attend a conference in Seattle. Rather than fly, the employee ~~prefers~~ is authorized to drive in his private vehicle. ~~Considering only one way figures, the trip by car would take about 15 hours and cost $93.60 (780 miles x $0.12) if mileage were to be paid. By air, the trip would take about 4 hours and cost about $50.~~ To accomodate the employee, it is permissible, in this example to allow "air travel equivalent"; that is, the cost of the plane fare and travel time to the extent it would take to fly ~~That is, $50 in lieu of mileage and 4 hours paid travel time~~ (if it is the agency's policy to

pay for travel time). The remaining travel time required ~~(11 hours)~~ to drive would have to be completed on the employee's time (completed during non-working hours or charged against accumulated vacation or compensating overtime balances).

(2) Applicable claims are to be clearly marked "IN-LIEU ALLOWANCE" and the underlying details fully explained.

2-2.4(1)-S4090 TRAVEL ADVANCES (1) If an employee is required to travel extensively in the pursuit of State business, it is recommended that the employee be given a travel advance. Travel advances should not, except in hardship cases, be made unless the employee's out-of-pocket expenses will exceed $50. For those agencies experiencing extensive travel reimbursements, a Cash Revolving Fund may be used for the purpose of making travel advances in those cases requiring immediate payment. If this condition applies, proper controls and bookkeeping are mandatory to its successful operation. In most cases advances can be made by regular State warrant -- a process which is preferred.

2-2.4(1)-S4120 SUPERVISOR'S RESPONSIBILITIES (1) Supervisor's Approval. Every Travel Expense Voucher submitted to the Department of Administration's Accounting Division must contain a supervisor's approval, except those for agency directors or their equivalent. ~~Absence thereof, constitutes grounds for rejecting the transaction documents and withholding of payment (when applicable).~~

(2) same as text (found on ARM page 2-18.16).

3. The department proposes to amend these rules because they unnecessarily repeat statutory language, or are in conflict with current legislation and practice.

4. Interested parties may in writing submit their data, views, or arguments concerning the proposed amendments to David Lewis, Director, Department of Administration, Mitchell Building, Helena, Montana 59601, no later than February 26, 1980.

5. If a person who is directly affected by the proposed amendments 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 David Lewis no later than February 26, 1980.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons directly affected by the proposed amendments; 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 Admin-

istrative Register. Ten percent of those persons directly affected has been determined to be 1,000 persons based on the 10,000 state employees in Montana.

7. The authority of the department to amend the proposed rules is based on sections 2-18-501, 2-18-502, and 2-18-503 MCA, and the rules implement sections 2-18-501 through 2-18-503 MCA.

David M Lewis

David Lewis, Director
Department of Administration

Certified to the Secretary of State January 8, 1980.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of rules relating to regulations of travel expense	NOTICE OF PROPOSED REPEAL OF ARM 2-2.4(1)-S480, 2-2.4(1)-S4010, 2-2.4(1)-S4100, 2-2.4(1)-S4130, 2-2.4(1)-S4150, 2-2.4(1)-S4160, and 2-2.4(1)-S4170 (REGULATION OF TRAVEL EXPENSES) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On February 28, 1980, the Department of Administration proposes to repeal rules 2-2.4(1)-S480, 2-2.4(1)-S4010, 2-2.4(1)-S4100, 2-2.4(1)-S4130, 2-2.4(1)-S4150, 2-2.4(1)-S4160, and 2-2.4(1)-S4170.

2. The rules proposed to be repealed are found on pages 2-18.10, 2-18.11, 2-18.15, 2-18.16, 2-18.20, 2-18.21, 2-18.22, and 2-18.23 respectively of the Administrative Rules of Montana.

3. The department proposes to repeal these rules because they unnecessarily repeat statutory language, or are in conflict with current legislation and practice.

4. Interested parties may submit their data, views, and arguments concerning the proposed repeals to David Lewis, Director, Department of Administration, Mitchell Building, Helena, Montana 59601, no later than February 26, 1980.

5. If a person who is directly affected by the proposed repeal of the above rules 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 David Lewis no later than February 26, 1980.

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 directly affected has been determined to be 1,000 persons based on the 10,000 state employees in Montana.

7. The authority of the department to repeal the proposed rules is based on sections 2-18-501, 2-18-502, and 2-18-503 MCA.

David Lewis, Director
Department of Administration

Certified to the Secretary of State January 8, 1980.

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

In the matter of the repeal of ARM 16-2.14(2)-S14230, Standards for Meat	)	NOTICE OF PROPOSED REPEAL OF ARM 16-2.14(2)-S14230 Standards for Meat.
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On or after February 19, 1980, the Department of Health and Environmental Sciences proposes to repeal rule 16-2.14(2)-S14230 Standards for Meat.

2. The rule to be repealed is on pages 16-198 through 16-200 of the Administrative Rules of Montana.

3. The Department is proposing to repeal this rule primarily due to a change in policy and also because the 1979 Legislature enacted a statutory definition of hamburger in section 50-31-103(15), MCA.

4. Interested persons may submit their data, views, or arguments concerning the proposed repeal in writing to Robert L. Solomon, Hearings Officer, Department of Health and Environmental Sciences, Capitol Station, Helena, Montana 59601, no later than February 18, 1980.

5. If a person who is directly affected by the proposed repeal of rule 16-2.14(2)-S14230 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 Robert L. Solomon, Hearings Officer, Department of Health and Environmental Sciences, Capitol Station, Helena, Montana 59601, no later than February 18, 1980.

6. If the Department receives requests for a public hearing on the proposed repeal from more than 10 percent or 25, whichever is less, of the persons who will be directly affected by the proposed repeal of this rule, by a governmental subdivision or agency, the Legislature's Administrative Code Committee, or by an association having not less than 25 members who will be directly affected, a public 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 59 persons based on the 597 licensed meat markets in Montana.

7. The authority of the Department to make the proposed repeal of this rule is based on section 50-31-201, MCA.

A. C. Knight, M.D., F.C.C.P.
Director, Department of Health
and Environmental Sciences

Certified to the Secretary of State January 8, 1980.

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

In the Matter of the ADOPTION OF RULES for licensing of laboratories performing analyses of public water supplies.	NOTICE OF PROPOSED ADOPTION OF RULES FOR LICENSING OF LABORATORIES NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On February 16, 1980, the Board of Health and Environmental Sciences proposes to adopt rules setting standards and procedures for licensure of laboratories who wish to perform analyses of public water supplies.

2. The proposed rules provide as follows:

Rule I. Definitions For the purposes of these rules:

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

(2) "Department" means the Montana Department of Health and Environmental Sciences established by 2-15-2101, MCA.

(3) "Laboratory evaluation officer" means a person designated by the department to evaluate laboratories for compliance with the criteria established in this chapter, and who is experienced in quality assurance, holds a graduate degree or has equivalent experience in microbiology, chemistry or radiological chemistry.

Rule II. Appointment of laboratory evaluation officers

(1) The director of the department shall appoint a laboratory evaluation officer or officers from the laboratory of the department, located in Helena, Montana. The officer(s) shall have the responsibility of evaluating the technical competence of personnel and the adequacy of equipment and facilities of any laboratory requesting a license to perform analyses of public water supplies, and shall advise the department whether such laboratories have the technical expertise and resources necessary to carry out public water supply testing and analysis in accordance with the standards set out in this chapter.

Rule III. Procedure for licensure

(1) Any laboratory desiring a license to perform analyses of public water supplies shall submit a written application on forms available from the Water Quality Bureau, 555 Fuller Avenue, Helena, Montana 59601 (phone: 449-2406). A laboratory may be licensed to conduct one, several, or all of the analyses included in ARM 16-2.14(10)-S14381, Public Water Supplies. An application for a license shall state the types of analyses or tests the applicant wants to conduct.

(2) The laboratory evaluation officer shall contact the applicant within 30 days after receipt by the department of a written application and arrange a date and time for an

evaluation of the applicant laboratory, on-site, which is mutually agreeable to both the department and the applicant. The laboratory evaluation officer shall specify prior to that date what staff, equipment and supplies need to be on hand during the evaluation and what tests will need to be run in order to determine whether the laboratory can meet the licensing standards set out in this chapter. The laboratory shall ensure that all items so specified as needed for a complete evaluation are available at the date and time agreed upon.

(3) During the on-site visit, the laboratory evaluation officer shall:

(a) evaluate the procedures and equipment used for those specific public water supply analyses for which the laboratory has requested licensure, to determine if they meet the standards set out in this chapter;

(b) review the laboratory's records to determine if it complies with required sampling frequency, check sample program, sample transit time, and resampling notices, if appropriate;

(c) determine if a quality control program exists, whether data exist showing it is being implemented, and whether the data show the laboratory is producing valid results.

(d) complete the on-site evaluation form and review the results of the evaluation with the laboratory director and appropriate staff members.

(4) The department shall send written notification to the laboratory within 30 days after the on-site visit whether it will be fully licensed, provisionally licensed, or denied licensure, based on the on-site evaluation and the internal laboratory quality control program. If the licensure is to be provisional, the notice shall include the deficiencies noted by the department and the date by which they must be eliminated. If licensure is denied, the grounds therefore shall be specifically included in the notice.

Rule IV. Activities covered by license; duration of license; temporary and provisional licenses; reciprocity

(1) A license granted by the department shall constitute permission to perform only those analyses for which a license is requested, and which the department finds the laboratory is capable of performing in accordance with the standards in this chapter.

(2) A license granted to any laboratory meeting the standards set out in this chapter for the specific parameters for which licensure is requested shall be for a three-year period.

(3) A provisional license may be granted to a laboratory which does not comply with all of the standards in this chapter, but whose deficiencies are minor and do not

affect the capability of the laboratory to perform valid analyses. A provisional license may be granted for any period up to one year, after which the deficiencies must be corrected or further licensure denied.

(4) After submission of a completed application, a temporary license will be granted by the department to laboratories already approved or certified by EPA to do analysis of public water supplies until the department makes the decision whether to grant a three-year or provisional license after an on-site visit and evaluation of the laboratory by the laboratory evaluation officer. Laboratories not currently approved or certified by the state or EPA shall be granted a license only after an on-site review and successful evaluation.

(5) The department may issue a license by reciprocity to out-of-state laboratories which apply, provided:

(a) the laboratory is currently approved or certified by EPA or by the state in which the laboratory is located if that state has a certification program approved by EPA; and

(b) the laboratory performs satisfactory analyses of water samples furnished either by the department or by EPA.

Rule V. Suspension of license to perform microbiological analyses A license to perform microbiological analyses is conditioned upon approval of the individual performing the analyses, based on a history of their ability to perform valid testing. If there is a change in such personnel, the laboratory must immediately inform the department and schedule an evaluation of the new staff member by the department. Until the new staff member has been tested by the laboratory evaluation officer and found capable of performing valid tests, the license to perform microbiological analyses of public water supplies shall be suspended.

Rule VI. Revocation of license

(1) The department may revoke a license if it determines, after investigation, that the laboratory has failed to follow proper analytical procedures, released erroneous results, acted unethically, or otherwise violated the standards in this chapter.

(2) The department shall furnish each licensed laboratory with performance evaluation samples as soon after initial licensing as possible and at least annually thereafter. If the laboratory's performance is not acceptable, appropriate technical assistance will be provided by the department's laboratory to cure the deficiency. Followup performance samples will then be provided by the department. If performance of the analyses on the samples continues to be unacceptable, the license may be revoked.

(3) An annual on-site evaluation shall be conducted by

the department on a date mutually acceptable to the department and the laboratory. If the evaluation shows deficiencies, the department shall provide technical assistance to cure them. If a followup on-site evaluation shows deficiencies still existing, the license may be revoked.

Rule VII. Records and reports

(1) All chemical data shall be kept for at least one year, or for any longer period required by ARM 16-2.14(10)-S14381, Public Water Supplies. All microbiological data shall be kept for at least three years.

(2) All analyses of samples not meeting the standards set out in ARM 16-2.14(10)-S14381 shall be promptly reported by telephone to the Water Quality Bureau of the department (phone: 449-2406) and records of those analyses shall be kept for at least three years.

(3) Written reports of contaminated microbiological samples shall be sent to the department within 48 hours of the test. Reports of all other microbiological analyses of samples from public water supplies shall be sent to the department within 40 days after the tests are completed.

Rule VIII. Requirements for laboratories doing chemical analyses of public water supplies A laboratory, in order to be licensed to perform chemical analyses of public water supplies, shall meet the following requirements:

(1) Laboratory facilities. Laboratory facilities shall contain the following:

(a) A sink with hot and cold running water;

(b) An adequate and properly grounded source of electricity;

(c) A source of distilled and/or deionized water (depending on parameters measured);

(d) An exhaust hood or equivalent for analysis of organic chemicals and trace metals.

(2) Laboratory equipment and instrument specifications. A laboratory doing all of the analyses required by ARM 16-2.14(10)-S14381, Public Water Supplies, shall have, or have access to, all of the following equipment with the minimum specifications cited. If a laboratory is licensed to do only some of the analyses required by ARM 16-2.14(10)-S14381, only those instruments shall be required that are needed to analyze for the substances for which the laboratory is licensed, but those instruments shall meet the following specifications:

(a) Analytical balance: shall provide sensitivity of at least 0.1 mg.

(b) Photometer (see Table 1 below for instrumentation for individual methods):

(i) Spectrophotometer: usable wave-length range, 400 to 700 nm. Maximum spectral band-width, no more than 20 nm. Wave-length accuracy, $\pm$ 2.5 nm. Photometer shall be capable

of using several sizes and shapes of absorption cells providing a sample path length varying from approximately 1 to 5 cm.

(ii) Filter photometer (abridged spectrophotometer): capable of measuring radiant energy in range of 400 to 700 nm. Relatively broad bands (10 to 75 nm) of this radiant energy are isolated by use of filters at or near the maximum absorption of the colorimetric methods. Photometer shall be capable of using several sizes and shapes of absorption cells providing a sample path length varying from approximately 1 to 5 cm.

(c) Magnetic stirrer: variable speed, 120 V, with Teflon-coated stirring bar.

(d) pH Meter: accuracy, ± 0.05 units. Scale readability, ± 0.1 units. Laboratories purchasing a new pH meter are strongly advised to purchase one capable of functioning with specific ion electrodes (see specific ion meter below). Unit may be line/bench or battery/portable operated.

(e) Specific ion meter: readable and accurate to ± 5 mV. Unit may be line/bench or battery/portable operated.

(f) Atomic absorption spectrophotometer: single-channel, single- or double-beam instrument having a grating monochromator, photomultiplier detector, adjustable slits, a wavelength range of 190 to 800 nm, and provisions for interfacing with a strip chart recorder.

(g) Recorder for atomic absorption: strip chart recorder having a chart width of 10 in. or 25 cm., a full scale response time of 0.5 s or less, 10- or 100-mV input to match the instrument, and variable chart speeds of 5 to 50 cm/min. or equivalent.

(h) Gas chromatograph (equipped with an electron-capture detector): a commercial or custom-designed gas chromatograph with a column oven capable of isothermal temperature control to at least 210° ± 0.2°C. System shall be equipped with accurate needle-valve gas-flow controls, accept 1/4-inch glass columns with the option of direct on-column injection. System must be demonstrated to be suitable for chlorinated hydrocarbon pesticides, with a minimum of decomposition and loss of compounds of interest.

(i) Record for gas chromatograph: strip chart recorder having a chart width of 10 in. or 25 cm., a full scale response time of 1 s. or less, 1 mV (-0.05 to 1.05) signal to match the instrument, and variable chart speeds of 5 to 50 cm/min. or equivalent.

(j) Conductivity meter: suitable for checking distilled water quality. Shall be readable in ohms or mhos, have a range of 2 to 2.5 million ohms or equivalent micromhos ± 1 percent, and have a sensitivity of 0.33 percent or better. Unit may be line/bench or battery/portable operated.

(k) Drying oven: gravity or mechanical convection

units with selectable temperature control from room temperature to 170° C or higher.

(l) Desiccator: glass or plastic model, depending on particular application.

(m) Hot plate: large or small units, with selectable temperature controls for safe heating of laboratory reagents.

(n) Refrigerator: a standard kitchen type domestic refrigerator for storage of aqueous reagents and samples. For storing organics and flammable materials, an "explosion-proof" type of refrigerator shall be used. When refrigeration is not required, an explosion-proof cabinet may be used.

(o) Glassware: shall be of Pyrex or Kimax type glass, which is more resistant than regular soft glass to damage by heat, chemicals, and abuse. All volumetric glassware shall be Class A.

(p) Stirred boiling water bath: from ambient temperature to 100°C (with gable lid).

(3) General laboratory practices. The following practices are acceptable:

(a) Prepackaged kit methods: All kit procedures, other than the DPD Colorimetric Test Kit, are considered alternative analytical techniques, and procedures described in 40 CFR §141.27 of the National Interim Primary Drinking Water Regulations are to be followed. A copy of the regulation may be obtained from the Water Quality Bureau.

(b) Calibration intervals for color wheels, sealed ampules, and other visual standards: Laboratories utilizing visual comparison devices shall calibrate the standards incorporated into such devices at least every 6 months. These calibrations shall be documented. Directions for preparing temporary and permanent type visual standards can be found in the appropriate sections of "Standard Methods for the Examination of Water and Wastewater," 14th Ed., published in 1975 (or the latest edition published) by the American Public Health Association. A copy of the above document may be obtained from the Water Quality Bureau. By comparing standards and plotting such a comparison on graph paper, a correction factor must be derived and applied to all future results obtained on the calibrated apparatus.

(c) Glassware preparation: All glassware shall be washed in a warm detergent solution and thoroughly rinsed first in tap water and then in distilled water. This cleaning procedure is sufficient for most analytical needs, but the individual analytical procedures shall be referred to and followed when more elaborate precautions are to be taken against contamination of glassware. A separate set of glassware (suitably prepared) must be maintained for the nitrate and trace metal procedures due to the potential for contamination from the laboratory environment. All glassware

used in organic chemical analyses shall have a final rinse with nanograde acetone or its equivalent and shall then be air dried in an area free of organic contamination.

(d) Distilled/deionized water: Water having resistivity values between 0.5 to 2.0 megohms (2.0 to 0.5 micromhos/cm) at 25°C shall be available.

$$\left[\frac{1}{\text{megohms}} = \text{micromhos} \quad \frac{1}{\text{micromhos}} = \text{megohms}\right]$$

High quality water meeting such specifications may be purchased from commercial suppliers; laboratories shall request a list of quality specifications for any water so purchased. Quality of distilled/deionized water is best maintained by sealing from the atmosphere. Quality checks shall be made at weekly intervals and documented. If water is produced by the batch, quality checks must also be run on each batch.

(e) Chemicals/reagents: "Analytical reagent grade" (AR) chemicals shall be used for most analyses required of water treatment laboratories. Consult "Standard Methods for the Examination of Water and Wastewater," 14th Ed., Part 102, pages 5-8, or the latest edition of this reference, published by the American Public Health Association, for more detailed information on reagent grades. Any special reagent requirements for individual analytical procedures which are stated in the above document and EPA's "Methods for Chemical Analysis of Water and Wastes" shall be used. Both documents are available from the Water Quality Bureau.

(4) Methodology and required equipment for individual parameters. Table 1 below shows minimum equipment requirements, methodology, and references for individual parameters. Equivalent equipment as noted in subsection (2) above may be used. All procedures other than those listed in Table 1 are considered alternative analytical techniques and may be used only if application for their use, including acceptable comparability data, is made to the department and approved.

TABLE 1

Parameter	Methodology (unfiltered sample)	Reference (Page number) SM[1]	Reference (Page number) EPA[2]	Major equipment required (or its equivalent)
Arsenic[3]	Atomic absorption; gaseous hydride		95-96	Atomic absorption spectrophotometer with recorder
	Flameless Atomic Absorption	(9)		same as above
Barium	Atomic absorption[8]	176	97-98	same as above
Cadmium	Atomic absorption[8],chelation-extraction	179	101-103	same as above
Chromium	same as above	192	105-106	same as above
Lead	same as above	215	112-113	same as above
Mercury	Flameless atomic absorption		118-126	Atomic absorption spectrophotometer with recorder or instrument designed specifically for measurement of mercury
	Automated Cold Vapor Technique		127	Automated Analyzer
Nitrate	Brucine colorimetric	427	--	Spectrophotometer or filter photometer
	Cadmium reduction	--	202	Automated Analyzer
	Automated Hydrazine Reduction	(5)		Automated Analyzer
	Automated Cadmium Reduction		202	Automated Analyzer
Selenium[3]	Atomic absorption[8], gaseous hydride	--	145	Atomic absorption spectrophotometer with recorder
	Flameless Atomic Absorption	(6)		same as above
Silver	Atomic absorption[8]	254	146	same as above
Fluoride	Electrode; distillation not required	391	65-67	Ion-selective electrode and expanded scale electrometer

TABLE 1 (continued)

Parameter	Methodology (unfiltered sample)	Reference (page number) SM[1]	Reference (page number) EPA[2]	Major equipment required (or its equivalent)
	Colorimetric with preliminary distillation	389 393	59-60	Direct distillation apparatus and spectrophotometer or filter photometer
	Automated Alizarin Fluoride Blue	614		Automated Analyzer
	Zirconium-Eriochrome Cyanine R		(7)	
Chlorinated hydrocarbons: Endrin Lindane Methoxychlor Toxaphene	Gas chromatography	--	(4)	Kuderna-Danish glassware, gas chromatograph equipped with glass-lined injection port and electron-capture detector, and recorder
Chlorophenoxys: 2,4-D 2,4,5-TP	Gas chromatography	--	(4)	same as above
Calcium	Atomic absorption	148	103	AAS with recorder
	EDTA Titration	189		
Magnesium	Atomic absorption	148	114	AAS with recorder
	Gravimetric	221		Analytical balance
	Calculation	223		
Sodium	Atomic absorption		147	AAS with recorder
	Flame photometric	250		Flame photometer
Potassium	Atomic absorption		143	AAS with recorder
	Cobaltinitrite colorimetric	235		Spectrophotometer or filter photometer
	Flame photometric	234		Flame photometer

TABLE 1 (continued)

Parameter	Methodology (unfiltered sample)	Reference (page number) SM[1]	Reference (page number) EPA[2]	Major equipment required (or its equivalent)
Alkalinity, Total	Electrometric titration to Ph 4.5, manual or automated, or equivalent automated methods	278 5	3	pH meter
Alkalinity Phenol-phthalein	Electrometric titration to pH 8.3	278		pH meter
Chloride	Silver nitrate	303		
	Mercuric nitrate	304	29	
	Automated ferricyanide	613	31	Automated analyzer
Sulfate	Gravimetric	493		Analytical balance
	Turbidimetric	496	277	Nephelometer
	Automated colorimetric		279	Automated analyzer
pH value	Electrometric	460	239	pH meter
Dissolved solids	Glass fiber filtration, 180°C	92	266	Analytical balance
Total hardness	EDTA titration	202	68	
	Automated colorimetric		70	Automated analyzer
	Atomic absorption (sum of Ca and Mg as their respective carbonates)	201		AAS with recorder
Iron	Atomic absorption[8]	148	110	AAS with recorder
	Phenanthroline colorimetric	208		Spectrophotometer or filter photometer
Manganese	Atomic absorption[8]	148	116	AAS with recorder
	Persulfate colorimetric	225		Spectrophotometer or filter photometer
	Periodate colorimetric	227		same as above

[1] "Standard Methods for the Examination of Water and Wastewater", 14th Ed., American Public Health Association, 1975.

TABLE 1 (continued)

2 "Methods for Chemical Analysis of Water and Wastes", U.S. Environmental Protection Agency, Office of Technology Transfer, Washington, D.C. 20450, 1974.

3 Complete method available in: Caldwell, J.S., Lishka, R.J., and McFarron, E.F., "Evaluation of a Low Cost Arsenic and Selenium Determination at Microgram per Liter Levels", J. Amer. Water Works Assoc.,65:731 (November 1973).

4 Methods available from U.S. Environmental Protection Agency, Environmental Monitoring and Support Laboratory, Environmental Research Center, Cincinnati, Ohio 45268.

5 "Methods for Chemical Analysis of Water and Wastes", U.S. Environmental Protection Agency, pp. 185-194 (1971).

6 "Atomic Absorption Newsletter, 14, No.5, p.109 (1975).

7 "Methods for Collection and Analysis of Water Samples for Dissolved Minerals and Gases", USGS, Book 5, Chapter A1, pp. 90-93.

8 The various furnace devices are considered to be atomic absorption techniques. Methods of Standard addition are to be followed as noted on p.78 of "Methods for Chemical Analysis of Water and Wastes,"1974 (see note 2 above).

9 "Atomic Absorption Newsletter", 13, No.3, p.75 (1974).

(5) Sample collecting, handling, and preservation. Requirements for container types, preservatives and holding times for individual parameters are shown in Table 2 below:

TABLE 2[1]

Parameter	Preservative[2]	Container[3]	Maximum Holding Time[4]
Arsenic	Conc HNO_3 to pH<2	P or G	6 months
Barium	Conc HNO_3 to pH<2	P or G	6 months
Cadmium	Conc HNO_3 to pH<2	P or G	6 months
Chromium	Conc HNO_3 to pH<2	P or G	6 months
Lead	Conc HNO_3 to pH<2	P or G	6 months
Mercury	Conc HNO_3 to pH<2	G	38 days
		P	14 days
Nitrate	Conc H_2SO_4 to pH<2	P or G	14 days
Selenium	Conc HNO_3 to pH<2	P or G	6 months
Silver	Conc HNO_3 to pH<2	P or G	6 months
Fluoride	None	P or G	1 month
Chlorinated hydrocarbons	Refrigerate at 4°C as soon as possible after collection	G with foil or Teflon-lined cap	14 days[5]
Chlorophenoxys	Refrigerate at 4°C as soon as possible after collection	G with foil Teflon-lined cap	7 days[5]
Calcium	Refrigerate at 4°C as soon as possible after collection	P or G	7 days
Magnesium	Refrigerate at 4°C as soon as possible after collection	P or G	7 days
Sodium	None	P or G	7 days
Potassium	None	P or G	7 days
Alkalinity (Total and Phenolphthalein)	Refrigerate at 4°C as soon as possible after collection	P or G	24 hours
Chloride	None	P or G	7 days
Sulfate	Refrigerate at 4°C as soon as possible after collection	P or G	7 days
pH Value	Refrigerate at 4°C as soon as possible after collection	P or G	6 hours[6]
Dissolved solids	Refrigerate at 4°C as soon as possible after collection	P or G	7 days

TABLE 2 (continued)

Parameter	Preservative[2]	Container[3]	Maximum Holding Time[4]
Total Hardness	Refrigerate at 4°C as soon as possible after collection	P or G	7 days
Iron	Conc HNO_3 to pH<2	P or G	6 months
Manganese	Conc HNO_3 to pH<2	P or G	6 months

[1] If a laboratory has no control over these factors, the laboratory director must reject any samples not meeting these criteria and so notify the authority requesting the analyses.

[2] If HNO_3 cannot be used because of shipping restrictions, sample may be initially preserved by icing and immediately shipping it to the laboratory. Upon receipt in the laboratory, the sample must be acidified with conc HNO_3 to pH 2. At time of analysis, sample container should be thoroughly rinsed with 1:1 HNO_3; washings should be added to sample.

[3] P=Plastic, hard or soft; G=Glass, hard or soft.

[4] In all cases, samples should be analyzed as soon after collection as possible.

[5] Well-stoppered and refrigerated extracts can be held up to 30 days.

[6] pH preferably should be determined on site. If samples cannot be returned to the laboratory in six hours and holding time exceeds this limit, the final reported data should indicate the actual holding time.

(6) Quality control. The following requirements must be met in order to ensure quality control:

(a) All quality control data must be available for inspection by the department.

(b) The laboratory must analyze an unknown performance sample once annually for parameters measured. Results must be within the control limits established by the department for each analysis for which the laboratory is licensed. If problems arise, appropriate technical assistance will be provided, and a followup performance sample shall be analyzed.

(c) A current service contract with yearly routine maintenance must be in effect on all balances.

(d) Class S weights must be available to make weekly checks on balances. These checks must be documented.

(e) A thermometer certified by the National Bureau of Standards (or one of equivalent accuracy) must be available to check thermometers in ovens, etc. These checks must be made monthly and documented.

(f) Color standards or their equivalent must be available to verify wave-length settings on spectrophotometers. The verification must be documented.

(g) Chemicals must be dated upon receipt of shipment and replaced as needed or before shelf life has been exceeded.

(h) The laboratory shall perform on a known reference sample (when available) once per quarter for the parameters measured. The measure value shall be within the control limits established by the department for each analysis for which the laboratory wishes to be certified.

(i) Standard deviation shall be calculated and documented for all measurements being conducted.

(j) Quality control charts or a tabulation of mean and standard deviation shall be used to document validity of data on a daily basis.

(k) Minimum daily quality control:

(i) After a standard reagent curve composed of a minimum of a reagent blank and three standards has been prepared, subsequent standard curves must be verified by use of at least a reagent blank and one standard at or near the MCL. Daily checks must be within ± 10 percent of original curve.

(ii) If 20 or more samples per day are analyzed, the working standard curve must be verified by running an additional standard at or near the MCL every 20 samples. Checks must be within ± 10 percent of original curve.

(iii) At least one duplicate sample shall be run every 10 samples, or with each set of samples, to verify precision of the method. Checks should be within the control limits established by the department for each analysis for which the laboratory is licensed.

(iv) At least one spiked sample shall be run every 10 samples or with each set of samples for each parameter to verify accuracy of the method, with the exception of pH, alkalinity and dissolved solids. Checks shall be within control limits established by the department for each analysis for which the laboratory is licensed.

(l) A written procedure must be available to analysts to correct deficiencies discovered by daily quality control.

(7) Data handling.

(a) Records of chemical analyses shall be kept by the laboratory for at least one year. Data on any sample which shows contamination shall be kept for at least three years.

(b) The following data must be kept:

(i) All raw data and calculations.

(ii) All quality control data.

(iii) Date, place, and time of sampling, and name of sampler.

(iv) Identification of sample as to whether it is a routine distribution system sample, check sample, raw or

process water sample, or other special purpose sample.

(v) Date of receipt of sample and date(s) of analysis.

(vi) Laboratory and persons responsible for performing analysis.

(vii) Analytical technique/method used.

(viii) Results of analyses.

(8) Personnel. The employees described below must meet the following training requirements and be supervised as follows:

(a) Routine test analyst:

(i) Academic training: minimum of high school diploma or its equivalent.

(ii) Experience: minimum of 2 years of experience in inorganic measurements, including 6 months of on-the-job training, under direct supervision of qualified analyst, in measurements being considered for certification; or, if no experience, 2 years of on-the-job training, under direct supervision of a qualified analyst, in measurements being considered for certification.

(b) Organic chemicals analyst:

(i) Academic training: minimum of high school diploma or its equivalent.

(ii) Experience: minimum of 6 months of experience in measurement of chlorinated hydrocarbons and chlorophenoxys and 2 years of experience in gas chromatography. Each year of college-level training in related scientific fields or demonstrated equivalency shall be considered equal to one year of work experience. Such a substitution shall not exceed one-half of the required experience.

(iii) Supervision: supervision by an analyst (also eligible to analyze for organic chemicals) who has a professional degree or its equivalent, with one year of course work in organic chemistry, and two years of experience in measurement of organic chemcials by gas chromatography.

(9) Action when contamination found. When a maximum contaminant level is found to be exceeded, the laboratory shall notify the water supplier within 24 hours of the analysis and request resampling from the same sampling point according to the requirements of ARM 16-2.14(10)-S14381.

Rule IX. Requirements for laboratories doing microbiological analyses of public water supplies A laboratory, in order to be licensed to perform microbiological analyses of public water supplies, shall meet the following requirements:

(1) Personnel. An analyst employed by the laboratory to perform microbiological analyses must have the level of training and supervision specified below:

(a) Academic training: minimum of high school diploma in academic or laboratory-oriented vocational courses or equivalent experience in microbiological testing.

(b) Job training: minimum of 30 days on-the-job training plus one week of supplementary training acceptable to the department. Personnel should take advantage of courses available to EPA or the department.

(c) Supervision: supervision by an experienced professional scientist. In the small water plant laboratory consisting of a single analyst, the department shall provide supervision.

(2) Laboratory facilities. Laboratory space must be adequate (200 square feet and six linear feet of bench space per analyst) to accommodate periods of peak work load. Working space requirements shall include storage space for media, glassware, and portable equipment items; floor space for stationary equipment (incubators. waterbaths, refrigerators, etc.); and associated area for cleaning glassware and sterilizing materials. Facilities shall be clean, air-conditioned and with adequate lighting at bench top (100 ft.-candles).

(3) Laboratory equipment, supplies, and materials. The laboratory must have available or access to the items required for the total coliform membrane filter or most probable number procedures as listed below.

(a) pH meter: accuracy must be $\pm$0.1 units.

(b) Balances-- top loader or pan: balance must be clean, not corroded, and be provided with appropriate weights of good quality. Balance must tare out and detect 50-mg weight accurately; this sensitivity is required for use in general media preparation of 2g or larger quantities.

(c) Temperature-monitoring devices:

(i) Glass or metal thermometers must be graduated in 0.5°C increments.

(ii) Continuous temperature recording devices must be sensitive to within 0.5°C.

(iii) Liquid column of glass thermometers must have no separation.

(iv) A certified thermometer or one of equivalent accuracy must be available.

(d) Air (or water jacketed) incubator/incubator rooms/ waterbaths/aluminum block incubators:

(i) Unit must maintain internal temperature of 35.0°$\pm$ 0.5°C in area of use at maximum loading.

(ii) When aluminum block incubators are used, culture dishes and tubes must be snug-fitting in block.

(e) Autoclave:

(i) must be in good operating condition when observed during operational cycle or when time-temperature charts are read. Vertical autoclaves are not recommended. For most efficient oepration, a double-walled autoclave constructed of stainless steel is suggested.

(ii) must have pressure and temperature gauges on ex-

haust side and an operating safety valve.

(iii) must reach sterilization temperature (121°C) and maintain it during sterilization cycle; no more than 45 minutes is required for a complete cycle.

(iv) Depressurization must not produce air bubbles in fermentation media.

(f) Hot-air oven: must be constructed to ensure a stable sterilization temperature. Its use is for sterilization of glass pipets, bottles, flasks, culture dishes, etc.

(g) Refrigerator: must hold temperature at 1° to 4.4°C (34° to 40°F).

(h) Optical/counting/lighting equipment: low power magnification device (binocular microscope with 10 to 15x) with fluorescent light source must be available for counting MF colonies. A mechanical hand tally should be used for counting colonies.

(i) Inoculation equipment: loop diameter must be at least 3 mm and of 22 to 24 gauge Nichrome, chromel, or platinum-iridium wire. Single-service metal loops, disposable dry heat-sterilized hardwood applicator sticks, pre-sterilized plastic, or metal loops may be used.

(j) Membrane filtration equipment:

(i) Units must be made of stainless steel, glass, or autoclavable plastic. Equipment must not leak and must be uncorroded.

(ii) Field equipment is acceptable for coliform detection only when standard laboratory MF procedures are followed.

(k) Membrane filters and pads:

(i) Membrane filters must be manufactured from cellulose ester materials, white, grid-marked, 47-mm diameter, 0.45 um pore size. Another pore size may be used if the manufacturer gives performance data equal to or better than the 0.45-um membrane filter.

(ii) Membranes and pads must be autoclavable or presterilized.

(l) Laboratory glassware, plastic ware, and metal utensils:

(i) Except for disposable plastic ware, items must be resistant to effects of corrosion, high temperature, and vigorous cleaning operations. Metal utensils made of stainless steel are preferred.

(ii) Flasks, beakers, pipets, dilution bottles, culture dishes, culture tubes, and other glassware must be of borosilicate glass and free of chips, cracks, or excessive etching. Volumetric glassware shall be Class A, denoting that it meets federal specifications and need not be calibrated before use.

(iii) Plastic items must be of clear, inert, nontoxic material and must retain accurate calibration marks after repeated autoclaving.

(m) Culture dishes:

(i) Sterile tight or loose-lid plastic culture dishes or loose-lid glass culture dishes must be used.

(ii) For loose-lid culture dishes, relative humidity in the incubator must be at least 90 percent.

(iii) Culture dish containers must be aluminum or stainless steel; or dishes may be wrapped in heavy aluminum foil or char-resistant paper.

(iv) Open packs of disposable sterile culture dishes must be resealed between uses.

(n) Culture tubes and closures:

(i) Culture tubes must be made of borosilicate glass or other corrosion resistant glass and must be of a sufficient size to contain the culture medium, as well as the sample portions employed, without being more than 3/4 full. It is desirable that the fermentation vial extend above the medium.

(ii) Caps must be snug-fitting stainless steel or plastic; loose-fitting aluminum caps or screw caps are also acceptable.

(o) Measuring equipment:

(i) Sterile, glass or plastic pipets must be used for measuring 10 ml or less.

(ii) Pipets must deliver the required volume quickly and accurately within a 2.5 percent tolerance.

(iii) Pipets must not be badly etched; mouthpiece or delivery tips must not be chipped; graduation marks must be legible.

(iv) Open packs of disposable sterile pipets must be resealed between uses.

(v) Pipet containers must be aluminum or stainless steel.

(vi) Graduate cylinders must be used for samples larger than 10 ml; calibrated membrane filter funnel markings are permissible provided accuracy is within a 2.5 percent tolerance.

(4) General laboratory practices.

(a) Sterilization procedures.

(i) The following times and temperatures must be used for autoclaving materials:

Material	Temperature/minimum time
Membrane filters and pads	121°C/10 min.
Carbohydrate-containing media (lauryl tryptose, brilliant green lactose bile broth, etc.)	121°C/12-15 min.
Contaminated materials and discarded tests	121°C/30 min.
Membrane filter assemblies (wrapped), sample collection bottles (empty), individual glassware items	121°C/30 min.

Rinse water volumes of 500 ml to 1,000 ml	121°C/45 min.
Rinse water in excess of 1,000 ml	121°C/time adjusted for volume; check for sterility
Dilution water blank	121°C/30 min.

(ii) Membrane filter assemblies must be sterilized between sample filtration series. A filtration series ends when 30 minutes or longer elapse between sample filtrations.

(iii) Dried glassware must be sterilized at a minimum of 170°C for two hours.

(b) Laboratory pure water (distilled, deionized, or other processed waters).

(i) An analyst must test the quality of the laboratory pure water or have it tested by the department laboratory or by a department-approved laboratory.

(ii) Only water determined as laboratory pure water (see quality control section) can be used for performing bacteriological analyses.

(c) Rinse and dilution water.

(i) Stock buffer solution must be prepared according to "Standard Methods of Examination of Water and Waste Water", 13th Ed., published by the American Public Health Association, using laboratory pure water adjusted to pH 7.2. Stock buffer must be autoclaved or filter-sterilized, labeled, dated, and stored at 1° to 4.4°C. The stored buffer solution must be free of turbidity. A copy of the above manual may be obtained from the Water Quality Bureau.

(ii) Rinse and dilution water must be prepared by adding 1.25 ml of stock buffer solution per liter of laboratory pure water. Final pH must be 7.2 ± 0.1.

(d) Media preparation and storage. The following are minimum requirements for storing and preparing media:

(i) Laboratories must use commercial dehydrated media for routine bacteriological procedures as quality control measures.

(ii) Lauryl tryptose and brilliant green lactose bile broths must be prepared according to the standards in the manual cited in (c)(i) above; lactose broth is not permitted.

(iii) Dehydrated media containers must be kept tightly closed and stored in a cool, dry location. Discolored or caked media cannot be used.

(iv) Laboratory pure water must be used; dissolution of the media must be completed before dispensing to culture tubes or bottles.

(v) The membrane filter broth and agar media must be heated in a boiling water bath until completely dissolved.

(vi) Membrane filter (MF) broths must be stored and refrigerated no longer than 96 hours. MF agar media must be

stored, refrigerated and used within two weeks.

(vii) Most probable number (MPN) media prepared in tubes with loose-fitting caps must be used within one week. If MPN media are refrigerated after sterilization, they must be incubated overnight at 35°C to confirm usability. Tubes showing growth or gas bubbles must be discarded.

(viii) Media in screw cap containers may be held up to three months, provided the media are stored in the dark and evaporation is not excessive (0.5 ml per 10 ml total volume).

(5) Methodology.

(a) Test procedures shall be those described in the 13th edition of "Standard Methods for the Examination of Water and Waste Water", published by the American Public Health Association (copies are available from the Water Quality Bureau). They are:

(i) standard coliform MPN tests (pp.664-668), single step; or

(ii) enrichment standard total coliform membrane filter procedure (pp.679-683).

(b) The membrane filter procedure is preferred because it permits analysis of large sample volumes in reduced analysis time. If used, the membranes shall show good colony development over the entire surface. The golden green metallic sheen colonies must be counted and recorded as the coliform density per 100 ml of water sample.

(c) The following rules for reporting any problem with membrane filter results must be observed:

(i) Confluent growth--growth (with or without discrete sheen colonies) covering the entire filtration area of the membrane. Results are reported as "confluent growth per 100 ml, with (or without) coliforms", and a new sample requested.

(ii) TNTC (too numerous to count): the total number of bacterial colonies on the membrane is too great (usually greater than 200 total colonies), not sufficiently distinct, or both; an accurate count cannot be made. Results are reported as "TNTC per 100 ml, with (or without) coliform", and a new sample requested.

(iii) Confluent growth and TNTC: A new sample must be requested, and the sample volumes filtered must be adjusted to apply the MF procedure; otherwise the MPN procedure must be used.

(iv) Confirmed MPN test on problem supplies: If the laboratory has elected to use the MPN test on water supplies that have a continued history of confluent growth or TNTC with the MF procedure, all presumptive tubes with heavy growth without gas production should be submitted to the confirmed MPN test to check for the suppression of coliforms.

A count is adjusted based upon confirmation and a new sample requested. This procedure should be carried out on one sample from each problem water supply once every three months.

(6) Sample collection, handling, and preservation.

(a) There must be strict adherence to correct sampling procedures, complete identification of the sample, and prompt transfer of the sample to the laboratory as described in "Standard Methods of Examination of Water and Waste Water", 13th edition, Section 450, pp. 657-660, published by the American Public Health Association (copies available from the Water Quality Bureau).

(b) The sample must be representative of the potable water system. The sampling program must include examination of the finished water at selected sites that systematically cover the distribution network.

(c) Minimum sample frequency must be that specified in ARM 16-2.14(10)-S14381, Public Water Supplies.

(d) The collector must be trained in sampling procedures and approved by the department or its delegated representative.

(e) The water tap must be sampled after maintaining a steady flow for two or three minutes to clear the service line. The tap must be free of aerator, strainer, hose attachment, or water purification devices.

(f) The sample volume must be a minimum of 100 ml. The sample bottle must be filled only to the shoulder to provide space for mixing.

(g) The sample report form must be completed immediately after collection with location, date and time of collection, chlorine residual, collector's name, and remarks.

(h) Sample bottles must be of at least 120 ml-capacity, sterile plastic or hard glass, wide-mouthed with stopper or plastic screw cap, and capable of withstanding repeated sterilization. Sodium thiosulfate (100 mg/l) shall be added to all sample bottles during preparation. As an example, 0.1 ml of a 10 percent solution is required in a 4-oz. (120-ml) bottle.

(i) Date and time of sample arrival must be added to the sample report form when sample is received in the laboratory.

(j) Samples delivered by collectors to the laboratory must be analyzed on the day of collection.

(k) Where it is necessary to send water samples by mail, bus, United Parcel Service, courier service, or private shipping, holding/transit time between sampling and analyses must not exceed 30 hours. When possible, samples are refrigerated during transit and during storage in the laboratory.

(l) If the laboratory is required by ARM 16-2.14(10)-S14381 to examine samples after 30 hours and up to 48 hours,

the laboratory must indicate that the data may be invalid because of excessive delay before sample processing. A sample arriving after 48 hours shall be refused without exception and a new sample requested.

(7) Quality control program.

(a) A written description of the current laboratory quality control program must be available for review by the department. Each analyst shall have a copy of the quality control program and a detailed guide of his own portion. Records of analytical quality control tests and quality control checks on media, materials, and equipment must be retained for three years.

(b) Analytical quality control tests for general laboratory practices and methodology. Minimum requirements for analytical quality control tests for general practices and methodology are:

(i) At least five sheen or borderline sheen colonies must be verified from each membrane containing five or more such colonies. Counts must be adjusted based on verification. The verification procedure must be conducted by transferring growth from colonies into lauryl tryptose broth (LTB) tubes and then transferring growth from gas-positive LTB cultures to brilliant green lactose bile (BGLB) tubes. Colonies must not be transferred exclusively to BGLB because of the lower recovery of stressed coliforms in this more selective medium. However, colonies may be transferred to LTB and BGLB simultaneously. Negative LTB tubes must be reincubated a second day and confirmed if gas is produced. It is desirable to verify all sheen and borderline sheen colonies.

(ii) A start and finish MF control test (rinse water, medium, and supplies) must be conducted for each filtration series. If sterile controls indicate contamination, all data on samples affected must be rejected and a request made for immediate resampling of those waters involved in the laboratory error.

(iii) The MPN test must be carried to completion, except for gram staining, on 10 percent of positive confirmed samples. If no positive tubes result from potable water samples, the completed test except for gram staining must be performed quarterly on at least one positive source water.

(iv) Laboratory pure water must be analyzed annually by the test for bactericidal properties for distilled water contained in "Standard Methods", cited in (6)(a) above, at page 646. Only satisfactorily tested water is permissible in preparing media, reagents, rinse, and dilution water. If the tests do not meet the requirements, corrective action must be taken and the water retested.

(v) Laboratory pure water must be analyzed monthly for conductance, pH, chlorine residual, and standard plate count. If tests exceed requirements, corrective action must

be taken and the water retested.

(vi) Laboratory pure water must not be in contact with heavy metals. It must be analyzed initially and annually thereafter for trace metals (especially Pb, Cd, Cr, Cu, Ni, and Zn). If tests do not meet the requirements, corrective action must be taken and the water retested.

(vii) Standard plate count procedure must be performed as described in "Standard Methods", cited in (6)(a) above, on pages 660-662. Plates must be incubated at 35° ± 0.5°C for 48 hours.

(viii) Requirements for laboratory pure water:

pH	5.5-7.5
Conductivity	Greater than 0.2 megohm as resistivity or less than 5.0 micromhos/cm at 25°C
Trace metals:	
a single metal	Not greater than 0.05 mg/l
total metals	Equal to or less than 1.0 mg/l
Test for bactericidal properties of distilled water ["Standard Methods", cited in (6)(a) above, page 646]	0.8 - 3.0
Free chlorine residual	0.0
Standard plate count	Less than 10,000/ml

(ix) Laboratory must analyze one quality control sample per year (when available) for parameter(s) measured.

(x) Laboratory must satisfactorily analyze one unknown performance sample per year for parameter(s) measured.

(xi) Duplicate analyses must be run on known positive samples at a minimum frequency of one per month. The duplicates may be run as a split sample by more than one analyst, with each split being a 50 ml sample.

(xii) Water plant laboratories must examine a minimum of one polluted water source per month in addition to the required number of distribution samples.

(xiii) If there is more than one analyst in a laboratory, at least once per month each analyst shall count the sheen colonies on a membrane from a polluted water source. Colonies on the membrane shall be verified and the analysts' counts compared to the verified count.

(c) Quality control checks of laboratory media, equipment, and supplies. Minimum requirements are:

(i) pH meter must be clean and calibrated each use period with pH 7.0 standard buffer. Buffer aliquot must be used only once. Commercial buffer solutions must be dated on initial use.

(ii) Balances (top loader or pan) must be calibrated annually.

(iii) Glass thermometers or continuous recording devices for incubators must be checked yearly and metal thermometers quarterly against a certified thermometer or one of equivalent accuracy.

(iv) Temperature in air (or water jacketed) incubator/incubator room/water baths/aluminum block incubators must be recorded continuously or recorded daily from in-place thermometer(s) immersed in liquid and placed on shelves in use.

(v) Date, time, and temperature must be recorded continuously or recorded for each sterilization cycle of the autoclave.

(vi) Hot air oven must be equipped with a thermometer calibrated in the range of 170°C or with a temperature recording device. Records must be maintained showing date, time, and temperature of each sterilization cycle. It is desirable to place the thermometer bulb in sand and to avoid overcrowding.

(vii) Membrane filters used must be those recommended by the manufacturer for water analysis. The recommendation must be based on data relating to ink toxicity, recovery, retention, and absence of growth-promoting substances.

(viii) Washing processes must provide clean glassware with no stains or spotting. With initial use of a detergent or washing product and whenever a different washing product is used, the rinsing process must demonstrate that it provides glassware free of toxic material by the inhibitory residue test set out on page 643 of "Standard Methods", cited in (6)(a) above.

(ix) At least one bottle per batch of sterilized sample bottles must be checked by adding approximately 25 ml of sterile LTB broth to each bottle. It must be incubated at 35 $\pm$ 0.5°C for 24 hours and checked for growth.

(x) Service contracts or approved internal protocols must be maintained on balances, autoclave, water still, etc., and the service records entered in a log book.

(xi) Records must be available for inspection on batches of sterilized media showing lot numbers, date, sterilization time-temperature, final pH, and technician's name.

(xii) Positive and negative cultures must be used, and testing must be carried out to determine recovery and performance compared to a previous acceptable lot of medium.

(xiii) Media shall be ordered on a basis of 12-month needs. Bottles shall be dated on receipt and when opened initially. Except for large volume uses, media should be purchased in 1/4-lb. bottles. Bottles of media should be used within six months after opening; however, in no case should opened media be used after one year. Shelf life of

unopened bottles is two years.

(xiv) Lot number of membrane filters and date of receipt shall be recorded.

(xv) Heat sensitive tapes and spore strips or ampoules shall be used during sterilization. Maximum registering thermometer is recommended.

(8) Data reporting.

(a) The laboratory shall complete a sample report form immediately after each sample is taken. The information on the form shall include sample identification number, sample collector's name, time and date of collection, arrival time and date in the laboratory, direct count, MF verified count, MPN completed count, analyst's name, and other relevant special information.

(b) If the membrane filter method shows contamination of the sample, the supplier shall be notified immediately without waiting for MF verification. After MF verification, the adjusted counts shall be reported to the supplier.

(c) A copy of the sample report form of a contaminated sample shall be retained both by the laboratory and the department for three years, at a minimum. If results are entered into a computer storage system, a printout of the data must be returned to the laboratory for verification with bench sheets.

(9) Action when contamination found. When a maximum contaminant level is found to be exceeded, the laboratory shall notify the water supplier within 24 hours of the analysis and request resampling from the same sampling point according to the requirements of ARM 16-2.14(10)-S14381, Public Water Supplies.

3. The board is proposing these rules in order to implement section 75-6-106, MCA, by establishing licensing standards for laboratories desiring to perform analyses of water from public water supplies.

4. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to C.W. Leaphart, Leaphart Law Firm, 1 North Last Chance Gulch, Helena, Montana 59601, no later than February 14, 1980.

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 C.W. Leaphart, 1 North Last Chance Gulch, Helena, Montana 59601, no later than February 14, 1980.

6. If the agency receives requests for a public hearing on the proposed rules 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 two persons based on approximately 25 laboratories which may seek licensure to do public water supply analyses.

7. The authority of the agency to adopt the proposed rules is based on section 75-6-103(2)(e), MCA.

JOHN F. McGREGOR, M.D., Chairman

Certified to the Secretary of State January 8, 1980.

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL of Rule 18-2.10(18)-S10200 regarding custom combine operation, these policies are now incorporated into Rule 18-2.10 (18)-S10210.	))))))	NOTICE OF PROPOSED REPEAL OF RULE 18-2. 10(18)-S10200, CUSTOM COMBINE OPERATION (SWATHERS). NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On February 18, 1980, the Department of Highways proposes to repeal Rule 18-2.10(18)-S10200 regarding custom combine operations.

2. The rule proposed to be repealed is on page 18-159 of the Administrative Rules of Montana.

3. The agency proposes to repeal this rule because the information is being incorporated into amended Rule 18-2.10 (18)-S10210.

4. Interested parties may submit their data, views, or arguments concerning the proposed repeal in writing to Ronald P. Richards, Director, Department of Highways, 2701 Prospect Avenue, Helena, Montana 59601, no later than February 14, 1980.

5. If a person who is directly affected by the proposed repeal of Rule 18-2.10(18)-S10200 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 Ronald P. Richards, Director, Department of Highways, 2701 Prospect, Helena, Montana 59601, no later than February 14, 1980.

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 directly affected has been determined to be 43 persons based on the number of custom combine operators who purchased permits during 1979.

7. The authority of the department to make the proposed rule is based on section 61-10-101, MCA, and the rule implements sections 61-10-102 through 61-10-148, MCA.

IN THE MATTER OF THE AMEND- MENT of Rule 18-2.10(18)-S10210 regarding general reciprocity information.	)	NOTICE OF PROPOSED AMEND- MENT OF RULE 18-2.10(18)- S10210, GENERAL RECIPROCITY INFORMATION. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On February 18, 1980, the Department of Highways proposes to amend Rule 18-2.10(18)-S10210 to make the rule current. It has not been amended since 1975.

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

18-2.10(18)-S10210 GENERAL RECIPROCITY INFORMATION (1) Vehicles Registered in Other States or Jurisdictions.

(a) Passenger Cars. Passenger cars are granted full reciprocity, except full Montana registration is required when owner establishes residence, becomes gainfully employed, or vehicles are used for profit.

(b) Non-Resident Salesmen. Granted full reciprocity on passenger vehicles when carrying samples and soliciting business. Full Montana registration required (Section 61-3-701, MCA) when selling and delivering merchandise at the time of sale.

(c) House Trailers. Granted full reciprocity when towed by car or truck for recreational purposes only.

(d) Students. Same as other passenger cars or personal use vehicles.

(e) Vehicles Used for Recreational Purposes. All non-resident vehicles used for recreational purposes by the owner or operator are to be granted full reciprocity for travel in, into, or through Montana. The only requirement is that they be of legal size and weight or a legal combination. The reciprocity applies to any state of license. As an example: Passenger cars with boat trailer, Passenger cars with house trailers, Trucks with campers and trailers, Trucks only, Busses not chartered or for hire, Trucks with house trailers, etc.

(f) Vehicles Used for Personal Living Quarters. All non-resident vehicles used for personal living quarters shall be granted reciprocity for travel into or through Montana, if the towing vehicle and the mobile home or trailer house are owned by the person using the vehicle living quarters. The above does not apply in any type of commercial movement. The above does not apply to persons gainfully employed in the State of Montana.

(2) Transit Plates - Transit Permits - Transporter Permits - Dealers License - Special Permits in lieu of Registra-

tion - Temporary Registrations. Reciprocity may or may not be granted to these types of registration depending on the existing reciprocity agreement between Montana and the jurisdiction involved. Specific information for each jurisdiction is available by contacting the Gross Vehicle Weight Division, P.O. Box 4639, Helena, Montana 59601, A.C. 406-449-2476, (2701 Prospect Avenue).

~~(4)~~ (3) Small Utility Rental Trailers - Drawn by Passenger Trucks (U-Haul~~, Nationwide Kar Go,~~ and others). The small rental trailers, drawn generally by passenger cars and trucks, are granted reciprocity for both interstate and intrastate use. To be granted reciprocity, they are only required to be currently licensed in some jurisdiction.

~~(6)~~ (4) Vehicles Owned by Governmental Agencies. All vehicles owned and operated into or through the State of Montana by the following are exempt from the payment of G.V.W. fees or temporary trip permits: United States Government, All States of the United States, Any Political Subdivision of any State, Canadian Government, All Provinces of Canada, and All Political Subdivisions of all Provinces of Canada.

(5) Non-Resident Custom Combine Operators. (a) Special Permits are issued to cover registration, gross vehicle weight fees, size and weight, and fuel requirements. Detailed information is available by contacting the Gross Vehicle Division, P.O. Box 4639, Helena, Montana 59601, A.C. 406-449-2476, (2701 Prospect Avenue). Also, see ARM 18-2.10(14)-S10120.

(b) Custom combine trucks and trailers licensed under proration and displaying Montana proration cab card are fully licensed in Montana. No further Montana vehicle license is required, unless prorate G.V.W. Fee weight is exceeded.

~~(7)~~ (6) Fuel, Weight, and Public Service Commission Requirements. The reciprocity granted does not excuse or relieve any owner or operator of any vehicle granted reciprocity from complying with all fuel laws, all Public Service Commission laws, and all the size and weight provisions of Sections 61-10-101 through 61-10-148, MCA.

Existing paragraphs (2), (3), and (5) are being deleted and combined into new paragraph (2). This rule is contained on ARM pages 18-161 through 18-162. A copy of the existing rule can be obtained by contacting the Gross Vehicle Weight Division, Box 4639, Helena, Montana 59601.

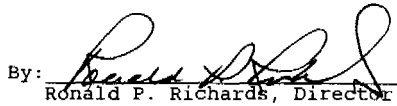
3. This rule is proposed to be amended to make current the information regarding reciprocal agreements signed between Montana and other jurisdictions. The meaning and intent of this rule has not been changed.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Ronald P. Richards, Director, Department of Highways, 2701 Prospect Avenue, Helena, Montana 59601, no later than February 14, 1980.

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 that request along with any written comments he has to Ronald P. Richards, Director, Department of Highways, 2701 Prospect Avenue, Helena, Montana 59601, no later than February 14, 1980.

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 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 12,600 persons based on the number of out of state carriers operating on Montana's highways from January through September 1979.

7. The authority of the department to make the proposed amendment is based on section 61-3-713 and implemented by 61-3-711 through 61-3-719, MCA.

By: 
Ronald P. Richards, Director
Department of Highways

Certified to the Secretary of State, January 8, 1980.

DEPARTMENT OF JUSTICE

NOTICE

THE RULES LISTED IN THE FOLLOWING CHAPTERS OF TITLE 23, DEPARTMENT OF JUSTICE, HAVE BEEN RECODIFIED AND REFILED WITH THE SECRETARY OF STATE IN COMPLIANCE WITH 2-4-322(4), MCA, AND ARE VALID.

CHAPTER 2	PROCEDURAL RULES
CHAPTER 6	MOTOR VEHICLE DIVISION
CHAPTER 6A	HIGHWAY PATROL BUREAU
CHAPTER 6AI	DRIVER EXAMINATION SECTION

Frank Murray

FRANK MURRAY
Secretary of State

1-1/17/80

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

In the matter of the repeal of rule 24-3.18(10)-S1890, Notice of Award, concerning specified injuries.	)	NOTICE OF PROPOSED REPEAL OF RULE 24-3.18(10)-S1890
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On February 18, 1980, the Division of Workers' Compensation proposes to repeal rule 24-3.18(10)-S1890, NOTICE OF AWARD, concerning specified injuries.

2. The rule proposed to be repealed is on page 24-245 of the Administrative Rules of Montana.

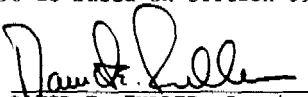
3. The agency proposes to repeal this rule because it is obsolete, no longer has any function, and has not been used by the division for several years.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to the Division of Workers' Compensation, 815 Front Street, Helena, Montana 59601, no later than February 14, 1980.

5. If a person who is directly affected by the proposed repeal of rule 24-3.18(10)-S1890 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 the Division of Workers' Compensation, 815 Front Street, Helena, Montana 59601, no later than February 14, 1980.

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 directly affected has been determined to be 25 persons.

7. The authority of the agency to make the proposed repeal of rule 24-3.18(10)-S1890 is based on section 39-71-307(2) MCA.



DAVID E. FULLER, Commissioner
Department of Labor and Industry

Certified to the Secretary of State 1-7-80

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

In the matter of the repeal of) Rules 26-2.10(10)-S10190) Through S10350 (Subchapter 10)) and Rules 26-2.10(14)-S10360) and S10370 (Subchapter 14) and) the adoption of New Rule I) through XXXI, pertaining to) control of strip and under-) ground mining and reclamation) of strip and underground mined) land, departmental reclamation) of abandoned coal, uranium,) hard rock, and open cut mined) lands through use of federal) lands, conservation of coal,) designation of lands unsuit-) able for coal mining; and) alternate reclamation of coal) and uranium mined lands)	NOTICE OF PROPOSED REPEAL OF PRESENT STRIP AND UNDERGROUND MINE RECLAMATION AND COAL CONSERVATION RULES: ADOPTION OF NEW STRIP AND UNDERGROUND MINE RECLAMATION AND COAL CONSERVATION RULES: ADOPTION OF A METAL MINE RECLAMATION RULE; AND AND ADOPTION OF AN OPEN CUT MINING RULE NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On February 19, 1980, the Department of State Lands and Board of Land Commissioners proposes to repeal the present rules pertaining to coal conservation and the control of underground coal and uranium prospecting and mining and reclamation of land affected by such activities and to adopt new rules pertaining to the same subject matters and to departmental reclamation of abandoned coal, uranium, hard rock, and open cut mined lands through the use of federal funds, designation of lands unsuitable for coal mining and alternate reclamation of coal and uranium prospected and mined lands.

2. The proposed new rules replace the present rules on coal strip and underground mining control and reclamation and coal conservation. Although the new rules are similar to the repealed rules in certain respects, the new format and massive changes require a publication as new rules rather than amended rules. Other rules do not replace or modify any rule currently found in the Administrative Rules of Montana.

3. The rules proposed to be repealed are on pages 26-48.5 through 26-48.81. The proposed rules are identical to

those proposed for adoption on May 24, 1979, and noticed on Mary 24, 1979 on page 452, Issue No. 10 of the Montana Administrative Register. The Board of Land Commissioners on July 16, 1979 adopted the rules in an amended form. The rules are being renoticed in order to comply with the recent amendment of 2-4-305 MCA, which provides that rules must be adopted and published, rather than adopted only, within six months after publication of the notice of intent to adopt. Although the rules were adopted within 6 months, notice of adoption was not published within that period. All written comments received during the comment period on the rules as noticed on May 24, 1979, and all oral comments received at the hearing on June 18, 1979, are hereby deemed submitted on the pursuant to this notice. Resubmission of those comments is therefore not necessary. The department and board do not contemplate changes, other than the correction of typographical errors, to the rules as amended to incorporate the comments and as adopted on July 17, 1979, in response to the comments received during the original May 24 - June 22 comment period.

4. A copy of the proposed rules, summary of comments and responses, and rules as adopted on July 17, 1979 may be obtained by contacting John F. North, Department of State Lands, Capitol Station, Helena, Montana, 59601 (449-2074). The proposed rules provide in summary as follows:

Rule I Definitions. This proposed rule defines many of the terms used in Rules II through XXXII.

Rule II Strip Mine Application Requirements. This proposed rule sets forth the required information, maps, and diagrams for a strip mine permit application.

Rule III Application Review Process. This proposed rule sets forth the time frames, public notice and hearing requirements, and criteria for review and issuance or denial of a permit application.

Rule IV Mining, Backfilling and Grading. This rule sets forth the performance standards for mining, backfilling, and grading. It includes, signs and markers, disposal of spoil, burial of toxic material, highwall elimination, contemporaneous reclamation, and approximate original contours requirements.

Rule V Roads and Railroad Loops. This rule sets forth performance standards including hydrologic standards, for

construction and reclamation of roads and railroad loops. It includes provisions for location, drainage, surfacing, maintenance, and restoration.

Rule VI Use of Explosives. This rule sets forth the performance standards for use of explosives in mining operations and procedures for notice to the public of blasting schedules, and monitoring requirements.

Rule VII Hydrology. This rule sets the performance standards for the conduct of mining and reclamation activities relative to protection of hydrologic systems, both surface and subsurface. It includes provisions for diversions, sediment control, discharge structures, and acids and toxic forming spoil handling, monitoring, and rehabilitation of structures.

Rule VIII Topsoil. This rule sets performance standards for the removal, stockpiling, redistribution, and conditioning of topsoil.

Rule IX Revegetation. This rule sets forth performance standards for the revegetation of disturbed areas. It includes standards for measuring the success of revegetation.

Rule X Protection of Fish and Wildlife and Related Environmental Values. This rule sets forth performance standards for the conduct of mining and reclamation operations to minimize disturbance to fish and wildlife and to provide for enhancement of habitat, where praticable.

Rule XI Air Resources Protection. This rule sets forth performance standards for the control of fugitive dust from mining and reclamation operations and monitoring.

Rule XII Post Mining Land Use. This rule requires reclamation to livestock and wildlife grazing habitat unless alternate reclamation is proposed and approved.

Rule XIII Coal Conservation. This rule sets forth performance standards for the conservation of coal in strip or underground mining.

Rule XIV Alluvial Valley Floors. This rule sets forth performance standards for the conduct of strip or underground mining operations on alluvial valley floors and requires monitoring to ensure compliance.

Rule XV Prime Farmland. This rule sets forth performance standards for the removal, stockpiling, and replacement of topsoil in areas defined as prime farmland.

Rule XVI Alternate Reclamation. This rule provides standards and procedures for approval or denial of an alternate reclamation plan, including alternate revegetation.

Rule XVII Performance Standards for Special Operations. This rule provides special performance standards for auger mining and coal processing plants and support facilities near the mine but not within the mine area proper.

Rule XVIII Underground Mining. This rule provides all application requirements and performance standards for underground mining, including subsidence control plans and standards.

Rule XIX Prospecting. This rule sets forth application requirements and performance standards for the conduct of prospecting operations.

Rule XX Bonding and Liability Insurance. This rule sets forth standards for the amount, form, conditions, terms, and release of bonds. Bond modification and release procedures and liability insurance requirements are also provided.

Rule XXI Annual Report. This rule sets forth the requirement for information to be contained in annual reports by operators and prospectors.

Rule XXII Areas Upon Which Coal Mining is Prohibited. This rule prohibits mining, subject to valid existing rights, (1) that would adversely affect any publicty owned park or places included in the National Register of Historic Sites, or (2) on lands within the National System of Trails. The rule also provides standards and procedures for implementation of 82-4-227(7), as amended by Chapter 550, Laws of Montana 1979; prohibitions on coal mining and the prohibitions described above.

Rule XXIII Designation of Lands Unsuitable for Coal Mining. This rule sets forth the procedures for petition and action on petitions to have lands declared unsuitable or to have a designation terminated, including notice and hearing provisions. Also included are definitions of key terms and a requirement that the department develop a data base and inventory system for departmental and public use in the designation process.

Rule XXIV Inspection and Enforcement. This rule establishes procedures for inspections of operators and prospectors, including reports, a procedure for inspections based on citizen complaints (including citizen accompaniment on the inspection) or notification by the Office of Surface Mining, and informal public hearings on notices of violation and cessation orders.

Rule XXV Suspension and Revocation. This rule establishes standards for determining whether a pattern of violations exists and procedures for suspension and revocation of permits, including show cause orders and petitions.

Rule XXVI Small Miner Assistance Program. This rule provides for a procedure whereby the department may select and pay a qualified laboratory to collect hydrologic data for small miners to the extent federal funds are available. The rule sets out criteria for eligibility and data requirements and procedures for application and granting of assistance.

Rule XXVII Abandoned Mine Land Reclamation Program. This rule establishes an Abandoned Mine Land Reclamation Fund and procedures whereby the department may expend monies from that fund to reclaim lands mined for coal and abandoned in an unreclaimed condition. The rule establishes criteria for determining which lands will be reclaimed and for acquisition, management, and disposition of lands. Also included is a requirement for filing of a lien against private lands for work which increases the value of that land.

Rule XXVIII Restrictions on Financial Interests. This rule defines the financial interest which are prescribed to department employees and establishes procedures for filing of financial interest statements to ensure compliance.

Rule XXIX Abandoned Mine Land Reclamation Program. This rule is substantially similar to Rule XXVII except that it applies to metal (hard rock) mined lands and provides that, with certain exceptions, unreclaimed coal mined lands must be reclaimed before metal mined lands can be reclaimed with abandoned mine land funds.

Rule XXX Abandoned Mine Land Reclamation Program. This rule is substantially similar to Rule XXVII except that it applies to open cut mined lands and provides that, with certain exceptions, unreclaimed coal mined lands must be

reclaimed before open cut coal mined lands may be reclaimed with abandoned mine lands funds.

Rule XXXI Applicability. This rule provides an effective date for the repeal of the old rules and for adoption of the new rules and provides that certain rules or portions of rules are applicable to coal mining only.

5. The repeal and adoption of rules is being proposed to bring Montana's strip and underground mine reclamation program into compliance with the Surface Mine Control and Reclamation Act of 1977 (Public Law 95-87) and the permanent rules adopted thereunder (30 CFR, Chapter VII, Subchapters F, G, J, K, L, and R) and thereby obtain Office of Surface Mining approval of Montana's program pursuant to Public Law 95-87, section 503. The repeal and adoption are also being proposed to implement Chapters 172 (HB 406), 196(HB 739), and 550(SB 515) Laws of Montana, 1979, and to implement and clarify other provisions of Part 2, Chapter 3, Title 82 MCA.

6. Interested parties may submit their data, views, or arguments concerning the proposed repeal and adoption in writing on or before February 15, 1980, to Leo Berry, Jr., Commissioner, Department of State Lands, Capitol Station, Helena, Montana, 59601.

7. If requests for a public hearing are received from 10% or more, or 25, whichever is less, of those persons directly affected by the proposed rules, by a governmental subdivision or agency, an association having not less than 25 members who will be directly affected, or the Montana Legislature's Administrative Code Committee, a hearing will be held. The agency has determined that 10% of those persons directly affected is in excess of 25. Requests for a hearing must be submitted in writing, to Leo Berry, Jr., Commissioner, Department of State Lands, Capitol Station, Helena, Montana, 59601, on or before February 15, 1980. If a hearing is held, notice thereof will be published in the Montana Administrative Register.

8. The authority of the Department of State Lands and Board of Land Commissioners to adopt the proposed rules is sections 82-4-204 and 205 for New Rules I through XXVIII and New Rule XXXI, section 82-4-321 for New Rules XXIX and XXXI, and section 82-4-422 for New Rules XXX and XXXI.

The new rules implement the following codes sections:

Rule I	82-4-204, 205
Rule II	82-4-222
Rule III	82-4-227
Rule IV	82-4-231, 232
Rule V	82-4-231, 232
Rule VI	82-4-231(3)(a)
Rule VII	82-4-227, 231, 232
Rule VIII	82-4-231, 232(4)
Rule IX	82-4-233, 235
Rule X	82-4-231(3)(j)
Rule XI	82-4-231(3)(m) and (4)
Rule XII	82-4-233
Rule XIII	82-4-231(3)(l)
Rule XIV	82-4-227(3)(b) and (4) 82-4-231(3)(k)(vi)
Rule XV	82-4-227(5), 82-4-232(3)
Rule XVI	82-4-232(7) and (8)
Rule XVII	82-4-227, 231, 232
Rule XVIII	82-4-222, 227, 231, 232, 233
Rule XIX	82-4-226
Rule XX	82-4-222(5), 223, 225, 232(6), 235
Rule XXI	82-4-237
Rule XXII	82-4-227
Rule XXIII	82-4-227(9), 228
Rule XXIV	82-4-205(5)
Rule XXV	82-4-251
Rule XXVI	82-4-222(1)(k)
Rule XXVII	82-4-239
Rule XXVIII	82-4-254(8)
Rule XXIX	82-4-341
Rule XXX	84-4-424, 426
Rule XXXI	Section 19, Laws of 1979

Leo Berry, Jr., Commissioner
Department of State Lands

Certified to the Secretary of State January 7, 1980.

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

IN THE MATTER of the Proposed Adoption of New Rules for Termination of Gas and Electric Service.	NOTICE OF PUBLIC HEARING ON NEW RULES REGARDING THE TERMINATION OF GAS AND ELECTRIC SERVICE

TO: All Interested Persons

1. On February 13, 1980, in the Senate Chambers, State Capitol Building, Helena, Montana at 2:00 p.m., a public hearing will be held to consider the proposed adoption of new rules for termination of gas and electric service.

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

3. The proposed rules provide as follows:

Rule I. DEFINITIONS (1) For purposes of this rule:

(a) "Customer" means any purchaser of gas or electric service supplied by a utility for residential purposes.

(b) "Delinquent Account" means an account for residential service which remains unpaid for at least 45 days after receipt of a bill.

(c) "Landlord Customer" means one or more individuals or an organization listed on a gas or electric utility's records as the party responsible for payment of the gas or electric service provided to one or more residential units of a building, of which building said person is not an occupant or is not the sole occupant.

(d) "Residential Building" means a building containing one or more dwelling units occupied by one or more tenants, but excluding nursing homes, hotels and motels.

(e) "Tenant" means any person or group of persons whose dwelling unit in a residential building is provided natural gas or electricity, pursuant to a rental agreement, but who is not the customer of the utility which supplies said gas or electricity.

(f) "Termination of Service" means a cessation of service caused by the utility and not voluntarily requested by a customer.

Rule II. GROUNDS FOR TERMINATION OF SERVICE (1) Subject to the requirements of these rules, a utility may terminate service to a customer for any of the following reasons:

(a) Nonpayment of a delinquent account amounting to $50 or more;

(b) Misrepresentation of identity for the purpose of obtaining utility service;

(c) Unauthorized interference, diversion or use of the utility's service situated or delivered on or about the customers premises;

(d) Failure to comply with the terms and conditions of a deferred payment agreement made in accordance with these rules;

(e) Refusal to grant a duly authorized representative of a utility access to equipment upon the premises of the customer at reasonable times for the purpose of inspection, maintenance

or replacement;

(f) Violation of other rules of the Commission or utility which adversely affects the safety of the customers or other persons, or the integrity of the utility's delivery system;

(g) Failure to pay proper charges and installation costs.

Rule III. PROHIBITED GROUNDS FOR TERMINATION OF SERVICE (1) Neither of the following shall constitute grounds for a utility to discontinue service:

(a) The failure of any person, other than the customer against whom discontinuance is sought, to pay any charges due to the utility;

(b) The failure of a customer to pay for merchandise, appliances or services not approved by the Public Service Commission as an integral part of the utility service provided by a utility.

Rule IV. STATEMENT OF TERMINATION POLICY (1) A current general statement of the utility's termination policy shall be provided to all existing customers and to all new customers when they initiate service. This statement must be written in clear and understandable language and must include the following information:

(a) The general starting and ending dates of the payment period;

(b) The time allowed to pay outstanding bills;

(c) The time allowed to make arrangements for payments and the nature of available arrangements;

(d) The name and telephone number of the utility employee to which inquiries and complaints may be directed;

(e) The time allowed to initiate a complaint;

(f) Instructions for designating a third party to receive a copy of a termination notice;

(g) Instructions for designating elderly or handicapped status or a medical emergency;

(h) Instructions for designating the presence of special appliances essential for maintenance of health or safety.

Rule V. NOTICE PRIOR TO TERMINATION (1) A utility may not terminate service unless written notice is sent by first class mail. If no response is received, the utility must send a second notice by certified mail (return receipt requested). The second notice must be received by the customer or personally served at least ten days prior to the date of the proposed termination. Prior to termination of service the utility must make a diligent attempt to contact the customer, either in person or by telephone, to apprise him of the proposed action. Actual termination may not take place until a minimum of 24 hours after the utility's diligent attempt to notify has been completed.

(2) The ten days' written notice requirement shall not apply in those cases where a customer fails to satisfy a payment agreement as described in these rules. In such cases, the utility must make a diligent attempt to contact the customer, either in person or by telephone to apprise him of the proposed

action. Actual termination may not take place until a minimum of 24 hours after the attempt to notify is completed.

Rule VI. CONTENTS OF WRITTEN NOTICE (1) The written notices required by these rules must contain:

(a) The utility's statement of termination policy;

(b) An identification of the customer and service account affected by the proposed termination;

(c) A statement of reasons for termination;

(d) The date of proposed termination;

(e) The amount of the reconnection fee, if any;

(f) A notice of rights and remedies, including procedures to dispute the termination notice, provisions relating to elderly and handicapped customers and those suffering a medical emergency, provisions for consumers who are unable to pay their bills and steps necessary to make a claim of inability to pay, alternative payment arrangements and sources of financial assistance.

(g) Dates of meter readings for the period of unpaid service;

(h) Designation of the bill in question as actual or estimated;

(i) Amount owed and time period over which amount was incurred.

Rule VII. GROUNDS FOR TERMINATION OF SERVICE WITHOUT WRITTEN NOTICE (1) A utility may terminate service without prior notice only:

(a) If a condition immediately dangerous or hazardous to life, physicial safety or property exists;

(b) Upon order by any court, the Commission or any other duly authorized public authority;

(c) If such service is obtained fraudulently or without authorization of the utility.

Rule VIII. CUSTOMER'S RIGHT TO DISPUTE A TERMINATION NOTICE (1) Utilities must provide a reasonable procedure for customers to dispute the termination of service. If the utility decides such a dispute against the customer, it must do so in writing and must advise the customer that he or she may appeal the decision to the Public Service Commission. If the Commission is not able to resolve the complaint informally, formal complaint proceedings under Section 38-2.2(26)-P2220, A.R.M., may be instituted by the customer.

(2) In its investigation of the proposed termination or during any hearing regarding the proposed termination, the Commission may make inquiry of the parties as to the following matters, among others:

(a) The extent to which the customer has control over their source of money for payments, including such matters as the lateness of public assistance checks;

(b) Weather conditions;

(c) The existence of illness of residents in the affected residences;

(d) The ages of the persons residing in the affected

units;

(e) The existence of, or potential for, termination of service by other companies.

(3) The Commission may consider and give due weight to the above matters in any decision rendered on the appeal.

Rule IX. TERMINATION NOTICE FOR NONPAYMENT-WHEN PROHIBITED (1) A notice of termination of service may not be issued for nonpayment of a delinquent account if the entire amount is disputed by the customer. A utility may, however, issue a notice of termination of service with respect to that portion of any delinquent account which is not disputed by the customer.

Rule X. TERMINATION OF SERVICE DURING WINTER MONTHS (1) During the period of November 1st to April 1st, no termination of residential service may take place if the customer establishes that he is unable to pay, or able to pay only in installments, that he is at least 65 years old or that he is handicapped.

(2) No termination of service may take place during the period of November 1st to April 1st except with specific prior approval of the Commission.

Rule XI. MEDICAL EMERGENCIES (1) No utility may terminate service to a residence where a physician or local board of health certifies to the utility that the absence of service will aggravate an existing medical emergency of any permanent resident. A certification by a physician or the local board of health of serious illness is sufficient if initially made by telephone. If certification is made by telephone, the utility must inform the customer, and the certifying physician or local board of health that a written certificate setting forth the required information must be forwarded to the utility within seven days. The certificate must provide the name and address of the person with a medical emergency that would be aggravated by a termination of service and the office address and telephone number of the certifying physician or local board of health. All written certification must be signed by a physician or by a person with knowledge of the facts at the local board of health. A medical emergency certificate expires in 30 days, but may be renewed for one additional 30 day period.

(2) To avoid the burden of substantial arrearage at the end of the medical emergency, the utility and the customer, or a representative of the customer, shall negotiate an equitable payment plan that is reasonable and consistent with the customer's ability to pay. If the parties cannot reach a satisfactory agreement, either party may seek such an agreement through the Commission.

Rule XII. TIME OF TERMINATION (1) Service shall not be discontinued on a day, or a day immediately preceding a day, when the services of the utility are not available to the general public for the purpose of reconnecting terminated service. Service may be terminated only between the hours of

8:00 a.m. and 4:00 p.m.

Rule XIII. METHOD OF TERMINATION (1) Upon arriving at a residence where service is to be discontinued for nonpayment, the utility's representative (employee) shall attempt to inform the occupant of the affected residence that service is to be discontinued. The employee shall present the occupant with a statement of charges due and shall request verification that the delinquent charges have not been paid or are not currently in dispute. Upon the presentation of evidence which reasonably indicates that the charge has been paid or is currently in dispute, service shall not be discontinued.

(2) The employee shall be authorized to accept payment. If payment in full of all delinquent charges is tendered, service shall not be terminated.

(3) Payment may be tendered in any reasonable manner including personal check. Payment by personal check is not reasonable if the customer has paid the utility with checks returned for insufficient funds twice or more within the previous two years.

(4) If prior telephone or personal contact has not been made and the customer or other responsible person is not in or upon the premises, the employee shall leave notice in a place conspicuous to the customer that service will be terminated on the next business day unless the delinquent charges have been paid. If the customer or other responsible person has been contacted by telephone, service may be discontinued immediately.

(5) When service is discontinued, the employee shall leave notice upon the premises in a place conspicuous to the customer that service has been discontinued and giving the address and telephone number of the utility where the customer may arrange to have service restored. The utility shall have personnel available after the time of termination authorized to reconnect service if the conditions cited as grounds for termination are corrected to the utility's satisfaction and upon payment of any reconnection charge specified in the utility's filed tariffs.

Rule XIV. THIRD-PARTY NOTIFICATION (1) If a customer desires, the utility shall provide a third person designated by such customer notification of all past due bills, notices of discontinuance of service, and notices of right to appeal to the Commission. The third party so notified will not be liable for the account of the customer, unless he or she has agreed to be a guarantor for the customer.

(2) Each utility shall promptly, and in no event later than 90 days after the effective date of these rules, devise procedures reasonably designed to provide a voluntary system of third party notification for all customers. Such procedures shall be submitted by each company in writing to the Commission. The Commission may require, by a written notification, such modifications of a utility's procedures as it considers reasonably necessary to carry out the purposes of this rule.

Rule XV. PAYMENT ARRANGEMENTS (1) When a customer cannot pay a bill in full, the utility may continue to serve the customer if the customer and the utility can agree on a reasonable portion of the outstanding bill to be paid immediately, and the manner in which the balance of the outstanding bill shall be paid.

(2) In deciding on the reasonableness of a particular agreement, the utility shall take into account the customer's ability to pay, the size of the unpaid balance, the customer's payment history, and the amount of time and reasons why the debt is outstanding.

(3) If a customer fails to make the payment agreed upon by the date that it is due, the utility may, but is not obligated to, enter into a second such agreement.

(4) No such agreement or settlement shall be binding upon a customer if it requires the customer to forego any right provided for in these rules.

Rule XVI. IDENTIFICATION OF LANDLORD CUSTOMERS

(1) Each utility shall promptly, and in no event later than six months after the effective date of these Regulations, devise procedures reasonably designed to identify, before discontinuance of service for nonpayment, landlord customers paying for service to a residential building. Such procedures shall be submitted by each company in writing to the Public Service Commission. The Commission may require, by written notification, such modifications of a utility's procedures as it considers reasonably necessary to carry out the purposes of this rule.

Rule XVII. NOTICE TO LANDLORD CUSTOMERS (1) Prior to the discontinuance of service to any landlord customer for nonpayment, the utility shall give the landlord customer prior written notice of discontinuance. Such notice shall contain the following information:

(a) The amount owed the company by the landlord customer for each affected account;

(b) The date on or after which service will be terminated, such date not to be less than 30 days after the date on which notice is first given to the landlord customer;

(c) The date on or after which the utility will notify tenants of the proposed termination;

(d) A statement that the landlord customer may avoid a termination of services by paying the company the full amount due for the accounts in question prior to the intended date of termination or by paying a portion of the amount due and making an equitable arrangement with the utility to pay the balance;

(e) The right of landlord customer to dispute the amount owing.

Rule XVIII. NOTICE TO TENANTS (1) The utility shall give written notice of the proposed termination for nonpayment to each residential unit reasonably likely to be occupied by an affected tenant. Such notice shall not be rendered earlier than five business days following initial notification to the

landlord customer. However, if the landlord customer disputes the amount owing, such notice shall not be rendered until the dispute has been resolved. In no event shall such notice be served upon the tenants less than 15 days prior to the termination of service to the landlord customer on account of nonpayment. Upon affidavit, the Commission may, for good cause shown by the utility, reduce the minimum time between notification of the landlord customer and notification of the tenants.

(2) The notice may be mailed or otherwise delivered to the address of each affected tenant, and shall contain the following information:

(a) The date on which the notice is rendered;

(b) The date on or after which service will be terminated;

(c) The amount presently owing;

(d) The rights of a tenant:

(i) to deduct the amount of any direct payment to the utility from any rent payments then or thereafter due as provided for by Montana law;

(ii) to be protected against any retaliation by the landlord for exercising such rights as provided for by Montana law.

(e) A telephone number at the utility which a tenant may call for an explanation of his or her rights and remedies.

Rule XIX. RIGHTS OF TENANTS TO CONTINUE SERVICE (1) At any time before or after service is terminated on account of nonpayment by the landlord customer, tenants may apply to the utility to have service continued or resumed. The utility shall not terminate service or shall resume service previously terminated if the tenants agree to become customers of the utility.

(2) Thereafter, the utility shall notify each tenant of the total amount of the bill for each billing period. If the tenants fail to make payment of any bill, the utility may commence termination procedures; provided that no such termination may occur until 20 days after each tenant has received written notice of the proposed termination. Such notice shall contain:

(a) The date on or after which service will be discontinued;

(b) The amount due, which shall include the arrearage on any earlier projected bill due from tenants; and

(c) A telephone number at the utility which a tenant may call for an explanation of his rights.

(3) Nothwithstanding anything contained elsewhere in these Rules, prior to any termination for nonpayment which would affect tenants, the utility shall notify the Commission by telephone of the proposed termination. Upon notice and investigation of such proposed termination, or during any hearing pursuant to the complaint procedures provided for in Section 38-2.2(26)-P2220 et seq., A.R.M., the Commission may make inquiry of the parties as to the following matters, among others:

(a) The amount the tenants have paid to the utility in

relation to the amount equal to one month's projected bill;

(b) The number of vacant units in the building;

(c) The extent to which the tenants have control over their source of money for rent payments, including such matters as the lateness of public assistance checks, direct rent payments by the Welfare Department to the tenants' landlord, or participation by tenants in a leased housing or rental assistance program;

(d) Whether the tenants are engaged in rent withholding against their landlord;

(e) The amount of payments recently received by the utility from the landlord and the size of the past due bill of the landlord;

(f) Whether the utility has pursued collection remedies, other than threatened termination of service, against the landlord;

(g) Weather conditions;

(h) The existence of illness of tenants in the affected units;

(i) The ages of the persons residing in the affected units;

(j) The availability of other housing to the tenants; and

(k) The existence of, or potential for, termination of service by other companies.

(4) The Commission may consider and give due weight to the above matters in any decision rendered on the complaint.

Rule XX. EXEMPTIONS (1) If hardships result from the application of any of these termination rules, or if unusual difficulty is involved in immediately complying with any of these rules, application may be made by any utility to the commission for permanent or temporary exemption from its provision, but such application shall be supported by full and complete justification for such action.

4. Rationale. The Commission is proposing these rules to implement the requirements of the Federal Public Utilities Regulatory Policies Act, to provide utilities and their customers objective rules governing termination of gas and electric service, and to protect the health and welfare of utility customers under circumstances when termination of utility service would create a substantial hardship. The Commission believes such rules must replace its informal agreements with utilities in view of the fact that inflation and rapidly rising energy costs have placed substantial burdens on Montana's utility customers.

5. Interested parties may submit their data, views, or arguments concerning the proposed adoption at the hearing or in writing to Eileen E. Shore, 1227 11th Avenue, Helena, Montana 59601, no later than February 13, 1979.

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

7. Authority for the Commission to make these rules is based on Section 2-4-303 and 69-3-103, MCA. IMP, Section 69-3-102, MCA.

WILLIAM J. OPITZ
Executive Director

CERTIFIED TO THE SECRETARY OF STATE JANUARY 8, 1980.

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

IN THE MATTER of the Proposed Amendment of ARM 40-3.54(14)-S54050 subsection (8) concerning acupuncture records; and the repeal of 40-3.54(6)-S5446 concerning declaration of intent and 40-3.54(14)-S54060 concerning temporary acupuncture certificates.	NOTICE OF PROPOSED AMENDMENT of ARM 40-3.54(14)-S54050 ACUPUNCTURE; and REPEAL OF 40-3.54(6)-S5446 DECLARATION OF INTENT and 40-3.54(14)-S54060 TEMPORARY ACUPUNCTURE CERTIFICATE NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On February 16, 1980 the Montana State Board of Medical Examiners proposes to amend subsection (8) of ARM 40-3.54(14)-S54050 concerning acupuncture records and repeal 40-3.54(6)-S5446 concerning declaration of intent and 40-3.54(14)-S54060 concerning temporary acupuncture certificates.

2. The proposed amendment of 40-3.54(14)-S54050 deletes subsection (8) in its entirety. The proposed deletion reads as follows: (deleted matter interlined)

" 40-3.54(14)-S54050 ACUPUNCTURE (1).....

~~(8)--Records---inspection:~~

~~(a)--It-shall-be-mandatory-that-each-licensee-keep accurate-records-of-each-patient-treated;--Such-records shall-include-the-name-of-the-patient;-the-name-of-the prescribing-physician-and-his-prescription;-the-nature of-the-treatment-given-and-any-other-relevant-data-deemed important-by-the-licensee;--All-records-shall-be-kept on-file-for-a-minimum-of-five-(5)-years-and-shall-be-open to-inspection-by-the-Board-or-by-its-duly-authorized representative-at-any-time;~~"

3. The board is proposing the deletion to comply with Senate Joint Resolution Number 8, 1977 Session Laws, which recommended the deletion be made. The authority of the board to make the proposed amendment is based on section 37-13-201 (1) MCA and the rule implements sections 37-13-201(2), 302, 303, 304, 305 MCA.

4. Rule 40-3.54(6)-S5446 declaration of intent is proposed for repeal in its entirety and is located at page 40-227.1 Administrative Rules of Montana and reads as follows:

~~"40-3.54(6)-S5446--DECLARATION-OF-INTENT--(1)-An applicant-for-licensure-who-is-a-Canadian-citizen shall-be-eligible-for-a-temporary-certificate-conditioned-on-his-filing-a-properly-executed-Declaration-to-become-a-U.S.-citizen-within-30-days-of-the date-he-is-eligible-to-file-such-Declaration-as-provided-by-the-United-States-statutes,-rules-and/or-regulations-governing-immigration;~~"

5. The portion of the statute which this rule implemented was repealed by the legislature, Chapter 323, Laws of 1979.

The board is therefore proposing to repeal the rule, which was not recodified with the remaining rules of the board. The authority of the board to make the proposed repeal is based on section 37-3-203 (1)(a) MCA. The section which it implemented has been repealed.

6. The proposed repeal of 40-3.54(14)-S54060 repeals the rule in its entirety. The rule is located at page 40-230.2 Administrative Rules of Montana and reads as follows: (deleted matter interlined)

~~"40-3.54(14)-S54060 TEMPORARY ACUPUNCTURE CERTIFICATE (1) An applicant who has fulfilled all requirements for licensure who is not a citizen of the United States and who has filed a Declaration of Intent (Form N-315) to become a United States citizen shall be issued a temporary certificate to practice acupuncture which is valid for one (1) year and shall not be renewed more than five (5) times."~~

7. The board is proposing the repeal because it does not have the statutory authority to adopt this rule.
The authority of the board to make the proposed repeal is based on section 37-13-201 (1) MCA. This rule was also not recodified.

8. Interested parties may submit their data, views or arguments concerning the proposed amendment and repeals in writing to the Montana State Board of Medical Examiners, Lalonde Building, Helena, MT 59601 no later than February 14, 1980.

9. If a person who is directly affected by the proposed amendment and repeals 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 the Montana State Board of Medical Examiners, Lalonde Building, Helena, Montana 59601 no later than February 14, 1980.

10. If the board receives requests for a public hearing on the proposed amendment and repeals from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment and repeals; 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 1 based on the 10 applicants per year.

11. The authority and implementing sections are stated after each proposed amendment and repeal.

MONTANA STATE BOARD OF MEDICAL EXAMINERS
THOMAS MALEE, M.D., PRESIDENT

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

Certified to the Secretary of State, January 8, 1980.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF NURSING HOME ADMINISTRATORS

FOR INFORMATION PURPOSES ONLY

During the recodification process for the Board of Nursing Home Administrators, it was discovered that when replacement pages were typed in February of 1976, an error was made placing the number and catchphrase of rule 40-3.66(6)-S6690 AFFILIATION WITH NATIONAL ASSOCIATIONS on what was rule 40-3.66(6)-S66000 MAINTAIN FINANCIAL AND OTHER RECORDS, which catchphrase was dropped along with the rule number. The wording of 40-3.66(6)-S6690 was also omitted and the wording of 40-3.66(6)-S66000 was placed under 40-3.66(6)-S6690 with that rule's catchphrase.

Please be advised that the wording of 40-3.66(6)-S6690 as it was originally and the catchphrase of 40-3.66(6)-S66000 are as follows:

"40-3.66(6)-S6690 AFFILIATION WITH NATIONAL ASSOCIATIONS
(1) The board may cooperate with other organizations interested in improving the profession. (History: Sec. 37-9-201 MCA; IMP, Sec. 37-9-201 MCA; Eff. 12/21/72.)

40-3.66(6)-S66000 MAINTAIN FINANCIAL AND OTHER RECORDS
(1) Public Information: Unless otherwise provided by ..... remains as printed.....

BOARD OF NURSING HOME
ADMINISTRATORS
MARVIN BULGATZ, PhD, CHAIRMAN

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

Certified to the Secretary of State, January 8, 1980.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF OSTEOPATHIC PHYSICIANS

IN THE MATTER of the Proposed) Amendment of ARM 40-3.74(6)-) S7460 concerning applications)	NOTICE OF PROPOSED AMENDMENT OF ARM 40-3.74(6)-S7460 APPLICATIONS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On February 16, 1980, the Board of Osteopathic Physicians proposes to amend ARM 40-3.74(6)-S7460 concerning applications.

2. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined)

"40-3.74(6)-S7460 APPLICATIONS (1) The application shall be accompanied by a copy of the diploma, grade sheet, ~~valid renewal license issued by another state~~ evidence of passing the National Osteopathic Board examination and a recent photo of applicant."

3. The amendment is proposed to remove material from this section which is relative to reciprocal licensing and covered in the reciprocal rule. The board feels that the passing of the National Board exam is the current criteria used by most states in judging competency and the current licensing procedure is departing from state by state examinations.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Osteopathic Physicians, Lalonde Building, Helena, Montana 59601 no later than February 14, 1980.

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 the Board of Osteopathic Physicians, Lalonde Building, Helena, Montana 59601 no later than February 14, 1980.

6. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons 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 1 based on the small number of applicants per year.

7. The authority of the board to make the proposed amendment is based on section 37-1-103(1)MCA and implements section 37-5-301 MCA.

BOARD OF OSTEOPATHIC PHYSICIANS
LESTER F. HOWARD, D.O., PRESIDENT

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

Certified to the Secretary of State, January 8, 1980.

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

IN THE MATTER of the Proposed Adoption of a new rule defining the practice of the profession of a sanitarian and amendments of ARM 40-3.100(6)-S10070 concerning applications; 40-3.100(6)-S10080 concerning registration and 40-3.100(6)-S10090 concerning suspension and revocation.	NOTICE OF PROPOSED ADOPTION OF ARM 40-3.100(6)-S10065 PRACTICE THE PROFESSION OF A SANITARIAN; and PROPOSED AMENDMENTS OF ARM 40-3.100(6)-S10070 APPLICATIONS; 40-3.100(6)-S10080 CERTIFICATE OF REGISTRATION and ARM 40-3.100(6)-S10090 SUSPENSION AND REVOCATION

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On February 16, 1980, the Board of Sanitarians proposes to adopt a new rule 40-3.100(6)-S10065 defining practicing the profession of a sanitarian and proposes to amend rules 40-3.100(6)-S10070 concerning applications; 40-3.100(6)-S10080 concerning applications; and 40-3.100(6)-S10090 concerning suspension and revocation.

2. The proposed new rule 40-3.100(6)-S10065 will read as follows: (New matter underlined)

"40-3.100(6)-S10065 PRACTICE THE PROFESSION OF SANITARIAN (1) The field of environmental sanitation to which section 37-40-101(5) MCA refers involves the prevention and control of public health hazards which may be associated with food items, private and semi-private potable water supplies, public swimming pools, housing and public accomodations, institutions (such as schools, day-care centers, jails), private and semi-private sewage disposal, garbage storage and disposal, and filth. Any person whose employment responsibilities include planning, inspectional, educational or enforcement duties in one or more of the above areas, must be registered in accordance with Chapter 40 of Montana law unless exempt by the law or unless the person's work is essentially confined to activities which are considered to be a normal function of a recognized profession. (Examples: microbiologists, chemists, meteorologists, etc.) Sanitarians, in order to prevent and control public health hazards, may be required to be involved in such environmental health areas as air quality control, consumer safety, solid waste disposal, vector and pest control, and accident prevention."

3. The board is proposing the new rule to clarify and further define practicing the profession of a sanitarian under section 37-40-101 (5) MCA. The proposed rule implements the same section.

4. The proposed amendment to 40-3.100(6)-S10070 adds a new subsection (1) and renumbers the current (1) and (2) and

will read as follows: (new matter underlined, deleted matter interlined)

"40-3.100(6)-S10070 APPLICATIONS (1) A person wishing to practice the profession of a sanitarian shall obtain a probationary certificate, described in rule 40-3.100(6)-S10080, prior to beginning work.

(2) Disposition of Applications. .....

~~(2)~~ (3) Forms of Application. ....."

5. The board is proposing the amendment to clarify that an individual must be licensed prior to commencing employment as a sanitarian. The proposed amendment and rule implement sections 37-40-301 and 302 MCA.

6. The proposed amendment to 40-3.100(6)-S10080 will read as follows: (new matter underlined, deleted matter interlined)

"40-3.100(6)-S10080 ~~CERTIFICATE OF~~ REGISTRATION PROCEDURES (1) Minimum standards for ~~Registration~~ Probationary Certificate. The applicant for registration must possess the following minimum standards:

(a) Graduation from an accredited college or university with a bachelor's degree and including a minimum of ~~thirty-(30)~~ quarter hours in the physical and biological sciences, including chemistry, ~~physics,~~ microbiology, and biology.

(i) Other courses of study may be substituted in lieu of those stated above upon review and approval of the board.

~~(b)--Considerable-knowledge-of-accepted-public-health sanitation-practices,-of-the-area-of-speciality,-of-the principles-of-sanitation-applicable-to-private-and-semi-private-water-supplies,-swimming-facilities,-solid-and liquid--waste-disposal,-of-the-fundamentals-of-food,-air, and-shelter-sanitation,-or-rodent-and-insect-control,-and-of-the-causes-and-control-of-filth-borne-diseases.--Some knowledge-of-the-Public-Health-Laws-and-regulations-as they-apply-to-sanitation-and-of-procedures-necessary-for dealing-effectively-with-the-public-on-health-measures.~~

~~(c)~~(b) Ability to work with people, to make clear and pertinent statements, ~~to-plan-and-execute--work-efficiently,~~ and to exercise good judgment in appraising situations and ~~in~~-making decisions~~;~~. ~~and-to-promote awareness-of-and-interest-in-public-health-problems.~~ Must possess the personal attributes necessary for the performance of the assigned work and be suitable for employment as evidenced by an investigation. Must have the physical ability to do the work without hazard to self or others.

(c)~~(d) To-measure-the-quality-of-the-requirements-of-(a) and-(c)-above-a~~An application Examination must be successfully completed within ~~thirty-(30)~~ from the date of application with a minimum score of 60~~% percent~~. If an

applicant should fail the application examination, he or she must retake the examination within 30 days. Should the applicant fail the examination the second time, he or she will not be allowed to re-apply for a period of one (1) year and may not work as a Sanitarian during that period. This application examination is considered part of the application and is not to be misconstrued as the examination required for registration under section 37-40-302 (4) MCA ~~69-3415(4) of the law.~~

(2) Probationary Certificate. When the ~~Board~~ department is satisfied that an applicant meets minimum qualifications as prescribed in the Sanitarian Registration Law and ~~of the~~ rules of the Board, and that the application ~~conforms~~ has been reviewed and approved for conformity with rules of the Board, the Department shall issue a probationary certificate, after the applicant successfully completes the application examination. A holder of a probationary certificate shall be considered a sanitarian-in-training.

(a) The Department shall notify holders of probationary certificates of the expiration date for the certificate ninety (90) days prior to expiration.

(3) Minimum Standards for Registration ~~Certificate~~. A certificate of registration (license) will be ~~issued~~ granted by the Board ~~when~~ if the applicant complies with the minimum standards required for the probationary certificate ~~has~~ and satisfactorily completeds an examination approved by the Board. The Certificate ~~shall be signed by the Chairman and the Secretary and~~ shall bear the registrant's name, certificate number and the date of issue, and shall be signed by each member of the Board.

(a) The registration examination shall provide an ~~comprehensive evaluation of (a), (b), and (c) of Section (1) of Certificate of Registration.~~ evaluation of the person's knowledge of environmental sanitation laws and regulations; of administrative procedures for dealing effectively with the public on environmental health problems; of the principles of sanitation applicable to food, water and air quality, liquid and solid waste disposal, recreation facilities, housing and institutions; of the fundamentals of biostatistics, of land use planning, of occupational health, of accident prevention, and of vector and pest control; and of the causes and control of environmental related diseases.

(b) Examinations will be held at a time and place designated by the Board.

~~(b)~~ (c) If an applicant should fail the registration examination, the applicant will be allowed to retake the examination within ~~thirty (30)~~ days. If an

applicant should fail the registration examination the second time, he or she shall not be allowed to re-apply for a period of ~~one-(1)~~ year and may not work as a Sanitarian during that period.

(4) Annual Certificate (License) Renewal. A certificate (license) renewal will be granted to any registered sanitarian who pays the prescribed renewal fee and complies with requirements of this section.

~~(c)~~(a) ~~The annual certificate (license) renewal fee will be five dollars ($5) for the period of January 1, 1975 to June 30, 1975. After July 1, 1975, t~~The annual certificate (license) renewal fee will be ~~ten dollars ($10)~~.

~~(d)~~(b) The licensee will be allowed a one month grace period after July 1 or until July 31 to renew the license. Unless a licensee can present a satisfactory explanation to the Board justifying ~~F~~failure to renew the license on or before July 31, he or she will be considered ~~a~~ in violation of the Sanitarians~~'~~ Registration Act and these rules and will make it necessary for the licensee to pay the certificate of registration fee and to retake the examination to be relicensed."

7. The board is proposing the amendments to this rule to update and clarify the rule. The rule implements sections 37-40-302 and 304 MCA.

8. The proposed amendment to 40-3.100(6)-S10090 adds a new subsection (2) and renumbers the current (2) as (3) and will read as follows: (New matter underlined, deleted matter interlined)

"40-3.100(6)-S10090 SUSPENSION AND REVOCATION (1)....

(2) For the purposes of defining the terms unprofessional conduct, incompetency and misconduct as used in subsections (1) and (3) of section 37-40-311 MCA it is determined by the board to mean acts, knowledge and practices which fail to conform to the accepted standards of the sanitarian profession and which may jeopardize the health and welfare of the public and shall include but not be limited to the following:

(a) wilful disobedience of Title 37, Chapter 40, MCA and/or the rules of the board;

(b) aiding or abetting in the practice of a sanitarian a person not licensed to practice as a sanitarian or a person whose license has been suspended or revoked;

(c) failure to uphold Montana laws, rules and regulations pertaining to environmental health;

(d) obtaining other financial compensation for professional services than the compensation provided by the employment contract;

(e) mentally or physically unable to engage in or act in the professional status as practicing sanitarian;

(f) habitual intemperance or excessive use of narcotic drugs, alcohol, or any other drug or substance to the extent that use impairs the user physically or mentally; and

(g) any condition which impairs intellect or judgment to the extent that the condition incapacitates the person from the proper performance of professional duties.

(3) When a certificate of registration has been.....

....."

9. The board if proposing the amendment to define what is meant by unprofessional conduct, incompetency and misconduct as used in subsections (1) and (3) of section 37-40-311 MCA. The rule implements the aforementioned section.

10. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Sanitarians, Lalonde Building, Helena, Montana 59601 no later than February 14, 1980.

11. If a person who is directly affected by the proposed amendments 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 comments he has to the Board of Sanitarians, Lalonde Building, Helena, Montana 59601 no later than February 14, 1980.

12. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons directly affected by the proposed amendments; 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 12 based on the 125 licensees.

13. The authority of the board to make the proposed amendments is based on section 37-40-203 MCA. The sections which the proposed amendments implement are listed after each proposed amendment.

BOARD OF SANITARIANS
KENNETH B. READ, R.S., CHAIRMAN

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

Certified to the Secretary of State, January 8, 1980.

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION OF A RULE for the determination of proximity to a place of worship or a school.	NOTICE OF PROPOSED ADOPTION OF A RULE for the determination of proximity to a place of worship or a school.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On February 18, 1980, the Department of Revenue proposes to adopt a rule to specify the manner of determining proximity to places of worship or schools for purposes of implementing 16-3-306, MCA.

2. The proposed rule provides as follows:

RULE I DETERMINATION OF PROXIMITY TO PLACE OF WORSHIP OR SCHOOL (1) In order to determine if the provisions of 16-3-306, MCA, are applicable, the department utilizes a two step test:

(a) determination of street of location, and

(b) determination of distance between entrance doors.

(2)(a) A building is considered to be on each street that abuts the building and appurtenant land. An alley is generally not considered to be a street unless it is used by the general public as a public thoroughfare for vehicular travel.

(b) If the proposed premises for liquor sales are not located on the same street as a place of worship or school, the provisions of 16-3-306, MCA, are not applicable. If the proposed premises are on the same street, then the second step of the test, provided for in subsection (3), is utilized.

(3)(a) If the proposed premises are on the same street, the distance between entrance doors is measured by a geometric straight line, regardless of intervening property and buildings. An entrance is considered to be a means of ingress to the premises generally used by the public.

(b) If the distance is more than 600 feet, the provisions of 16-3-306, MCA, are not applicable. If the distance is less than or equal to 600 feet, Section 16-3-306, MCA applies.

3. The rule is proposed to implement 16-3-306, MCA. In particular the rule specifies the factors taken into account by the Department in determining the street or streets on which a building is located and the method of determining distance as required by 16-3-306, MCA.

4. Interested parties may submit their data, views, or arguments concerning the proposed rule in writing no later than February 16, 1980, to:

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

5. If a person who is directly affected by the proposed rule 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 February 16, 1980.

6. If the Department receives requests for a public hearing on the proposed rule from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed rule; from the Revenue Oversight 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 25 persons based on the number of existing and potential licensees subject to 16-3-306, MCA.

7. Authority of the Department to make the proposed rule is based on 16-1-303, MCA. The proposed rule implements 16-3-306, MCA.

Mary L. Craig
MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State 1-7-80

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION OF RULES relating to the taxation of gasohol	))))	NOTICE OF PROPOSED ADOPTION OF RULES relating to the taxation of gasohol. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On February 18, 1980, the Department of Revenue proposes to adopt rules relating to the taxation of gasohol.

2. The proposed rules provide as follows:

RULE I TREATMENT OF GASOHOL (1) For the purposes of Title 15, chapter 70, part 2, reference to gasoline includes gasohol (regardless of where produced and how produced), except for the computation of the tax on gasohol meeting the definition of 15-70-201(7), MCA. Gasoline in general is taxed at the rate specified in 15-70-204(1), MCA, while gasohol as defined in 15-7-201(7), MCA, is taxed at the rate specified in 15-70-204(3), MCA.

(2) In particular, a distributor of gasohol (regardless of where produced and how produced) must meet all the requirements specified for a distributor of gasoline.

RULE II AGRICULTURAL PRODUCTS (1) As used in the definition of gasohol (15-70-201, MCA), the term "agricultural products" includes timber.

RULE III ETHANOL CONTENT (1) A product consisting of 100% anhydrous ethanol is not considered to be gasohol.

3. The rules are proposed to implement Chapter 576, Laws of 1979, relating to the taxation of gasohol.

Rule I is intended to make it clear that gasohol is treated as gasoline for all purposes except computation of the tax under 15-70-204, MCA. The special tax treatment is granted only to that gasohol meeting the definition given by 15-70-201(7), MCA. Rule II is self-explanatory. Rule III is designed to cover the situation of production of only anhydrous ethanol. If the pure product were treated as gasohol, the producer (such as a grain farmer) would become a distributor under the definition of 15-70-201(6), MCA, and hence subject to all distributor requirements. The Department believes it was not the intent of the Legislature to subject such producers to the distributor requirements. As a by-product of Rule III, the use of pure anhydrous enthanol as a fuel would escape taxation under Title 15, chapter 70, part 2. The Department considers this possibility not to be significant in the near future and would leave resolution of the question to the 1981 Legislature. This

approach would encourage gasohol production and as such comport with the legislative intent.

4. Interested persons may submit their data, views, or arguments concerning the proposed rules in writing no later than February 16, 1980, to:

Laurence Weinberg
Legal Division
Department of Revenue
Mitchell Building
Helena, Montana 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 that request along with any written comments he has to Laurence Weinberg at the address given in paragraph 4 above no later than February 16, 1980.

6. If the department receives request for a public hearing on the proposed rules from either 10% or 25, whichever is less, of the persons directly affected; from the Revenue Oversight Committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who are 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 25 based upon the number of persons potentially involved in the production of gasohol.

7. The authority of the department to make the proposed rule is based on 15-70-104, MCA. The proposed rules implement 15-70-201 and 15-70-204, MCA.

MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State 1-8-80

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 48-2.10(2)-S10020, concerning experience verification for teacher certification	))))))	NOTICE OF PROPOSED AMENDMENT OF RULE 48-2.10(2)-S10020 concerning experience verification for teacher certification NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On February 16, 1980, the Board of Public Education proposes to amend rule 48-2.10(2)-S10020 which concerns experience verification for new applicants for teacher certificates.

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

(1)-(3) Remain the same.

(4) When experience is required for a new certificate applicant, the majority of the experience required must be obtained in a school organization consistent with Montana's K-12 pattern.

(5) When experience is required for a new certificate applicant, experience gained prior to certificate eligibility is not considered.

3. The rule is proposed to be amended to specify that experience necessary for an administrative certificate must include a working knowledge of the public schools and to clarify that the Board can recognize only that teaching experience gained as a teacher as defined by State law.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment to Marjorie W. King, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59601, no later than February 14, 1980. 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 Marjorie W. King, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59601, no later than February 14, 1980. Section 2-4-302.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10 percent 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 150 persons based on the average 1500 teachers and administrators seeking professional certificates each year in Montana.

7. The authority of the agency to make the proposed amendment is based on section 20-2-121, MCA and the rule implements sections 20-4-102 and 20-4-106, MCA.

MARJORIE W. KING, CHAIRMAN
BOARD OF PUBLIC EDUCATION

Certified to the Secretary of State January 8, 1980.

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

In the matter of the repeal of Rules 16-2.2(2)-P2000 through P2050 and 16-2.2(2)-P2070 through P2080 pertaining to the implementation of the Montana Environmental Policy Act; and the adoption of new rules I through XX implementing MEPA	NOTICE OF REPEAL OF ARM 16-2.2(2)-P2000 through P2050 and 16-2.2(2)-P2070 through P2080, AND ADOPTION OF ARM 16-2.2(2)-P2001 through 2009, 16-2.2(2)-P2011 through P2019, AND 16-2.2(2)-P2021 through P2022, NEW RULES IMPLEMENTING THE MONTANA ENVIRONMENTAL POLICY ACT

TO: All Interested Persons.

1. On July 26, 1979, the Department of Health and Environmental Sciences published notice of proposed repeal of ARM 16-2.2(2)-P2000, P2010, P2020, P2030, P2040, P2050, P2070, and P2080 and adoption of new rules implementing the Montana Environmental Policy Act, at page 763 of the 1979 Montana Administrative Register, Issue No. 14. A public hearing was held on August 30, 1979, at which time written and oral testimony was taken. Written testimony was accepted until September 14, 1979.

2. The department has repealed ARM 16-2.2(2)-P2000, P2010, P2020, P2030, P2040, P2050, P2070, and P2080 which are found on pages 16-20 through 16-20.N of the Administrative Rules of Montana. The department has adopted the proposed new rules implementing the Montana Environmental Policy Act with changes. Except for the difference indicated below, the text of the adopted rules is set forth in the Department of State Lands' "Notice of Repeal of ARM 26-2.2(18)-P250-P2000, P2020, and P2030, and Adoption of New Rules Implementing the Montana Environmental Policy Act," incorporated herein, and as set forth and beginning on page 88, Issue No. 1 of the Montana Administrative Register, published on January 17, 1980:

The words "department" and "board" as used in the Department of State Lands' Notice of Repeal and Adoption means "Department of Health and Environmental Sciences" in the adopted rules.

3. The comments received and the Department of Health and Environmental Sciences' responses to those comments can also be found in the Department of State Lands' "Notice of Repeal of ARM 26-2.2(18)-P250-P2000, P2020, and P2030, and Adoption of New Rules Implementing the Montana Environmental Policy Act," incorporated herein, and as set forth and beginning on page 88, Issue No. 1 of the Montana Administrative Register, published on January 17, 1980.

4. The authority of the Department of Health and Environmental Sciences to repeal and adopt the rules is section 2-4-201 and section 2-15-112, MCA. The code provisions implemented are Part 1, Chapter 1, Title 75 and section 75-1-201.

BY: A. C. Knight

A. C. Knight, Director
Department of Health and
Environmental Sciences

Certified to the Secretary of State January 8, 1980.

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

In the matter of the repeal of rule 16-2.14(2)-S14130 regulating dance halls and pleasure resorts	))))	NOTICE OF THE REPEAL OF RULE 16-2.14(2)-S14130

TO: All Interested Persons

1. On November 15, 1979, the department published notice of a proposed repeal of rule 16-2.14(2)-S14130 concerning regulation of dance halls and pleasure resorts at page 1310 of the 1979 Montana Administrative Register, issue number 21.

2. The agency has repealed the rule as proposed.

3. No comments or testimony were received.

A. C. KNIGHT, Director

Certified to the Secretary of State January 8, 1980

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

In the matter of the repeal of rule 16-2.14(2)-S14240 regarding nuisances	)))	NOTICE OF THE REPEAL OF RULE 16-2.14(2)-S14240

TO: All Interested Persons

1. On November 15, 1979, the department published notice of a proposed repeal of rule 16-2.14(2)-S14240 concerning nuisances at page 1312 of the 1979 Montana Administrative Register, issue number 21.

2. The agency has repealed the rule as proposed.

3. No comments or testimony were received.

A. C. KNIGHT, Director

Certified to the Secretary of State January 8, 1980

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

In the matter of the repeal of rule 16-2.14(2)-S14250 regulating rummage and second-hand clothing	))))	NOTICE OF THE REPEAL OF RULE 16-2.14(2)-S14250

TO: All Interested Persons

1. On November 15, 1979, the department published notice of a proposed repeal of rule 16-2.14(2)-S14250 concerning regulation of rummage and second-hand clothing at page 1311 of the 1979 Montana Administrative Register, issue number 21.
2. The agency has repealed the rule as proposed.
3. No comments or testimony were received.

A. C. KNIGHT, Director

Certified to the Secretary of State January 8, 1980

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules 1 through 20 Implementing the Montana Environmental Policy Act as Noticed and Implemented by the Department of State Lands	)))))	NOTICE OF ADOPTION OF NEW RULES IMPLEMENTING THE MONTANA ENVIRONMENTAL POLICY ACT

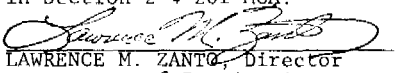
TO: All Interested Persons:

1. On July 26, 1979, the Department of Institutions published notice of the adoption of new rules implementing the Montana Environmental Policy Act. This was done in Notice No. 20-32 found in the Montana Administrative Register, issue number 14. A public hearing at which written and oral testimony was taken was held on August 30, 1979. Written testimony was accepted until September 14, 1979.

2. The comments received and the department's responses to those comments are reviewed in the Notice of Repeal and Adoption of similar rules by the Department of State Lands. The Department of Institutions, along with other state agencies, jointly adopts these rules and makes reference to the adoption of the State Land's rules.

3. These rules may be found in the title of the Department of State Lands and reference is made to those rules on page 88 , Issue 1, 1/17/80, of the Administrative Rules of Montana.

4. The authority for the Department of Institutions to adopt these rules is found in Section 2-4-201 MCA.



LAWRENCE M. ZANTA, Director
Department of Institutions

Certified to the Secretary of State January 8, 1980.

BEFORE THE DEPARTMENT OF JUSTICE
FIRE MARSHAL BUREAU
OF THE
STATE OF MONTANA

In the matter of the repeal of rules pertaining to fire and life safety protection (ARM 23-2.10B(1)-S1010)	))))	NOTICE OF THE REPEAL OF RULES pertaining to fire and life safety protection

To: All Interested Persons:

1. On November 8, 1979, the Department of Justice, Fire Marshal Bureau, published notice of a proposed repeal of rule ARM 23-2.10(1)-S1010 as amended concerning fire and life safety protection at page 1465 of the 1979 Montana Administrative Register, issue number 22.

2. The agency has repealed the rule as proposed.

3. No comments or testimony were received.

MIKE GREELY
Attorney General

Certified to the Secretary of State January 8, 1980.

BEFORE THE DEPARTMENT OF JUSTICE
FIRE MARSHAL BUREAU
OF THE
STATE OF MONTANA

In the matter of amendment of Rule ARM 23-2.10B(1)-S1030 concerning the adoption of the Uniform Fire Code by reference	)))	NOTICE OF THE ADOPTION OF A RULE, Uniform Fire Code, 1979 edition

To: All Interested Persons:

1. On November 8, 1979, the Department of Justice, Fire Marshal Bureau, published notice of a proposed amendment to rule ARM 23-2.10B(1)-S1030, concerning the adoption of the 1979 edition of the Uniform Fire Code by reference at page 1463 of the 1979 Montana Administrative Register, issue number 22.

2. The agency has adopted the rule as proposed.

3. No comments or testimony were received.

MIKE GREELY
Attorney General

Certified to the Secretary of State January 8, 1980.

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

In the matter of the repeal of) Rules 26-2.2(18)-P250 through) P2000, P2020, and P2030 pertaining to the implementation) of the Montana Environmental) Policy Act; and the adoption) of new rules I through XX implementing MEPA)	NOTICE OF REPEAL OF ARM 26-2.2(18)-P250 - P2000, P2020, AND P2030, AND ADOPTION OF NEW RULES IMPLEMENTING THE MONTANA ENVIRONMENTAL POLICY ACT

TO: All Interested Persons

1. On July 26, 1979, the Department of State Lands and Board of Land Commissioners published notice of proposed repeal of ARM 26-2.2(18)-P250 - P2000, P2020, and P2030 and adoption of new rules implementing the Montana Environmental Policy Act. A public hearing at which written and oral testimony was taken, was held on August 30, 1979. Written testimony was accepted until September 14, 1979.

2. The department and board has repealed ARM 26-2.2(18)-P250 - P2000, P2020, and P2030, which are found on page 26-14.2, and adopted the proposed new rules with changes as indicated beginning on the next page.

3. The comments received and the department and board's responses to those comments are summarized immediately following the rules (it should be noted that the numbering of the adopted rules have been changed to comply with the Secretary of State's recent directives, but for reasons of convenience to commentators, comments have been organized under the numbering system of the proposed rules).

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

RULE II DEFINITION OF MEPA TERMS (1) "Cumulative impact" means the ~~impact on the environment which results~~

~~from-the-incremental-impact-of-the-action-when-added-to other-past-and-present-actions,-and-feasible-and-reasonably foreseeable-future-actions.~~ incremental cumulation of impacts on the human environment of the proposed action when considered in conjunction with other past and present actions related to the proposed action by location or generic type. Related future actions must also be considered when these actions are under concurrent consideration by any state agency through pre-impact statement studies, separate impact statement evaluation, or permit processing procedures.

(2) "Department" means the Montana Department of State Lands.

(3) "Emergency actions" include, but are not limited to:

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

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

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

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

(a) "Draft environmental impact statement" means a detailed written statement prepared to the fullest extent possible in accordance with section 75-1-201(2)(c), and Rule V.

(b) "Final environmental impact statement" means a written statement prepared to the fullest extent possible in accordance with section 75-1-201 and Rule VII and which responds to substantive comments received on the draft environmental impact statement.

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

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

(6) "Human Environment" includes, but is not limited to biological, physical, social, economic, cultural, and aesthetic factors that interrelate to form the environment.

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

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

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

(10) "Secondary impact" means the affects an action may have of stimulating, inducing, or inhibiting impacts.

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

RULE III DETERMINATION OF NECESSITY FOR ENVIRONMENTAL IMPACT STATEMENT (1) ~~In determining whether to prepare an EIS, the Department of State Lands shall:~~

~~(a) determine under subsection (6) below whether the proposal is one which;~~

~~(i) normally requires an EIS;~~

~~(ii) normally does not require either an EIS or a PER; or~~

~~(b) if the proposed action is not covered by paragraph (a) above or subsection (4) below, prepare a PER; or~~

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

~~(2) If the proposed action is in category (1)(a)(ii) but it appears that there are special circumstances, the department may prepare a PER.~~ The department shall prepare a PER to determine whether an EIS is necessary in the following situations:

(a) when the proposed action is one that normally requires an EIS but, because of special circumstances, the action may not be a major one significantly affecting the quality of the human environment;

(b) when the proposed action is one that normally does not require an EIS, but, because of special circumstances, the action may be a major one significantly affecting the quality of the human environment,

(c) the action is not one required to be listed under (6) below and it is not clear without preparation of a PER whether the proposed action is a major one significantly affecting the quality of the human environment.

(2) The department shall prepare an EIS in the following situations:

(a) when the proposed action is one that normally requires an EIS under (6) of the rule and there are no special circumstances;

(b) when a PER indicates that an EIS is necessary; or

(c) when the proposed action is so clearly a major action of state government significantly affecting the quality of the human environment that no PER is necessary.

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

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

(b) actions which may be either significantly growth inducing or growth inhibiting;

(c) actions which may substantially alter environmental conditions in terms of quality or availability; or

(d) actions which will result in substantial cumulative impacts.

(4) An EIS is not required for the following actions:

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

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

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

(d) non-discretionary actions: actions in which the agency exercises no discretion, but rather acts upon a given state of facts in a prescribed manner.

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

(5) If the PER shows a significant impact on the quality of the human environment, an EIS shall be prepared on that action.

(6) The department shall ~~maintain~~ adopt a list of those activities or functions that ~~fall-within-paragraphs-(1)(a)(i)-and-(1)(a)(ii)(b)-above.~~ normally require an EIS or do not require either an EIS or a PER. ~~The-list-shall-be-maintained-as-a-public-document.--Copies-of-the-list-and-any-subsequent-revisions-shall-be-sent-to-the-EQC-and-any-person-who-has-requested-a-copy.--The-EQC-or-any-person-may-recommend-additions-to-or-deletions-from-the-list~~ in accordance with rule-making procedures provided by the Montana Administrative Procedure Act (Chapter 4, Title 2).

RULE IV PREPARATION OF PRELIMINARY ENVIRONMENTAL REVIEW (1) A PER shall include:

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

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

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

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

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

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

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

~~(a)~~ (1) a description of the nature and objectives of the proposed action;

~~(b)~~(2) a description of the current environmental conditions in the area significantly affected by the proposed action, including maps and charts, where appropriate;

~~(c)~~(3) a description of the impacts on the quality of the human environment by the proposed action including:

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

~~(ii)~~(b) primary, secondary, and cumulative impacts;

~~(iii)~~(c) potential growth inducing or growth inhibiting impacts;

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

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

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

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

~~(d)~~(4) a description of reasonable alternative actions that could be taken by the department;

~~(e)~~(5) the proposed agency decision on the proposed action, if appropriate;

~~(f)~~(6) source material used in the preparation of the draft EIS; and;

~~(g)~~(7) the names of those individuals or groups responsible for compiling the draft EIS and the names of those individuals or groups contrituting to the EIS~~.~~; and

~~(h)~~(8) a summary as required by Rule XI(3).

~~(2) Distribution of Draft EIS.~~ RULE VI ADOPTION OF DRAFT ENVIRONMENTAL IMPACT STATEMENT AS FINAL ~~Following preparation of the draft EIS in accordance with subsection (1) of this rule, the department shall distribute copies to the Governor, EQC, appropriate local, state and federal agencies, the applicant whose project is being evaluated by the EIS, and those members of the public who request it. The department shall send a copy of only the summary to persons who request it only. For purposes of distribution to the public, the department shall maintain a mailing list of any persons or groups who have requested to be placed on the list for receipt of either the EIS or summary.~~

~~(a)~~(1) Depending upon the nature and number of substantive comments received in response to the draft environmental impact statement, the draft statement may suffice. In this case, the department shall submit one copy of all comments or a summary of a representative sample of comments received in response to the draft statement to the Governor, EQC, the applicant whose project is being evaluated in the EIS, and all commentators. The department shall determine whether a final EIS is necessary within 30 days of the close of the comment period on the draft EIS.

~~(b)~~(2) If the department determines that a final EIS is not necessary, it may make a final decision on the proposed action no sooner than fifteen (15) days after complying with ~~paragraph (2)(a)~~ subsection (1) above. The department shall also include with the comments notice of its decision not to prepare a final EIS and a statement describing its proposed course of action. The applicant whose project is being evaluated in the EIS may request an extension of this fifteen (15) day period in order to respond to the written comments that have been received.

~~(3) Preparation and contents of final EIS.~~ RULE VII PREPARATION AND CONTENTS OF FINAL ENVIRONMENTAL IMPACT STATEMENTS A final environmental impact statement shall include:

~~(a)~~(1) a summary of major conclusions and supporting information from the draft EIS and the responses to substantive comments received on the draft EIS, stating specifically where such conclusions and information were changed from those which appeared in the draft;

~~(b)~~(2) a list of all sources of written and oral comments on the draft EIS, including those obtained at public hearings, and, unless impractical, the text of comments received by the department (in all cases, a representative sample of comments shall be included);

~~(c)~~(3) the department's responses to substantive comments (these responses shall include an evaluation of the comments received and a disposition of the issues involved);

~~(d)~~(4) data, information, and explanations obtained subsequent to circulation of the draft;

~~(e)~~(5) the department's recommendation for the final agency decision on the proposed action, where appropriate;

~~(4) time limits and distribution requirements of environmental impact statements.~~ RULE VIII TIME LIMITS AND DISTRIBUTION OF ENVIRONMENTAL IMPACT STATEMENTS

~~(a)~~(1) Following preparation of a ~~final~~ draft EIS, the

department shall distribute copies to the Governor, EQC, appropriate state and federal agencies, the applicant, and persons who ~~submitted comments on or received a copy of the draft EIS, and other members of the public, upon request.~~ have requested copies.

~~(b)~~(2) The listed transmittal date to the Governor and the EQC shall not be earlier than the date that the draft EIS is mailed to other agencies, organizations, and individuals. The department shall allow 30 days for reply; provided that the department may extend this period up to an additional 30 days upon application of any person ~~and for an additional reasonable period of time~~ for good cause. No extension which is otherwise prohibited by law may be granted.

~~(c)~~(3) After the time period for comment on the draft EIS has expired, a copy of all written comments received by the department shall be sent to the applicant whose project is being evaluated in the EIS. The applicant shall be advised that he has a reasonable time to respond in writing to the comments received by the department on the draft EIS and that the applicant's written response must be received before a final EIS can be prepared and circulated. The applicant may waive his right to respond to the comments on the draft EIS.

~~(d)~~(4) No action which requires the preparation of a final EIS shall be taken sooner than 45 days after the transmittal date of the draft EIS to the Governor and EQC.

~~(e)~~(5) Except as provided in ~~paragraph (2)(b) of this rule,~~ Rule VI(2) a final decision may not be made on the proposed action being evaluated in the EIS ~~after~~ until 15 days have expired from the date of transmittal of the final EIS to the Governor and EQC. The listed transmittal date to the Governor and EQC shall not be earlier than the date that the final EIS is mailed to other agencies, organizations, and individuals.

~~(f)~~(6) Following preparation of a final EIS, the department shall distribute copies to the Governor, EQC, appropriate state and federal agencies, the applicant, persons who submitted comments on or received a copy of the EIS, and other members of the public, upon request.

~~(5) Record of Decision. At the time of its decision, the department shall make a written record of the decision stating how the final EIS was considered and used in its decision-making.~~

~~(6)~~(7) ~~Availability of written comments.~~ All written comments received on an EIS, including written responses received from the applicant, shall be made available to the public upon request.

~~(7)~~(8) ~~Limitations on actions.~~ Until an agency reaches its final decision on the proposed action, no action concerning the proposal shall be taken which would:

(a) have an adverse environmental impact; or

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

~~(8)~~ ~~Supplements.~~ RULE IX SUPPLEMENTS TO ENVIRONMENTAL IMPACT STATEMENTS ~~(a)~~(1) The department shall prepare supplements to either draft or final environmental impact statements if:

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

~~(ii)~~(b) there are significant new circumstances, discovered prior to final agency decision, including information bearing on the proposed action or its impacts, which change the basis for decision.

~~(b)~~(2) The same time periods applicable to draft and final EISs specified in Rules VI and VIII apply to the circulation and review of supplements.

~~(9)~~ ~~Incorporation by reference and adoption.~~ RULE X INCORPORATION BY REFERENCE AND ADOPTION ~~(a)~~(1) The department shall adopt and incorporate by reference as part of a draft EIS all or any part of the information, conclusions, comments, and responses to comments contained in an existing EIS which has been previously or is being contemporaneously prepared pursuant to the Montana Environmental Policy Act or the National Environmental Policy Act if:

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

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

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

~~(b)~~(2) ~~The~~ A summary of the existing EIS, or the portion adopted or incorporated by reference, and a list of places where the full text is available shall be circulated as a part of the EIS and treated as part of the EIS for all purposes, including, if required, preparation of a final EIS. ~~However, where reproduction of the adopted or incorporated portions of a previously prepared EIS would be prohibitively expensive because of the volume of the material involved, the department may summarize the content of the adopted or incorporated information if the previous EIS has been circulated and the agency lists the places where the full text of the adopted or incorporated EIS is available~~

~~for inspection. Furthermore, the department shall not be required to send copies of the existing EIS to persons who have previously received the adopted or incorporated EIS from the department or from any other state or federal agency which prepared the existing EIS.~~

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

~~(d)~~(3) If all or any part of an existing EIS is adopted or incorporated by reference, the department shall prepare an addendum as part of the draft EIS. The addendum shall include as a minimum:

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

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

~~(e)~~(4) The department shall take full responsibility for the ~~contents~~ portions of the previous EIS, adopted or incorporated. If the department disagrees with certain portions of the previous EIS, the points of disagreement shall be specifically discussed in the addendum.

~~(f)~~(5) No material may be adopted or incorporated by reference unless it is reasonably available for inspection by interested persons within the time allowed for comment.

(6) Where part of an existing EIS or contemporaneously prepared EIS is incorporated by reference, that part incorporated shall include sufficient material to insure the part incorporated will be considered in the context it was presented in the original EIS.

~~(10) Length, format and summary.~~ RULE XI LENGTH, FORMAT, AND SUMMARY OF ENVIRONMENTAL IMPACT STATEMENT

~~(a)~~(1) The recommended maximum length of the text of either a draft or final EIS is 150 pages. For an EIS on a complex proposal the recommended maximum length is 300 pages.

~~(b)~~(2) An EIS shall be written in plain and concise language.

~~(c)~~(3) ~~If the EIS is long and complex,~~ The department shall prepare with the draft ~~or~~ and final EIS a brief summary which shall be available for distribution separate from the EIS. ~~If a summary is prepared, it~~ The summary shall describe:

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

~~(ii)~~(b) areas of controversy and major conclusions; and

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

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

RULE ~~VI~~ XIII JOINT ENVIRONMENTAL IMPACT STATEMENTS (1) ~~lead agency.~~ If another state agency also has jurisdiction over a project, proposal, or major state action which ~~may~~ will have a significant impact on the quality of the human environment and is clearly the lead agency, the department shall cooperate with the lead agency in the preparation of a joint EIS. If the department is clearly the lead agency, it shall be responsible for coordinating the preparation of the EIS as required by this rule. When two or more agencies have jurisdiction over the same project, proposal or major state action and lead agency status cannot be resolved, the department shall request a determination from the Governor. The department shall resolve the lead agency question or submit it to the Governor within 15 days of complete application.

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

~~(3)~~(2) ~~Federal and local agencies.~~ The department shall cooperate with federal and local agencies in preparing EISs. This cooperation may include:

(a) joint environmental research studies,

(b) joint public hearings, or

(c) joint environmental impact statements. (When federal laws have EIS requirements, the department ~~may~~ shall, when practical and expedient, cooperate in fulfilling the requirements of the federal as well as the state laws so that one document will comply with all applicable laws.)~~.~~

RULE ~~VII~~ XIV PREPARATION, CONTENT AND DISTRIBUTION OF A PROGRAMMATIC REVIEW (1) If the department is contemplating a series of agency-initiated actions, programs, or policies which in part or in total will constitute a major state action significantly affecting the quality of the human

environment, the department may prepare a programmatic review discussing the impacts of the series of actions.

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

(3) The time limits specified for distribution and public comment in ~~Rule V(4)~~ Rule VIII apply to the distribution of programmatic reviews.

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

(a) is part of an ongoing program;

(b) is justified independently of the program; or

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

(5) Actions taken under this subsection (4) shall be accompanied by an EIS, if required.

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

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

~~(3) Resolution of statutory conflicts.~~ RULE XVII RESOLUTION OF STATUTORY CONFLICTS If conflicting provisions of other state laws prevent the department from fully complying with ~~these rules~~ this subchapter, the department shall notify the Governor and EQC of the nature of the conflict and shall suggest a proposed course of action that will enable the department to comply to the fullest extent possible with the provisions of MEPA. ~~and~~ This modification shall be prepared within 45 days of decision on the project, proposal, or major state action.

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

RULE ~~II~~ XIX PUBLIC HEARINGS (1) When a public hearing is held on an EIS, the department shall advise the applicant whose project is being evaluated in the EIS, persons who have submitted comments on the draft EIS, and persons who received a copy of the draft EIS of the date and location of the hearing and that the applicant shall have an opportunity to respond to all oral comments received at the hearing. The department shall also issue a news release to radio stations and newspapers of general circulation in the area to be affected by the proposal, prior to the hearing. If the newspaper articles pursuant to these news releases do not appear, the department shall cause a legal notice to appear in a newspaper of general circulation in the area to be affected. The news release and notice shall advise the public as to the nature of testimony it wishes to receive at the hearing. The applicant may respond orally at the conclusion of the hearing and in writing at a later date. The hearing shall be held after the draft EIS has been circulated and prior to preparation of the final EIS.

(2) The department shall hold a public hearing when if requested within 20 days of issuance of the draft EIS by either:

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

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

(c) an association having not less than 25 members who will be directly affected. Instances of doubt shall be resolved in favor of holding a public hearing.

(3) No person may give testimony at the hearing as a representative of a participating agency. Such a representative may, however, at the discretion of the hearing officer, give a statement regarding his or her agency's authority on procedures and answer questions from the public.

RULE XX RETROACTIVE APPLICATION OF THE MEPA RULES AMENDMENTS These amended rules adopted to implement MEPA apply ~~to all applications pending at the time these rules are adopted by the department, provided that the procedures outlined herein may not be used to delay the preparation~~

~~of an EIS in preparation at the time the rules are adopted.~~ to all applications filed after the effective date of these amendments and to all applications for which a draft EIS has not been filed with the Governor prior to the effective date of these amendments.

The following are summaries of the comments received and the Department's response to those comments:

RULE I POLICY STATEMENT CONCERNING MEPA RULES

No comments received.

RULE II DEFINITIONS

(1) COMMENT: Add a "(1)(d) which reads emergency repairs to any facility to prevent economic losses or dislocations" so that emergency provisions cover situations such as a fire at a refinery, natural gas plant, grain elevator, flour mill, etc.

RESPONSE: Most situations similar to the examples given are no longer in the purview of the state permitting process. Where no state action is involved, MEPA would clearly not apply and no additional emergency exclusion would be necessary in the rules. The proposal is therefore rejected.

(2) COMMENT: Amend (2) to read: "(2) Human environment means those factors bearing directly upon the public health, welfare and safety, including but not limited to biological, physical, social, economic, cultural and esthetic factors."

RESPONSE: Public health, welfare, and safety are a subset of the biological, physical, social, economic, cultural, and aesthetic factors listed in the proposed definition. While health, safety and welfare are specifically mentioned in MEPA, it is apparent that these concerns are not the primary focus of MEPA, any more than are the other concerns mentioned. The definition proposed covers all of the concerns of MEPA without focusing on any one of them. The proposal is therefore rejected.

(3) COMMENT: The definition of human environment is written in a way that would require compliance with MEPA procedures in cases where only the economic or social environment is likely to be affected. The definition used in the CEQ regulations implementing the National Environmental Policy Act should be adopted.

RESPONSE: There is nothing in the definition of "human environment" that implies compliance with MEPA procedures is mandatory only when the economic or social environment is affected. Compliance with MEPA procedures is required when a state action having a significant impact on the human environment is contemplated, whether significance of that impact is determined through interrelated impacts involving all components of the human environment or through impact on an individual component listed in the definition. The proposal is therefore rejected.

(4) COMMENT: The word "substantive" in (4)(6) should be deleted as it provides too much latitude to the agency to ignore comments to the EIS. An EIS is in the nature of a rule making and, under Montana law, all comments to rule-makings must be responded to. The agency has no latitude to refuse to respond to any comments.

Response: First, the EIS process is not, under the law, the same as rule-making. Second, a substantive comment is one that elicits an agency response. Many comments expressing opinions or preferences neither require nor anticipate an agency response. Still other comments may delve into philosophical issues beyond the scope of the EIS under consideration. The redundancy achieved with such phrases as "comment noted" or "no response necessary" or the repetition of the agency response to the same comment from numerous sources should be eliminated in an effort to streamline the EIS process. The proposal is therefore rejected.

(5) COMMENT: Several commentators suggested that the definition of cumulative impact in (7) is too broad and vague. One suggested eliminating the definition. Other suggested modification.

RESPONSE: Cumulative impacts must be addressed so that a state agency can "fulfill the responsibilities of each generation as trustee of the environment of succeeding generations" 75l103(2)(c)(iv). "Therefore, simply deleting the definition is not an acceptable approach. The definition has been altered to be more explicit and incorporate most of the suggestions offered.

(6) COMMENT: This rule should contain a definition of "secondary impacts".

RESPONSE: Since "cumulative" and "secondary" are not synonomous, a definition of "secondary impact" similar to the one suggested has been included in order to distinguish between the terms.

RULE III DETERMINATION OF NECESSITY FOR ENVIRONMENTAL IMPACT STATEMENT

(1) COMMENT: Paragraph (1)(b) and (c) and (2) are ambiguous and don't adequately define those situations where the preparation of a PER is required or advisable. Also, the term "special circumstances" is not defined and yet is determinative of whether a PER is required.

RESPONSE: Subsections (1) and (2) have been rewritten to eliminate ambiguity. The term "special circumstances" includes factors which cannot reasonably be foreseen. Therefore the term cannot be more specifically defined.

(2) COMMENT: Paragraph (3)(a) and (c) are too subjective and could be simplified by combining (a) and (c).

RESPONSE: Because (a) and (c) involve separate concepts and because the language proposed by the commentator is so general as to provide almost no objective criteria, the comment has been rejected.

(3) COMMENT: Delete (3)(d) which states that an EIS will normally be required if the action will result in substantial cumulative impacts since any significant impact will be covered by an EIS and the definition of "cumulative impact" could be construed as broadening the EIS into infinity.

RESPONSE: The comment has been rejected because "any significant impact" may not naturally include substantial cumulative impacts. The inclusion of (3)(d) assures that an EIS will be done on an action if it will result in substantial cumulative impacts.

(4) COMMENT: Section (3) should be expanded to include: (e) actions which may generate additional or secondary impacts which may have direct or indirect local, statewide or regional implications: (g) actions which may have irreversible environmental effects; and (h) actions which are likely to be precedent setting or controversial.

RESPONSE: The comment proposing the inclusion of (3)(b) is rejected because it expands the scope of the EIS requirement and many times will be included within other categories of (3).

The comment proposing the inclusion of (3)(g) is rejected since it is already covered by (3). Also, not all irreversible impacts are significant.

The inclusion of (3)(f) is rejected since regional and statewide implications are implicity included in (b) and (d).

The inclusion of (3)(e) is rejected because it is already covered in (3)(b).

(5) COMMENTS: In (4)(e), rulemaking should not be totally excluded from EIS requirements as proposed. Section 75-1-201(c) MCA requires an EIS on proposed rules because a rule is legislation and because a rule may be a major state action having a significant impact on the human environment. Also, the fact that legislature rejected bills in 1977 and 1979 which would have excluded legislation and rulemaking from the MEPA process indicates intention of legislature that major rulemaking proposals be subject to the MEPA process. However, a full-blown EIS is not required on rule-making. An abbreviated document describing the proposed rule and its effect on the environment and those to be affected would suffice. Also, adoption of rules required by federal government should be excluded.

RESPONSE: Commentators, although not in accord on reasoning, were unamious in requesting that the rulemaking exemption be eliminated. The comment is therefore accepted and the exception has been eliminated.

(6) COMMENT: Subsection (5) should read as follows: "If the PER shows a significant negative impact on the human environment an environmental impact statement ~~shall~~ may be prepared on that action."

RESPONSE: This comment is rejected because MEPA requires that an EIS must be done if the PER shows that there will be a significant impact on the quality of the human environment.

(7) COMMENT: Subsection (6) requires too much formality and could hamper additions or deletions of actions to lists which normally require or do not require an EIS.

RESPONSE: This comment has been rejected because the lists developed under (6) constitute rules under the APA.

(8) COMMENT: Section (6) should provide the criteria for making additions and deletions to lists of activities that fall within sections (1)(a)(i) and (1)(a)(ii).

RESPONSE: This comment has been rejected because the criteria used for making additions or deletions developed

under (6) can be adequately discussed at the rulemaking hearings on adoption of the tests.

(9) COMMENT: Lists of activities which normally require or do not require an EIS should be adopted as a rule.

RESPONSE: This comment has been accepted and the rule corrected accordingly.

(10) COMMENT: A new section which sets time limits of department determination as to whether a PER or EIS is necessary.

RESPONSE: Time limits for action on a permit application are set by the statutes under which the applications are submitted. These time limits supercede MEPA time provisions (see Kadillak v. Anconda Co., et al, 36 St. Rep. 1820) and render further limitations unnecessary. The comment is therefore rejected.

RULE IV PREPARATION OF PRELIMINARY ENVIRONMENTAL REVIEW

(1) COMMENT: Combine paragraph (1)(b) and (c) into one subsection (b). In (1)(b), replace the phrase "physical environment" with "human environment" in (1)(b).

RESPONSE: The first suggestion would substitute one subsection (b) containing all the criteria presently listed in subsections (b) and (c) and would combine the term "physical environment" of subsection (b) and the term "human population" of subsection (c) into one term "human environment." This would represent no substantive change. The present division into two subsections is a natural division into two subject areas which serve to make the rule more readable. The proposed changes are rejected.

(2) COMMENT: The qualifications of the contributors to the PER should be given in the PER.

RESPONSE: The purpose of the PER is to allow the agency to determine whether an EIS is necessary. It is an internal document prepared by agency personnel. Qualifications of contributors are already known by the agency. The comment is therefore rejected.

(3) COMMENT: PERs should be opened up to public participation and comment.

RESPONSE: By Rule III(5) the function of a PER is to determine if the proposed action will have a significant impact on the human environment. Thus the requirement of MEPA is met. PERs are internal decision-making documents that are not specifically required by MEPA. They are designed to require that an agency document its decision whether an EIS is required and to streamline the implementation of MEPA by ensuring that an EIS is done only for actions "significantly affecting the quality of the human environment." Section 75-1-201 MCA. Rule IV (2) recognizes PERs as public documents and provide that the agency may give public notice of and distribute a PER. The comment is therefore rejected.

(4) COMMENT: Paragraph (1)(d) should require the PER to include a list of other agencies with overlapping authority along with a citation to their authority plus a list of "permits, licenses and approvals" required for the proposed action and require the agency preparing the PER must consult with other agencies possessing jurisdiction and expertise.

RESPONSE: A list of statutory and regulatory authority and "permits, licenses, and approvals" is outside the scope of the PER, the purpose of which is to determine whether the proposed action is a major one significantly affecting the human environment. MEPA requires inter-agency consultation only in the preparation of an EIS. However, agencies do consult with other agencies when necessary and do not when it is not beneficial. An across-the-board consultation requirement would not be beneficial. The comment is therefore rejected.

(5) COMMENT: Paragraph (1)(c) (and possibly (1)(b) although not specifically mentioned) should include an evaluation of the secondary impacts along with immediate and cumulative impacts.

RESPONSE: Both IV(1)(b) and (1)(c) are amended to require an evaluation of secondary impacts because an EIS (Rule V (3)(b) requires an assessment of "primary, secondary, and cumulative impacts".

(6) COMMENT: Eliminate the criteria "access to and quality of recreational and wilderness activities" from (1)(c).

RESPONSE: These criteria represent potential impacts that may significantly affect "the quality of the human environment" (75-1-201 (2)(c) and, therefore, are properly

included as one of the criteria to be considered in a PER. The comment is therefore rejected.

(7) COMMENT: Although the definition of a "preliminary environmental review" has been changed to a "brief written statement", this intent is not reflected in Rule IV. The new rule does not differ in any respect from the old rule, and upon review, it can be seen that the requirements contained within the rule are not conducive to a "brief written statement".

RESPONSE: Rule IV has been changed from the existing rules by the addition of the phrase "an evaluation. . ., through the use of a checklist and a brief narrative. . ." in both (1)(b) and (c). This format is now used by several agencies and the length of PERs has been considerably reduced over those written in past years. A brief narrative is included in the PER usually only for those impacts identified as being major in the checklist of evaluation criteria listed in Rule IV (1)(b) and (c). The comment is therefore rejected.

(8) COMMENT: Reword (2) to provide that an individual may review a copy of the PER "in the courthouse of the county in which a project is to be located" or obtain a copy from the agency for cost. The suggested wording would eliminate the provision that an agency may give public notice of and distribute a PER, and the requirement that the agency submit a copy to EQC.

RESPONSE: Obtaining a PER upon request makes the document sufficiently available to the public. Submitting a copy of the PER to EQC is well within the intent of MEPA in establishing the EQC. The comment is therefore rejected.

(9) COMMENT: Rule IV does not guarantee the protection of confidentiality of proprietary information.

RESPONSE: Rule VIII (2) provides that: "Information declared confidential by state law or by an order of a court shall be excluded from a PER and EIS." This provision protects confidential information and balances Section 9 and 10 of Article II, 1972 Constitution of Montana and reflects statutory law under which state agencies operate. The comment is therefore rejected.

RULE V PREPARATION, CONTENT, AND DISTRIBUTION OF ENVIRONMENTAL IMPACT STATEMENTS

(1) COMMENT: Paragraph (1)(c) should be modified to reflect subsection (2) where a summary is required.

RESPONSE: The department agrees. The rule has been amended accordingly.

(2) COMMENT: Where a cost-benefit analysis is used, its methodology should be disclosed.

RESPONSE: This proposal has been rejected because its acceptance would unnecessarily extend the length of the EIS. When the methodology is questioned, it can be provided and considered in the final EIS.

(3) COMMENT: Subparagraph (1)(c)(vi) is unclear as it does not define "enhancement" of the environment and there is an implication that man can improve nature's productive ability.

RESPONSE: The subparagraph commented upon is but one part of the rule setting forth the matter that is to be included in a draft EIS. The subject requirement is a statutory requirement as set forth at 75-1-201(2)(c)(iv). The commentator's implication regarding man's inability to increase nature's productivity with artificial means is inappropriate in this instance as MEPA requires a consideration of these matters. The comment is therefore rejected.

(4) COMMENT: Delete (1)(c)(vii) as there is no definition of "secondary" or "cumulative" with the possible result of a broadening of the scope of an EIS.

RESPONSE: A narrower definition has been provided in Rule II. The comment is therefore rejected.

(5) COMMENT: The proposed wording in (1)(d) is improper and illegal because the agency must look at all alternatives, not just those available to the agency. A bill with language similar to the wording of this rule was killed by a recent legislature.

RESPONSE: The action of the legislature in rejecting a proposed bill is subject to a variety of interpretations, none of which reach the level of statutory requirement. State agencies may make rules to implement MEPA. So long these rules are within the authority of MEPA, reasonable in their requirements, and not prohibited by or in conflict with other state law, they are valid exercises of administrative authority. When the reviewer has a different view as to alternatives, those may be addressed in comments to the DEIS and in the FEIS, The comment is therefore rejected.

COMMENT: In (1)(f), the only source material to be used is that which is acceptable, and the agency must make a good-faith effort to obtain all available scientifically prepared source material.

RESPONSE: This sets forth as a requirement for inclusion in the draft enviornmental impact statement a listing of the source material used in the preparation of that document. If a reviewer of a draft feels that improper source material was used or that source material was overlooked and should be included, that person has the opportunity to comment on and provide the information during the comment period. The comment is therefore rejected.

(7) COMMENT: The new rules must contain the qualifications of persons compiling and contributing to an EIS.

RESPONSE: Requiring listing of qualifications does nothing to assist in preparation or evaluation of the EIS. The listing of the name of the compiler or preparer of the draft, the names of individuals or groups contributing to the draft EIS and the EIS provide the information necessary to evaluate the level of professional input in any EIS. The comment is therefore rejected.

(8) COMMENT: There should be clarification of the circumstances under which substative responses to comments will be required.

RESPONSE: The proposed language (not repeated here) permits as much, if not more, subjective determination than the rule as presently written. The comment is therefore rejected.

(9) COMMENT: A charge should be required for distribution of a DEIS to members of the public and copies of the DEIS made available at the local county courthouse for public inspection.

RESPONSE: The costs of printing and postage presently are an insignificant portion of the preparation of most DEIS's. Where these costs become significant, agencies have sufficient authority to charge those who want copies of a DEIS.

Requiring placement of copies in a county courthouse serves no purpose as there is no official repository for documents of this type. The department cannot regulate county clerk and recorders by rule. The result would be

inconsistent treatment of the documents by the various counties with no assurance the public would have access to them. The comment is therefore rejected.

(10) COMMENT: There should be a deadline for determination that a FEIS is not necessary.

RESPONSE: The department agrees. A 30 day time period has been included.

(11) COMMENT: When an agency determines that a final EIS is not necessary, there should be a maximum time limit set for making that final decision. The suggestion provided is that 30 days or within the applicable statutory review period is a sufficient time for making a final decision in this instance.

RESPONSE: The legislation under which a permit is issued sets the time limit for decision. The comment is therefore rejected.

(12) COMMENT: Subsection (2) should be amended to provide that the final decision may be appealed.

RESPONSE: The comment is unclear as to what action is to be appealable, what body or party might appeal the action, or to whom appeal should be allowable. The statutes under which final decisions may or may not be appealed provide the legislature's decision on appealability. The comment is therefore rejected.

(13) COMMENT: Suggested modifications to subsection (3) are to provide an agency with greater discretion in the preparation of the FEIS.

RESPONSE: The subsection as drafted provides an agency with sufficient discretion in the preparation of the FEIS - some commenters feel too much. The comment is therefore rejected.

(14) COMMENT: An agency should not be burdened with selecting "substantive" comments and providing a "representative" sample; thus, all responses should be provided to all commentators. In addition, the requirement is too subjective and gives illegal latitude to a department in its determination of which comments merit response.

RESPONSE: MEPA does not require a written response to every comment. The comments received may not always relate

to the project under consideration, the environmental impact under consideration, or even the state agency that is holding the hearing. In addition, some comments are placed on the record for the purpose of position only and may be rhetorical in nature. To include these comments in the final EIS is to increase unnecessarily the staff workload and the length of the EIS. Further, the comments themselves are available for review at the agency's office should a person wish to review them. The comment is therefore rejected.

(15) COMMENT: The following should be added to paragraph (3)(b): "In all cases, the qualifications of those in dividuals contributing factual data or giving expert opinions shall be included."

RESPONSE: The comment is rejected for the reasons set forth in the response to comment #7 to this rule.

(16) COMMENT: A requirement that all acceptable and relevant data and information available prior to distribution of the draft and not used in the draft must be included in the final should be added to (3)(d).

RESPONSE: Commentator anticipates that all information available prior to distribution of the draft that is acceptable and relevant should be utilized in a final EIS. To do so in each instance would increase the length of an EIS considerably. It would unnecessarily repeat information that had been provided in other impact statements. It also introduces a level of subjectivity into the process without guidelines or standards which would further complicate and confuse the EIS preparation process. The commentator's apparent fear and complaint are that agencies do not always include all source material that is available. This is a decision of the agency. Also, a reason for having the source material listed in the draft EIS is that commentators may provide further source material or comments on the adequacy of source material utilized. The comment is therefore rejected.

(17) COMMENT: The inclusion of the agency's final decision on the proposed action, as provided in subsection (e), should not be part of the EIS.

RESPONSE: The final decision is made after distribution of the final EIS. Therefore, subsection (e) has been modified to provide that an agency recommendation may be included in the final EIS, where appropriate.

(18) COMMENT: The copies should be made available to government agencies, the applicant, and in the courthouse of the affected county, with others to be purchased from the agency at cost.

RESPONSE: The comment is rejected for the reasons set fourth in comment #9 to this rule.

(19) COMMENT: The open-ended time limit for a draft EIS will provide conflict with federal EIS's when a joint EIS is being prepared.

RESPONSE: The open-ended time frame allows for coordination with federal agencies. In most cases, the crucial time limitation is the permit decision-making rather than the draft time frame. That permit time frame cannot be changed by these rules. The comment is therefore rejected.

(20) COMMENT: There are typographical errors in this rule which make understanding subsections (a)(b)(c) and (d) difficult. Subsection (a) should be related to a draft EIS in the first sentence and that (b)(c) and (d) be clarified to indicate that they apply to the draft EIS and not to a final EIS.

RESPONSE: This rule has been modified in paragraph (a) to speak directly to the DEIS. The actions under (b) follow those of (a) and apply to the DEIS not the FEIS. A new paragraph (f) is added to address distribution of the FEIS. Also, paragraph (e) has been clarified.

(21) COMMENT: A necessity hearing should be required where a department desires to extend the time for comment from those receiving a copy of the final EIS.

RESPONSE: The adoption of this suggestion would further increase the time available for reply to the environmental impact statement. A necessity hearing would require adequate notice, a time for hearing, and a time for preparation of the decision from the hearing. During these activities, the reply period would be held open in order to provide fairness to all parties. Because of the potential for increased delay, the comment is rejected.

(22) COMMENT: The present 60 day time limit should be maintained in (4)(b) because it provides a "cut and dried" deadline, a reasonable time for comment, eliminates loopholes, and delay, and unreasonable expense, and will not bog down projects.

RESPONSE: The department agrees. The rule has been amended to provide 30-day comment period with a 30-day extension for cause.

(23) COMMENT: Paragraph (4)(b) permits unnecessary delay and suggests that the draft should be submitted to the governor and EQC at the same time it is mailed to others. Further, a maximum of 15 days following the comment period should be set for beginnning action on preparation of a final EIS and a maximum of 90 days to complete a final EIS.

RESPONSE: The draft is to be submitted to the governor and the EQC at the same time as it is submitted to others. That is the purpose of the wording in (b). Further, it is the design of this subsection (b) to assure that the starting date for comment is the same for all parties. Thus, no one would have an argument or claim that they were short-changed in their comment period. Time limits for preparation of the final EIS are provided in the permitting statute. The comment is therefore rejected.

(24) COMMENT: In (4)(b) there is no "triggering mechanism" for extension of the original 30-day response period. Proposed wording is as follows ". . .shall extend this period by 30 days upon request by any affected party and for. . ."

RESPONSE: The comment is accepted. The triggering mechanism has been included but it has not been limited to application by affected parties.

(25) COMMENT: Paragraph (4)(b) allows for unnecessary delay. The maximum number of days following the comment period should be set for beginning action and a 90-day maximum should be set for completion of a final EIS.

RESPONSE: This comment is rejected for the reasons set forth in the response to comments #22 and #23.

(26) COMMENT: Delete requirement for stating how the EIS was considered and used in decision-making (5), as being outside the scope of MEPA, and as being precluded by legislative action.

RESPONSE: The department agrees because MEPA has been interpreted by the executive board as procedural. The proposed rule may be inconsistent with this interpretation. Subsection (5) has been deleted.

(27) COMMENT: The record of decision provided for in (5) should be more inclusive and explicit.

RESPONSE: The record of decision requirement has been deleted. The proposal is therefore rejected.

(28) COMMENT: The written comments on an EIS should be on file at the affected county courthouse or available from the agency for a printing and postage charge.

RESPONSE: As written, the rule requires the EIS comments be available upon request. Each agency may determine whether a charge is necessary. The statutory responsibilities of county officers do not include filing of EIS's or comments thereon. The agency cannot regulate county clerk and records by rule. There is nothing to prevent a county officer from requesting and keeping on file an EIS or comments thereon.

(29) COMMENT: Delete the no-action alternative in subsection (7).

RESPONSE: No reason was given for the comment. To delete this alternative is to unnecessarily restrict an agency's possible choice of decisions. The proposal is therefore rejected.

(30) COMMENT: There is potential conflict between specific statutory requirements and the limitations set forth in this subsection.

RESPONSE: No modification of the subsection is necessary. Where a specific statutory requirement exists, that requirement overrides the MEPA rules and will be adhered to by a state agency (see Kadillak v. Anaconda Co., et al., supra).

(31) COMMENT: Supplements to an EIS due to new circumstances should be required only when the new circumstances change the basis for the decision and only when discovered prior to implementation of the final agency decision.

RESPONSE: The department agrees. The proposed changes have been implemented.

(32) COMMENT: There are no time periods incorporated for the final EIS. Thus, there are no time periods for supplements.

RESPONSE: Rule V(4) contains time limits for FEISs. The comment is therefore rejected.

(33) COMMENT: Subparagraph (8)(a)(i) implies an agency has authority to make changes in the applicant's proposed action under provisions of MEPA rather than other state law.

RESPONSE: While the comment is well-founded, this provision or statement provides that where the agency does have authority and does make a substantial change in the proposed action, then a supplement must be prepared in the same manner as if and when the applicant makes a substantial change. This subsection is not designed to allow the agency to require such changes. The comment is therefore rejected.

(34) COMMENT: As written, subsection (9) permits incorporation of information out of its original context. This should not be allowed.

RESPONSE: The department agrees. The rule has been modified by adding to (a) "where a part of an existing EIS or contemporaneously prepared EIS is incorporated by reference, that part incorporated shall include sufficient material to insure the part incorporated will be considered in the context it was presented in the original EIS."

(35) COMMENT: The legislature considered and did not accept a bill that would achieve the effect as this subsection (9), thus, it should be carefully reviewed before adoption.

RESPONSE: See response to Comment #5.

(36) COMMENT: While the provision may help eliminate some duplication in the EIS process, it must be made clear that the portions incorporated pursuant to (9) are subject to comment by the public and must be responded to by the department.

RESPONSE: No response is needed in this instance as no changes are requested. It is a comment for emphasis. The agency would anticipate comment to the material placed in the EIS and also responding to and correcting them where necessary.

However, in subsection (9)(e), the responsibility which the agency accepts is full responsibility for the portions of the previous EIS as adopted by the agency, not for each and everything not adopted. The wording of (e) has been changed to reflect this.

(37) COMMENT: Provision for incorporation of information from other than existing EIS's in (9)(a) should be made as this would help streamline the EIS process.

RESPONSE: The purpose of listing source material in an EIS is to provide knowledge of the location of information

used in an EIS. The reason for incorporation is to present material that has been addressed previously for EIS purposes. Information in sources other than EISs, while of value in the preparation of an EIS, is unlikely to have been compiled to address the same or similar issue presented in the EIS. The comment is therefore rejected.

(38) COMMENT: In (9)(b), the agency should have the option of circulating a previous EIS or listing the places such EIS may be found rather than being required to do both. Thus, the word "and" should be stricken in the second sentence and replaced by "or".

RESPONSE: To effectively implement this suggestion the comment period for DEISs would need to be extended, thereby lengthening the EIS process. The comment is therefore rejected.

(39) COMMENT: Paragraph (9)(c) is not necessary so long as paragraph (9)(d) requires an addendum. Thus, delete (c).

Response: The department agrees. Paragraph (9)(c) has been deleted.

(40) COMMENT: Subsection (10) should require a summary for each EIS.

RESPONSE: The department agrees. The change has been incorporated. To conform with earlier changes, the language has been changed to indicate that a summary must be prepared for both draft and final EISs.

(41) COMMENT: Include an additional subsection reading as follows: "All matters stated as fact in an EIS must be supported with citations to professionally acceptable documentation. All matters which are not supported with such citations shall be stated as statements of opinion".

RESPONSE: The purpose of the requirement of listing of source material is to provide that the matters of fact in an EIS are supported by documentation. To include a subsection such as this is also to increase possibility for subjective determination as there are no criteria for what is professional or acceptable in this proposal. The objections stated by this commenter may also be addressed and it is the purpose of a review period and comment period for such comments and objections to be addressed and presented to the preparing agency. To add them at this point is to unnecessarily complicate the EIS process. The comment is therefore rejected.

(42) COMMENT: It should be emphasized these are guidelines only and standards of adequacy should be provided.

RESPONSE: The policy of MEPA as set forth in section 75-1-103 provides the guidelines necessary for these rules. This policy has been made part of these rules in Rule I. Except for page limitations, the provisions of this subsection are requirements, not guidelines.

(43) COMMENT: The provision for inclusion of a summary of the adopted or incorporated material should be broadened to allow circulation of the summary when the EIS adopted or incorporated is available at certain listed places.

RESPONSE: The department agrees. Along the same lines, adoption or incorporation by reference does not occur when the text is included. Therefore, the provision for incorporation or adoption by including the full text has been completely eliminated.

RULE VI JOINT ENVIRONMENTAL IMPACT STATEMENTS

(1) COMMENT: In the first sentence of (1), strike "may" put "will" in its place.

RESPONSE: The proposed change appears to be closer to the intent of the legislature in 75-1201(2)(c). The proposed change has been incorporated.

(2) COMMENT: In the first sentence of (2), strike "may" and insert "shall."

RESPONSE: The proposed language would require the lead agency to request participation of other agencies in drafting the EIS. The lead agency may, however, have similar expertise on its own staff and therefore not need to involve other agencies. Of course, consultation with other agencies is required in 75-1-201(3). The proposed change is rejected; however, language indicating that this provision applies to preparation rather than consultation has been added and the subsection has been removed from the joint EIS rule and has been made a separate rule (Rule XII).

(3) COMMENT: In the parenthetical sentence in (3)(c), delete "may" and replace it with "shall."

RESPONSE: The proposed change would require state agencies to engage in joint EISs with federal agencies.

This could result in delays when the federal EIS process takes longer than the state process. Also, this is impossible when the federal process would take longer than the state permitting statute allows. Similarly, joint studies and hearings may not be possible. However, use of the word "may" was not intended to allow agencies to avoid joint preparation where it is possible and advantageous. Therefore, the phrase "shall when pratical and expedient" has been substituted.

(4) COMMENT: At the end of (1) add a sentence requiring agency determination within 15 days or governor determination within 30 days in order to protect the public from inter-agency disputes.

RESPONSE: The department agrees. However, it cannot control the Governor's office by rule. Therefore, only the 15-day requirement has been added.

(5) COMMENT: The mandatory cooperation requirement of (1) and the permissive provision of (2) are inconsistent.

RESPONSE: Subparagraph (1) applies when this agency has jurisdiction over a project. Subparagraph (2) requires only a good faith effort of agencies that have no jurisdiction. Language has been added to (2) to clarify the distinction. See new Rule XII.

Rule VII PREPARATION, CONTENT AND DISTRIBUTION OF A PROGRAMMATIC REVIEW

(1) COMMENT: Include rulemaking within the scope of the programmatic rule.

RESPONSE: The question of EISs on rulemaking is being considered in Rule III. The proposed language therefore has not been incorporated in Rule VII.

(2) COMMENT: The term "major action of state government significantly affecting the human environment" should be defined.

RESPONSE: The term is not defined in MEPA, by the Montana Supreme Court, or in the recently adopted federal CEQ rules. In Rule III, the department lists those actions which definitely are within or without the purview of the

term. This case-by-case determination, due to the many variables involved, has been deemed the best approach. The comment is therefore rejected.

(3) COMMENT: The improved time limits of Rule V (5) should be made to apply to the distribution of programmatic reviews.

RESPONSE: The published draft contained a typographical error. "Rule V (5)" has been changed to "Rule V (4)." Language has been added to clarify that the time limits of Rule V (4) apply to both distribution and comment on programmatic reviews.

(4) COMMENT: Because oftentimes the most important environmental decisions are made at the programmatic or regional level, programmatics or regionals should be mandatory and should address cumulative impacts, impacts common to a series of actions, and the overall impact of the program.

RESPONSE: Programmatics and regionals are often extemely expensive. However, in most instances the fee bill is not applicable. Where there is also no appropriation for preparation of the document, the department cannot prepare such a document. Therefore, the discretionary language has been retained. However, the language describing the contents of the document has been incorporated.

RULE VIII SPECIAL RULES APPLICABLE TO CERTAIN MEPA SITUATIONS

(1) COMMENT: In subsection (1), the word "immediate" should be stricken.

RESPONSE: MEPA requires agency compliance "to the fullest extent possible." Only immediately necessary actions should be exempt from the EIS process. The language has been changed accordingly.

(2) COMMENT: In subsection (2), the confidentiality of proprietary information should be protected.

RESPONSE: There is no legal authority under state law to allow this. The comment is therefore rejected.

(3) COMMENT: In subsection (2), a person should not be required to go to court to establish confidentiality. He should be able to claim it and make the challenger go to court to get the information.

RESPONSE: The whole concept of the public's constitutional right to know is based on placing the burden of proving confidentiality on the party claiming it. The comment is rejected.

(4) COMMENT: In subsection (3) it is unclear as to what must be prepared within 45 days.

RESPONSE: The department agrees. Language indicating that the notice must be prepared within 45 days has been added.

(5) COMMENT: Subsection (3) should require that the Environmental Quality Council be notified of any conflicting provisions under any statutory conflicts.

RESPONSE: The department agrees. Appropriate language has been added.

(6) COMMENT: Subsection (4) should require that disclosure of direct financial interests only be made.

RESPONSE: Any financial interest, direct or indirect, could lead to the affects sought to be prohibited. The comment is therefore rejected.

(7) COMMENT: MEPA contains no authorization for subsection (4).

RESPONSE: The authority to ensure that impact statements as prepared by unbiased personnel is implied from the impact statement requirement itself and from Title 2, Chapter 2, Part 1. It should be noted that the federal CEQ rules contain a similar requirement.

RULE IX PUBLIC HEARINGS

(1) COMMENTS: Subsection (2)(c) should be deleted and (a) and (b) should be limited to only those in the immediate area.

RESPONSE: Allowing only those in the immediate area to request a public hearing violates the purpose of MEPA. Inclusion of (2)(c) is consistent with hearing requirements of the APA. The comment is therefore rejected.

(2) COMMENT: The public hearing should be held within 60 days of preparation of the EIS.

RESPONSE: No reason was given for the proposed limitation. The statute under which a permit is issued contains the time frames for agency action on the application. The commment is therefore rejected.

(3) COMMENT: The request for a public hearing should be required to be made within 15 days of the EIS draft.

RESPONSE: The department agrees that a time limit should be set. Fifteen days is too short a time for a complex EIS. A 20 day time limit has been added.

(4) COMMENT: Use of the term "applicant whose project is being evaluated in the EIS' could lead to an interpretation that only EISs on permit applications require hearings.

RESPONSE: Subsection (2) controls when a hearing is required. The comment is therefore rejected.

(5) COMMENT: A scoping process should be included in the rules.

RESPONSE: The concept of scoping requires public input on the adequacy of the EIS before drafting the DEIS. The purpose is to ensure that all issues that the public is concerned about are addressed and to allow those issues about which the public is not concerned to receive less attention. The concept is rejected for several reasons. First, public input is provided for on the DEIS. Scoping hearings might be required 2 or 3 times if the proposal changes in its initial stages, as it frequently does. Second, it is doubtful that a public scoping meeting would result in narrowing of the issues. Third, informal scoping already occurs, even though no formal public hearings are held. For those reasons the comment is rejected.

(6) COMMENT: The agency should be required to advertise the hearing on radio and in the newspaper - once weekly for 3 consecutive weeks before the hearing.

RESPONSE: Often the statutory time frames under which the permit is issued do not allow this long a period for public notice. The department agrees that newspaper and radio notice is beneficial. Therefore, public notice language has been added.

(7) COMMENT: Time limits for comments at the hearing should be set for not more than 3 to 5 minutes.

RESPONSE: The agency should receive the maximum amount of testimony in the time alloted for the hearing. The time allotment for each person must be set by the hearings officer for each hearing, depending on the number of participants. The comment is therefore rejected.

(8) COMMENT: Hearings should be required to be held at a time and place most convenient to the public - not during mid-day.

RESPONSE: While in most instances an evening hearing is preferable to the public, there are exceptions. Hearings officers should be given the discretion to determine the time and place best suited for the hearing. Therefore, a hard and fast rule requiring evening hearings has been rejected.

(9) COMMENT: Both emotional and technical testimony should be considered on the draft - but only non-technical testimony should be taken at the hearing.

RESPONSE: The purpose of the public hearing is to receive public testimony regarding the sufficiency of the EIS. Technical testimony relevant to this issue cannot be excluded. The comment is therefore rejected.

(10) COMMENT: The agency should furnish guidelines to what it wants to hear from the public.

RESPONSE: The department agrees. Language requiring the press release or notice to state what nature of testimony it wishes to receive has been added.

(11) COMMENT: No effected agency representative should be allowed to give testimony from the floor.

RESPONSE: The department agrees that no representative of an agency participating in preparation of the EIS should be allowed to testify. Language to this effect has been added.

(12) COMMENT: A transcript should be furnished to all persons who attend the hearing or request one.

RESPONSE: Transcript preparation is extremely costly and time consuming. The department relies on notes and tapes rather than a transcription. All comments are summarized and responded to in the final EIS, which is available on

request. Because FEIS are also costly, they are sent only to those who request them. Persons attending the hearing may easily request them. The proposal is therefore rejected.

(13) COMMENT: The agency's findings from the hearing should be published in the same newspaper in which the hearing notice was published.

RESPONSE: The agency's findings, which in most cases are too lengthy for publication, are published in the final EIS, which is available to the public. The comment is therefore rejected.

RULE X RETROACTIVE APPLICATION OF THE MEPA RULES

(1) COMMENT: The rule should be changed to read that the revised rules do not apply to applications pending at the time of adoption to avoid confusion.

RESPONSE: The department agrees. The language has been amended to provide that these amendments do not apply to any EIS for which the draft has been filed prior to the effective date of these amendments.

(2) COMMENT: This rule should be deleted because which applications these rules apply to is a matter of law, not rule.

RESPONSE: An agency has authority to include such a provision. The comment is therefore rejected.

4. The authority for the rules is section 2-4-201 and 2-15-112 MCA.

Leo Berry, Jr., Commissioner
Department of State Lands

Certified to the Secretary of State January 7, 1980.

BEFORE THE BOARD AND DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION OF
THE STATE OF MONTANA

In the matter of the repeal of Rules 36-2.2(6)-P200 through P280, except 36-2.2(6)-P260, pertaining to the implementation of the Montana Environmental Policy Act; and the adoption of new rules I through XX implementing MEPA	NOTICE OF THE REPEAL OF ARM 36-2.2(6)-P200 through 36-22(6)-P280, except 36-2.2(6)-260, AND THE ADOPTION OF NEW RULES I THROUGH XX IMPLEMENTING THE MONTANA ENVIRONMENTAL POLICY ACT

TO: All Interested Persons

1. On July 26, 1979, the Board and Department of Natural Resources and Conservation published notice of a proposed repeal of ARM 36-2.2(6)-P200 through 36-22(6)-P280, with the exception of 36-2.2(6)P260, the fee bill rule, and a proposed adoption of new rules implementing the Montana Environmental Policy Act at page 780 of the 1979 Montana Administrative Register, issue number 14. A public hearing was held on August 30, 1979, at which time written and oral testimony was taken. Written testimony was accepted until September 14, 1979.

2. The department has repealed ARM 36-2.2(6)-P200 through 36-22(6)-P280, with the exception of 36-22(6)-P260, as proposed. The department has adopted the proposed new rules implementing the Montana Environmental Policy Act with changes. Except for the difference indicated below, the text of the adopted rules is set forth in the Department of State Lands' "Notice of Repeal of ARM 26-2.2(18)-P250 - P2000, P2020, and P2030, and adoption of new rules implementing the Montana Environmental Policy Act" incorporated herein by reference and beginning on page **88** of the Montana Administrative Register, issue number 1, published on January 17, 1980.

Rule II (2) is changed to read in the adopted rules:

"(2) "Department" means the Montana Department of Natural Resources and Conservation."

(3) The comments received and the Department of Natural Resources and Conservation's responses to those comments can also be found in the Department of State Lands' "Notice of Repeal of ARM 26-2.2(18)-P250 - P2000, P2020, and P2030, and adoption of new rules implementing the Montana Environmental Policy Act" incorporated herein by reference and beginning on page **88** of the Montana Administrative Register, issue number 1, published on January 17, 1980.

(4) The authority of the Department of Natural Resources and Conservation to repeal and adopt the rules is Section 2-4-201, MCA, and Section 2-15-112, MCA. The statutes implemented are Part 1, Chapter 1, Title 75, MCA, and Section 75-1-201, MCA.

Ted J. Doney

Ted J. Doney, Director
Department of Natural Resources
and Conservation
32 South Ewing
Helena, Montana 59601

Certified to the Secretary of State January 8, 1980.

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

In the Matter of the Amendments of 40-3.78(6)-S7820 concerning definitions; 40-3.78(6)-S7830 concerning equipment and requirements; 40-3.78(6)-S7840 concerning inspections and prescriptions; 40-3.78(6)-S7870 concerning requirements and standards for vending machines; 40-3.78(6)-S7880 concerning explosive chemicals; 40-3.78(6)-S78010 concerning copies of prescriptions; 40-3.78(6)-S78020 concerning labeling; 40-3.78(6)-S78040 concerning internship regulations, subsections (2)(a),(e),(h), (4) (b), (5)(j), (6)(a), (i), (7)(a),(8)(b),(d) and (f); 40-3.78(6)-S78050 concerning hospital requirements and standards subsections (2)(a)(i) &(ii),(3)(a), (b)(i),(ii),(iii), (4),(a)(i) and(iii), (b)(ii) & (v),(c)(ii) (ab) & (ad),(d)(i)(ab),(d)(iii), (e)(i) & (ii),(f) including subsections under (f), (g)(i) & (ii),(h)(ii) & (iii), (i) in its entirety, (5)(i)(ab),(6)(i)(ii) & (iii); 40-3.78(6)-S78070 subsections (2),(4),(5),(6),(7), (8),(9),(10),(11),(12),(13),(b), (c),(d),(e) concerning granting and issuing licenses; 40-3.78(6)-S78090 concerning suspension and revocation; 40-3.78(6)-S78100, subsection (4)(iii)(ad),(5)(a) and (9)(a) concerning amendments to the Dangerous Drug Act and registration; and adoption of a new rule setting a fee schedule.	NOTICE OF AMENDMENTS OF ARM 40-3.78(6)-S7820 BOARD DEFINITION; 40-3.78(6)-S7830 SET AND APPROVE REQUIREMENTS AND STANDARDS - EQUIPMENT AND REQUIREMENTS; 40-3.78(6)-S7840 SET AND APPROVE REQUIREMENTS AND STANDARDS - INSPECTIONS AND PRESCRIPTIONS; 40-3.78(6)-S7870 SET AND APPROVE REQUIREMENTS AND STANDARDS - VENDING MACHINES; 40-3.78(6)-S7880 SET AND APPROVE REQUIREMENTS AND STANDARDS - EXPLOSIVE CHEMICALS; 40-3.78(6)-S78010 SET AND APPROVE REQUIREMENTS AND STANDARDS - COPY OF PRESCRIPTION; 40-3.78(6)-S78020 SET AND APPROVE REQUIREMENTS AND STANDARDS - LABELING; 40-3.78(6)-S78040 SET AND APPROVE REQUIREMENTS AND STANDARDS - INTERNSHIP REGULATIONS; 40-3.78(6)-S78050 SET AND APPROVE REQUIREMENTS AND STANDARDS - HOSPITAL; 40-3.78(6)-S78070 LICENSING - GRANT AND ISSUE LICENSES; 40-3.78(6)-S78090 LEGAL SUSPENSION AND REVOCATION; 40-3.78(6)-S78100 AMENDMENTS TO DANGEROUS DRUG ACT, REGISTRATION; and ADOPTION OF A NEW RULE 40-3.78(6)-S78065 FEE SCHEDULE

TO: All Interested Persons:

1. On November 29, 1979, the Board of Pharmacists published a notice of proposed amendments and an adoption in the above entitled matter at page 1466 through 1483, 1979 Montana Administrative Register, Issue number 22.

2. The board has amended and adopted tne rules as proposed with the following exceptions:

Rule 40-3.78(6)-S78070 subsections (11) and (12);

Rule 40-3.78(6)-S78065 subsections (c) and (d) under (3) and subsections (5),(7) and (8). These subsections are not being acted upon at this time in response to a letter from the Administrative Code Committee in which they question the authority of the board for adopting the fees referred to in the subsections stated above.

The committee also questioned the statutory authority of the board for the $10 fee to conduct research and the $10 fee to analyze dangerous drugs, under Rule 40-3.78(6)-S78100 subsection (5)(a). The two particular fees are already part of the rule and were not proposed for change in the notice. The board has determined that any change or deletion in the two fees would require another notice and is therefore adopting the rule as proposed. The board will again review the two fees and those referred to in the two rules above after the Code Committee has met and communicated its opinion to the board.

3. No other comments or testimony were received. The reasons for the amendments and adoption are as stated in the notice.

BOARD OF PHARMACISTS
JAMES CARLSON, R.Ph., PRESIDENT

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

Certified to the Secretary of State, January 8, 1980.

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

In the matter of the amendment of ARM 40-3.94(6)-S9420 subsections (9) and (10) concerning rules of professional conduct.	NOTICE OF AMENDMENT OF ARM 40-3.94(6)-S9420 RULES OF PROFESSIONAL CONDUCT

TO: All Interested Persons:

1. On November 29, 1979, the Board of Public Accountants published a notice of proposed amendment of ARM 40-3.94(6)-S9420 subsections (9) and (10) concerning rules of professional conduct at pages 1484 and 1485, 1979 Montana Administrative Register, issued number 22.

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

3. No comments or testimony were received.

BOARD OF PUBLIC ACCOUNTANTS
SHERMAN VELTKAMP, C.P.A.,
CHAIRMAN

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

Certified to the Secretary of State, January 8, 1980.

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION OF RULES for accounting control of cigarette distribution and for sale of unstamped cigarettes.	))))))	NOTICE OF ADOPTION OF RULES regarding accounting control of cigarette distribution and for sale of unstamped cigarettes.

TO: All Interested Persons:

1. On July 26, 1979, the Department of Revenue published notice of a public hearing on the proposed adoption of rules concerning the accounting control of cigarette distribution and the sales of unstamped cigarettes at pages 790 and 791 of the 1979 Montana Administrative Register, issue no. 14.

2. The Department has adopted Rule I (42-2.14(1)-S1471) and Rule II (42-2.14(1)-S1472).

3. Numerous parties appeared at the hearing from the cigarette industry. The following is a point by point summary of and response to their comments.

(a) Comment: The rules would require all wholesalers to fill out monthly reports on all cigarettes even though only a few sell unstamped cigarettes. This goes considerably beyond the intent of the law.

Response: The monthly reporting system which has been developed and implemented by the Miscellaneous Tax Division is based on and in most cases copied directly from the system in use by the Oregon Department of Revenue. It should be noted that the State of Oregon has used their system for many years, even before Indians started selling unstamped cigarettes. The system consists of the basic report (Form No. CT-205) and three supporting schedules, (Form No. CT-206, Schedule A an Schedule C). This system should have been implemented with the passage of the original cigarette tax act but is absolutely essential with the passage of HB 486. Schedule C was developed by the National Tobacco Tax Association with the cooperation and assistance of industry representatives and is used by most states. The State of Montana is one of the few exceptions. The time is long overdue for Montana to reciprocate and furnish such information to it's sister states. The opposition to the use of Schedule C by the Montana Tobacco and Candy Distributors Association is totally out-of-step with the position taken by other associations and industry groups. The National Association of Tobacco Distributors strongly endorses the use of a Schedule C throughout the United States. The monthly reporting system designed for use in Montana must be used by all wholesalers in order to achieve

full utilization and effectiveness. However, even if it were desirable to have it used by only a few wholesalers, such usage would not be possible as case law is replete with prohibitions against applying different requirements to persons within the same class of taxpayers.

(b) Comment: The rules will necessitate extensive extra paperwork for all wholesalers.

Response: Full implementation of the monthly reporting system will require some additional manhours. An experienced bookkeeper familiar with the forms, the business and the product can complete all the forms on a monthly basis in less than one hour. Taking a monthly inventory of unstamped cigarettes and cigarette tax indicia will of course require additional manhours. These manhours should not be charged to the monthly reporting system but rather as a cost of doing business. Any cigarette wholesaler who does not conduct at least a monthly inventory has no internal control of his merchandise. Cigarettes being a high value, small size product require almost the same internal controls as those required for a jeweler's inventory of gems and stones. Testimony given at the public hearing by Mr. Joe Anderson of Anderson Wholesale, reflected the fact that in his business, he takes a daily inventory of cigarettes. It should also be noted that Safeway Stores, Inc. has been completing the Montana forms for the last three months without any major problems or excessive expenditure of time. The point proved by this fact is that a large regional grocery wholesaler can complete all requirements of the monthly reporting forms with minimum effort if they have their records well organized. Two other regional grocery wholesalers, U.R.M. Stores and Roundup Company, both of which are located in Spokane, Washington, have indicated that they will have no problems with the Montana monthly reporting system since they are already completing the same type forms for the Oregon Department of Revenue.

(c) Comments: The Department of Revenue already has all the information the forms would provide and the rule is duplicative.

Response: This objection is not factual and must have been made by an individual unfamiliar with accounting principles and procedures. The Department of Revenue does have data processing printouts furnished by cigarette manufacturers concerning shipments of cigarettes into Montana and a record of meter units and water decals purchased by wholesalers. The major missing link, however, is the inventory of unstamped cigarettes and cigarette tax indicia which focuses the information to a specific point in time. Other items of missing information include:

1. Merchandise returned
2. Damaged or destroyed merchandise
3. Out-of-state sales

4. Spoiled meter unit impressions or water decals
5. Transfers between wholesalers

(d) Comment: The rules will actually encourage the sale of unstamped cigarettes, since wholesalers will feel that as long as they have to file a report on their cigarettes, they might as well sell some unstamped ones.

Response: This objection seems to hint that selling unstamped cigarettes is either immoral or illegal. Upon the passage of HB 486, sales of unstamped cigarettes by Montana wholesalers has become a fact of life. It makes no difference to the Department of Revenue if every cigarette wholesaler in this state engages in such activity.

(e) Comments: HB 486 was intended to help Montana wholesalers sell cigarettes that are now being bought in Washington and Idaho and, thereby, generate income tax and property tax dollars. Since the rule will require purchasers to provide documentation to the wholesaler that he can buy the unstamped cigarettes, this will be a disincentive and he will continue to buy the cigarettes out-of-state. A similar point made was that this requirement placed cigarette sellers in the position of enforcers of the law, which they felt should be the Department's job.

Response: The purpose of HB 486 was to allow profits from the sale of unstamped cigarettes to flow into the pockets of Montana wholesalers. The objection is not factual when stating that documentation must be provided by the purchasers of unstamped cigarettes. The only information required are the items that must be completed on Form No. CT-206. Most of the information required by the form is exactly the same information that a wholesaler must obtain for sales of stamped cigarettes. The four exceptions are:

1. Name of Tribe
2. Tribal enrollment number of the purchaser
3. Social Security number of the purchaser
4. Signature of the purchaser

These four items of information will enable the Department of Revenue to verify with the Bureau of Indian Affairs that the purchaser is eligible to purchase unstamped cigarettes. The Department fails to see where wholesalers will have any more enforcement activities under the proposed rules than they have had in the past.

(f) Comment: The rules are deficient because:

1. They don't help define who is exempt from cigarette taxation; and

2. They address only Indians, when the bill was designed to deal also with military reservations.

Response: There is no question and can be no argument that HB 486 deals only with broad generalities and is lacking in specifics. The fact should be remembered, however, that HB 486 was written by the Montana Association of Tobacco and Candy Distributors and it had every opportunity in the world to put in any specifics wanted. The point is moot, however, since the U. S. Supreme Court in the Moe case has defined exempt purchasers and exempt consumers and any state law or regulation not in conformance would be null and void. It is true that the proposed rules address only Indians as purchasers of unstamped cigarettes. This was done purposely as these are the only purchasers with which Montana wholesalers will deal. Commissaries on military reservations purchase cigarettes direct from the manufacturers at exactly the same price as paid by wholesalers. The only way a wholesaler could sell to a commissary would be if he sold at a price less than his cost and this act would be a violation of the Unfair Business Practices Act administered by the Department of Business Regulation.

(g) Comments: The Department has not demonstrated a need for the rule and has not consulted with industry representative in industry's cost in complying with it.

Response: The Department has conclusively shown the need for these rules by pointing out that HB 486 allows a vast inventory of unstamped cigarettes to be maintained in Montana at the wholesale level and allows the unstamped cigarettes to move freely about the State. Mr. McGee or Mr. Michaelson of the Department called on each cigarette wholesaler who sells cigarettes in this State. These sessions were for the purpose of explaining the new forms and helping the bookkeeper or other employee work through a sample set of forms. The sessions ranged in time from 2 hours to a day and a half. At the public hearing, it was suggested that the rules would cost the wholesalers thousands of dollars to implement. To date however, no firm has offered any specific amounts which could be examined and questioned.

MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State 1-8-80

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the incorporation by reference of certain model rules as set forth by the attorney general.)	NOTICE OF THE ADOPTION OF A NEW RULE CONCERNING CITIZEN'S PARTICIPATION, NOTICING AND HEARING PROCEDURES AND DECLARATORY RULINGS.

TO: All Interested Persons:

1. On November 29, 1979, the Office of the Secretary of State published notice of a proposed adoption of a new rule concerning the incorporation by reference of certain model rules as set forth by the attorney general pertaining to citizen's participation, noticing and hearing procedures and declaratory rulings, at page 1486 of the 1979 Montana Administrative Register, issue number 22.

2. The Office of the Secretary of State has adopted the rule as proposed.

3. No comments or testimony were received.

Dated this 8th day of January 1980.

Frank Murray

FRANK MURRAY
Secretary of State

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of adoption of rules for the conduct of Vocational Education Programs, Particularly in Secondary Schools	NOTICE OF ADOPTION OF RULES For Vocational Education Programs **(Rules 48-2.26(11)-S26141 through S26147)**

TO: All Interested Persons.

1. On November 15, 1979, the Office of Public Instruction published notice of amendments **to above rules** concerning conduct of vocational education programs, particularly in secondary schools at page 1380 of the 1979 Montana Administrative Register, issue number 21.

2. The agency has adopted the rules with minor editorial changes but substantially as proposed.

3. No comments or testimony were received.

Georgia Rice
Superintendent of Public Instruction

Certified to Secretary of State January 8, 1980.

VOLUME NO. 38 OPINION NO. 60

DEPARTMENT OF PROFESSIONAL & OCCUPATIONAL LICENSING - Licensing requirements, modular home factory workers;
LICENSES, OCCUPATIONAL & PROFESSIONAL - Licensing requirements, modular home factory workers;
PLUMBERS AND PLUMBING - Licensing requirements, modular home factory workers.
MONTANA CODE ANNOTATED - Sections 37-69-101, 37-69-103, and 37-69-301.

HELD: Montana factory workers who install, at the factory, plumbing in modular homes which are to be located "in any incorporated city, town, or in any other area served by a public water supply or a public sewer system in this state," must be licensed as plumbers under Title 37, chapter 69, MCA.

4 January 1980

Ed Carney, Director
Department of Professional and
Occupational Licensing
42½ North Last Chance Gulch
Lalonde Building
Helena, Montana 59601

Dear Mr. Carney:

You have requested my opinion concerning whether Montana factory workers who install, at the factory, plumbing in modular homes must be licensed as plumbers under Title 37, chapter 69, MCA.

The licensing requirement you refer to is codified in section 37-69-301, MCA, which provides in pertinent part:

> Any person working at the field of plumbing in any incorporated city, town, or in any other area served by a public water supply or a public sewer system in this state, either as a master plumber or as a journeyman plumber ... shall first secure a state license ...

According to this statute, three factors determine when a license is required. First, the activity under consideration must fall within the "field of plumbing" as that term is defined in the code. Second, the work must be accomplished "in any incorporated city, town, or in any other area served by a public water supply or a public sewer system in this state" as that phrase is contemplated in the statute. Finally, the person must be working as a master or journeyman plumber.

Turning to the first factor, "field of plumbing" is defined in section 37-69-101(3), MCA, as follows:

> (3) "Field of plumbing" means the business, trade, or work having to do with the installation, removal, alteration, or repair of plumbing and drainage systems or parts thereof.

Clearly this definition encompasses the type of work done by Montana factory workers who install plumbing in modular homes.

The second factor is more difficult to apply to a factory situation because, unlike conventional housing, modular homes are built in one place and thereafter located in another. For purposes of licensing, however, the statutory references to "public water supply" and "public sewer system" indicate that the relevant consideration is a home's ultimate location. Therefore, the second factor is satisfied if the modular home in question is to be finally located "in any incorporated city, town, or in any other area served by a public water supply or a public sewer system in this state."

The final factor to consider is whether the person performing the work is working "either as a master plumber or as a journeyman plumber." Master plumber is defined in section 37-69-101(5), MCA, as follows:

> (5) "Master plumber" means a person who is authorized by this chapter to plan, estimate, bid, contract for, and supervise plumbing work.

Journeyman plumber is defined in section 37-69-101(4), MCA, as follows:

> (4) "Journeyman plumber" means a person who is authorized to make installation of all sanitary plumbing and potable water supply piping and appliances connected thereto.

Both terms described persons who are "authorized" to do certain types of work and in each context the term "authorized" apparently means "authorized by this chapter." But this definition, if read in the context of section 37-69-301, MCA, would result in the illogical conclusion that only those persons already licensed would be subject to the licensing requirement. Section 37-69-103, MCA, which makes it unlawful for unlicensed persons to engage in the field of plumbing, demonstrates that this result was not intended by the legislature. Consequently, consistent with the provision of section 37-69-101, which provides that the statutory definitions apply "[u]nless the context requires otherwise," I conclude that the requirement that a person be working "either as a master plumber or as a journeyman plumber" refers to any person performing those tasks which this chapter would authorize him to perform if he were licensed.

THEREFORE, IT IS MY OPINION:

> Montana factory workers who install, at the factory, plumbing in modular homes which are to be located "in any incorporated city, town, or in any other area served by a public water supply or a public sewer system in this state," must be licensed as plumbers under Title 37, chapter 69, MCA.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 38 OPINION NO. 61

TRAFFIC - Traffic offenses, statutes governing payment of fines;
COURTS - Justice Courts, traffic offenses, statutes governing payment of fines;
FINES - Traffic offenses, Justice Courts, statutes governing payment of fines;
MONTANA CODES ANNOTATED - Sections 46-19-102 and 61-8-711.

HELD: Section 61-8-711, MCA, governs the penalties that may be imposed upon persons convicted of traffic offenses.

7 January 1980

Ronald W. Smith, Esq.
Hill County Attorney
Hill County Courthouse
Havre, Montana 59501

Dear Mr. Smith:

You have requested my opinion on the following question:

> When a person convicted of a traffic offense is sentenced to pay a fine, does 61-8-711 or 46-19-102, MCA, govern?

Section 61-8-711, MCA, is part of the traffic regulation statutes, and provides maximum fines and periods of imprisonment for traffic offenses depending upon whether the offense is the defendant's first, second or third within one year. Subsection (3) provides that upon failure to pay a fine, the defendant is to be imprisoned in the county jail for a period of one day for each two dollars of the fine. Section 46-19-102, MCA, is part of the general criminal procedure code, and provides that if a judgment is a fine and imprisonment until the fine is paid, the defendant is to be held in custody for a period not to exceed one day for each ten dollars of the fine.

Your letter states that some Justices of the Peace are applying the two-dollar-a-day imprisonment of 61-8-711 to traffic offenders, while others are applying the ten-dollar-a-day imprisonment of 46-19-102 to similar offenses. The result is that persons convicted of the same offense and

subjected to the same fine are serving greatly disparate jail terms depending upon which statute is being applied.

First, it is clear that section 61-8-711, MCA, applies to all traffic offenses to the exclusion of section 46-19-102, MCA. This results from the fact that when a general and a particular statute on the same subject are inconsistent, the particular statute governs. Section 1-2-102, MCA.

The situation you have raised, however, reveals a more fundamental problem that you should consider. If the failure to pay the fine is based upon indigency, constitutional issues arise. In Williams v. Illinois, 399 U.S. 235 (1970); Tate v. Short, 401 U.S. 395 (1971); Morris v. Schoonfield, 399 U.S. 508 (1970); and State ex rel. Kotwicki v. District Court, 166 Mont. 335, 532 P.2d 694 (1975), the courts have recognized the infirmity of imposing a fine as a sentence and then converting it into a jail term simply because the defendant is indigent and cannot forthwith pay the fine in full.

The implications of these holdings on the present situation are clear, and should be carefully considered whenever a defendant is jailed for non-payment of a fine.

THEREFORE, IT IS MY OPINION:

Section 61-8-711, MCA, governs the penalties that may be imposed upon persons convicted of traffic offenses.

Very truly yours,

MIKE GREELY
Attorney General