MONTANA ADMINISTRATIVE REGISTER

1980 ISSUE NO. 14
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NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a Joint Resolution directing an agency to adopt, amend, or repeal a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with existing or proposed rules. The address is Room 138, State Capitol, Helena, Montana 59601.

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

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INFORMATION REGARDING THE RECODIFICATION OF THE ADMINISTRATIVE RULES OF MONTANA

The recodification of the administrative rules is complete as of July 1, 1980. The complete reprint and distribution of the newly recodified set of the Administrative Rules of Montana (ARM) should be accomplished by September, 1980. The provisions of the law relating to recodification are found in Title 2, Chapter 4, MCA - the Montana Administrative Procedure Act. This act will be included in Volume 1, Title 1, Chapter 7, of the ARM.

Title Assignments - All title assignments remain the same with the exception of Title 10 - Education. This title has been expanded to include: Superintendent of Public Instruction, Board of Public Education, State Library Commission and the Montana Arts Council. Each of the above named agencies is assigned separate chapters in Title 10. Title 48, originally assigned to the Superintendent of Public Instruction and the Board of Public Education, is deleted.

New Numbering System - A new three-part numbering system was adopted during recodification (Example - 44.1.1101). The number to the far left designates the title number assigned to a department, the number between the periods designates the chapter number, and the number to the far right indicates the subchapter number with the last two numbers indicating the individual rule number.

New Rules or Rule Changes Published in the Montana Administrative Register (MAR) During Transition Period - During the transition period from July 1, 1980, until the distribution of

the newly recodified set of ARM, users will not have ready access to the language of the recodified rules. During this period, rulemaking agencies will publish in the MAR the entire language of a proposed new rule either in the notice or adoption stage, with the exception of an adoption by reference.

The proposed amendment of a recodified rule will contain the entire language of the rule with interlining and underlining to indicate the changes made to the rule. If the language of a recodified rule appears in the Montana Administrative Register, then the issue and page number where the rule is found will be listed. In this case, only the amended language may be published. The new three-part number will be listed.

In the case of a proposed repeal of a recodified rule, the agency will list the new three-part number followed in parenthesis by the old rule number assigned before recodification, and the page number in the ARM where the rule can be found. If substantive changes were made to the rule during the period that replacement pages were not furnished to the ARM, then the page number in the MAR will also be listed where the changes can be found.

Please direct questions relating to recodified rules to the affected agency or to the Administrative Rules Bureau, Secretary of State's office, Room 202, Capitol Building, Helena, Montana 59601.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the repeal of rules 10.16.1401, 10.16.1402, 10.16.1403, 10.16.1404, 10.16.1405, 10.16.1406, 10.16.1407, 10.16.1408, 10.16.1409, 10.16.1410, 10.16.1501, 10.16.1502, 10.16.1503, 10.16.1504, 10.16.1505, 10.16.1506, 10.16.1507, 10.16.1508, 10.16.1509, 10.16.1510, 10.16.1511, 10.16.1512, 10.16.1513, 10.16.1601, (48-2.18(42)-P18720, 48-2.18(42)-P18730, 48-2.18(42)-P18740.	)	NOTICE OF PROPOSED REPEAL OF DUPLICATE RULES PERTAINING TO HEARING PROCEDURES IN SPECIAL EDUCATION NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

I. On August 30, 1980 the superintendent of public instruction proposes to repeal rules 10.16.1401, 10.16.1402, 10.16.1403, 10.16.1404, 10.16.1405, 10.16.1406, 10.16.1407, 10.16.1408, 10.16.1409, 10.16.1410, 10.16.1501, 10.16.1502, 10.16.1503, 10.16.1504, 10.16.1505, 10.16.1506, 10.16.1057, 10.16.1508, 10.16.1509, 10.16.1510, 10.16.1511, 10.16.1512, 10.16.1513, 10.16.1601. These numbers correspond to rules 4-2.18(42)-P18720, 48-2.18(42)-P18730, 48-2.18(42)-P18740 which were divided into shorter rules during recodification. These rules pertain to hearing procedures.

2. The rules proposed to be repealed are on pages 48-406, 48-407, 48-408, 48-409, 48-410, 48-411, 48-412 of the Administrative Rules of Montana.

3. The agency proposes to repeal these rules because they unnecessarily duplicate 10.16.301, 10.16.302, 10.16.303, 10.16.304, 10.16.305, 10.16.306, 10.16.307, 10.16.308, 10.16.309, 10.16.310, 10.16.311 (48-2.18(42)-P18750, 48-2.18(42)-P18760, 48-2.18 (42)-P18770.) The rules had been ineffectively repealed under an emergency procedure under their old number 48-2.18(42)-P18720, 48-2.18(42)-P18730, 48-2.18(42)-P18740 to comply with federal due process standards. They were accidentally retained during recodification and given new numbers. This repeal will not affect the hearing procedure currently in place under 10.16.301, 10.16.302, 10.16.303, 10.16.304, 10.16.305, 10.16. 306, 10.16.307, 10.16.308, 10.16.309, 10.16.310, 10.16.311 (48-2.18(42)-P18750, 48-2.18(42)-P18760, 48-2.18(42)-P18770.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Shirley Miller, Special Education Unit, State Capitol, Helena, Montana 59601 no later than August 28, 1980.

5. If a person who is directly affected by the proposed repeal of rules 10.16.1401, 10.16.1402, 10.16.1403, 10.16.1404, 10.16.1405, 10.16.1406, 10.16.1407, 10.16.1408, 10.16.1409, 10.16.1410, 10.16.1501, 10.16.1502, 10.16.1503, 10.16.1504, 10.16.1505, 10.16.1506, 10.16,1507, 10.16.1508, 10.16.1509, 10.16.1510, 10.16.1511, 10.16.1512, 10.16.1513, 10.16.1601,

(48-2.18(42)-P18720, 48-2.18(42)-P18730, 48-2.18(42)-P18740) wishes to express his data, views and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit that request along with any written comments to Shirley Miller, Special Education Unit, State Capitol, Helena, Montana, 59601 no later than September 28, 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 at least a thousand persons based on the number of special education personnel and parents of special education children.

7. The authority of the agency to make the proposed rule is based on Sections 20-7-403 MCA, 20-7-402 (1) (b) MCA; and 20-7-402(2) MCA.

BY Georgia Rice
GEORGIA RICE
SUPERINTENDENT OF PUBLIC INSTRUCTION

Certified to the Secretary of State, July 22, 1980.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment of Rules 10.44.201(6), 10.44.202(2)(d) and 10.44.202(3) specifying criteria for eligibility of vocational education programs for weighted cost funding.	NOTICE OF PROPOSED AMENDMENT OF RULES 10.44.201(6), 10.44.202(2)(d) AND 10.44.202(3) FOR VOCATIONAL AGRICULTURE PROGRAMS IN SECONDARY SCHOOLS NO HEARING CONTEMPLATED

TO: All Interested Persons

1. On September 15, 1980 the superintendent of public instruction proposes to amend rules 10.44.201(6), 10.44.202(2)(d) and 10.44.202(3) which specify eligibility criteria for weighted cost funding in vocational agriculture programs in secondary schools. (History: Sec. 20-7-301(7), MCA; IMP, Sec. 20-7-303 MCA; NEW 1979 MAR pp. 1130-1143, Eff. 9/28/79, AMD 1980 MAR p. 134, Eff. 1/18/80.)

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

10.44.201 GENERAL REQUIREMENTS. (1) The program's primary objectives may be that of developing skills leading to employment as well as advanced vocational training.

(2) Specific objectives shall be defined for skills to be developed and related to a specific occupation by U. S. Office of Education course code number.

(3) The program shall be based on the vocational education need of students in the area. A needs assessment shall be made during initial planning. Program information shall be projected for a five-year period.

(4) Programs must be developed and conducted in consultation with an advisory committee. The committee shall include members of both sexes from business, industry and labor. It should represent a cross section of men and women active in the occupation. Minorities residing in the area served by the committee must be represented appropriately.

(5) Instruction shall be based on an analysis of the skills and knowledge required in the occupation.

(6) The program ~~must~~ shall develop leadership and character through activities that accommodate ~~the~~ students' transitions from school to jobs. ~~Vocational student organizations (Future Farmers of America (FFA) and Distributive Education Clubs of America (DECA) are required for vocational agriculture and marketing and distributive education. Student organizations are highly recommended.~~ All student vocational organizations are considered to be an integral part of vocational education instruction.

(7) Provision shall be made for vocational guidance and shall include, but not be limited to, occupational information and career counseling.

(8) Students shall be selected for enrollment on the basis of their interest in the occupation and their ability to profit from the instruction. Prerequisite courses shall be required which provide students with information and experiences to make sound choices of occupations and advanced training.

(9) Instructors shall be occupationally competent and certified in the vocation to be taught.

(10) Instructional equipment and facilities shall be comparable to those used in the occupation; adequate for the maintenance of acceptable educational, health and safety standards; and capable of accommodating male, female and handicapped students.

(11) Provisions shall be made for job placement, annual follow-up of program completers and program evaluation.

(12) The maximum number of students per class shall be determined by the work being done, equipment being used, ease of supervision, safety factors, space and resources available, and the need for individual student instruction. Class size maximums are given for each program under its specific requirements. Approval for a larger class must be obtained in advance and will be granted only when evidence that adequate provisions have been made to ensure that the larger number will not hinder the success of the program. Deficiencies in some cases may dictate a smaller number of students per class.

(13) Programs shall be planned with regard for how they will relate to other employment and training programs conducted in the area.

(14) Provisions shall be made to ensure equal access to all programs by female, male and handicapped students; to review, evaluate and replace sex-biased learning materials; to make facilities and equipment available for all students; to provide guidance and counseling, especially for students choosing to enter non-traditional occupations; and to seek job placement dependent on the students' abilities, needs and interests rather than on cultural or sex stereotypes. Applications shall describe procedures in effect or ones that will be put into effect to ensure that these requirements are met.

(15) The school shall participate in the Montana Vocational Education Information System by providing information as required.

(16) Each program shall conduct a yearly self-evaluation and submit a copy to the Office of Public Instruction. The program shall cooperate with the Office of Public Instruction in a thorough team evaluation which shall be conducted at least every five years.

(17) Local educational agencies shall use vocational education funds to supplement (add to, enhance) local funds to improve vocational programs. Funds will not be approved when it has been determined that supplanting (replacing) of local funds will occur. A school shall not decrease the amount spent in the vocational programs from one year to the next, figured either on an aggregate or per student basis, unless "unusual circumstances" exist, such as large expenditures in previous years for equipment.

(18) Accounting procedures must use standard school accounting codes. A yearly certified expenditure report will be submitted showing the actual expenditure of funds compared to the last approved budget. Records will be kept locally for

audits. These records will include invoices, purchase orders, warrant numbers and other documents. Records for funded programs by six-digit course codes will be separated from non-funded programs. (History: Sec. 20-7-301(7) MCA; IMP, Sec. 20-7-303 MCA; NEW, 1979 MAR pp. 1130-1143, Eff. 9/28/79, AMD, 1980 MAR p.134, Eff. 1/18/80.)

10.44.202 AGRICULTURE EDUCATION PROGRAMS.

(1) The United States Office of Education course codes for Agriculture Education programs are:

(a) 01.0100 Agriculture Production
(b) 01.0200 Agricultural Supplies and Services
(c) 01.0300 Agricultural Mechanics
(d) 01.0400 Agricultural Products
(e) 01.0500 Ornamental Horticulture
(f) 01.0600 Agricultural Resources
(g) 01.0700 Forestry

(2) All students enrolled in Vocational Agricultural classes 9-12 are required to plan and conduct occupational experience programs under the direct supervision of a vocational agriculture teacher.

(a) The duration of programs shall be two or more years, with four years recommended.

(b) Classes shall meet a minimum of 270 minutes per week. Longer blocks of time are encouraged at the eleventh- and twelfth-grade level.

(c) The maximum class size per instructor shall be twenty students. Student-teacher ratio shall not exceed 60 to 1.

(d) Instructors shall hold a Montana Class 1, 2, or 5 teaching certificate with endorsement in agriculture (61). The instructor must have had one year of agricultural occupational experience within the past five years. ~~Travel funds must be provided by the district in addition to the instructor's salary in order that the teacher may supervise and coordinate the occupational experience phase of the program.~~ Travel funds should be provided by the local district in accord with district policy so that the instructor may supervise and coordinate the occupational experience phase of the program. ~~Instructors shall be employed for a minimum of ten and one half months, with at least four weeks at the end of the school year and two weeks before the start of the school year to supervise the students occupational experience programs.~~ It is strongly recommended that vocational agriculture/agribusiness programs be conducted for a minimum of ten and one-half months. That portion of the program conducted during the summer, if a summer program is deemed appropriate and necessary to meet the needs of local vocational agriculture students, shall be scheduled by the local board of trustees to best meet these students' needs. All portions of a vocational agriculture program must be supervised by an instructor qualified in vocational agriculture. Because the funding level for vocational agriculture was based

on the additional cost of a one and one-half month extension of teaching contract(s), any board of trustees offering less than a one and one-half month extended instructor(s) contract will receive a lower level of state reimbursement for an approved vocational agriculture program.

10.44.202(3) Future Farmers of America (FFA) ~~must be conducted as part of the program, serving as an activity~~, is an integral part of vocational agriculture/agribusiness program. Student membership in FFA is left to the discretion of the individual student. The ~~teacher~~ instructor of vocational agriculture/ agribusiness shall serve as advisor to the local FFA Chapter. ~~All programs of vocational agriculture/agribusiness must maintain a local chapter in good standing with the state and national FFA organizations.~~ It is strongly recommended that all programs of secondary vocational agriculture/agribusiness maintain a functional FFA chapter in good standing with the state and national FFA organizations. (History: Sec. 20-7-301(7) MCA, IMP, Sec. 20-7-303 MCA; NEW 1979 MAR pp. 1130-1143, Eff. 9/28/79, AMD 1980 MAR p. 134, Eff. 1/18/80.)

3. The rule is proposed to be amended in response to a petition for its amendment filed by Rex Manuel, State Representative from District No. 11. Representative Manuel petitioned on behalf of the boards of trustees at Fairfield and Dutton. Reasons for the petition are stated in a letter to Mr. David Niss, Attorney for the Legislative Council, State Capitol, Helena, Montana 59601.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Larry Key, Administrator, Department of Vocational and Occupational Services, Office of Public Instruction, State Capitol, Helena, Montana 59601, no later than August 28, 1980.

5. If the administrator of the department of vocational and occupational services receives requests for public hearing on the repeal from either 10% of the persons directly affected or 25 persons, whichever is less, from the Administrative Code Committee of the Legislature; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Ten percent of those affected has been determined to be 10% of 336 school administrators, 1344 members of boards of trustees and 170 teachers in vocational agriculture or 185 persons.

6. The authority of the department to make the amendments is based on section 20-7-301(7) MCA and the rules implement section 20-7-303 MCA.

BY Georgia Rice
GEORGIA RICE
SUPERINTENDENT OF PUBLIC INSTRUCTION

Certified to the Secretary of State July 22, 1980.

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

In the matter of the amendment of rules 16-2.14(1)-S1415 air quality permits, and 16-2.14(10)-S14460 water quality permits, to allow special public comment procedure for air and water permits under the Major Facility Siting Act	NOTICE OF VACATION OF MAR NOTICE NO. 16-2-146 16-2.14(1)-S1415 (16.8.1101-1119) 16-2.14(10)-S14460 (16.20.901-919)

TO: All Interested Persons

1. On June 26, 1980, the Board of Health and Environmental Sciences published notice of the proposed amendment of rules 16-2.14(1)-S1415, pertaining to air quality permits, and 16-2.14(10)-S14460, pertaining to water quality permits, at pages 1660 through 1662 of the 1980 Montana Administrative Register, issue no. 12.

2. The Board vacates the above-referenced notice, and no amendment to the rules will occur unless another notice is promulgated in the Montana Administrative Register.

JOHN F. McGREGOR, Chairman

Certified to the Secretary of State July 22, 1980

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

In the matter of the adoption of rules establishing procedures for public comment on applications for air and water permits under the Major Facility Siting Act	))))))	NOTICE OF CONTINUANCE OF PUBLIC HEARING

TO: All Interested Persons

1. On June 26, 1980, the Board of Health and Environmental Sciences published notice of the proposed adoption of rules setting procedure for public comment on applications for air or water permits under the Major Facility Siting Act on pages 1663-1666 of the Montana Administrative Register, issue no. 12, and establishing July 18, 1980, at 9:30 a.m. as the date and time for public hearing on the proposed rules.

2. The hearing commenced on July 18, 1980, is hereby continued until October 10, 1980, at 9:00 a.m. in the auditorium of the Highway Department Building, 2701 Prospect, Helena, Montana.

3. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to C. W. Leaphart, 1 North Last Chance Gulch, Helena, Montana, 59601, no later than October 9, 1980.

4. C. W. Leaphart, 1 North Last Chance Gulch, Helena Montana, has been designated to preside over and conduct the hearing.

JOHN F. McGREGOR, M.D., Chairman

Certified to the Secretary of State July 22, 1980

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

In the matter of the amendment of rule 16-2.18(6)-S1830 [16.24.401 through 16.24.405] setting standards for certification of day care centers) NOTICE OF PROPOSED AMENDMENT OF RULE 16-2.18(6)-S1830, [16.24.401 through 16.24.405] Day Care Centers)NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On September 2, 1980, the Department of Health and Environmental Sciences proposes to amend rule 16-2.18(6)-S1830, which sets standards to protect the health of children in day care centers that must be met before a certificate of approval and, ultimately, a license from the Department of Social and Rehabilitation Services to operate may be issued.

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

Recodified numbers: 16.24.401 through 405.

16-2.18(6)-S1830 DAY CARE CENTERS

(1) same

(2) Physical facilities:

(a) same

~~(b) Only ground or first floor space may be used in caring for children with the following exceptions.~~

~~(i) A warm, dry, well-ventilated and lighted basement with two accessible exits may be used for part day sessions not exceeding three hours if basement meets the above requirements. In addition, basement must be attractive in appearance, no bare cement wall or floor or open beams shall be exposed. A basement area shall not be used for full day care.~~

~~(ii) Upper floors may be used when they are entered from enclosed stairways with safety rails, have guards across windows and at top of stairs, and have two exits meeting requirements of the state fire marshal.~~

(c) (b) same

~~(d) The indoor area for play of the group receiving care shall contain a minimum of 35 square feet of usable floor space per child, exclusive of passageways, lockers, bathrooms and other space not primarily designated as play area. School children of the operator will not be included in making these calculations.~~

~~(e)~~ (c) same

~~(f)~~ (d) same

~~(g)~~ (e) same

~~(h)~~ (f) same

~~(i)~~ (g) same

~~(j)~~ (h) same

~~(k)~~ (i) same

~~(l)~~ (j) same

~~(m)~~ (k) same

~~(n)~~ (l) same

~~(e)~~ (m) same
~~(p)~~ (n) same
~~(q)~~ (o) same
~~(r)~~ (p) same
(3) Children receiving care:
(a) same
~~(b)--Children-under-two-years-of-age-shall-not-be-accepted-in-day-care-centers;~~
~~(c)~~ (b) same
(4) same
(5) same

3. Subsection (2)(b) is proposed to be eliminated because (2)(b)(i) bears no particular relationship to protection of the health of children and (2)(b)(ii) contradicts Section 802(c) of the Uniform Building Code, 1979 Ed., precluding day care operations above ground floor. Subsection (2)(d) also contradicts the Uniform Building Code, which requires 50 square feet of space per child, rather than 35 square feet, and is unnecessary because the Uniform Building Code already applies. Subsection (3)(b) is proposed to be eliminated because the department's statutory authority to adopt it is tenuous, since the provision in unrelated to the "health hazards of overcrowding, food preparation, and communicable diseases".

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59601, no later than September 1, 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 this request along with any written comments he has to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59601, no later than September 1, 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 who are 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 in excess of 25, based upon the large number of people utilizing day care centers.

7. The authority of the department to make the proposed amendment is based on Section 53-4-506(1), MCA, and the rule implements Section 53-4-506(1), MCA.

A. C. KNIGHT, Director

by: JOHN W. BARTLETT, Deputy Director

Certified to the Secretary of State July 22, 1980

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

IN THE MATTER of the Proposed) NOTICE OF PROPOSED AMENDMENT
Amendment of ARM 40.6.402 con-) OF ARM 40.6.402 LICENSING
cerning licensing requirements) REQUIREMENTS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On August 30, 1980, the Board of Athletics proposes to amendment ARM 40.6.402 concerning licensing requirements.

2. The amendment as proposed will add a new subsection (a) under (2) of the rule and will read as follows: (new matter underlined)

"40.6.402 LICENSING REQUIREMENTS (1) No person, club, corporation, organization, association may hold or conduct any boxing, sparring or wrestling match, contest or exhibition, unless such club, corporation, organization, association or person shall have first procured a license from the board.

(2) All professional boxing or wrestling contests or exhibitions (where contestant receives remuneration directly or indirectly as consideration for their performance) which are held or given in connection with any theatrical performance, circus, carnival, picnic, sideshows at fairs, club smokers, lodges, stag parties, benefits or any other amusements are strictly prohibited, except when duly licensed by the board.

(a) All barroom type brawls, "so you think your tough" type contests, and rough-neck type boxing and sparring matches or contests where the contestants receive remuneration directly or indirectly, and where they have no prior organized amateur or professional training are prohibited.

(3) The board of athletics reserves the right to limit the number of licenses or the number of permits to any person, club, corporation or association in any city, town or village.

(4) The board shall request that whenever any person is approached with a request or suggestion that a sham or collusive contest be entered into or that the contest shall not be conducted honestly and fairly, such licensed person must immediately report the matter to the board of athletics.

(5) The license issued by the board shall be posted up and at all times displayed in the box office of the premises where the boxing exhibitions are held.

(6) No license shall be issued to any applicant if he is not deemed by the board to possess the necessary qualifications. Such licenses may be revoked by the board upon such cause as the board shall deem sufficient.

(7) All licensees shall take the necessary precautions

for safety, order and proper behavior.

(8) Before acting upon an application for a license and permit, the board may at its discretion, examine under oath the applicant and other witnesses.

(a) The bonding requirements of section 23-3-207 MCA, must be complied with before any license can be granted. A bond in the amount of $5,000 must be filed with the board before any license can be granted.

(9) No promoter will be permitted or licensed to operate at any one time more than one open arena, when the season permits, nor more than one closed arena or building, either by being interested directly or leasing the property or by holding the lease and subleasing the property to another unless first having the approval of the board.

(10) Any organization or person holding an annual license must obtain a separate permit or sanction from the board before holding any specific boxing or wrestling contests.

(a) The board must be notified of any proposed contest, together with the names and weights of all contestants, at least 10 days before any such contest or exhibition.

(11) Applicants for license shall, before such license is issued and annually thereafter, pay to the board a license fee as follows: promoters and matchmakers for professional boxing or wrestling conducted by licensed clubs, whether acting individually or as an employee or agent of a club or clubs, $100.00 in conjunction with bond requirement.

(12) The word club as generally referred to in these rules may mean a person, club, corporation or association. Wherever the word board is used, it shall be understood to mean the board of athletics."

3. The board is proposing the amendment because boxers in this type of matches are street fighters recruited for one night stands. They do not have training as boxers, no managers, and must fight more then once in a night which is in violation of 40.6.902 (3)(e) (40-3.14(10)-S14010). The boxers are not in physical condition to box, and are, therefore, subject to many injuries which could be serious.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Athletics, Lalonde Building, Helena, Montana 59601 no later than August 28, 1980.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Athletics, Lalonde Building, Helena, Montana 59601 no later than August 28, 1980.

6. If the board receives requests for a public hearing on the proposed amendments 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.

7. The authority of the board to make the proposed amendment is based on section 23-3-102 MCA and implements sections 23-3-201 and 203 MCA.

BOARD OF ATHLETICS
PATRICK J. CONNORS, CHAIRMAN

BY: _____
TIMOTHY J. MELOY
STAFF ATTORNEY
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, July 22, 1980.

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

IN THE MATTER of the proposed amendments of ARM 40.32.414 concerning examinations and 40.32.417 concerning reciprocity licenses	NOTICE OF PROPOSED AMENDMENT OF ARM 40.32.414 EXAMINATIONS AND 40.32.417 RECIPROCITY LICENSES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 30, 1980, the Board of Nursing Home Administrators proposes to amend ARM 40.32.414 concerning examinations and 40.32.417 concerning reciprocity licenses.

2. The proposed amendment to ARM 40.32.414 will read as follows: (new matter underlined, deleted matter interlined)

"40.32.414 EXAMINATIONS (1) Examinations will be administered in May and November of each year. An application for examination shall be filed at least 30 days prior to the examination date and must be accompanied by the required fee, which shall not be refunded.

(2) A signed physician's statement of recent date will be accepted as evidence that the applicant is of sound physical and mental health.

(3) Applicant must provide a recent photograph approximately 2 - 1/2 x 2 - 1/2" in size of the head and shoulders only.

(4) ~~Any~~ One ~~or a combination~~ of the following will establish eligibility for the examination.

(a) Education: at least an Associate Degree ~~or its equivalent, in hospital or nursing home administration~~ a health related field with credits in adminstration, subject to board approval;

(b) ~~presenting evidence satisfactory to the board of sufficient education, training or experience in the foregoing fields to administer, supervise and manage a long-term care facility, and~~

~~(c)~~ Experience: four of the last six years as an administrator or assistant in a licensed health care facility.

(5) A passing score in examinations prepared by the Professional Examination Service, or the National Association of Boards and a passing score in an open book examination relating to the provisions of the Montana long-term care facility licensing law and regulations will be required of each applicant.

(6) Each applicant shall be required to attain a final score of at least 75% in examinations prepared by the Professional Examination Service, or the National Association of Boards, and a final score of at least 90% in the open book examination relating to the provisions of the Montana long-term care facility licensing law and regulations.

(7) In the event of failure, the individual may re-take the examination within the period of 1 year, by paying only the application fee."

3. The board is proposing the rule to clearly define requirements for eligibility for applicants to take the examination. The rule implements sections 37-9-203 and 301 MCA.

4. The proposed amendment to ARM 40.32.417 will read as follows. (new matter underlined, deleted matter interlined)

"40.32.417 RECIPROCITY LICENSES (1) A signed statement from the examining board of another jurisdiction attesting that the applicant attained a general average of at least 75% in an examination prepared by the Professional Examination Service or the National Association of Boards and setting forth that the applicant holds a currently valid license ~~in said jurisdiction may be accepted~~ and that said state's requirements to sit for the examination are at least equal to the requirements of Montana.

(2) An application for license by reciprocity may be filed at any time and must be accompanied by the required fees, which shall not be refunded."

5. The board is proposing the amendment to make certain that an out-of-state applicant, seeking a reciprocal license, has met the same requirements in education and/or experience as required of an applicant applying for examination in Montana. The rule implements section 37-9-303 MCA.

6. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Nursing Home Administrators, Lalonde Building, Helena, Montana 59601 no later than August 28, 1980.

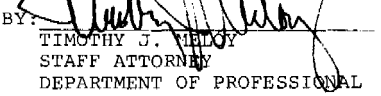
7. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Nursing Home Administrators, Lalonde Building, Helena, Montana 59601 no later than August 28, 1980.

8. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are 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 by the proposed amendments has been determined to be 1.

9. The authority of the board to make the proposed amendments is based on section 37-9-201 (1) MCA. The implementing

sections are listed with the reasons for the amendments.

BOARD OF NURSING HOME
ADMINISTRATORS
VERA E. GERKE, CHAIRMAN

BY: 
TIMOTHY J. KELLOY
STAFF ATTORNEY
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, July 22, 1980.

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL OF NUMEROUS RULES relating to property tax.	)))	NOTICE OF PROPOSED REPEAL OF NUMEROUS RULES relating to property tax.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 1, 1980, the Department of Revenue proposes to repeal numerous rules related to property tax.

2. The rules proposed for repeal and the pages of the Montana Administrative Code (prior to recodification) where they can be found are as follows:

Rule (MAC)	Page
42-2.22(18)-S22280	42-190.1
42-2.22(18)-S22330 through 42-2.22(18)-S22370	42-190.5 through 42-190.7
42-2.22(22)-S22450	42-190.14
42-2.22(22)-S22470	42-190.15
42-2.22(22)-S22530 through 42-2.22(22)-S22560	42-190.18 through 42-190.20
42-2.22(22)-S22580	42-190.20
42-2.22(22)-S22590	42-190.20 and 42-190.21
42-2.22(30)-S22700	42-190.25
42-2.22(46)-S22960	42-190.53

3. The rules listed above are proposed for repeal as a result of the rules recodification process. These rules have not been recodified and consequently are invalid pursuant to Chapter 600, Laws of 1979. They are being repealed so as to leave no doubts as to their status.

Rules 42-2.22(18)-S22280 and 42-2.22(18)-S22330 through 42-2.22(18)-S22370, relating to the net proceeds tax on miscellaneous mines, are redundant with statutory provisions found in Title 15, chapter 23, part 5, MCA.

Rules 42-2.22(22)-S22450, 42-2.22(22)-S22470, 42-2.22(22)-S22530 through 42-2.22(22)-S22560, 42-2.22(22)-S22580, and 42-2.22(22)-S22590, relating to the net proceeds tax on oil and gas, are redundant with statutory provisions found in Title 15, chapter 23, part 6, MCA.

Rule 42-2.22(30)-S22700, relating to the gross proceeds tax on coal, is proposed for repeal as temporary.

Rule 42-2.22(46)-S22960, relating to centrally assessed property, is proposed for repeal as temporary.

4. Interested parties may submit their data, views, or arguments concerning the proposed repeals in writing no later than August 31, 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 repeals wishes to submit 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 no later than August 31, 1980.

6. If the Department receives requests for a public hearing 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 fom 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 greater than 25 based on the number of persons subject to the various types of property tax.

7. Authority of the Department to make the proposed repeals is based on 15-23-108, MCA. The repeals implement 2-4-322, MCA, and the intent of Chapter 600, Laws of 1979.

MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State 7-21-80

BEFORE THE DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 46.10.108(46-2.10(14)-S11070) pertaining to AFDC overpayments and underpayments	))))))	NOTICE OF PROPOSED AMENDMENT OF RULE 46.10.108 (45-2.10(14)-S11070) PERTAINING TO AFDC OVERPAYMENTS AND UNDERPAYMENTS

TO: All Interested Persons

1. On September 2, 1980, the Department of Social and Rehabilitation Services proposes to amend Rule 46.10.108 pertaining to AFDC overpayments and underpayments.

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

46.10.108 OVERPAYMENTS AND UNDERPAYMENTS (1) When it is discovered that an administrative error resulted in an underpayment of an assistance grant, it may be corrected by increasing the grant for the following month to cover the underpayment. Corrective payments are limited to a 12-month period preceding the month in which the underpayment was discovered.

(a) For purposes of determining continued eligibility and amount of assistance, such retroactive corrective payments shall not be considered as income or as a resource in the month paid nor in the following month.

(b) No retroactive payment need be made where the administrative cost would exceed the amount of the payment.

(2) Current payments of assistance will not be reduced because of prior overpayment unless the recipient has income or resources currently available in the amount by which the agency proposes to reduce payments. Where evidence clearly establishes that a recipient willfully withheld information concerning his income, resources or other circumstances, the state may recoup prior overpayments from current assistance grants irrespective of current income or resources.

(a) Willful withholding of information includes:

(i) willful misstatements (either oral or written) made in response to oral or written questions from the agency;

(ii) willful failure by the recipient to report changes in income and resources; and

(iii) willful failure by the recipient to report receipt of a payment which he knows or should know represents an erroneous overpayment.

(b) Cases where the recipient willfully withheld information causing overpayment are to be referred to the program integrity bureau for the determination of the possibility of fraud.

(c) In cases where the overpayment resulted from the willful misstatements or withholding of information on the part of the recipient, the amount to be recovered will be 125% of the amount of the overpayment.

(3) Recoupment of overpayments not occasioned by willful withholding of information is limited to the 12 months preceding the month in which the overpayment is discovered.

(4) When recoupment is made from current assistance payments the proportion deducted from the grant is limited, on a case-by-case basis, so as not to cause undue hardship on recipients.

(5) Any recoupment of overpayments due from withholding of information may be made from available income and resources, including disregarded, set-aside or reserved items, or from current assistance payments or from both.

(6) Recipients are not to be held responsible for agency generated errors if such recoupment would result in an undue hardship to the recipient.

(7) The department will notify recipients at least every six months of their responsibility for reporting their income as defined in sub-chapter 4 and resources as defined in ARM 46.10.410 (2)(3) and (4).

(a) Recipients must report all available income and resources (including disregarded, set-aside, or reserved items), as well as current assistance payments.

(b) The department shall furnish a form on which recipients must acknowledge every six months that the reporting obligations have been brought to their attention and such obligations are understood by them.

3. The rule is proposed to be amended to comply with Section 53-2-108 MCA allowing the Department to recover 125% of the amount of an overpayment when such overpayment was caused by willful misstatements or withholding of information by a recipient.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to Office of Legal Affairs, P. O. Box 4210, Helena, Montana 59601, no later than August 28, 1980.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or argument 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 Office of Legal Affairs, P. O. Box 4210, Helena, Montana 59601, no later than August 28, 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 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 640 persons based on the 6,400 AFDC recipients in Montana.

7. The authority of the agency to make the proposed amendment is based on Section 53-4-212 MCA; and the rule implements Section 53-4-211 MCA.

BY: John A. Meredith
Director, Social and Rehabilitation Services

Certified to the Secretary of State July 22, 1980

BEFORE THE DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 46.9.101 (46-2.10(1)-S10051) describing organization of Economic Assistance Division	)))))	NOTICE OF PROPOSED AMENDMENT OF RULE 46.9.101 DESCRIBING ECONOMIC ASSISTANCE DIVISION. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On September 2, 1980, the Department of Social and Rehabilitation Services proposes to amend Rule 46.9.101 describing its Economic Assistance Division.

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

46.9.101 DESCRIPTION (1) The economic assistance division is comprised of the following bureaus:
(a) program and policy bureau; and
(b) field services bureau.
(2) The program and policy bureau is comprised of the following sections:
(a) assistance payments ~~bureau~~ section;
(b) medical assistance ~~bureau~~ section; ~~and~~
(c) food and nutrition services ~~bureau~~ section; and
(d) operations section.

3. The rule is proposed to be amended to redefine the Department's Economic Assistance Division since internal reorganization has now been completed.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Office of Legal Affairs of the Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, Montana 59601 no later than August 28, 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 Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than August 28, 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 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 1,118 persons based on a department budget analysis that shows a total of 11,184 recipients.

7. The authority of the agency to make the proposed adoption is based on Section 53-2-201 MCA, and the rules implement Section 53-2-201 MCA.

Jon A. Meredith
Director, Social and Rehabilitation Services

Certified to the Secretary of State July 22, 1980.

BEFORE THE DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 46.12.2002 pertaining to physician services, requirements (abortions)	) NOTICE OF PUBLIC HEARING) ON THE PROPOSED AMEND-) MENT OF RULE 46.12.2002) PERTAINING TO MEDICAL) SERVICES, ABORTION RE-) QUIREMENTS

TO: All Interested Persons

1. On August 22, 1980, at 9:00 a.m., a public hearing will be held in the Social and Rehabilitation Services auditorium at 111 Sanders, Helena, MT to consider the amendment of Rule 46.12.2002 pertaining to physician services/abortion requirements.

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

46.12.2002 PHYSICIAN SERVICES, REQUIREMENTS These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308.

(1) Utilization and peer review of physician services shall be conducted by the designated professional review organization.

(2) Physician services for conditions or ailments that are generally considered cosmetic in nature are not a benefit of the medicaid program except in such cases where it can be demonstrated that the physical and psycho-social wellbeing of the recipient is severely affected in a detrimental manner. Such services must be prior authorized by the medical assistance bureau and will be based on recommendations of the designated peer review organization.

(a) The request for authorization shall include all relevant information to justify the need for the service. This information shall include statements from a physician qualified in the area of concern, a potential provider, and a social worker involved with the case.

(b) The information must clearly document the necessity for the service and assurance that the plan will be followed to completion.

(3) Physicians' services provided for sterilization procedures must meet the following requirements in order to receive medicaid reimbursement:

(a) The recipient to be sterilized must not be declared mentally incompetent by a federal, state, or local court of law.

(b) The recipient to be sterilized must be at least 21 years old at the time of informed consent to sterilization.

(c) The recipient to be sterilized must not be institutionalized in a corrective, penal, mental, or rehabilitative facility.

(d) The recipient to be sterilized must give informed consent, in accordance with the medicaid approved informed consent to sterilization form, not less than 30 days nor more than 180 days prior to sterilization except in the case of premature delivery or emergency abdominal surgery. For these exceptions, at least 72 hours must pass between informed consent and the sterilization procedure. In cases of premature delivery, informed consent must have been given at least 30 days before the expected delivery date.

(e) The recipient to be sterilized, the person who obtained the consent, and the interpreter (if required) must sign the informed consent form at least 30 days but not more than 180 days prior to the sterilization. The physician performing the sterilization must sign and date the informed consent form after the sterilization has been performed.

(f) A copy of the informed consent to sterilization form, must be attached to the medicaid claim when billing for sterilization procedures.

(4) Physician services for hysterectomies must meet the following requirements in order to receive medicaid reimbursement:

(a) medicaid reimbursement for hysterectomies which are solely for the purpose of rendering the recipient incapable of reproducing is prohibited;

(b) medicaid reimbursement for a hysterectomy is allowed only when the surgery is medically necessary to treat injury or pathology;

(c) the physician must inform the recipient that the hysterectomy will render her permanently incapable of reproducing; and

(d) a completed copy of the approved acknowledgement of receipt of hysterectomy information form must be attached to the medicaid claim when billing for hysterectomy services.

(5) Physician services for abortion procedures must meet the following requirements in order to receive medicaid payment:

~~(a) the abortion is done in accordance with the Montana Abortion Control Act, sections 50-20-101 through 50-20-112, MCA; and~~

~~(b) the physician certifies in writing that the abortion is medically necessary and said statement is on or attached to the medicaid claim form.~~

(a) The physician has found, and certified in writing, that on the basis of his/her professional judgement, the life of the mother would be endangered if the fetus were carried to term. The certification must be on or attached to the medicaid claim.

(b) The recipient was a victim of rape or incest and the incident was promptly reported to a law enforcement or public health agency and there is signed documentation stating:

(i) the person upon whom the abortion was performed was reported to have been the victim of an incident of rape or incest;

(ii) the date on which the incident occurred;

(iii) the date on which the report was made which must have been within 60 days of the date on which the incident occurred;

(iv) the name and address of the victim and the name and address of the person making the report (if different from the victim); and

(v) signature of the person who reported the incident. The above signed documentation must be attached to the medicaid claim.

3. A recent ruling by the U.S. Supreme Court has determined that the "Hyde Amendment" does not violate the U.S. Constitution. When that decision becomes final, (on or about July 28, 1980) the Federal regulations implementing that law will once again eliminate Federal Financial Participation for Medicaid abortions except in those situations enumerated by this amendment. The Department is bound by the intent of the Montana legislature in not being able to fund abortions totally from State funds, 50-20-103 MCA.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, P. O. Box 4210, Helena, Mt 59601, no later than August 28, 1980.

5. The Office of Legal Affairs has been designated to preside over and conduct the hearing.

6. The authority of the agency to make the proposed amendment is based on Section 53-6-113 MCA, and the rule implements Section 53-6-141 MCA.

Jon A. Meredith
Director, Social and Rehabilitation Services

Certified to the Secretary of State July 22, 1980.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rule 46.5.905 (46-2.6(2)-S684) pertaining to establishing day care rates	)))))	NOTICE OF PROPOSED AMENDMENT OF RULE 46.5.905 ESTABLISHING DAY CARE RATES. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On September 2, 1980, the Department of Social and Rehabilitation Services proposes to amend Rule 46.5.905 which pertains to establishing day care rates for homes and centers.

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

46.5.905 DAY CARE RATES (1) General:

(a) Day care rates in centers must be at least equal for state-paid day care recipients and public day care consumers of the day care center. This does not preclude centers from charging higher rates to public day care consumers (those persons who are not receiving payment of their child care from the department). This does not preclude centers from charging lower rates to public consumers and subsidizing the difference from other center funds such as United Ways moneys.

(2) Specific:

(a) Full day care services are paid at a rate of ~~$4.50~~ $5.00 per day per child in care in day care homes. The maximum rate for centers is ~~$5.50~~ $6.00 per child per day of care. These rate increases shall be paid retroactively beginning July 1, 1980.

(b) Part-time care is paid at a rate of 50¢ per hour per child in day care homes, and 60¢ per hour per child in all centers up to a maximum of a full day or night care rate.

(c) Extra meals are paid at a rate of 60¢ per child per meal. The hourly rate for care is 50¢ per hour per child in day care homes and 60¢ per hour per child in centers. This is subject to written approval of the district office social worker supervisor III.

(d) Special child or exceptional child day care is paid at a rate determined by the day care facility, parent of the child, and the social worker up to a maximum of $8 per day or per night care; and upon approval by the district social worker supervisor III. Part-time care may be provided at a rate of up to a maximum of $1 per hour per child, up to a maximum of a full day or night care special rate of $8 and subject to the same requirements as applied to the daily rate.

(e) Day care operators will be allowed to claim a day's care only when actually provided to the child, unless the child is enrolled in the center.

3. The rule is proposed to be amended to give day care homes and centers the increase in rates anticipated and appropriated for by the 1979 Legislature to begin July 1, 1980, the start of the new fiscal year.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Office of Legal Affairs of the Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, MT 59601, no later than August 28, 1980.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than August 28, 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 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 125 persons based on 1,248 day care home and center recipients.

7. The authority of the agency to make the proposed amendment is based on Section 53-4-503 MCA, and the rule implements Section 53-4-514.

Jon A. Meredith
Director, Social and Rehabilitation Services

Certified to the Secretary of State July 22, 1980.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rule 46.11.101 (46-2.10(22)-S11751)) and the repeal of Rules 46.11.102 (46-2.10(22)-S11760); 46.11.103 (46-2.10(22)-S11770); and 46.11.104) (46-2.10(22)-S11780) pertaining to the food stamp program	))))))	NOTICE OF PROPOSED AMENDMENT OF RULE 46.11.101 AND THE REPEAL OF RULES 46.11.102, 46.11.103, and 46.11.104 PERTAINING TO FOOD STAMPS. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On September 2, 1980, the Department of Social and Rehabilitation Services proposes to amend Rule 46.11.101 and repeal Rules 46.11.102, 46.11.103, and 46.11.104 pertaining to food stamps.

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

46.11.101 FOOD STAMP PROGRAM (1) The department of social and rehabilitation services adopts and incorporates by reference the food stamp program rules as adopted by the food and nutrition services, United States department of agriculture and as set forth in ~~the federal register, volume 43, No. 201, pages 47881 through 47934 food stamp program~~ 7 CFR 271 through 276, as amended. A copy of the entire food stamp program rules may be obtained by contacting the Food and Nutrition Services ~~Bureau~~ Section, Department of Social and Rehabilitation Services, Box 4210, Helena, MT 59601.

3. The rules proposed to be repealed are on pages 46-94.31 and 46-94.32.

4. Rule 46.11.101 is proposed to be amended to more accurately state where the food stamp program rules can be found now that they have been printed in Title 7 of the CFR. Rules 46.11.102 through 46.11.104 are proposed to be repealed because their provisions are covered under the federal rules, therefore making them redundant and unnecessary.

5. Interested parties may submit their data, views or arguments concerning the proposed amendment and repeal in writing to the Office of Legal Affairs of the Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, MT 59601, no later than August 28, 1980.

6. If a person who is directly affected by the proposed amendment and repeal wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than August 28, 1980.

7. If the agency receives requests for a public hearing on the proposed amendment and repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment and repeal; 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 4,500 persons based on 45,000 food stamp recipients.

8. The authority of the agency to make the proposed amendment and repeal is based on Section 53-2-201 MCA, and the rule implements Section 53-2-306 MCA.

Jon A. Meredith
Director, Social and Rehabilitation Services

Certified to the Secretary of State July 22, 1980.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA
MONTANA BOARD OF HOUSING

IN THE MATTER OF THE AMENDMENT OF RULE 2-3.28(6)-S2840 for the consideration of assets where establishing income limits for lower income persons and families.	)))))	NOTICE OF AMENDMENT OF RULE 2-3.28(6)-S2840 Lower Income Persons And Families (2.41.302)

TO: All Interested Persons.

1. On February 14, 1980 the Montana Board of Housing published notice of the proposed amendment of Rule 2-3.28(6)-S2840 relating to a requirement that the Board of Housing also consider assets and other financial resources when establishing income limits for lower income persons and families, at page 440 of the 1980 Montana Administrative Register, issue number 3.

2. The Agency has amended the rule as proposed.

3. No comments or testimony were received.

IN THE MATTER OF THE AMENDMENT OF RULE 2-3.28(6)-S2850 to provide that no person or family qualifying under the Board's single family program may obtain more than one loan unless said person or family shall relocate their residence by more than 30 miles.	))))))	NOTICE OF AMENDMENT OF RULE 2-3.28(6)-S2850 Financing Programs (2.41.303)

TO: All Interested Persons.

1. On February 14, 1980 the Montana Board of Housing published notice of the proposed amendment of Rule 2-3.28(6)-S2850 relating to a requirement that no person or family qualifying under the Board's single family program may obtain more than one loan unless said person or family shall relocate their residence by more than 30 miles, at page 441 of the 1980 Montana Administrative Register, issue no. 3.

2. The Department has amended Rule 2-3.28(6)-S2850 as proposed.

3. At the public hearing, the Board received one oral comment from Harold Gerke, a member of the Montana House of Representatives from Yellowstone County relating to the matter of second loans under the Board's single family program.

Representative Gerke stated that the Board should be very careful in adopting a single standard which would be applied to many persons or families in different situations. Representative Gerke used as examples persons or families who

wished to move between Billings and Laurel, Kalispell and the surrounding towns and Butte and Anaconda who would not qualify for the Board's single family program because of the 30-mile limitation in the Rule, suggesting that a rule could be promulgated which requires only that a person pay his first loan in full in order that he may qualify for a second.

The Board recognizes that the 30-mile limitation will impose a hardship on some persons or families who are required to relocate their residence for legitimate purposes. The Board finds, however, that a compelling need exists for some regulation over those certain persons and families qualifying under the Board's single family program who sell a house obtained under the Board's program at a profit and thereafter apply for a second loan under the Board's program without showing that the house obtained through the first loan is inadequate or that said person or family requires assistance of the Board to provide decent, safe and sanitary housing.

It has been the Board's experience that persons and families who seek multiple loans under the Board's program frequently do so for speculative purposes to the detriment of persons and families which qualify under the Board's program and are in actual need of decent, safe and sanitary housing, but are unable to obtain a loan because of their location in the State or that funds are not otherwise available under the Board's program.

The Board further finds that the 30-mile limitation on second loans will serve to discourage persons or families from seeking a second loan for speculative purposes while preserving second loans for those persons or families who are required to relocate their residences by reason of change of job location, health or proximity to medical care.

IN THE MATTER OF THE AMENDMENT OF RULE 2.2-3.28(6)-S2870 to provide that no qualified lending institution may enter into any written commitment to make mortgage loans to be purchased or financed by the Board with a builder, developer, or real estate agent or broker unless the Board first determines that, due to economic and other conditions prevailing in the area involved, such commitments are made necessary or desirable to provide decent, safe, and sanitary housing which is within the capabilities of lower income persons and families.	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 2-3.28(6)-S2870 Qualified lending institutions. (2.41.305)

TO: All Interested Persons.

1. On February 14, 1980 the Montana Board of Housing published notice of the proposed amendment of Rule 2-3.28(6)-S2870 to provide that no qualified lending institution may enter into any written commitment to make mortgage loans to be purchased or financed by the Board with a builder, developer, or real estate agent or broker unless the Board first determines that, due to economic and other conditions prevailing in the area involved, such commitments are made necessary or desirable to provide decent, safe, and sanitary housing which is within the capabilities of lower income persons and families at page 442 of the 1980 Montana Administrative Register, issue no. 3.

2. The Department has amended Rule 2-3.28(6)-S2870 as proposed.

3. Comments reserved and responses by the board are summarized as follows:

COMMENTS FROM PROPONENTS

(a) Robert Garrison, representing Oakland Company & Realtors, Billings, Montana, supported the amendment and filed a written statement thereon because it would permit competition between all builders, developers and real estate brokers rather than providing a preference to those able to obtain written commitments for funds from a lender.

(b) Marge Dahlquist, representing Dahlquist Realty, Great Falls, Montana, supported the amendment and filed a written statement thereon and suggested that all loans should be made on a first-come, first-served basis to those persons qualifying, with no funds reserved by the lenders.

(c) Jim Skinner, a real estate broker from Great Falls, Montana, supported the amendment, suggesting that the average purchaser of a home should have access to funds under the Board's programs without applying only through those certain builders, developers or real estate brokers who are able to reserve funds with the lenders.

(d) Ben Vaughn, representing McDonald & Company, Billings, Montana, supported the amendment because of the tendency of the financial institutions to make funds available under the Board's programs only to the large, established builders and developers by committing funds in accordance with the number of construction loans a builder or developer obtained through a certain lender each year.

(e) Cliff Christian, representing the Montana Association of Realtors, Helena, Montana, supported the amendment and stated that pre-commitments should be allowed on a percentage basis and for new construction only, or else builders in Montana were not going to build. He suggest that if the money was not used within a specific period of time, it should be put back into the fund and allow it to be used for existing housing.

(f) Lilliam E. Williams, representing Double Diamond Properties, Bozeman, Montana, filed a written statement in support of the amendment relating case histories of loans made

under the Board's programs in Gallatin County wherein certain lenders have established policies in excess of Board requirements, reserved Board loans for friends or loans for personal properties, or solicited commitments and payments of commitment fees from real estate brokers.

(g) Bob Johnson, a homeowner from Deer Lodge, Montana, filed a written statement in support of the amendment on the basis that the Board should allocate funds only to those areas of the state which need housing and reserve these funds for walk-in traffic.

(h) Quentin F. Vitt, LaDona F. Vitt, Marvyl Simpson, Sandy Dahl, Patricia A. Cole and Pete Danielson, representing Quentin's Real Estate, Kalispell, Montana, each filed written statements in support of the amendment, calling for the allocation of funds on a first-come, first-served basis and relating their experiences with lenders in their area stating that because of commitments to certain builders and realtors, funds were not available for other persons within a few days after the money was available. These supporters further ask that existing housing continue to qualify under the Board's programs.

COMMENTS FROM OPPONENTS

(a) Robert Miller, representing the Montana Homebuilders Association, Billings, Montana, opposed the amendment and filed a written statement thereon stating that homebuilders cannot produce necessary new home construction without the guaranteed continuity of funding that prior commitments with lenders would provide. He asked that in future bond issues, 75% of the single family program funds be set aside for new construction on a prior commitment basis and 25% on a walk-in or first-come, first-served basis, and that, if any of the 75% is not committed on by bona fide builders within a 90 day period, the balance be returned to be used on a walk-in or first-come, first-served basis. Mr. Miller further asked that income qualifications and sales price ceiling be re-examined to keep pace with inflation, and he stated that the single family program must be geared to help the middle income family.

Response: Rejected. The Board finds that this rule is necessary because experience gained under existing programs has shown that a practice has developed whereby qualified lending institutions have entered into written agreements with certain builders, developers and real estate agents or brokers for a commitment to allocate a portion of the mortgage funds available to the said lending institutions from the Board's programs.

The effect of this practice has been to restrict the availability of mortgage funds only to those clients or customers of those builders, developers and real estate agents or brokers obtaining commitments for funds to the detriment of persons and families which qualify under the Board's programs and are in actual need of decent, safe and sanitary housing but are unable to obtain a loan because they are not clients or

customers of said builders, developers and real estate agents or brokers, or funds are not otherwise available from qualified lending institutions under the Board's programs in violation of the intent of the Housing Act of 1975.

This practice also results in the sale of houses by certain builders, developers and real estate brokers and agents at a premium sales price because of the desireable low-interest loans available under the Board's programs in violation of the intent of the Housing Act of 1975.

The Board recognizes that certain builders and developers are unable to obtain from financial institutions adequate capital with which they may construct new housing unless there are concurrent arrangements made for permanent financing. However, the purpose of the amendment of the rule is to reduce or eliminate the abuses reported to the Board and at the same time allow flexibility in tailoring each housing program to the needs of those persons and families which qualify. The Board finds that housing needs of these persons and families is not uniform statewide or at any given time and it is important that the Board have available to it a means by which it may provide new housing or make available funds for existing housing as determined at the time of the program and as required by specific areas and economic conditions.

The Board further recognizes the economic advantages to the construction industry and the State of Montana by using the funds made available under the Board's programs for new construction, however, the purpose of the Housing Act of 1975 is to provide additional decent, safe and sanitary housing which is within the financial capabilities of lower income persons and families. This is to be done by acquiring, constructing or rehabilitating dwelling accommodations for persons or families of lower income in need of housing. The law clearly requires that the housing needs of these persons or families be accomplished through acquisition of existing housing and new construction in tandem, not exclusively by one method or another.

The Board finds that it may better serve the intent of the Act by (1) reviewing the housing needs of lower income persons and families in the State of Montana for each program, (2) considering the allocation of funds for new construction on a prior commitment basis or on a first-come, first-served basis at the time the program is developed and, (3) adjusting each program to meet these needs.

(b) Tom Mather, representing Tom Mather & Associates, Great Falls, Montana, opposed the amendment and filed a written statement thereon stating that pre-commitments for new construction are practical and necessary. He proposed that applications for funds be made directly to the Montana Board of Housing, that fees be submitted accordingly, with the fee money to be deposited and return the most favorable rate of interest to submitting fee depositors. Homebuyers could then apply for take-out mortgage loans at the authorized service lenders of

Their choice, eliminating the unfair criticism of lenders committing allocated funds on other than a first-come, first-served basis.

Response: Rejected. See (a) above. In addition, the Board does not have the staff or resources necessary to accept and process direct applications from persons or families wishing to participate under the Board's programs and for this reason the Board uses the services of qualified lending institutions.

(c) Neil Allred, representing the Conrad National Bank, Kalispell, Montana also opposed the amendment. He stated that new construction is a real asset to the economy of the State of Montana, and that the amendment would disqualify builders from developing FHA/VA approved subdivisions and building new homes in the Kalispell market area. He feels that a major portion of the funds needs to be allocated to developers and builders by prior commitment and that if they cannot fund a project by a certain date, the funds should be surrendered back to the lender to be used on a first-come, first-served basis. Mr. Allred did feel the commitment period could be abbreviated somewhat.

Response: Rejected. See (a) above.

(d) John Urwiler, representing Mountain View Construction, Missoula, Montana, opposed the amendment and was in favor of the allocation of funds as discussed by Robert Miller of the Montana Homebuilders Association. He felt that builders who are borrowing funds at 15% to 17% interest would not start houses unless they had end loan commitments on the interim financing. He also stated that a builder only has one opportunity to use the funds with each unit, but that a realtor dealing with existing houses, new houses and commitments to the real estate community has three opportunities to use the money.

Response: Rejected. See (a) above.

(e) Darold Schaffer, a builder from Kalispell, opposed the amendment and agreed with the other opponents that a majority of the funds should be earmarked for new construction. He emphasized that, as a builder, he felt it was necessary to have some assurance when he starts a building that there will be a take-out loan at the end of the interim financing period and at a price that his customers can afford. Mr. Schaffer also thought that the only way to prevent house sales at inflated prices was by commitment to new housing under FHA/VA appraisal where the price is established independently of the type of financing available. Also, Mr. Schaffer did not feel that prior commitments of funds to builders or real estate offices had anything to do with the ability of an individual to buy fair, safe and decent housing.

Response: Rejected. See (a) above.

(f) Art Degenhart, Boise Cascade Homes, Laurel, Montana, opposed the amendment for the same reasons set forth by Robert Miller of the Montana Homebuilders Association and added that Boise Cascade's dealers were unable to obtain "up-front"

commitments to purchase homes and put them in small towns because it was the local walk-in traffic in cities where the lenders are located who were obtaining the commitments. He suggested that a banker should entertain commitments and then pro-rate to all persons who submitted their commitments to allow an adequate issuance of money throughout the state.

Response: Rejected. See (a) above.

(g) Agnes Hoffman, Security Bank, Billings, Montana, opposed the amendment and filed a written statement thereon and felt that the amendment as considered would allow sellers of existing homes to benefit from premium sales prices because of low interest loans available under the Board's program. Ms. Hoffman also proposed an amendment as follows:

> "3.(1) I recommend the rule to be further amended to read '..... deemed to require assistance under the board future programs,' or, IF CHANGES ARE DEEMED NECESSARY ON AN EXISTING ISSUE, THESE CHANGES MUST NOT BE MORE RESTRICTIVE THAN THE ORIGINAL REQUIREMENTS AS COMMITTED."

Response: Rejected. See (a) above.

(h) Kermit Mueller, American Building Company, Helena, Montana opposed the amendment and expressed his appreciation for what the Board of Housing is presently doing for builders. He felt it is helpful to Montana's economy when he can hire carpenters and suppliers and when mortgage people and others are involved in home building.

Response: Rejected. See (a) above.

(i) Representative Harold Gerke, Billings, Montana, objected to the amendment and stated that, as far as he could recall, the original intent of the bill was for new housing. He is in favor of prior written commitments from lenders and feels that these arrangements were more mandatory with higher interest rates. Mr. Gerke also feels that the Board has the authority to correct abuses of the present programs without new rules and regulations.

Response: Rejected. See (a) above.

(j) Tom Wester, Homebuilders Association of Helena, Montana, opposed the amendment and filed a written. He stated that his research indicated that one of the purposes of the program was to benefit the people of the state by providing jobs in new housing construction and keeping the economy viable. Mr. Wester said that if an individual walks into a lending institution, receives one of the Board's loans, goes out and buys an existing structure, the only person benefiting from that transaction is the individual.

Response: Rejected. See (a) above.

(k) Jim McDonald, Great Falls, Montana, president of the Montana Homebuilders Association, opposed the amendment and asked the Board to consider Robert Miller's statement, particularly as to 75% of available funds under the single family program being earmarked for new construction which, they feel, was the intent of the original bill.

Response: Rejected. See (a) above.

(l) Scott M. Hayes, representing Boise Cascade, Laurel, Montana, filed a written statement in opposition to the amendment, alleging it was legislative intent that the funds made available under the Board's programs be used for new construction and because builders cannot undertake construction in rural areas without a commitment for funding.

Response: Rejected. See (a) above.

(m) John A. Johnson, a builder from Great Falls, Montana, filed a written statement in opposition to the amendment because small builders cannot obtain funds for the construction of a house without pre-commitment for permanent financing.

Response: Rejected. See (a) above.

(n) Herman Hauch, representing Team Associates, Billings, Montana, filed a written statement in opposition to the amendment because the Board needs written committments in order to deliver its loans promptly and that control of the programs is difficult.

Response: Rejected. See (a) above.

(o) Morris Camrud, representing Real Estate Mart, Inc., Insurance Mart, Guaranty Co. and Remco Construction, Inc., of Billings, Montana, filed a written statement in opposition to the amendment, requesting that all funds be allocated for new construction and that builders be permitted to arrange for financing through commitments with lenders.

Response: Rejected. See (a) above.

GENERAL COMMENTS

(a) David Brown, First Bank Helena, appeared on behalf of the Montana Bankers Association, filed a written statement and stated that the amendment as proposed was workable with the lenders so long as the Board intends, where necessary, to review special local economic conditions and the need in those specific cases to allow written commitments to developers and realtors.

As a representative of First Bank Helena, Mr. Brown stated that his firm has not made loans on the basis of written commitments to developers and real estate people but ask that clients of the developers and real estate people come to the bank with bona fide sales contracts and obtain financing.

(b) Doug Beaudoin, Bancshares Mortgage Company, Missoula, Montana opposed the amendment and stated that some builders in certain areas of the State need commitments by lenders in order to operate. He said his bank will not make any interim financing for a builder if there is no guarantee on the end loan take-out.

(c) Paul D. Johnson, representing Bank of Columbia Falls, Columbia Falls, Montana, filed a written statement in regard to the proposed amendment stating that commitment of a portion of

the program funds to builders and developers is necessary to enable them to fund single family construction and that a portion of the funds should be reserved for walk-in traffic. Mr. Johnson suggests that realtors should not receive commitments because it allows that group an unfair advantage in the market place.

W. A. Groff, Chairman
Board of Housing

By: _____
Lyle E. Olson, Administrator

Certified to Secretary of State, July 22nd, 1980.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of Rule 4.12.1806 (old rule #4.14.550)	)))	NOTICE OF ADOPTION OF PROPOSED AMENDMENTS OF 4.12.1806 (OLD RULE # 4.14.550)

TO: All interested persons

1. On April 24, 1980, the Montana Department of Agriculture published notice of a proposed amendment to rule 4.12.1806, concerning Inspection of All Fruits, Vegetables--Collection of Fees at page 1196 of the 1980 MAR, issue number 8.

This is a renotice to correct inadvertant errors in previous notice.

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

RULE 4.12.1806 INSPECTION OF ALL FRUITS, VEGETABLES--COLLECTION OF FEES (1) All fruits and/or vegetables (with exception of cherries, potatoes, and watermelons) - ~~2¢~~ 2.5¢ per unit up to a maximum fee charge of ~~$15.00~~ $20.00.

Potatoes: Fresh shipments or lots, seed or tablestock (shipping point) 3¢ per cwt up to a maximum of $45.00.

Cherries: Fresh shipments ~~2¢~~ 2.5¢ per package or lug up to a maximum of ~~$25.00~~ $30.00.

Watermelon: ~~3¢~~ 3.5¢ per hundred weight up to a maximum fee of ~~$15.00~~ $20.00.

Additional inspection fee charges include:

Potato Tags - Minimum 3¢/tag (commercial or tablestock).

Phytosanitary Certificate - Minimum of ~~$1.50~~ $3.00 and not to exceed ~~$10.00~~ $15.00.

State Lot Certificate - Minimum of ~~$1.50~~ $3.00 and not to exceed ~~$15.00~~ $20.00.

3. No comments or testimony was received.

The portion of the scheduled hearing related to an increase in potato inspection is being postponed to a later date that will be established as being mutually convenient, but prior to potato harvest this year.

W. Gordon McOmber, Director

Certified to the Secretary of State, July 21, 1980.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the repeal of rule 48-2.18(1)-S1801: concerning special education supervision and policy on planning prepared for the Board of Public Education by the Superintendent of Public Instruction	NOTICE OF THE REPEAL OF A RULE 48-2.18(1)-S1801 FOR SPECIAL EDUCATION

TO: All Interested Persons.

1. On June 12, 1980 the superintendent of public instruction published notice of a proposed repeal of rule 48-2.18(1)-S1801 concerning planning, supervision and policy for special education at pages 48-356.2, 48-356.3 and 48-357 of the Administrative Rules of Montana, at page 1571, Issue #11, MAR.

2. The superintendent of public instruction has repealed the rule as proposed.

3. No requests for hearing, nor comments were received.

Georgia Rice

GEORGIA RICE
SUPERINTENDENT OF PUBLIC INSTRUCTION

Certified to the Secretary of State 7-23, 1980.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the repeal of rules 48-2.26(2)-S2610 through 48-2.26(2)-S26010; rules 48-2.26(6)-S26020 through 48-2.26(6)-S26050; rules 48-2.26(10)-S26140; rules 48-2.26(14)-S26150 through 48-2.26(14)-S26200; and rules 48-2.26 (18)-S26210 through 48-2.26 (18)-S26230, concerning the governance of administration, personnel, programs, funding and evaluation for Vocational Education.	NOTICE OF THE REPEAL OF RULES FOR VOCATIONAL EDUCATION

TO: All Interested Persons.

1. On June 12 , 1980 the superintendent of public instruction published notice of a proposed repeal of rules in subchapters 2, 6, 10, 14 and 18 in chapter 26 of title 48 concerning governance and administration, personnel, programs, funding and evaluation for Vocational Education, pg. 1569, Issue #11, MAR.

2. The agency has repealed the rule as proposed.

3. No comments or testimony were received.

BY Georgia Rice
GEORGIA RICE
SUPERINTENDENT OF PUBLIC INSTRUCTION

Certified to the Secretary of State July 22, 1980.

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

In the matter of the amendment of rule 16-2.14(10)-S14381 [Title 16, Chapter 20, subchapter 2, specifically ARM 16.20.241], public water supplies	NOTICE OF AMENDMENT OF ARM 16-2.14(10)-S14381 [ARM 16.20.241] (Public Water Supplies)

TO: All Interested Persons

1. On June 12, 1980, the Board of Health and Environmental Sciences published notice of the proposed amendment of rule 16-2.14(10)-S14381 concerning the laboratory fee for microbiological analysis of a sample from a public water supply at page 1561 of the 1980 Montana Administrative Register, issue number 11.

2. The board has amended the rule as proposed.

3. No comments or testimony were received suggesting changes to or objecting to the proposed amendment.

JOHN F. McGREGOR, M.D., Chairman

Certified to the Secretary of State July 22, 1980

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

In the matter of the amendment of rule ARM 16-2.14(10)-S14480 [recodified as Title 16, Chapter 20, sub-chapter 6] regarding surface water quality standards	NOTICE OF AMENDMENT TO RULE ARM 16-2.14(10)-S14480 (Surface Water Quality Standards)

TO: All Interested Persons

1. On March 27, 1980, the Board of Health and Environmental Sciences published notice of a proposed amendment to rule ARM 16-2.14(10)-S14480, concerning surface water quality standards at page 906 of the 1980 Montana Administrative Register, issue number 6.

2. The Board has amended the rule with the following changes:

16-2.14(10)-S14480 SURFACE WATER QUALITY STANDARDS

(1) All of this subsection as existing and as proposed in the notice cited above has been deleted and new language adopted as follows:

(1) Policy statement. The following standards are adopted to conserve water by protecting, maintaining, and improving the quality and potability of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry, recreation, and other beneficial uses.

(2)(a) through (e) Same as proposed.

(f) "Geometric mean" means the value obtained by taking the Nth root of the product of the measured values where zero values for measured values are taken to be the detection limit.

(2)(f) through (t) are renumbered consecutively (2)(g) through (u) because of the addition of the new subsection (f).

(3) Same as proposed.

(4)(a) Same as proposed.

(4)(b) One of the sentences proposed to be deleted from this subsection is not deleted; this subsection therefore reads as follows:

(4)(b) A-Closed classification.

(i) Waters classified A-Closed are suitable for drinking, culinary and food processing purposes after simple disinfection. Public access and activities such as livestock grazing and timber harvest are to be controlled by the utility owner under conditions prescribed and orders issued by the department.

(ii) Same as proposed.

(A) through (I) Same as proposed.

(4)(c) Same as proposed.

(i) Same as proposed.

(ii) Same as proposed.

(A) through (G) Same as proposed.

(H) The sentence proposed to be added at the end of this subsection has been replaced with new language, this entire subsection therefore reads as follows:

(H) Concentrations of toxic or other deleterious substances which would remain in the water after conventional water treatment must not exceed the maximum contaminant levels set forth in the 1975 National Interim Primary Drinking Water Standards (40 CFR Part 141) or subsequent revisions or the 1979 National Secondary Drinking Water Standards (40 CFR Part 143) or subsequent revisions. The maximum allowable concentration of toxic or deleterious substances also must not exceed acute or chronic problem levels as revealed by bio-assay or other methods. The values listed in Quality Criteria for Water published by the Office of Water and Hazardous Materials, EPA, Washington, D.C. (The Red Book) shall be used as a guide to determine problem levels unless local conditions make these values inappropriate. In accordance with section 75-5-306(1), MCA, it is not necessary that wastes be treated to a purer condition than the natural condition of the receiving water.

(4)(d) Same as proposed.

(i) Same as proposed.

(ii) Same as proposed.

(A) through (G) Same as proposed.

(H) The sentence proposed to be added at the end of this subsection has been replaced with new language, this entire subsection therefore reads as follows:

(H) Concentrations of toxic or other deleterious substances which would remain in the water after conventional water treatment must not exceed the maximum contaminant levels set forth in the 1975 National Interim Primary Drinking Water Standards (40 CFR Part 141) or subsequent revisions or the 1979 National Secondary Drinking Water Standards (40 CFR Part 143) or subsequent revisions. The maximum allowable concentration of toxic or deleterious substances also must not exceed acute or chronic problem levels as revealed by bio-assay or other methods. The values listed in Quality Criteria for Water published by the Office of Water and Hazardous Materials, EPA, Washington, D.C. (The Red Book) shall be used as a guide to determine problem levels unless local conditions make these values inappropriate. In accordance with section 75-5-306(1), MCA, it is not necessary that wastes be treated to a purer condition than the natural condition of the receiving water.

(4)(e) Same as proposed.

(i) Same as proposed.

(ii) Same as proposed.

(A) through (G) Same as proposed.

(H) The sentence proposed to be added at the end of this subsection has been replaced with new language, this entire subsection therefore reads as follows:

(H) Concentrations of toxic or other deleterious substances which would remain in the water after conventional water treatment must not exceed the maximum contaminant levels set forth in the 1975 National Interim Primary Drinking Water Standards (40 CFR Part 141) or subsequent revisions or the 1979 National Secondary Drinking Water Standards (40 CFR Part 143) or subsequent revisions. The maximum allowable concentration of toxic or deleterious substances also must not exceed acute or chronic problem levels as revealed by bio-assay or other methods. The values listed in Quality Criteria for Water published by the Office of Water and Hazardous Materials, EPA, Washington, D.C. (The Red Book) shall be used as a guide to determine problem levels unless local conditions make these values inappropriate. In accordance with section 75-5-306(1), MCA, it is not necessary that wastes be treated to a purer condition than the natural condition of the receiving water.

(4)(f) Same as proposed.

(i) Same as proposed.

(ii) Same as proposed.

(A) through (G) Same as proposed.

(H) The sentence proposed to be added at the end of this subsection has been replaced with new language, this entire subsection therefore reads as follows:

(H) Concentrations of toxic or other deleterious substances which would remain in the water after conventional water treatment must not exceed the maximum contaminant levels set forth in the 1975 National Interim Primary Drinking Water Standards (40 CFR Part 141) or subsequent revisions or the 1979 National Secondary Drinking Water Standards (40 CFR Part 143) or subsequent revisions. The maximum allowable concentration of toxic or deleterious substances also must not exceed acute or chronic problem levels as revealed by bio-assay or other methods. The values listed in Quality Criteria for Water published by the Office of Water and Hazardous Materials, EPA, Washington, D.C. (The Red Book) shall be used as a guide to determine problem levels unless local conditions make these values inappropriate. In accordance with section 75-5-306(1), MCA, it is not necessary that wastes be treated to a purer condition than the natural condition of the receiving water.

(4)(g) Same as proposed.
(i) Same as proposed.
(ii) Same as proposed.
(A) through (G) Same as proposed.
(H) The first sentence of this subsection has been changed and now reads as follows: Concentrations of toxic or deleterious substances must not exceed levels which render the waters harmful, detrimental or injurious to public health.

The second and third sentences proposed in this subsection have been replaced with the following language: The maximum allowable concentrations of toxic or deleterious substances also must not exceed acute or chronic problem levels as revealed by bio-assay or other methods. The values listed in Quality Criteria for Water published by the Office of Water and Hazardous Materials, EPA, Washington, D.C. (The Red Book) shall be used as a guide to determine problem levels unless local conditions make these values inappropriate. In accordance with Section 75-5-306(1), MCA, it is not necessary that wastes be treated to a purer condition than the natural condition of the receiving water.

The last paragraph of this subsection together with the listed parameters and maximum instantaneous concentrations is adopted as proposed.

(4)(h) Same as proposed.
(i) Same as proposed.
(ii) Same as proposed.
(A) through (G) Same as proposed.
(H) The first sentence of this subsection has been changed and now reads as follows: Concentrations of toxic or deleterious substances must not exceed levels which render the waters harmful, detrimental or injurious to public health.

The second and third sentences proposed in this subsection have been replaced with the following language: The maximum allowable concentrations of toxic or deleterious substances also must not exceed acute or chronic problem levels as revealed by bio-assay or other methods. The values listed in Quality Criteria for Water published by the Office of Water and Hazardous Materials, EPA, Washington, D.C. (The Red Book) shall be used as a guide to determine problem levels unless local conditions make these values inappropriate. In accordance with Section 75-5-306(1), MCA, it is not necessary that wastes be treated to a purer condition than the natural condition of the receiving water.

The last paragraph of this subsection together with the listed parameters and maximum instantaneous concentrations is adopted as proposed.

(4)(i) Same as proposed.

(i) The proposed language of this subsection has been changed to read as follows: The quality of these waters is naturally marginal for drinking, culinary and food processing purposes, agriculture and industrial water supply; however, since no better quality of water is available for these uses, degradation which will impact established beneficial uses will not be allowed.

(ii) Same as proposed.

(A) through (G) Same as proposed.

(H) The first two sentences of this subsection have been changed and now read as follows: Concentrations of toxic or other deleterious substances must not exceed levels which render the waters harmful, detrimental or injurious to public health. The maximum allowable concentrations of toxic or deleterious substances also must not exceed acute or chronic problem levels as revealed by bio-assay or other methods. The values listed in Quality Criteria for Water published by the Office of Water and Hazardous Materials, EPA, Washington, D.C. (The Red Book) shall be used as a guide to determine problem levels unless local conditions make these values inappropriate. In accordance with Section 75-5-306(1), MCA, it is not necessary that wastes be treated to a purer condition than the natural condition of the receiving water.

(4)(j) Same as proposed.

(i) Same as proposed.

(ii) Same as proposed.

(A) through (H) Same as proposed.

(5)(a) through (c) Same as proposed.

(d) The second sentence of this subsection which was proposed to be deleted has not been deleted. That sentence read as follows: When dilution flows are less than the above design flow at a point discharge, the discharge is to be governed by the permit conditions developed for the discharge through the waste discharge permit program.

(5)(e) and (f) Same as proposed.

(g) Same as proposed.

(i) Same as proposed.

(A) Same as proposed.

(ii) Same as proposed.

(iii) This subsection has been changed to read as follows (new material is underlined, material to be deleted is interlined): If a short-term activity other than those described in (i) and (ii) above causes unavoidable short-term ~~changes or~~ violations ~~in surface water quality~~ of the turbidity, total dissolved solids, or temperature standards, the activity ~~may be~~ is exempt from the standard if it is carried out in accordance with conditions prescribed by the department in a (5)(g) authorization form.

(A) Same as proposed.

(5)(h) and (i) Same as proposed.

(j) Same as proposed, except delete the words "and coal" in the first sentence.

(i) This subsection has been changed to read as follows (new material is underlined, material to be deleted is interlined): Complete ~~Plans~~ plans and specifications for proposed leaching pads, tailings ponds or holding facilities utilized in the processing of or ~~and coal~~ must be submitted to the department no less than 180 days prior to the day on which it is desired to commence their ~~construction~~ operation.

(ii) Same as proposed, except delete the words "and coal".

(k), (l), (m) Same as proposed.

(n) A sentence has been added to this subsection which reads as follows: Ephemeral streams are subject to all general provisions in subsection (5), but not to the specific water quality standards of subsection (4).

(o) through (s) Same as proposed.

(t) The first sentence proposed in this subsection has been deleted. The second sentence has been changed as follows (new material is underlined, material to be deleted is interlined): On ~~ether~~ all public water supply watersheds, detailed plans and specifications for the construction and operation of logging roads will be submitted to the department for its approval as required by Title 75, Chapter 6, MCA.

(6) This entire subsection on water-use classifications is adopted as proposed except Poplar river drainage is not deleted as proposed. The addition of Poplar river drainage appears in subsection (ix) under (6)(d). The subsection therefore reads as follows (new material is underlined, material to be deleted is interlined):

(ix) Missouri River drainage from Milk River to North Dakota boundary except waters listed in (d)(ix)(A) through (d)(ix)~~(C)~~(D) C-3

(A) Missouri River (mainstem) from Milk River to North Dakota boundary B-3

(B) Wolf Creek drainage near Wolf Point B-2

(C) Antelope Creek drainage near Antelope B-3

(D) Poplar River drainage B-2

3. Comments on the proposed amendments were received from numerous persons. Summaries of comments and testimony received in addition to the Board's responses are set forth on the following pages.

Subsection (1):
Commentors: Conoco, Inc., EIC, Fort Peck Tribes, Lee, League of Women Voters
Comment: Subsection (1) does not accurately reflect the policy statement in Section 75-5-101, MCA, and therefore the proposed changes could be interpreted to allow degradation.
Response: To avoid any conflict that might arise, the board has changed the proposed language in this subsection by incorporating Section 75-5-101(1), MCA, as the new policy statement. This is as follows: (1) Policy statement. The following standards are adopted to conserve water by protecting, maintaining, and improving the quality and potability of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry, recreation, and other beneficial uses.

Subsection (2):
Commentors: EPA, Flathead 208
Comment: The commentors stated that definitions are needed for: "Bio-assay", "bio-assay tolerance levels", "practicable", "reasonable operation", "heavy metals", "toxic materials", "pH", "dissolved oxygen", "fecal coliform", "geometric mean", "board", "perennial stream", "naturally-occurring color".
Response: The terms "bio-assay", "bio-assay tolerance levels concentration", "heavy metals", "toxic (materials) substances", "pH", "dissolved oxygen", "fecal coliform", "naturally occurring color", and "practicable" were not noticed out for proposed amendment in the March 18, 1980, Notice of Public Hearing on Proposed Amendment of rule ARM 16-2.14(10)-S14480, (surface water quality standards), and hereinafter referred to in this document as the March 18, 1980, Notice. Therefore, the board is legally prohibited from taking any action on these terms at this time.

"Reasonable operation" will not be defined since it is taken directly from the Water Quality Act, specifically Section 75-5-306(2), MCA. The following definition of "geometric mean" has been included since geometric mean is used in the proposed amendment and the meaning in the biological field is different from the common mathematical definition. "Geometric mean" means the value obtained by taking the Nth root of the product of the measured values where zero values for measured values are taken to be the detection limit. "Board" is already defined in Section 75-5-301(12), MCA. "Perennial stream" is not used in either the existing standards or the proposed amendment, therefore, there is no need to define the term.

Commentors: WETA, Montana Petroleum Association
Comment: The mixing zone definition should be revised because it is too restrictive and it should include a minimum zone for all discharges.
Response: Since the acquisition of the mixing zone is not a matter of right, the board believes the proposed definition is in compliance with the policy and requirements of the Water Quality Act.
Comment: Another suggested change to the mixing zone definition was to drop quantitative from the definition because "the impact of quantity was not a determining factor of the quality of the moxing zone".
Response: The board believes this is incorrect since the quantity of some substances such as heat is important to the quality of the mixing zone.
Comment: Another commentor suggests that the mixing zone definition include a minimum mixing zone which would apply to all discharges.
Response: The board believes that this is not proper for all substances because there are some substances which accumulate in the food chain such as mercury or which are known to cause cancer; therefore, each mixing zone needs to be individually determined and, in some instances, no mixing zone should be allowed. Furthermore, the acquisition of the mixing zone is not a matter of right. The board believes the proposed definition complies with the requirements of the policy and other provisions of the Water Quality Act.

Commentor: Environmental Protection Agency (EPA)
Comment: The mixing zone definition should be more restrictive. The EPA specifically requests that the requirements of subsection (5)(e) apply in the mixing zone. The board disagrees for two reasons: 1) In order to meet the requirements of subsection (5)(e) in the mixing zone, the discharge, in many cases, would have to have the same quality as the receiving water. 2) If these requirements are necessary to protect water quality in the receiving water outside of the mixing zone, the restrictions necessary to comply with subsection (5)(e) will be included in the discharge permit.

Subsection (4)(a)
Commentor: Exxon
Comment: This subsection is unnecessarily long and can be improved by replacing the proposed language with "specific surface water quality standards, along with general provisions in subsection (5), protect the beneficial water use description set forth in subsection (4)(b) through (4)(g) of this rule".

Response: The board overrules this suggestion. Although the suggested language is shorter, it is not as clear as the proposed language inasmuch as the intent of the section is to protect the water uses and not the water use descriptions.

Commentor: EIC
Comment: This subsection requires a minimum of five samples while subsections (4)(d)(ii)(A) through (4)(j)(ii)(A) require: "nor are 10 percent of the total samples during any . . . "; for clarity, subsection (4)(a) should require a minimum of 10 samples so that the 10 percent level can be calculated.
Response: The board did not notice out any changes in the sampling requirements in this subsection in its March 18, 1980 Notice. Therefore, the board is legally precluded from making this change at this time.

Subsection (4)(b)(i)
Commentors: Exxon, City of Missoula
Comment: This subsection would be improved by inserting the first sentence of (5)(t), "public access and activities such as livestock grazing and timber harvest will be controlled by the utility owner as prescribed by the department", in this subsection.
Response: The board agrees and has made this change.

Subsection (4)(b)(ii) and (ii) of (4)(c) through (4)(j)
Commentor: Montana Coal Council
Comment: The language which states "water quality standards shall not be violated by any person" should be deleted because it is not needed and suggests that a discharge in accordance with a valid discharge permit could cause a violation of water quality standards (the definition of pollution provides that a discharge in accordance with a permit is not pollution).
Response: Since Section 75-5-103(5), MCA, clearly states that a permitted discharge is not pollution under the Water Quality Act, a person (permittee) discharging in accordance with permit requirements cannot cause pollution under the Act.

Subsection (4)(b)(iii)(A) and (A) of (4)(c) through (4)(j)
Commentor: EIC
Comment: The mathematical definition of "geometric mean" requires all values to be greater than zero or the geometric mean is zero.
Response: The board agrees that this could cause confusion and has inserted a definition of "geometric mean" in the definition section.

Subsection (4)(b)(ii)(B)
Commentor: EPA
Comment: It is not necessary to state that dissolved oxygen

criteria is not applicable. This should be changed or deleted.
Response: This comment is overruled since this section was not noticed out for any substantive changes in the board's March 18, 1980, Notice. Therefore, the board legally is prohibited from taking any action on this subseftion at this time.

Subsection (4)(b)(ii)(C) and (C) of (4)(c) through (4)(j)
Commentor: ASARCO (East Helena)
Comment: A person should not be in violation of this standard due to variability in natural conditions or limitations of measuring techniques. A language change is suggested.
Response: The natural variations are allowed for by such phrases as "from natural" and "induced variation". The limitations of technique are always present and are considered in determining if violations have, in fact, occurred. Thus, these arguments are overruled.

Subsection (4)(b)(ii)(E) and (E) of (4)(c) through (4)(j)
Commentor: ASARCO (East Helena)
Comment: The same comment as that for subsection (4)(b)(ii)(C) was made except that this one dealt with temperature.
Response: The same as that for subsection (4)(b)(ii)(C).

Subsection (4)(b)(ii)(F) and (F) of (4)(c) through (4)(j)
Commentors: Conoco Inc., Montana Cattlemen's Association
Comment: The existing language, "adversely affect the use indicated" is clearer than the proposed language change which used the terms "nuisance", "harmful", "detrimental", and "injurious". These terms must be defined.
Response: The board believes that the proposed language is clearer than the existing language. Furthermore, this proposed language is the language used by the legislature in the Water Quality Act, specifically Section 75-5-103(5), MCA.

Subsection (4)(b)(ii)(F) and (F) of (4)(c) through (4)(j)
Commentor: League of Women Voters
Comment: The proposed language is superior to the existing language.
Response: The board agrees and has not made any changes to the proposed language.

Subsection (4)(b)(ii)(F) and (F) of (4)(c) through (4)(j)
Commentor: Montana Cattlemen's Association International
Comment: Subsection (F) of section (4) means that cattle walking through an area not usually trod by such livestock would cause a violation of the standards by increasing the level of turbidity.
Response: Livestock operations which are not included in MPDES activities which are reasonable will not constitute violations.

Subsection (4)(c)(ii)(A)
Commentor: Flathead 208
Comment: The source of coliform organisms cannot be determined.
Response: It can be demonstrated by serial instream sampling, source investigations, or investigations of other instream bacteria such as fecal streptococci. Therefore, this comment is overruled.
Comment: It is not clear whether the coliform group means total or fecal coliforms.
Response: Coliform group means just that -- the group which includes fecal and nonfecal subgroups. Therefore, this comment is overruled.

Subsection (4)(c)(ii)(E) and (E) of (4)(d) through (4)(i)
Commentor: EPA
Comment: EPA requested the scientific basis for the temperature standards be provided.
Response: The board did not notice out amendments to the temperature standards in its March 18, 1980, Notice Comments on the temperature standard are outside the legal scope of the notice and the board is legally prohibited from amending the temperature standard in any way at this time. Temperature data, however, is available at the department for review.

Subsection (4)(c)(ii)(H) and (H) of (4)(d) through (4)(i)
Commentors: 17 of the 36 written and many of the oral comments addressed this subsection.
Comment: The Red Book criteria should not be used as standards for Montana because many streams have instream concentrations which exceed the Red Book criteria; the basis used to determine the Red Book criteria may not apply in Montana due to antagonistic or synergistic effects from other substances which are present in our waters and may not have been present in the test waters used in developing the Red Book criteria; there are many potentially harmful substances which are not considered in the Red Book; and use of the Red Book criteria as standards necessitates a variance procedure which is difficult to implement.
Response: The board agrees that using the Red Book criteria as Montana surface water quality standards may be problematic; therefore, the board has revised this section in response to the many comments received in order to overcome the suggested problems. The revised language is: (H) Concentrations of toxic or deleterious substances which would remain in the water after conventional water treatment must not exceed the maximum contaminant level set forth in the 1975 National Interim Primary Drinking Water Standards (40 CFR, Part 141) or subsequent revisions, or the 1979 National Secondary Drinking Water Standards (40 CFR, Part 143) or subsequent revisions. The

maximum allowable concentrations of toxic or deleterious substances also must not exceed acute or chronic problem levels as revealed by bio-assay or other methods. The values listed in Quality Criteria for Water published by the Office of Water Hazardous Materials, EPA, Washington, D.C. (The Red Book) shall be used as a guide to determine problem levels unless local conditions make these values inappropriate. In accordance with Section 75-5-306(1), MCA, it is not necessary that waste be treated to a purer condition than the natural condition of the receiving water.

Subsection (4)(c)(ii)(H) and (H) of (4)(d) through (4)(i)
Commentor: Anaconda Copper Company
Comment: The references to subsequent revisions should be deleted.
Response: The board disagrees since the public is provided an opportunity to comment on all federal regulations.

Subsection (4)(d)(ii)(A) and (A) of (4)(e) through (4)(j)
Commentor: EPA
Comment: The percentage requirement is vague and should be replaced with a 7-day geometric mean limit.
Response: The percentage requirement was not noticed out in the board's March 18, 1980, Notice. Therefore, the board is legally prohibited from taking any action on the percentage requirement at this time.

Subsection (4)(g)(ii) and (4)(h)(ii)(H)
Commentors: Conoco Inc., Exxon
Comment: The specific values given are not the same as the Red Book criteria and the rationale for these values has not been presented.
Response: As discussed in the material distributed with the proposed changes, these values were derived from instream studies which showed that these are the present maximum values and these high values are not due to present discharges but to the deposition of mining and milling wastes in the channel and adjacent flood plain which occurred before the development of water quality standards or a discharge permit program. Therefore, the board retains these values.

Subsection (4)(c)(i) and (4)(c)(ii)(H) and corresponding section of (4)(d) through (4)(h)
Commentor: League of Women Voters
Comment: "Conventional treatment" should be changed to "adequate conventional treatment" to prevent any loophole which could result in inadequate conventional treatment.

Response: This comment is overruled since the determination of the degree of treatment required for a water supply system is not determined by these standards alone. If conventional treatment is used, the water resulting should be suitable for drinking.

Subsection (4)(e)
Commentor: Peabody Coal Company
Comment: "Marginal propagation of salmonids" should be defined.
Response: This comment is overruled since the board did not notice out any change in the usage of this phrase or a proposed definition in its March 18, 1980, Notice. Therefore, the board is legally prohibited from defining the phrase at this time.

Subsection (4)(i)
Commentors: BIA, Exxon
Comment: The formation of this new water use classification could have large and unknown effects on water uses and thus requires an environmental impact statement (EIS).
Response: The formation of this new classification will not have significant effects on water users and does not constitute a major state action having a significant impact on the human environment thereby requiring an EIS.

Subsection (4)(i)(ii)(H)
Commentor: Montana Coal Council
Comment: The language "known or demonstrated to be a public health significance" should be replaced with "render the waters harmful, detrimental or injurious to public health .
Response: The board agrees and has made this change.

Subsection (4)(i)
Commentors: Fitz, Hillickson, Humbert, League of Women Voters Yellowstone Basin Water Users Association, Lee
Comment: More restrictive language is needed in this water use classification especially with regard to salinity in order to protect the present water uses. In particular, the usage of Poplar River water as a drinking water supply should be protected.
Response: The board agrees and has modified this section by replacing the language in (4)(i) after ". . . furbearers" with the following: "The quality of these waters is naturally marginal for drinking, culinary and food processing purposes, agriculture and industrial water supply; however, since no better quality of water is available for these uses, degradation which will impact established beneficial uses will not be allowed." In addition, the board has decided to retain the B-2 classification for the Poplar River drainage.

Subsection (4)(j)
Commentor: Anaconda Copper Company
Comment: Silver Bow Creek does not meet the standards which apply to the E classification due to irretrievable, man-induced conditions such as the old mining and milling deposits in and adjacent to the channel.
Response: This comment is overruled since the board did not notice out any proposed amendments to the specific limits in the E classification in its March 18, 1980, Notice. Therefore, the board is legally prohibited from taking any action on the specific limits at this time.

Subsection (4)(j)(i)
Commentor: Exxon
Comment: The language "other than food processing" found in subsection (4)(j)(i) should be defined.
Response: This comment is overruled since the board did not notice out any change in the usage of this phrase or a proposed definition in its March 18, 1980, Notice. Therefore, the board is legally prohibited from defining the phrase at this time.

Subsection (4)
Commentors: Peabody Coal Company, Western Energy Company, Botz, Landasky Mining Company
Comment: Ephemeral streams should have standards different from the specific water quality standards.
Response: The board agrees and has modified subsection (5)(n) by requiring ephemeral streams to only comply with the requirements set forth in the "General Provisions".

Subsection (4)
Commentor: Moffat
Comment: The quality of ephemeral streams should be protected.
Response: The board agrees and has protected the quality of the ephemeral streams by the requirements set forth in the "General Provisions".

Subsection (4)(j)
Commentor: Anaconda Copper Company
Comment: The pH standard in this classification should not be applied to Silver Bow Creek because it could lead to water quality degradation downstream.
Response: The board cannot make this change at this time since it did not notice out a proposed amendment to the pH standard for the E classification in its March 18, 1980, Notice.

Subsection (5), heading
Commentors: Conoco Inc., Exxon, ASARCO (East Helena)
Comment: It was commented that the phrase ". . . unless they conflict with subsection(4) in which case the requirements of subsection (4) prevail" should be deleted as there should be no conflicts in regulations. The conflict is apparently between section (4) and subsection (5)(m) and (5)(n).
Response: Subsection (5)(n) has been modified to make its relationship with subsection (4) clearer. This language is retained for three reasons. First, this language is necessary to prevent confusion if conflicts do occur. Secondly, the language itself is not new; it can be found in (3)(a) of the existing rule. It has been transferred to (5) for clarification purposes. Thirdly, the relationship between section (4) and subsection (5)(m) is clarified by this phrase which allows section (4) to be used to determine treatment requirements if necessary.

Subsection (5), heading
Commentor: WETA
Comment: The conflict provision together with the definition of the mixing zone means that discharges are not allowed which would have impact on water quality. This is inconsistent with Section 75-5-306(1), MCA. Thus an EIS is necessary.
Response: The board disagrees. There is no intent to prohibit discharges per se by these regulations. Furthermore the provisions of the Montana Water Quality Act, of which Section 75-5-306(1)(a) is a part, prevail over these regulations if there were a conflict.

Subsection (5)(a)
Commentor: Exxon
Comment: Subsection (5)(a) is neither clear nor consistent with other proposed sections.
Response: The board disagrees and has retained the proposed wording.

Subsection (5)(c)
Commentor: Exxon
Comment: The 40 CFR reference should be clarified and "as determined by the department" should be deleted.
Response: The board disagrees. This reference is clear and in cases where secondary treatment equivalent is not defined, the department must be able to make such a determination.

Subsection (5)(c)
Commentor: Peabody Coal Company
Comment: If the requirement for BPCTCA called for in subsection (5)(c) is met, is a permittee exempt from the other water quality standards?
Response: No. BPCTCA is the minimum requirement.

Subsection (5)(d)
Commentor: ASARCO (East Helena)
Comment: It is not clear what requirements apply when flow is less than the 7-day, 10-year low flow.
Response: The board agrees and has modified section (5)(d) accordingly.

Subsection (5)(f)
Commentor: Conoco
Comment: The thrust of this proposed section should be to control unregulated discharges and activities.
Response: This comment is overruled. This subsection covers all discharges and activities. Furthermore, the board has not proposed new substantive language in this section but rather has deleted explanatory language which does not belong in a rule.

Subsection (5)(g)
Commentors: Burlington Northern, Exxon, Yellowstone Basin Water Users Association
Comment: One commentor stated that it was unclear as to what happened to those activities which are defined as nonprojects under (5)(g)(i).
Response: Section (5)(g)(iii) applies to those projects not covered by (5)(g)(i)
Comment: Another commentor asks that the (5)(g) authorization form be included in the rule.
Response: The board disagrees. All forms required by the department are available from the department.
Comment: Another commentor suggested that subsection (5)(g)(iii) be deleted since it is not necessary and is not sufficiently specific.
Response: The board believes that (5)(g)(iii) is necessary; however, the language has been modified to make it more specific.

Subsection (5)(i)
Commentor: EPA
Comment: EPA asked why the language "operations will be performed in the best practical manner" is used in this section while previous references to dams utilize the phrase "reasonable operations".

Response: Since the board did not notice out a change in the language referred to by the EPA in (5)(i), the board is legally prohibited from changing that language at this time.

Subsection (5)(j)
Commentors: Nine of the commentors addressed this subsection.
Comment: One commentor who agreed with the intent of this subsection asked that the time schedule coincide with the MPDES time schedule.
Response: The board agrees and has modified the time requirement so as to conform to the MPDES time requirements.
Comment: Another commentor stated that a prohibition against seeps from holding ponds is unreasonable.
Response: (5)(j) is not a prohibition against seeps but only controls potential seeps which are likely to cause pollution of surface waters. Such control is necessary because after pollution from seeps has occurred, it may be very difficult, if not impossible, to prevent consequent pollution of surface waters.
Comment: Another commentor stated that the subsection duplicates requirements of the Department of State Lands and the Office of Surface Coal Mining.
Response: The board does agree that there is some duplication between this subsection and the requirements of the other agencies regarding coal mining only but not regarding other types of mining. The board therefore has deleted coal from this subsection.
Comment: Another commentor stated that (5)(j) should be included in the water quality standards.
Response: The board agrees that this proposed section, with some modification as noted, should be included in the rule.
Comment: The department should be required to act within the 180 days specified.
Response: Subsection (5)(j) does require the department to act within 180 days from receipt of completed plans and specifications.

Subsection (5)(j)
Commentor: Beaverhead-Madison-Jefferson Chapter of the Montana Mining Association
Comment: The monitoring requirements of subsection (5)(j) could cause the closure of some small mines.
Response: This subsection requires monitoring only if necessary to protect water qualtiy.

Subsection (5)(k)
Commentor: Flathead 208
Comment: Dumping of snow within the 100-year flood plain of rivers should also be controlled.
Response: The statement "where it is likely to cause pollution" adequately covers this possibility.

Subsection (5)(l)
Commentors: Nine commentors addressed this subsection.
Comment: One commentor stated that a mixing zone should be possible for all discharges.
Response: The board agrees and the rule allows the possibility of all new discharges acquiring a mixing zone; however, the department will only be allowed to grant a mixing zone if it will have a minimum impact on surface water quality.
Comment: Another commentor stated that inclusion of the word "may" allows too much discretion to the department in the granting of mixing zones.
Response: The board overrules this comment since granting of a mixing zone to a permittee is not a matter of right under the law. The rule, as proposed, assures that the policy and other requirements of the Montana Water Quality Act will be met.
Comment: Other commentors stated that a mixing zone should not be granted to new discharges because it will allow pollution rights, be contrary to the Montana Constitution, the Federal Water Quality Act and the State Water Quality Act.
Response: The board overrules these comments since the department may only allow a mixing zone if it will have a minimum impact on surface water quality. In cases where the department believes a mixing zone will have more than a minimum impact on surface water quality, the department will not be allowed to grant a mixing zone. Moreover, the board believes that the granting of a mixing zone, where applicable, is in conformance with Section 75-5-301, MCA, which requires the board to consider the economics of waste treatment in the formulation of water quality standards. Finally, in light of the restrictions placed upon the department in the granting of a mixing zone and Section 75-5-301, MCA, it is the board's position that the granting of a mixing zone, where applicable, is not contrary to the Montana Constitution or the Federal and State Water Quality Acts.

Subsection (5)(o)
Commentors: Conoco Inc., and the Montana Cattlemen's Assoc.
Comment: The commentors suggested that this subsection include specific procedures addressing the manner in which pollution resulting from various sources will be required to be eliminated or minimized by the department.
Response: This comment is overruled since this section was not noticed out for any substantive changes in the board's March 18, 1980, Notice. Therefore, the board legally is prohibited from taking any action on this subsection at this time.

Subsection (5)(o)
Commentor: Montana Cattlemen's Association International
Comment: In subsection (5)(o) "must" should not replace "are to".
Response: This is a language change and does not alter the meaning of the subsection.

Subsection (5)(s)
Commentors: ASARCO (Suhr)
Comment: The language "must be determined" should be replaced with "must be based on the latest research results for the materials . . .".
Response: The board disagrees and has not made this change because this section merely specifies the manner in which bio-assay tolerance concentrations shall be determined and does not specify when bio-assay studies must be made.
Comment: The language "provided' on the 12th line of this subsection should be changed.
Response: Since the board did not notice out a change in this language in its March 18, 1980, Notice, it is legally prohibited from taking any action in the language at this time.

Subsection (5)(s)
Commentor: Peabody Coal Company
Comment: "Representative sensitive local species" should be defined.
Response: This comment is overruled since the board did not notice out any change in the usage of this phrase or a proposed definition in its March 18, 1980, Notice. Therefore, the board is legally prohibited from defining the phrase at this time.

Subsection (5)(t)
Commentors: Burlington Northern, Exxon
Comment: (5)(t) needs to be clarified and the requirement for the submission of detailed plans and specifications should be deleted since it duplicates the 208 planning efforts.
Response: The board agrees that (5)(t) needs clarification and has done so. The requirement for the submission of detailed plans and specifications however, is a statutory requirement found in Section 75-6-112(3)(b) MCA, and cannot be deleted by regulation.

Subsection (5)(t)
Commentor: Burlington Northern, City of Missoula
Comment: "Public water supply watershed' and "public access" should be defined.
Response: This comment is overruled since the board did not notice out any change in the usage of this phrase or a proposed definition in its March 18, 1980, Notice. Therefore

the board is legally prohibited from defining the phrase at this time.

Subsection (6)(b)(B)
Commentor: Anaconda Copper Company
Comment: The classification of Silver Bow Creek should be changed since Silver Bow Creek does not always meet the requirements for the E classification.
Response: Since the board did not notice out a change in the classification of Silver Bow Creek in its March 18, 1980, Notice, it is legally prohibited from changing the classification at this time.

Subsection (6), general
Commentor: Conoco Inc.
Comment: The commentor asked whether all the waters were classified correctly in this revision and suggested a different format should be used for easier reading.
Response: All waters are classified correctly and the format of the rule is prescribed by law.

Subsection (6)(a)(i)
Commentor: EIC
Comment: A separate classification should be established for natural resource waters and an inventory should be made to determine the quality of these waters; then, degradation should not be allowed.
Response: Since the board did not notice out a change in the classification of National Park, Wilderness and Primitive Area waters in its March 18, 1980, Notice it is legally prohibited from taking action on their classification at this time.

Subsection (6)(d)(ix)
Commentor: Fitz
Comment: The Poplar River is the source of Scobey's water supply and the C3 classification does not provide sufficient protection for this use.
Response: The board agrees and has retained the B-2 classification for the Poplar River Basin waters.

Subsection (6)(d)(ix)
Commentor: Fort Peck Tribes
Comment: The C3 classification does not afford sufficient protection to reservation waters.
Response: The board agrees and has modified the requirements of the C3 classification as stated above.

Subsection (6)(d)(ix)
Comment: The C3 classification needs to include salinity (total dissolved solids) limitations.
Response: The board agrees and has modified the C3 classification as stated above.

Subsection (6)(d)(ix)
Commentor: Lee
Comment: A flow weighted TDS limit should be used for all C3 waters.
Response: The board disagrees. Flow weighted limits are not appropriate for all uses, especially for drinking water where the value during a short period of time determines suitability.

Subsection (6), general
Commentors: Peabody, Western Energy
Comment: Many waters classified C3 do not meet the standards for this classification.
Response: The board agrees and has modified the (H) standard of the C3 classification standards.

Subsection (6), general
Commentor: WETA
Comment: All streams in national parks and national forests should be clearly distinguished by separate classifications.
Response: Waters of National Parks, Wilderness and Primitive Areas are clearly distinguished in subsection (6)(a). Waters in the national forest support many uses and thus are best protected by inclusion in the statewide water quality standards.

General
Commentor: Anaconda Company
The Anaconda Copper Company included in its comments ones made in its 1977 comments on the 1977 proposed amendments. These comments deal with several issues. Response to the comment applicable to the proposed amendments follows:
Comment: The Anaconda Company requested a change in the point where the Clark Fork River changes in classification from C to B, that is, from Garrison down to Cold Creek.

Response: This comment is overruled since the board did not notice out a classification change from Garrison to Gold Creek in its March 18, 1980, Notice, and is therefore legally prohibited from making a classification change at this time.

Commentor: BIA
Comment: BIA raised a question on Indian water rights.
Response: The board does not feel a discussion is necessary here. Since the board has no jurisdiction over the water rights issue, it will not discuss it.

Commentor: Conoco Inc.
Comment: Conoco Inc. states that these amended rules are being illegally proposed since an environmental impact statement has not been prepared.
Response: The board disagrees. All notice and public hearing requirements mandated by the Montana Administrative Procedure Act (Title 2, Chapter 4, MCA) and the Montana Water Quality Act (Title 75, Chapter 5, MCA) have been complied with. Further, it is the position of both the board and the Department of Health that the proposed amendments to the water quality standards do not constitute a major state action having a significant impact on the human environment. Therefore, an EIS is not required.

Commentor: Conoco and Exxon
Comment: Conoco and Exxon noted the lack of a legally defensible policy section on enforcement.
Response: All enforcement prerogatives of the department and the procedures to be followed are explicitly set forth in the Water Quality Act (Title 75, Chapter 5, MCA), and, therefore, need not be repeated in these rules.

Commentor: Joe Depner
Comment: Are the high TDS levels noted in the eastern part of the state due to a misclassification or to pollution. That is, in those streams which were reclassified from B3 to C3.
Response: The high TDS levels are natural and are not due to pollution.

Commentor: EPA
Comment: Wherever "hydrogen ion concentration" is present in the standards, it should read "hydrogen ion activity" to be correct.
Response: Since the board did not notice out this change in its March 18, 1980, Notice, it is legally prohibited from making the change at this time.

Commentor: EPA
Comment: The board should consider establishing numeric standards for many toxic substances not covered by the Red Book.
Response: Since this was not part of the March 18 1980 Notice, it cannot be legally done at this time.

Commentor: EPA
Comment: The statistical basis for the applicability of all standards should be given. that is, are they never to be exceeded, 24-hour average, or seasonal or yearly average.
Response: The standards are never to be violated and thus in some cases must not be exceeded, and in other cases are not to be lowered.

Commentor: EPA
Comment: The grandfather clause for dams set forth in the definition section under "naturally occurring" should not exist.
Response: This provision was taken directly from the statutory language and thus cannot be deleted until the statute is amended.

Commentor: Exxon
Comment: The proposed changes including those relating to the mixing zone are significant and the impacts should be examined in an EIS.
Response: The board disagrees. All notice and public hearing requirements mandated by the Montana Administrative Procedure Act (Title 2, Chapter 4, MCA) and the Montana Water Quality Act (Title 75, Chpater 5, MCA) have been complied with. Further, it is the position of both the board and the Department of Health that the proposed amendments to the water quality standards do not constitute a major state action having a significant impact on the human environment. Therefore, an EIS is not required.

Commentor: Exxon
Comment: The department should comment on the lack of non-degradation control in the proposed rules.
Response: The Act establishes and requires nondegradation. A rule implementing that statute is currently being developed by the department.

Commentor: Fort Peck Tribes
Comment: The tribes object to the state's attempting to re-classify streams within the boundaries of the reservation.
Response: All waters within the state are state waters and must have their quality maintained suitable for all beneficial uses.

Commentor: Hellickson
Comment: The standards should serve to improve the quality of our waters and the laws should be written so that no new degradation is allowed.
Response: These standards, in conjunction with Section 75-5-303 MCA, do serve to protect and improve quality of surface waters. Section 75-5-303, MCA, specifies the exception or exemption processes which can be used to allow degradation.

Commentor: Humbert
Comment. There is no water quality standard that prevents complete dewatering of a stream, but there should be.
Response: Dewatering or the withdrawal of water from state waters is within the jurisdiction of the Department and Board of Natural Resources and Conservation and not the Board and Department of Health and Environmental Sciences.

Commentor: Humbert
Comment: Until groundwater standards and rules are devised and instituted, the Water Quality Bureau must be given some direction by the board in dealing with groundwater quality.
Response: Until groundwater quality rules are adopted, the Water Quality Act serves as a basis to protect groundwater quality. Even without rules, groundwater quality must be protected under the Act.

Commentor: Lee
Comment: There should be instream flow limits.
Response: The Department and Board of Natural Resources and Conservation have jurisdiction to establish instream flow reservations; not the Board and Department of Health.

Commentor: Lee
Comment: There should be guidelines included in the standards for the use of the department whenever the department is empowered to make the decision "as determined by the department".
Response: The parameters of the water quality standards and the intent of the Water Quality Act serve as guidelines whenever the department makes a decision. Recourse is available by appealing to the board.

Commentor: Montana Cattlemen's Association International
Comment: The reliance upon judgmental determinations by the department is questionable, especially since there is no recourse by the discharger should he feel a decision to be contrary to the actual conditions.
Response: This is not true in that the department's decision can be appealed to the board.

Commentor: Montana Cattlemen's Association International
Comment: There should be further deliberation that should include people from the sectors most affected by the impacts before the amendments are adopted.
Response: The board and department believe that adequate steps have been taken to ensure public participation.

Commentor: National Farmers' Organization of Montana
Comment: There has been a shift in emphasis from law to departmental judgment which is pervasive and unwarranted and the public has not had sufficient notice of the changes requested nor chance for comment prior to this hearing.
Response: The board believes that there has not been a shifting of emphasis from law to departmental judgment. Further, all notice and hearing requirements established in the Montana Administrative Procedure and Water Quality Act have been complied with. In addition, a public meeting was held in February to discuss the proposed changes and receive public comment. The board believes that the public has had sufficient notice and opportunity for comment.

Commentor: Botz
Comment: The standards are not equitable because they apply almost exclusively to point sources of pollution and exclude nonpoint sources of pollution. Because agriculture is the most important factor in degradation of Montana's streams there should be rules developed which will ensure the survival of healthy aquatic ecosystems in the face of stream dewatering and degradation due to agricultural practices.
Response: Dewatering, or the withdrawal and diversion of water from state waters, is under the jurisdiction of the Board and Department of Natural Resources and Conservation and not the Board and Department of Health. Further, the standards apply to all persons and all sources.

Commentor: The Montana Petroleum Association
Comment: The Montana Petroleum Association submitted the American Petroleum Institute's comments on water quality criteria developed by the EPA and published in the Red Book.
Response: Because these comments deal with the use of Red Book criteria as standards and because the Red Book criteria are not being used as standards, these lengthy comments are not discussed.

Commentor: WETA
Comment: The proposed rule requires all discharges to have an effluent quality equal to or greater than the receiving body of water and thus an EIS is required as this is a significant change.
Response: The change as cited has not, in fact, been made and the Water Quality Act, and not these rules, establishes nondegradation.

Commentor: WETA
Comment: The department should include in its discussion of the proposed changes to the standards a distinction between designations; that is, the classifications and how they have changed. Also, a more detailed rationale and justification of the proposed changes should be prepared in an EIS.
Response: The department explained the classification changes it made in material that was sent to interested parties with the proposed amendments. Further, the board feels the written discussion of impacts prepared by the department and sent to interested parties with the standards was sufficient. Finally, it is the board's position that the proposed amendments to the water quality standards do not constitute a major state action having a significant impact on the human environment; therefore, an EIS is not required.

Commentor: Montana Coal Council, Yellowstone Basin Water Users Association
Comment: The Water Quality Bureau should get baseline data for all streams in the state.
Response: The Water Quality Bureau has gathered baseline data and is continuing this data gathering.

Commentor: Anaconda Copper Company
Comment: It is not clear if subsection (5)(j) applies even if there is no possibility of seepage from a pond reaching surface water.
Response: (5)(j) applies only if "pollution" of surface water may result.

Commentor: Peabody Coal Company
Comment: The natural water quality of the Tongue River violates the drinking water standards which apply to B-2 waters.
Response: This comment is overruled since the board did not notice out a classification change in its March 18, 1980, Notice and is therefore legally prohibited from making a classification change at this time.

Commentor: Peabody Coal Company
Comment: Bio-assays should not be required for the total form of substances.
Response: Subsection (5)(s) specifies procedures which must be used. The material and form of the material to be tested will be determined by the composition of the prospective discharge.

Commentor: Beaverhead-Madison-Jefferson Chapter of the Montana Mining Association
Comment: The monitoring requirements of subsection (5)(j) could cause the closure of some small mines.
Response: This subsection requires monitoring only if necessary to protect water quality.

JOHN F. McGREGOR M.D., Chairman

Certified to the Secretary of State July 22, 1980

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(6)-S10070 through 26-2.10(6)-S10100 and rule 26-2.10(6)-S10180, specifying forms available under the Opencut Mining Act)	NOTICE OF THE REPEAL OF ARM 26-2.10(6)-S10070 through 26-2.10(6)-S10100 and 26-2.10 (6)-S10180 (Opencut Mining Act Forms)

TO: All interested Persons

1. On Feb. 14, 1980, the Department of State Lands and the Board of Land Commissioners published notice of a proposed repeal of rules 26-2.10(6)-S10070 through 26-2.10 (6)-S10100 and rule 26-2.10(6)-S10180, specifying forms available under the Opencut Mining Act on page 471 of the 1980 Montana Administrative Register, issue number 3.

2. The agency has repealed the rules as proposed.

3. No comments or testimony were received. The agency has repealed these rules because forms are no longer being included in the Administrative Rules of Montana.

Leo Berry, Jr., Commissioner
Department of State Lands

CERTIFIED TO THE SECRETARY OF STATE JULY 22, 1980.

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

IN THE MATTER of the Adoption of Rules Implementing Minimum Rate Case Filing Standards for Municipal Water and Sewer Utilities.	NOTICE OF THE ADOPTION OF NEW RULES IMPLEMENTING MINIMUM RATE CASE FILING STANDARDS FOR MUNICIPAL WATER AND SEWER UTILITIES.

TO: All Interested Persons

1. On March 13, 1980, the Department of Public Service Regulation published notice of the proposed adoption of rules implementing minimum rate case filing standards for municipal water and sewer utilities at page 692 of the 1980 Montana Administrative Register, issue number 5.

2. The agency has adopted the rules as proposed.

Rule I. 38.5.301 APPLICATIONS FOR RATE INCREASES (1), (2) and (3) No change.

Rule II. 38.5.302 TWO TYPES OF FILINGS (1), (a), (b), and (2) No change.

Rule III. 38.5.303 LETTER OF TRANSMITTAL (1), (a), (b) (c), (d) and (e) No change.

Rule IV. 38.5.304 UTILITY-RELATED ORDINANCES (1) No change.

Rule V. 38.5.305 PETITION AND PROPOSED TARIFFS (1), (a), (b) (c) and (2) No change.

Rule VI. 38.5.306 RESOLUTION (1) No change.

Rule VII. 38.5.307 NARRATIVE, COMPARISON OF RATES, NUMBER OF CUSTOMERS AFFECTED, AND ANTICIPATED ADDITIONAL REVENUE (1), (a), (b), (c) and (d) No change.

Rule VIII. 38.5.308 COMPARISON OF REVENUES AND EXPENSES (1) and (2) No change.

Rule IX. 38.5.309 SCHEDULES OF REVENUES BY CLASS (1) and (2) No change.

Rule X. 38.5.310 SCHEDULES OF NUMBERS OF CUSTOMERS (1) No change.

Rule XI. 38.5.311 WATER STATISTICS (1) No change.

Rule XII. 38.5.312 ATTESTATION (1) No change.

Rule XIII. 38.5.313 WORKING PAPERS (1) No change.

3. At the public hearing, a representative of the Montana Consumer Counsel read a prepared statement supporting the adoption of the rules as proposed with one addition. To quote from the statement,

> The concern of the Montana Consumer Counsel is that no guidelines are established within the standards to prevent the projections from becoming an area of abuse. The Montana Consumer Counsel would urge the additional guideline that any projections must be substantiated by either historical or other reliable evidence that the projections can reasonably be expected to occur. Projections based on the Consumer Price Index or other such broad general

average would not be satisfactory evidence to support a projection.

The Commission feels that it should be the prerogative of municipalities to offer such projections as can be supported with proper evidence. Undoubtedly, however, guidelines will emerge as projections are considered on a case by case basis.

Representatives of the Cities of Helena and Polson made the objection that the rules called for the collection of too much detailed information by municipalities. They suggested that the rules should more closely approximate the categories used in the Budgetary, Accounting, and Reporting System for Montana Cities and Counties of the Montana Department of Community Affairs, as well as less use of Schedules of Revenues by Class (Rule IX).

All operating accounts used in the rules are taken verbatim from the BARS; such accounts as bond payments and various reserves should be readily available from municipal bond ordinances; finally, fund balances, bank deposits, advances from other funds and notes and warrants payable are readily available. As to the need for revenues by class, this information is essential if the Commission is to aid municipalities in determining equitable rate structures.

GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE JULY 22, 1980.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF PUBLIC ACCOUNTANTS

In the matter of the Repeal of ARM 40-3.94(6)-S9460 (40.52.414) concerning applications	))))	NOTICE OF REPEAL OF ARM 40-3.94(6)-S9460 (40.52.414) APPLICATIONS

TO: All Interested Persons:

1. On June 12, 1980, the Board of Public Accountants published a notice of proposed repeal of ARM 40-3.94(6)-S9460 (40.52.414) concerning applications at page 1566, Montana Administrative Register, issue number 11.

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

3. No comments or testimony were received.

BOARD OF PUBLIC ACCOUNTANTS
SHERMAN VELTKAMP, CHAIRMAN

BY: _____
TIMOTHY J. MELOY,
STAFF ATTORNEY
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, July 22, 1980.

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT OF RULE 42-2.14(1)-S1470, relating to cigarette tax refunds.	NOTICE OF AMENDMENT OF RULE 42-2.14(1)-S1470 (now recodified as ARM 42.31.131), relating to cigarette tax refunds.

TO: All Interested Persons:

1. On June 12, 1980, the Department of Revenue published notice of the proposed amendment of Rule 42-2.14(1)-S1470 (now recodified as ARM 42.31.131), relating to cigarette tax refunds, at pages 1567 and 1568 of the 1980 Montana Administrative Register Issue no. 11.

2. The Department has amended the rule as proposed.

3. No comments or testimony were received.

MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State 7-15-80.

VOLUME NO. 38 OPINION NO.88

DEPARTMENT OF PROFESSIONAL & OCCUPATIONAL LICENSING - Licensure requirements for administration of contrast media;
LICENSES, OCCUPATIONAL AND PROFESSIONAL - Contrast media administration by professional nurses;
NURSES, REGISTERED - Administration of contrast media;
RADIOLOGIC TECHNOLOGISTS - Administration of contrast media, lack of authority for;
MONTANA CODE ANNOTATED - Sections 37-8-102, 37-14-301.

HELD: Licensed professional nurses, but not licensed radiologic technologists, may inject contrast media into patients for the purpose of taking diagnostic x-ray images in the body.

14 July 1980

Ed Carney, Director
Dpartment of Professional
and Occupational Licensing
42½ North Last Chance Gulch
Helena, Montana 59601

Dear Mr. Carney:

You have requested my opinion on the following question:

> Whether both radiologic technologists and professional nurses may inject fluids known as "contrast media" into patients for the purpose of taking diagnostic x-ray images in the body.

For reasons of public policy the Legislature has sought to regulate and control the practices of professional nursing and radiologic technology by prescribing licensure requirements for each. See Title 37, chapters 8 and 14, MCA, respectively. These statutes attempt to define the practices they cover, and in general prohibit unlicensed persons, or those not exempted, from engaging in those practices. Your question arises because neither chapter mentions the injection of "contrast media" into patients and therefore it is not apparent whether such injections may be administered by licensed professional nurses, licensed radiologic technologists, or both.

The procedure in question involves the use of a "contrast medium," an agent (gas or fluid or other material) which is opaque to x-rays and therefore creates a shadow on a radiograph outlining the part of the body into which it is injected. Radiologic examination procedures employing contrast media include angiography (injection of contrast medium into arteries and veins), pneumography (injection of contrast medium into chest, abdomen, spinal canal, brain) and lymphography (injection of contrast medium into lymphatic channels), to name a few. It is generally accepted that such procedures involve some risk to the patient, and "virtually all ... have a small morbidity and mortality rate in the best of hands." 4 Lawyers' Medical Cyclopedia § 29.1b, at 3 (Rev. Ed. 1975).

The applicable provision in chapter 8 of Title 37 is section 37-8-102(3)(a), MCA, which defines "practice of professional nursing" as:

> [T]he performance for compensation of an act in the observation, care, and counsel of the ill, injured, or infirm or in the maintenance of health or prevention of illness of others or in the supervision and teaching of other personnel or the administration of medications and treatments prescribed by a person licensed in this state to prescribe medications and treatments, requiring substantial specialized judgment and skill and based on knowledge and application of the principles of biological, physical, and social sciences.

The "practice of professional nursing" has not been defined to specifically include the injection of contrast media into patients. Nor, for that matter, is the injection of any substance made a part of that definition. As recognized in 26 OP. ATT'Y GEN. NO. 89 at 142 (1956), the statutory definition of professional nursing is general and does not delineate all aspects of professional nursing practice. Concluding that intravenous injections could be carried out by a professional nurse, as "part of the nurse's role in the doctor-nurse team," that opinion focused on the nature of professional nursing. It should be noted that the definition Attorney General Olsen consulted did not contain the phrase "administration of medications and treatments...," which was added as part of a later revision of the definition of the "practice of professional nursing." See chapter 291, section 2, L. 1967. With the inclusion of that phrase,

in my judgment, the definition is clearly broad enough to include the injection of contrast media into patients to facilitate x-ray studies. Therefore, I conclude a licensed professional nurse may perform that procedure.

A radiologic technologist is on different footing. Under the applicable statute, section 37-14-301(2), MCA, a licensed radiologic technologist:

> |M|ay apply x-ray radiation to persons for medical, diagnostic, or therapeutic purposes under the specific direction of a person licensed to prescribe such examinations or treatments.

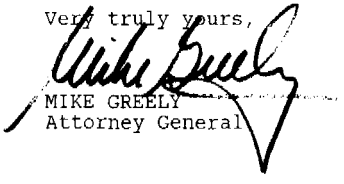
As you have pointed out, the operative phrase "apply x-ray radiation" has significant meaning. It could reasonably encompass positioning the film and the patient, and the placement of impervious shielding, for example.

However, in my opinion the injecting of a contrast medium into a passage, organ or tissue cannot be equated with those activities, and is sufficiently distinct from "applying x-ray radiation" to be beyond the scope of that phrase. If the Legislature chose to expand the authority granted to licensed radiologic technologists it could do so, presumably raising licensure requirements accordingly. I am unwilling to read such expansion into the existing statutes, and therefore conclude that a licensed radiologic technologist may not inject contrast media into patients.

THEREFORE, IT IS MY OPINION:

> Licensed professional nurses, but not licensed radiologic technologists, may inject contrast media into patients for the purpose of taking diagnostic x-ray images in the body.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 38 OPINION NO. 89

LOCAL GOVERNMENT - Statutes to be used in abandonment of the commission-manager form;
MUNICIPAL GOVERNMENT - Statutes to be used in abandonment of the commission-manager form;

HELD: The provisions of section 7-3-4334, MCA, must be followed when a local government unit abandons the commission-manager form of government.

15 July 1980

W. Gene Theroux, Esq.
Poplar City Attorney
P.O. Box 998
Wolf Point, Montana 59201

Dear Mr. Theroux:

You have requested my opinion on the following question:

> What statutes must be followed to abandon a commission-manager form of local government?

The procedure for abandonment of the commission-manager form is specifically provided for in section 7-3-4334, MCA, entitled, "Procedure To Abandon Commission-Manager Form of Government." However, a new law was adopted by the Forty-Sixth Legislative session as Chapter 675 Laws of Montana 1979 and codified as sections 7-3-121 through 7-3-161, MCA. The new statute contains general provisions for altering all forms of local government.

It is a fundamental principal of statutory construction that where one statute deals with the subject in general and comprehensive terms, and another section deals with a part of the same subject in a more specific and definite manner, the specific will control. Barth v. Ely, 85 Mont. 310, 278 P. 1002 (1929); Denning v. Missoula City-County Local Government Study Commission, 34 St. Rptr. 802 (1977). This rule of construction is also set out in the Montana Codes in section 1-2-102, MCA, which provides in pertinent part:

> When a general and particular provision is inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it.

In State ex rel. State Aeronautics Commission v. Board of Examiners, 121 Mont. 402, 417, 194 P.2d 633 (1948), it was stated:

> It is also a fundamental canon of statutory construction that a latter statute general in its terms and not expressly repealing a prior special or specific statute will be considered as not intended to affect the special or specific provisions of the earlier statute.

Chapter 675 did not repeal section 7-3-4334, MCA. As section 7-3-4334 specifically applies to abandoning the commission-manager form of government it must be followed in this instance.

THEREFORE IT IS MY OPINION:

> The provisions of section 7-3-4334, MCA, must be followed when a local government unit abandons the commission-manager form of government.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 38 OPINION NO. 90

COUNTY COMMISSIONERS - Power of county commissioners to change justices of the peace salaries during term of office; JUSTICES OF THE PEACE - Power of county commissioners to change justices of the peace salaries during term of office; SALARIES - Power of county commissioners to change justices of the peace salaries during term of office; MONTANA CODE ANNOTATED - Sections 3-10-207 and 3-10-208; 1972 MONTANA CONSTITUTION - Article VII, section 7(1).

HELD: 1. The reduction of a full-time justice of the peace to a part-time justice of the peace with a salary commensurate to the workload and office hours constitutes a salary diminution within the language of the 1972 Montana Constitution, Article VII, section 7(1).

2. Absent a voluntary waiver by the incumbent, the proper time at which to reduce a full-time justice of the peace position to a part-time position is before the next election.

3. Any pay raises given a justice of the peace must stand for the remainder of the term and only at the beginning of the next term may such raises be diminished.

16 July 1980

Bruce E. Becker, Esq.
Park County Attorney
P.O. Box 823
Livingston, Montana 59047

Dear Mr. Becker:

You have requested my opinion concerning the following question:

> May a full-time salaried, justice of the peace assume part-time status in exchange for reduced remuneration during his term of office?

Your letter informs me that the Board of County Commissioners has determined there is a need for two part-time justices of the peace, located in two towns in the county,

instead of the present full-time salaried justice of the peace. The two part-time justices would be paid on an hourly basis with total wages roughly equalling the present justice's full-time salary. If the incumbent assumes one of the part-time positions, his total yearly remuneration will decrease. The question then arises whether he may assume part-time status in mid-term in light of Article VII, section 7(1), 1972 Montana Constitution, which provides:

> All justices and judges shall be paid as provided by law, but salaries shall not be diminished during terms of office.

Article VII, section 7(1) of the 1972 Montana Constitution is functionally equivalent to Article V, section 31 of the 1889 Montana Constitution which provided that:

> ... no law shall extend the term of any public officer, or increase or diminish his salary or emolument after his election or appointment.

This latter provision has been interpreted by the Supreme Court of Montana to "remove from the lawmakers the temptation to control the other branches of government by promises of reward in the form of increased compensation or threats of punishment by way of reduced salaries ..." State ex rel. Jackson v. Porter, 57 Mont. 343, 347, 188 P. 375 (1920). The prohibition against salary increases was deleted in the 1972 Constitution but the restraint on salary diminution remained.

Using this background then, all relevant statutes must be construed in light of Article VII, section 7(1). The Park County Commissioners have authority under 3-10-101, MCA, to appoint one additional justice of the peace. Under sections 3-10-207 and 3-10-208, MCA, the commissioners may by resolution set the salary and hours of the justice of the peace within statutory guidelines. Combining the statutory and constitutional provisions it is apparent that once a justice of the peace is elected his or her salary cannot be diminished during that term. The county commissioners statutory authority is limited to salary increases only.

The term salary is generally understood to mean compensation for the duties of the office at a fixed sum and not computed by an hourly wage; State v. Ash, 53 Ariz. 197, 87 P.2d 270 (1939). Section 7-4-2502, MCA, regarding pay schedules of county officers, indicates that salary is computed on a

monthly or bi-monthly basis. Applying this definition, Article VII, section 7(1) prohibits any decrease during his or her term in the amount of compensation actually received by the justice of the peace. If the law allowed the commissioners to reduce a justice's remuneration by reducing his hours, the commissioners could impose a more subtle form of coercion merely by suggesting that a single justice's hours of work, and therefore his compensation, should be reduced. This result is directly contrary to the reasoning of the court in Jackson.

Article VII, section 7(1) prohibits a decrease in a justice's salary during his term. Since the justice will, under the facts presented, receive less compensation when he or she assumes part-time status, the determination that a full-time justice is not needed and that a full-time salary will be split between two part-time individuals may generally be made only prior to the general election so that the decrease will be effective at the beginning of a new term.

There is one possible alternative for the changes proposed in Park County. The constitutional prohibition in Article VII, section 7(1) may, under certain circumstances, be waived. In Jackson, the court stated that "[s]o far as there is a reason for the rule which underlies the limitations, it must be enforced with the utmost rigor, but whenever the reason for the rule ceases, so does the rule itself." The statement's implication is that should the current full-time justice of the peace voluntarily agree to reduce his status to part-time and accept the resulting decrease in salary, the reason for the rule -- the maintenance of an independent judiciary -- ceases and, therefore, so does the rule. If, however, the current justice wishes to retain his full-time position and salary, the constitutional provision applies and the status cannot be changed until the next election. The key factor involved is the voluntary waiver for without such a waiver no action may be taken.

Regarding your collateral questions concerning what effect, if any, pay raises have on the term "salary", the plain language of the Constitution must again control. Since section 7(1) disallows any decrease in salary, any pay raises given a justice of the peace during his or her term must stand until the next election. To allow otherwise would be to diminish a salary.

THEREFORE, IT IS MY OPINION:

1. The reduction of a full-time justice of the peace to a part-time justice of the peace with a salary commensurate to the workload and office hours constitutes a salary diminution within the language of the 1972 Montana Constitution, Article VII, section 7(1).

2. Absent a voluntary waiver by the incumbent, the proper time at which to reduce a full-time justice of the peace position to a part-time position is before the next election.

3. Any pay raises given a justice of the peace must stand for the remainder of the term and only at the beginning of the next term may such raises be diminished.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 38 OPINION NO. 91

LEGISLATURE - Power to allow local governments to establish salary levels of officers;
LOCAL GOVERNMENT - Authority to establish salary levels for county officers;
COUNTIES - Authority to establish salary levels for officers;
COUNTY OFFICERS - Power of Legislature to allow counties to establish salary levels;
SALARIES - County officers;
MONTANA CONSTITUTION - Article XI, sections 3 and 4;
MONTANA CODE ANNOTATED - Title 7, chapters 3 and 4.

HELD: The Montana Constitution grants the Legislature authority to allow counties to establish the salaries of elected county officials.

17 July 1980

David Wanzenried
Local Government Management Advisor
Department of Community Affairs
Capitol Station
Helena, Montana 59601

Dear Mr. Wanzenried:

You have requested my opinion whether Article XI, section 3, of the Montana Constitution prohibits the Legislature from authorizing counties to set the salaries of elected county officials.

At the present time the salaries for most county officers are determined by the Legislature, Title 7, ch. 4, part 25, MCA. However, the Constitution authorizes the Legislature to grant specific powers to counties, Article XI, section 4(1)(b), Montana Constitution. In some instances, the Legislature has authorized county governments to set the compensation of its officers in providing for optional forms of local government. See Title 7, chapter 3, MCA. Under some optional forms of government, the establishment of certain county offices is within the discretion of the county commissioners. In those instances the commissioners or executives are empowered to establish appropriate rates of compensation. See, e.g., sections 7-3-2132; 7-3-2133; and 7-3-2134, MCA.

Article XI, section 3, Montana Constitution provides:

> Forms of Government (1) The legislature shall provide methods for governing local government units and procedures for incorporating, classifying, merging, consolidating, and dissolving such units, and altering their boundaries. The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question.
>
> (2) One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator. The terms, qualifications, duties, and compensation of those offices shall be provided by law. The Board of county commissioners may consolidate two or more such offices. The Boards of two or more counties may provide for a joint office and for the election of one official to perform the duties of any such office in those counties. [Emphasis supplied.]

Subsection (2) provides that the compensation of those officers shall be provided by law. Article XI, section 4(1)(b), Montana Constitution provides:

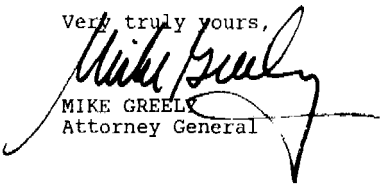
> A county has legislative, administrative, and other powers provided or implied by law.

The 1972 Constitution authorizes the Legislature to grant legislative powers to the counties and those powers of counties are to be liberally construed, Article XI, section 4(2), Montana Constitution. Thus an authorized legislative enactment by a county would satisfy the requirement that the compensation be "provided by law."

THEREFORE, IT IS MY OPINION:

The Montana Constitution grants the Legislature authority to allow counties to establish the salaries of elected county officials.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 38 OPINION NO. 92

ACCOUNTANTS AND ACCOUNTANCY - Validity of late renewal fee for license;
ADMINISTRATIVE LAW - Validity of rule imposing late renewal fee for license;
BOARD OF PUBLIC ACCOUNTANTS - Authority to impose late renewal fee for license;
FEES - Late renewal fee for license;
FINES - Late renewal of license;
LICENSE FEES - Late renewal fee;
RULES AND REGULATIONS - Validity of rule imposing late renewal fee for license.
MONTANA CODE ANNOTATED - Sections 2-4-305(4) and (5), 37-50-201(2), 37-50-314.

HELD: Prior to July 1, 1979, the Board of Public Accountants did not have the authority to impose a 100 per cent late renewal fee in addition to the $25 annual renewal fee for licenses to engage in the practice of public accounting in Montana. The Board of Public Accountants may now impose a late renewal fee, not to exceed the added administrative costs incurred by failure to renew on time. However, the board may not impose a penalty or fine for late renewal that exceeds administrative costs.

18 July 1980

Ed Carney, Director
Department of Professional
and Occupational Licensing
42½ North Last Chance Gulch
Helena, Montana 59601

Dear Mr. Carney:

You requested an opinion concerning the following question:

Does the Montana Board of Public Accountants have the authority, statutory or implied, to impose a late renewal fee for late renewal of the annual license to practice the profession of a public accountant in the state of Montana?

I understand that the Legislative Auditor's office has already considered this question and determined that in the absence of specific statutory authority, the board does not have the power to assess such a fine. I concur with that determination.

Your question concerns the validity of the portion of ARM 40.52.411(3) (formerly ARM 40-3.94(6)-S94090(3)) that states:

> If renewal is not made on or before February 28, then any renewal therafter shall be assessed in addition to the renewal fee 100% of the amount of the annual license to practice.

This rule was adopted by the Board of Public Accountants pursuant to its general rulemaking authority, contained in section 37-50-201(2), MCA which states:

> The board may adopt rules for the conduct of its affairs and the administration of [Chapter 50 of Title 37, MCA, concerning accountants].

The general tests for determining the validity of the rule in question are set forth in the Montana Administrative Procedure Act as follows:

> (4) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.
>
> (5) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, no rule adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.

§2-4-305(4) and (5), MCA.

In Bell v. State, ___ Mont.___, 594 P.2d 331, 333 (1979), the Montana Supreme Court provided these guidelines for the determination of whether rules come within the scope of a broad grant of rulemaking authority similar to section 37-50-201(2), MCA:

> [A]dministrative regulations are "out of harmony" with legislative guidelines if they: (1) "engraft additional and contradictory requirements on the statute;" State of Montana ex rel. ... Swart v. ... Casne (1977), ___ Mont. ___, 564 P.2d 983, 34 St. Rep. 394, 399; or (2) if they engraft additional, noncontradictory requirements on the statute which were not envisioned by the legislature; Arizona State Board of Funeral Directors v. Perlman (1972), 108 Ariz. 33, 492 P.2d 694.

The legislative guidelines for the board's rule concerning a fine for late renewal are contained in section 37-50-314, MCA, concerning annual certification or licensure of public accountants. That statute was amended, effective July 1, 1979. Because the question you have submitted arose prior to the amendment, I will address the authority of the Board of Public Accountants to adopt a rule imposing a late renewal fee under both versions of the statute.

Prior to July 1, 1979, the statute expressly authorized the board to determine the amount of an annual license fee, not to exceed $25 for all or part of a year. The Board set the fee at the maximum allowable level of $25. ARM 40.52.410(4) and (5) (formerly ARM 40-3.94(6)-S94070(4) and (5)). The operative statute expressly limited the maximum fee amount for one year to $25, and eliminated the possibility of power to assess a higher fee under any circumstances. The additional late renewal fee of 100 percent of the license amount added to the annual renewal fee was inconsistent with section 37-50-314 and was therefore invalid.

Furthermore, the fine for late renewal was not "necessary to effectuate the purpose of the statute." The legislature expressly provided a method of assuring compliance with the license requirement. Section 37-50-314(2), MCA, provided that a licensee's failure to renew within three years of the license's expiration date deprived him of the right to renew. The power to assess fines in excess of $25 per year cannot be implied as an administrative detail which the legislature intended to leave to the discretion of the board.

Under the present amended statute, no maximum fee amount is fixed. The statement of intent attached to SB 489 (Ch. 684, L. 1979) reveals the legislative intent to allow the board to prescribe a reasonable annual renewal fee, not to exceed an amount necessary to meet administrative costs. The

amended statute provides more flexibility for the board in determining a reasonable annual renewal fee. If an increased renewal fee is necessary to meet the added administrative costs incurred by failure to renew on time, the board may be able to pass the added cost on to the licensee.

However, the board may not assess a fine or penalty for late renewal that exceeds the added administrative costs. Section 37-50-314(2), MCA, requires a person who fails to renew his license to surrender it to the board upon request. The board is thus given power to assure compliance with the licensing procedure. A fine is not "reasonably necessary" to give effect to the legislative purposes. See section 2-4-305(5), MCA.

THEREFORE, IT IS MY OPINION:

> Prior to July 1, 1979, the Board of Public Accountants did not have the authority to impose a 100 percent late renewal fee in addition to the $25 annual renewal fee for licenses to engage in the practice of public accounting in Montana. The Board of Public Accountants may now impose a late renewal fee, not to exceed the added administrative costs incurred by failure to renew on time. However, the board may not impose a penalty or fine for late renewal that exceeds administrative costs.

Very truly yours,

MIKE GREELY
Attorney General