RESERVE

MONTANA ADMINISTRATIVE REGISTER

1980 ISSUE NO. 16
PAGES 2442-2527

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.

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.

NOTICE: The July 1977 through June 1980 Montana Administrative Registers have been placed on microfiche. For information, please contact the Secretary of State, Room 202, Capitol Building, Helena, Montana 59601.

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 16

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

In the matter of the amendment of rules 16.16.802, 16.16.803, and 16.16.804 pertaining to the collection and disposition of fees for the review of subdivisions	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 16.16.802, 16.16.803, and 16.16.804 (Subdivision Review Fees)

TO: All Interested Persons

1. On September 30, 1980, at 9:00 o'clock a.m., a public hearing will be held in the Hospital-Medical Facilities Conference Room, 836 Front Street, Helena, Montana, to consider the amendment of rules ARM 16.16.802, 16.16.803, and 16.16.804.

2. The proposed amendments replace parts of rules ARM 16.16.803, 16.16.803, and 16.16.804, formerly ARM 16-2.14(10)-S14341(2), (3), and (4), found in the Administrative Rules of Montana. The proposed amendments clarify language and increase the amount of money that the department will reimburse to local governing bodies who review mobile home or trailer parcels in courts or parks installing individual or multiple family sewage treatment systems.

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

16.16.802 DEFINITIONS In addition to the terms defined in sections 76-4-102 and 76-4-103, MCA:

(1) "Condominium" means the ownership of single units with common elements located on property and is a subdivision.

(2) "Condominium living unit" means a part of the property of a condominium intended for occupancy.

(3) "Parcel" means a part of land which is created by a division of land (referred to in ARM 16.16.101(5) as lots) or a space in an area used for a recreational camping ~~vehicles~~ vehicle, ~~and~~ mobile ~~homes;~~ home or trailer.

16.16.803 FEE SCHEDULES (1) The fees described below pertain only to review of subdivisions as mandated by Title 76, Chapter 4, Part 1, MCA. An additional fee may be requested pursuant to the Montana Environmental Policy Act (Section 75-1-101, et seq., MCA) for the preparation of an environmental impact statment.

(a) The fees in Schedule I shall be charged:

(i) Per parcel when land is divided into one or more parcels.

(ii) Per condominium living unit except, where municipal sewer is available, the fees shall be charged per sewer hookup.

SCHEDULE I

Fee schedule for division of land into one or more parcels and for condominiums.

	Individual Sewerage System	Public Sewer requiring Department approval	Sewer Extension requiring Department approval	Existing Sewer Previously approved (no extensions required)
Individual Water Supply	$25	$25	$25	$20
Public Water Supply requiring Department review	$25	$25	$25	$20
Water extension requiring Department review	$25	$25	$25	$20
Existing Water Supply previously approved (no extension is required)	$20	$20	$20	$10

(b) The fees in Schedule II shall be charged per mobile ~~home/trailer court parcel:~~ home or trailer parcel.

SCHEDULE II

Fee schedule ~~for mobile home/trailer courts:~~ per mobile home or trailer parcel.

	Individual Sewerage System	Public Sewer requiring Department approval	Sewer Extension requiring Department approval	Existing Sewer previously approved (no extensions required)
Individual Water Supply	$15	$15	$15	$10
Public Water Supply requiring Department review	$15	$15	$15	$10
Water Extension requiring Department review	$15	$15	$15	$10
Existing Water Supply previously approved (no extension is required)	$10	$10	$10	$ 5

(c) The following fees shall be charged for recreational camping vehicles and tourist campgrounds.

(i) Where water and sewer hookups are to be provided, the fee shall be five dollars ($5) per vehicle parcel.

(ii) Where no water and sewer hookups are provided, the fee shall be two dollars ($2) per vehicle parcel.

16.16.804 DISPOSITION OF FEES (1) The department ~~will~~ shall reimburse local governing bodies under department contract to review ~~the minor~~ subdivisions ~~in the following amounts:~~ as follows:

(a) Five dollars ($5) per parcel for ~~major~~ subdivisions containing over 5 parcels with individual sewage treatment systems.

~~(b) Five dollars ($5) per parcel for major and minor subdivisions coming under master plan exclusions.~~

~~(c)~~ (e) ~~Five~~ Ten dollars ~~($5)~~ ($10) per mobile home~~/trailer court~~ or trailer parcel ~~for~~ in courts or parks containing 5 or fewer parcels installing individual or multiple family sewage treatment systems.

~~(d)~~ (b) Ten dollars ($10) per parcel for ~~minor~~ subdivisions containing 5 or fewer parcels with public sewer.

~~(e)~~ (c) Fifteen dollars ($15) per parcel for ~~minor~~ subdivisions with ~~three or more~~ 3 to 5 parcels on individual sewage treatment systems.

~~(f)~~ (d) Twenty dollars ($20) per parcel for divisions of ~~two (2)~~ parcels or less on individual sewage treatment systems.

(f) Five dollars ($5) per mobile home or trailer parcel in courts or parks containing over 5 parcels installing individual or multiple sewage treatment systems.

(2) The department may reimburse counties ~~not involved in the minor subdivision review program in the following amounts:~~ who have not been delegated review authority of subdivisions containing 5 or fewer parcels but who perform review services, including but not limited to on-site inspection of proposed and approved facilities and aiding of persons in the application procedure, as follows:

(a) Two dollars ($2) per parcel for ~~major~~ subdivisions containing 5 or fewer parcels with individual sewage treatment systems.

(b) Five dollars ($5) per parcel for ~~minor~~ subdivisions containing 5 or fewer parcels with individual sewage treatment systems.

~~(c) Reimbursement to counties in this category is dependent upon departmental determination of the amount of involvement by local health department in the review process.~~

(3) The department will reimburse the local governing bodies of municipalities five dollars ($5) per parcel for a subdivision coming under the master plan exclusion.

~~(3)~~ (4) Funds will be reimbursed to the counties quarterly based upon ~~a~~ the fiscal year starting on July 1~~,~~ ~~1977~~ and ending on June 30~~,~~ ~~1978~~, of each year.

~~(4)~~ (5) Fee payment should be by check or money order made payable to the Department of Health and Environmental Sciences.

4. The department is proposing these amendments for a couple of reasons. One reason is to simply clarify existing language. The other reason is in response to a petition to amend ARM 16-2.14(10)-S14341, filed by the Lewis and Clark City-County Board of Health. Petitioners proposed that the reimbursement to the local governing bodies be increased from $5 to $10 per mobile home and trailer court parcel after review. The department has found this proposal meritorious and is proposing an amendment to ARM 16.16.804(1)(f) accordingly [previously ARM 16-2.14(10)-S14341(4)(a)(iv)].

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Mr. Robert L. Solomon, Department of Health and Environmental Sciences, Capitol Station, Helena, Montana, 59601, no later than September 30, 1980.

6. Mr. Robert L. Solomon has been designated to preside over and conduct the hearing.

7. The authority of the department to make the proposed amendments is based on section 76-4-105, MCA, and the rules implement section 76-4-105, MCA.

A. C. KNIGHT, M.D., Director

Certified to the Secretary of State August 19, 1980

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

In the matter of the repeal of rules 16.14.590, 16.14.591, 16.14.592, 16.14.593, 16.14.594, and 16.14.595 and the adoption of new rules relating to hazardous waste	NOTICE OF PUBLIC HEARING FOR REPEAL OF ARM 16.14.590 through 16.14.595 and ADOPTION OF NEW RULES RELATING TO HAZARDOUS WASTE

TO: All Interested Persons

1. On September 19, 1980, beginning at 9:00 a.m., at the Department of Highways auditorium, 2701 Prospect Avenue, Helena, Montana, a public hearing will be held to consider the repeal of ARM 16.14.590, 16.14.591, 16.14.592, 16.14.593, 16.14.594 and 16.14.595, and the adoption of new rules relating to hazardous waste.

2. The proposed new rules replace ARM 16.14.590 through 16.14.595 [16-2.14(8)-S14315(3)(a)(ii, (3)(b), (3)(c)(ii), (9)(a), (b) and (c)], which can be found on pages 16-751 through 16-797 [16-332.3, .4, .10 and .11], Administrative Rules of Montana.

3. For the convenience of users and to minimize possibilities of error due to numerous cross-references within these proposed rules, the sub-chapter scheme and rule numbers have been assigned at this time. These proposed rules will constitute a new chapter within Title 16, ARM, and provide as follows:

TITLE 16
CHAPTER 44
HAZARDOUS WASTE

Sub-Chapter 1 (reserved)

Sub-Chapter 2
General Provisions

Sub-Chapter 3
Identification and Listing of Hazardous Waste

Sub-Chapter 4
Standards Applicable to Generators of Hazardous Waste

Sub-Chapter 5
Standards Applicable to Transporters of Hazardous Waste

Sub-Chapter 6
Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

Sub-Chapter 1 reserved

Sub-Chapter 2

General Provisions

Rule 16.44.201 reserved

16.44.202 DEFINITIONS In this chapter, the following terms shall have the meanings or interpretations shown below:

(1) "Act" or "MSWMA" means the Montana Solid Waste Management Act, Title 75, Chapter 10, Part 2, MCA.

(2) "Active portion" means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after November 19, 1980, and which is not a closed portion. (See also "closed portion" and "inactive portion.")

(3) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(4) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit (i.e., part of a facility), e.g., the plant manager, superintendent or person of equivalent responsibility.

(5) "CFR" means the Code of Federal Regulations published by the U.S. Government Printing Office.

(6) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "active portion" and "inactive portion.")

(7) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(8) "Constituent" or "hazardous waste constituent" means a constituent which caused EPA to list the hazardous waste in 40 CFR Part 261, Subpart D, or a constituent listed in Table 1 of ARM 16.44.324.

(9) "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

(10) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

(11) "Designated facility" means a hazardous waste treatment, storage, or disposal facility which has received an EPA permit (or a facility with interim status) in accordance with the requirements of 40 CFR Parts 122 and 124, a license from the department pursuant to provisions of the Act, or a permit from another state authorized by the EPA under 40 CFR Part 123, that has been designated on the manifest by the generator as required by ARM 16.44.405.

(12) "Dike" means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(13) "Discharge" or "hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste into or on any land or water.

(14) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure.

(15) "DOT" means the United States Department of Transportation.

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

(17) "EPA hazardous waste number" means the number assigned to each hazardous waste listed or characteristic identified in sub-chapter 3 of this chapter.

(18) "EPA identification number" means the number assigned to each generator, transporter, and treatment, storage, or disposal facility.

(19) "Existing hazardous waste management facility" or "existing facility" means a facility which was in operation, or for which construction had commenced, on or before November 1, 1980. Construction had commenced if:

(a) The owner or operator has obtained all necessary federal, state, and local preconstruction approvals or permits; and either

(i) a continuous physical, on-site construction program has begun, or

(ii) the owner or operator has entered into contractual obligations--which cannot be cancelled or modified without substantial loss--for construction of the facility to be completed within a reasonable time.

(20) "Facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them). A facility constitutes a solid waste management system as defined in the act, section 75-10-203.

(21) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the government printing office.

(22) "Food-chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(23) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

(24) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(25) "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in suh-chapter 3 of this chapter.

(26) "Groundwater" means water below the land surface in a zone of saturation.

(27) "Inactive portion" means that portion of a facility which is not operated after November 19, 1980. (See also "active portion" and "closed portion.")

(28) "Incinerator" means an enclosed device using controlled flame combustion, the primary purpose of which is to thermally break down hazardous waste. Examples of incinerators are rotary kiln, fluidized bed, and liquid injection incinerators.

(29) "Incompatible waste" means a hazardous waste which is unsuitable for:

(a) placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or

(b) commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases. (See 40 CFR Part 265, Appendix V for examples.)

(30) "Individual generation site" means the contiguous site at or on which one or more hazardous wastes are generated. An individual genration site, such as a large manufacturing plant, may have one or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(31) "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

(32) "Injection well" means a well into which fluids are injected. (See also "underground injection.")

(33) "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

(34) "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

(35) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a land treatment facility, a surface impoundment, or an injection well.

(36) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(37) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

(38) "Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

(39) "Liner" means a continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents, or leachate.

(40) "Manifest" means the shipping document originated and signed by the generator which contains the information required by ARM 16.44.405 through 16.44.408.

(41) "Manifest document number" means the serially increasing number assigned to the manifest by the generator for recording and reporting purposes.

(42) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(43) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(44) "New hazardous waste management facility" or "new facility" means a facility which began operation or for which construction commenced after November 1, 1980. (See also "existing hazardous waste management facility.")

(45) "On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

(46) "Open burning" means the combustion of any material without the following characteristics:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products. (See also "incineration" and "thermal treatment.")

(47) "Operator" means the person responsible for the overall operation of a facility.

(48) "Owner" means the person who owns a facility or part of a facility.

(49) "Partial closure" means the closure of a discrete part of a facility in accordance with the applicable closure requirements of 40 CFR Part 265. For example, partial closure may include the closure of a trench, a unit operation, a landfill cell, or a pit, while other parts of the same facility continue in operation or will be placed in operation in the future.

(50) "Personnel" or "facility personnel" means all persons who work at, or oversee the operations of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of 40 CFR Part 265.

(51) "Pile" means any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage.

(52) "Point source" means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(53) "Publicly owned treatment works" or "POTW" means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a "state" or "municipality" (as defined by section 502(4) of the clean water act amendments of 1977). This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(54) "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. section 6901 et seq.

(55) "Representative sample" means a sample of a universe or whole (e.g., waste pile, lagoon, groundwater) which can be expected to exhibit the average properties of the universe or whole.

(56) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(57) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(58) "Saturated zone" or "zone of saturation" means that part of the earth's crust in which all voids are filled with water.

(59) "Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plan, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

(60) "Surface impoundment" or "impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(61) "Tank" means a stationary device, designed to contain an accumulation of hazardous waste, which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

(62) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.")

(63) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.

(64) "Transporter" means a person engaged in the off-site transportation of hazardous waste.

(65) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well.")

(66) "Unsaturated zone" or "zone of aeration" means the zone between the land surface and the water table.

(67) "United States" means the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marina Islands.

(68) "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

(69) "Well" means any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(70) "Well injection": (See "underground injection.")

Sub-Chapter 3

Identification and Listing of Hazardous Waste

16.44.301 POLICY This sub-chapter identifies only some of the materials which are hazardous wastes under the act and this chapter. A material which is not a hazardous waste identified in this sub-chapter is still a hazardous waste for purposes of the act if, in the case of section 75-10-205, MCA, the department has reason to believe that the material may be a hazardous waste within the meaning of section 75-10-203, MCA.

16.44.302 DEFINITION OF WASTE A waste is any garbage, refuse, sludge or any other waste material which is not excluded under ARM 16.44.304. An "other waste material" is any solid, liquid, semi-solid or contained gaseous material, resulting from industrial, commercial, mining or agricultural operations, or from community activities which:

(1) is discarded or is being accumulated, stored or physically, chemically or biologically treated prior to being discarded;

(2) has served its original intended use and sometimes is discarded; or

(3) is a manufacturing or mining byproduct and sometimes is discarded.

(a) A material is "discarded" if it is not used, reused, reclaimed or recycled and is abandoned by being:

(i) disposed of;

(ii) burned or incinerated, except where the material is being burned as a fuel for the purposes of recovering usable energy; or

(iii) physically, chemically or biologically treated, other than burned or incinerated, in lieu of or prior to being disposed of.

(b) A "manufacturing or mining byproduct" is a material that is not one of the primary products of a particular manufacturing or mining operation, is a secondary and incidental product of the particular operation, and would not be solely and separately manufactured or mined by the particular manufacturing or mining operation. The term does not include an intermediate manufacturing or mining product which results from one of the steps in a manufacturing or mining process and is typically processed through the next step of the process within a short time.

16.44.303 DEFINITION OF HAZARDOUS WASTE (1) A waste, as defined in ARM 16.44.302, is a hazardous waste if:

(a) it is not excluded from regulation as a hazardous waste under ARM 16.44.304(1); and

(b) it meets any of the following criteria:

(i) it is listed in ARM 16.44.330 through 16.44.333,

(ii) it is a mixture of any waste and one or more hazardous wastes listed in ARM 16.44.330 through 16.44.333,

(iii) it exhibits any of the characteristics of hazardous waste identified in ARM 16.44.320 through 16.44.324.

(2) A waste which is not excluded from regulation under ARM 16.44.304(1) becomes a hazardous waste when any of the following events occur:

(a) In the case of a waste listed in ARM 16.44.330 through 16.44.333, when the waste first meets the listing description set forth in ARM 16.44.330 through 16.44.333.

(b) In the case of a mixture of any waste and one or more listed hazardous wastes, when a hazardous waste listed in ARM 16.44.330 through 16.44.333 is first added to the waste.

(c) In the case of any other waste, including a waste mixture, when the waste exhibits any of the characteristics identified in ARM 16.44.320 through 16.44.324.

(3) Unless and until it meets the criteria of ARM 16.44.303(4), a hazardous waste will remain a hazardous waste. Any waste generated from the treatment, storage or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust or leachate, but not including precipitation run-off, is a hazardous waste.

(4) Any waste described in ARM 16.44.303(3) is not a hazardous waste if:

(a) it does not exhibit any of the characteristics of hazardous waste identified in ARM 16.44.320 through 16.44.324; and

(b) if it is a waste generated from the treatment, storage or disposal of a hazardous waste listed in ARM 16.44.331 through 16.44.333, it does not meet any of the criteria in ARM 16.44.311.

16.44.304 EXCLUSIONS (1) The following materials are not hazardous wastes:

(a) household waste, including household waste that has been collected, transported, stored, treated, disposed of, recovered such as refuse-derived fuel, or reused. "Household waste" means any waste material, including garbage, trash and sanitary wastes in septic tanks, derived from households including single and multiple residences, hotels and motels.

(b) wastes generated by either of the following and which are returned to the soil as fertilizers:

(i) the growing and harvesting of agricultural crops; or

(ii) the raising of animals including animal manure.

(c) mining overburden returned to the mine site.

(d) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels.

(e) drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

(2) The following materials are not wastes for the purposes of this chapter but may be subject to regulation under the provisions of ARM Title 16, Chapter 14:

(a) Domestic sewage and any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly owned treatment works for treatment. Domestic sewage means untreated sanitary wastes that pass through a sewer system.

(b) Industrial wastewater discharges that are point source discharges subject to regulation under Title 75, Chapter 5, MCA, and rules implementing that chapter.

(c) Irrigation return flows.

(d) Source, special nuclear or byproduct material as defined by Title 75, Chapter 3, MCA, and rules implementing that chapter.

(e) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.

16.44.305 SPECIAL REQUIREMENTS FOR HAZARDOUS WASTE GENERATED BY SMALL QUANTITY GENERATORS (1) Except as otherwise provided in this rule, if a person generates in a calendar month a total of less than 1000 kilograms of hazardous wastes, those wastes are not subject to regulation under sub-chapters 4, 5, and 6 of this chapter.

(2) If a person whose waste has been excluded from regulation under subsection (1) of this rule accumulates hazardous wastes in quantities greater than 1000 kilograms, those accumulated wastes are subject to regulation under sub-chapters 4, 5, and 6 of this chapter.

(3) If a person generates in a calendar month or accumulates at any time any of the following hazardous wastes in quantities greater than set forth below, those wastes are subject to regulation under sub-chapters 4, 5, and 6 of this chapter:

(a) One kilogram of any commercial product or manufacturing chemical intermediate having the generic name listed in ARM 16.44.333(5);

(b) One kilogram of any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in ARM 16.44.333(5);

(c) Any containers identified in ARM 16.44.333(3) that are larger than 20 liters in capacity;

(d) 10 kilograms of inner liners from containers identified under ARM 16.44.333(3);

(e) 100 kilograms of any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land, of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in ARM 16.44.333(5).

(4) In order for hazardous waste to be excluded from regulation under this rule, the generator must comply with ARM 16.44.402. He must also either treat or dispose of the waste in an on-site facility, or ensure delivery to an off-site treatment, storage or disposal facility, either of which is:

(a) permitted by EPA or licensed by the department pursuant to this chapter;

(b) in interim status under sub-chapter 6 of this chapter; or

(c) licensed by the department to manage solid waste pursuant to sub-chapter 5, chapter 14, Title 16, ARM.

(5) Hazardous waste subject to the reduced requirements of this rule may be mixed with non-hazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this rule unless the mixture meets any of the characteristics of hazardous waste identified in ARM 16.44.320 through ARM 16.44.324.

16.44.306 SPECIAL REQUIREMENTS FOR HAZARDOUS WASTE WHICH IS USED, REUSED, RECYCLED OR RECLAIMED (1) Except as otherwise provided in subsection (2) of this rule, a hazardous waste which meets either of the following criteria is not subject to regulation under sub-chapters 4, 5, and 6 of this chapter until such time as the department promulgates rules to the contrary:

(a) it is being beneficially used or reused or legitimately recycled or reclaimed.

(b) it is being accumulated, stored, or physically, chemically or biologically treated prior to beneficial use or reuse or legitimate recycling or reclamation.

(2) A hazardous waste which is a sludge, or which is listed in ARM 16.44.330 through 16.44.333, or which contains one or more hazardous wastes listed in ARM 16.44.330 through 16.44.333; and which is transported or stored prior to being used, reused, recycled or reclaimed is subject to the requirements of sub-chapters 4 and 5 of this chapter and Subparts A, B, C, D, E, G, H, I, J, and L of Part 265, Title 40, CFR, and any subsequent amendments thereto, with respect to such transportation or storage

Rules 16.44.307 through 16.44.309 reserved

16.44.310 CRITERIA FOR IDENTIFYING THE CHARACTERISTICS OF HAZARDOUS WASTE (1) The department may identify and define a characteristic of a hazardous waste in ARM 16.44.320 through 16.44.324 only upon determining that:

(a) a waste that exhibits the characteristic may cause or contribute to an increase in mortality or an increase in serious illness, taking into account the toxicity of the waste, its persistence and degradability in nature, its potential for assimilation or concentration in tissue, and other factors that may otherwise cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms; and

(b) the chracteristic can be measured by an available standardized test method which is reasonably within the capability of generators of waste or private sector laboratories that are available to serve generators of waste; or reasonably detected by generators of waste through their knowledge of their waste.

16.44.311 CRITERIA FOR LISTING HAZARDOUS WASTE (1) The department may list a waste as a hazardous waste only upon determining that the waste meets one of the following criteria:

(a) It exhibits any of the characteristics of hazardous waste identified in ARM 16.44.320 through 16.44.324.

(b) It has been found to be fatal to humans in low doses or, in the absence of data on human toxicity, it has been shown in studies to have an oral LD 50 toxicity (rat) of less than 50 milligrams per kilogram, an inhalation LC 50 toxicity (rat) of less than 2 milligrams per liter, or a dermal LD 50 toxicity (rabbit) of less than 200 milligrams per kilogram or is otherwise capable of causing or contributing to an increase in serious illness.

(i) Waste listed in accordance with the criteria in subsection (1)(b) of this rule will be designated acute hazardous waste.

(c) It contains any of the toxic constituents listed in ARM 16.44.358 unless, after considering any of the following factors, the department concludes that the waste is not capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed:

(i) the nature of the toxicity presented by the constituent.

(ii) the concentration of the constituent in the waste.

(iii) the potential of the constituent or any toxic degradation product of the constituent to migrate from the waste

into the environment under the types of improper management considered in subsection (1)(c)(vii) of this rule.

(iv) the persistence of the constituent or any toxic degradation product of the constituent.

(v) the potential for the constituent or any toxic degradation product of the constituent to degrade into non-harmful constituents and the rate of degradation.

(vi) the degree to which the constituent or any degradation product of the constituent bioaccumulates in ecosystems.

(vii) the plausible types of improper management to which the waste could be subjected.

(viii) the quantities of the waste generated at individual generation sites or on a regional or national basis.

(ix) the nature and severity of the human health and enviornmental damage that has occurred as a result of the improper management of wastes containing the constituent.

(x) action taken by other governmental agencies or regulatory programs based on the health or environmental hazard posed by the waste or waste constituent.

(xi) such other factors as may be appropriate.

(A) Wastes listed in accordance with subsection (1)(c) of this rule will be designated toxic wastes.

(2) The department may list classes or types of waste as hazardous waste if it has reason to believe that individual wastes, within the class or type of waste, typically or frequently are hazardous under the definition of hazardous waste in section 75-10-203, MCA.

(3) The department will use the criteria for listing specified in this rule to establsih the exclusion limits referred to in ARM 16.44.305(3).

16.44.320 CHARACTERISTICS OF HAZARDOUS WASTE -- GENERAL

(1) A waste, as defined in ARM 16.44.302, which is not excluded from regulation as a hazardous waste under ARM 16.44.304(1), is a hazardous waste if it exhibits any of the characteristics identified in ARM 16.44.321 through ARM 16.44.324.

(2) A hazardous waste which is identified by a characteristic in this sub-chapter, but is not listed as a hazardous waste in ARM 16.44.330 through 16.44.333, is assigned the EPA hazardous waste number set forth in the respective characteristic in ARM 16.44.321 through 16.44.324. This number must be used in complying with requirements of this chapter.

(3) For purposes of ARM 16.44.320 through 16.44.324, the department will consider a sample obtained using any of the applicable sampling methods specified in ARM 16.44.351 to be a representative sample.

16.44.321 CHARACTERISTIC OF IGNITABILITY (1) A waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(a) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume, and has a flash point less than 60°C. (140°F.), as determined by a Pensky-Martens closed cup tester, using the test method specified in ASTM Standard D-93-79, or a Setaflash closed cup tester, using the test method specified in ASTM Standard D-3278-78.

(b) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard.

(c) It is an ignitable compressed gas as defined in 49 CFR 173.300 and any subsequent amendments thereto and as determined by the test methods described in that regulation.

(d) It is an oxidizer as defined in 49 CFR 173.151 and any su sequent amendments thereto.

(2) A waste that exhibits the characteristic of ignitability, but is not listed as a hazardous waste in ARM 16.44.330 through ARM 16.44.333, has the EPA hazardous waste number of D001.

16.44.322 CHARACTERISTIC OF CORROSIVITY (1) A waste exhibits the characteristic of corrosivity if a representative sample of the waste has either of the following properties:

(a) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using the test method specified in the "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods."

(b) It is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature of 55°C. (130° F.) as determined by the test method specified in NACE (National Association of Corrosion Engineers) Standard TM-01-69 as standardized in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods."

(2) A waste that exhibits the characteristic of corrosivity, but is not listed as a hazardous waste in ARM 16.44.330 through 16.44.333, has the EPA hazardous waste number of D002.

16.44.323 CHARACTERISTIC OF REACTIVITY (1) A waste exhibits the characteristic of reactivity if a representative sample of the waste has any of the following properties:

(a) It is normally unstable and readily undergoes violent change without detonating.

(b) It reacts violently with water.

(c) It forms potentially explosive mixtures with water.

(d) When mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(e) It is a cyanide or sulfide bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(f) It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement.

(g) It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure.

(h) It is a forbidden explosive as defined in 49 CFR 173.51, or a Class A explosive as defined in 49 CFR 173.53, or a Class B explosive as defined in 49 CFR 173.88 and any subsequent amendments thereto.

(2) A waste that exhibits the characteristic of reactivity, but is not listed as a hazardous waste in ARM 16.44.330 through 16.44.333, has the EPA hazardous waste number of D003.

16.44.324 CHARACTERISTIC OF EP TOXICITY (1) A waste exhibits the characteristic of EP toxicity if, using the test methods described in ARM 16.44.352, the extract from a representative sample of the waste contains any of the contaminants listed in Table I at a concentration equal to or greater than the respective value given in that table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering, is considered to be the extract for the purposes of this rule.

(2) A waste that exhibits the characteristic of EP toxicity, but is not listed as a hazardous waste in ARM 16.44.330 through 16.44.333, has the EPA hazardous waste number specified in Table I which corresponds to the toxic contaminant causing it to be hazardous.

TABLE I on next page

TABLE I

CONCENTRATION OF CONTAMINANTS FOR CHARACTERISTIC OF EP TOXICITY

EPA HAZARDOUS WASTE NUMBER	CONTAMINANT	CONCENTRATION (Milligrams per Liter)
D004	Arsenic	5.0
D005	Barium	100.0
D006	Cadmium	1.0
D007	Chromium	5.0
D008	Lead	5.0
D009	Mercury	0.2
D010	Selenium	1.0
D011	Silver	5.0
D012	Endrin (1,2,3,4,10,10-hexachloro-1,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-1,4-endro,endo-5,8-dimethano naphthalene.)	0.02
D013	Lindane (1,2,3,4,5,6-hexachloro-cyclohexane, gamma isomer.)	0.4
D014	Methoxychlor (1,1,1-Trichloro-2,2-bis[p-methoxyphenyl]ethane).	10.0
D015	Toxaphene ($C_{10}H_{10}Cl_8$, Technical chlorinated camphene, 67-69 percent chlorine).	0.5
D016	2,4-D, (2,4-Dichlorophenoxyacetic acid).	10.0
D017	2,4,5-TP Silvex (2,4,5-Trichlorophenoxypropionic acid).	1.0

Rules 16.44.325 through 16.44.329 reserved

16.44.330 LISTS OF HAZARDOUS WASTES -- GENERAL (1) A waste is a hazardous waste if it is listed in ARM 16.44.331 through 16.44.333.

(2) The basis for listing the classes or types of wastes listed in ARM 16.44.331 through 16.44.333 will be indicated by employing one or more of the following hazard codes:

(a) Ignitable Waste----------(I)
Corrosive Waste----------(C)
Reactive Waste----------(R)
EP Toxic Waste----------(E)
Acute Hazardous Waste----------(H)
Toxic Waste----------(T)

(b) ARM 16.44.357 identifies the constituent which caused the waste to be listed as an EP toxic waste (E) or toxic waste (T) in ARM 16.44.331 and 16.44.332.

(3) Each hazardous waste listed in ARM 16.44.331 through 16.44.333 is assigned an EPA hazardous waste number which precedes the name of the waste. This number must be used in complying with the requirements of this chapter.

16.44.331 HAZARDOUS WASTE FROM NONSPECIFIC SOURCES For the purposes of this chapter, the department adopts as hazardous wastes those hazardous wastes from nonspecific sources listed in 40 CFR 261.31 and any subsequent amendments thereto.

16.44.332 HAZARDOUS WASTE FROM SPECIFIC SOURCES For the purposes of this chapter, the department adopts as hazardous wastes those hazardous wastes from specific sources listed in 40 CFR 261.32 and any subsequent amendments thereto.

16.44.333 DISCARDED COMMERCIAL CHEMICAL PRODUCTS, OFF-SPECIFICATION SPECIES, CONTAINERS, AND SPILL RESIDUES THEREOF The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded:

(1) Any commercial chemical product, or manufacturing chemical intermediate having the generic name listed in subsections (5) or (6) of this rule.

(2) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in subsections (5) or (6) of this rule.

(3) Any container or inner liner removed from a container that has been used to hold any commercial chemical product or manufacturing chemical intermediate having the generic name listed in subsection (5) of this rule, unless:

(a) the container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

(b) the container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

(c) in the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container, has been removed.

(4) Any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land, of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in subsections (5) or (6) of this rule.

(5) The commercial chemical products or manufacturing chemical intermediates, referred to in subsections (1) through (4) of this rule are identified as acute hazardous wastes (H) and are subject to the small quantity exclusion defined in ARM 16.44.305(3). These wastes and their corresponding EPA hazardous waste numbers are those wastes listed in 40 CFR 261.33(e) and any subsequent amendment thereto.

(6) The commercial chemical products or manufacturing chemical intermediates, referred to in subsections (1), (2), and (4) of this rule are identified as toxic wastes (T) unless otherwise designated and are subject to the small quantity exclusion defined in ARM 16.44.305(1) and (2). These wastes and their corresponding EPA hazardous waste numbers are those wastes listed in 40 CFR 261.33(f) and any subsequent amendments thereto.

Rules 16.44.334 through 16.44.350 reserved

16.44.351 REPRESENTATIVE SAMPLING METHODS The department adopts as its representative sampling methods those representative sampling methods described in Title 40 of the Code of Federal Regulations, Part 261, Appendix I, and any subsequent amendments thereto.

16.44.352 EP TOXICITY TEST PROCEDURES The department adopts as its EP toxicity test procedures those EP toxicity test procedures described in Title 40 of the Code of Federal Regulations, Part 261, Appendix II and any subsequent amendments thereto.

16.44.353 CHEMICAL ANALYSIS TEST METHODS The department adopts as its chemical analysis test methods those chemical analysis test methods described in Title 40 of the Code of Federal Regulations, Part 261, Appendix III and any subsequent amendments thereto.

Rules 16.44.354 through 16.44.356 reserved

16.44.357 BASIS FOR LISTING The basis for listing hazardous waste for the purposes of this chapter is the basis for listing hazardous wastes contained in Title 40 of the Code of Federal Regualtions, Part 261, Appendix VII and any subsequent amendments thereto.

16.44.358 HAZARDOUS CONSTITUENTS The list of hazardous constituents for the purposes of this chapter is the list of hazardous constituents contained in Title 40 of the Code of Federal Regulations, Part 261, Appendix VIII and any subsequent amendments thereto.

Sub-Chapter 4

Standards Applicable to Generators of Hazardous Waste

16.44.401 GENERAL PROVISIONS (1) A generator who treats, stores, or disposes of hazardous waste on-site must only comply with the following sections of this sub-chapter with respect to that waste:

(a) ARM 16.44.402 for determining whether or not he has a hazardous waste;

(b) ARM 16.44.403 for obtaining an EPA identification number;

(c) ARM 16.44.416(3) and (4) for recordkeeping; and, if applicable,

(d) ARM 16.44.430 for farmers.

(2) Any person who imports hazardous wastes into Montana from a foreign country must comply with the standards applicable to generators established in this sub-chapter.

(3) A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of ARM 16.44.430 is not required to comply with other standards in this sub-chapter or sub-chapter 6 of this chapter with respect to such pesticides.

(4) A person who generates a hazardous waste as defined by sub-chapter (3) of this chapter is subject to the penalties provided in the act if he does not comply with the requirements of this sub-chapter.

16.44.402 HAZARDOUS WASTE DETERMINATION A person who generates a waste, as defined in ARM 16.44.302, must determine if that waste is a hazardous waste using the following method:

(1) He should first determine if the waste is excluded from regulation under ARM 16.44.304 and 16.44.305.

(2) He must then determine if the waste is listed as a hazardous waste in ARM 16.44.330 through 16.44.333.

(3) If the waste is not listed as a hazardous waste in ARM 16.44.330 through 16.44.333,he must determine whether the waste is identified in ARM 16.44.320 through 16.44.324 by either:

(a) testing the waste according to the methods set forth in ARM 16.44.320 through 16.44.324; or

(b) applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

16.44.403 EPA IDENTIFICATION NUMBERS (1) A generator must not treat, store, dispose of, transport, or offer for transportation hazardous waste without having received an EPA identification number from the department or EPA.

(2) A generator who has not received an EPA identification number may obtain one by applying to the department. Upon receiving the request, the department will assign an EPA identification number to the generator.

(3) A generator must not offer his hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number.

Rule 16.44.404 reserved

16.44.405 MANIFEST GENERAL REQUIREMENTS (1) A generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage or disposal must prepare a manifest before transporting the waste off-site.

(2) A generator must designate on the manifest one facility which is permitted to handle the waste described on the manifest.

(3) A generator may also designate on the manifest one alternate facility which is permitted to handle his waste in the event an emergency prevents delivery of the waste to the primary designated facility.

(4) If the transporter is unable to deliver the hazardous waste to the designated facility or the alternate facility, the generator must either designate another facility or instruct the transporter to return the waste.

16.44.406 REQUIRED INFORMATION ON MANIFEST (1) The manifest must contain all of the following information:

(a) a manifest document number;

(b) the generator's name, mailing address, telephone number, and EPA identification number;

(c) the name and EPA identification number of each transporter;

(d) the name, address and EPA identification number of the designated facility and an alternate facility, if any;

(e) the description of the waste as required by the U.S. Department of Transportation in 49 CFR 172.101, 172.202, 172.203, and any subsequent amendments thereto; and

(f) the total quantity of each hazardous waste by units of weight or volume, and the type and number of containers as loaded into or onto the transport vehicle.

(2) The following certification must appear on the manifest: "This is to certify that the above-named materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation according to the applicable regulations of the Department of Transportation and EPA."

16.44.407 MANIFEST COPIES The manifest consists of at least the number of copies which will provide the generator, each transporter, and the owner or operator of the designated facility with one copy each for their records and another copy to be returned to the generator.

16.44.408 USE OF MANIFEST (1) The generator must sign the manifest certiciation by hand; obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and retain one copy in accordance with ARM 16.44.416(1).

(2) The generator must give the transporter the remaining copies of the manifest.

(3) For shipment of hazardous waste solely by railroad or solely by water (bulk shipments only), the generator must send 3 copies of the manifest dated and signed in accordance with this rule to the owner or operator of the designated facility. Copies of the manifest are not required for each transporter.

Rules 16.44.409 through 16.44.414 reserved

16.44.415 ACCUMULATION TIME (1) A generator may accumulate hazardous waste on-site without a license for 90 days or less, provided that:

(a) All such waste is shipped off-site in 90 days or less;

(b) The waste is placed in containers which meet the standards of 40 CFR 262.30 and any subsequent amendments thereto, and are managed in accordance with 40 CFR 265.174 and 265.176 and any subsequent amendments thereto, or in tanks, provided the generator complies with the requirements of Subpart J of 40 CFR, Part 265 except Section 265.193 and any subsequent amendments thereto;

(c) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(d) Each container is properly labeled and marked according to 40 CFR 262.31 and 262.32 and any subsequent amendments thereto; and

(e) The generator complies with the requirements for owners or operators in Subparts C and D in 40 CFR, Part 265 and with 40 CFR 265.16 and any subsequent amendments thereto.

(2) A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of sub-chapter (6) of this chapter.

16.44.416 RECORDKEEPING (1) A generator must keep a copy of each manifest signed in accordance with ARM 16.44.408(1) for 3 years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least 3 years from the date the waste was accepted by the initial transporter.

(2) A generator must keep a copy of each annual report and exception report for a period of at least 3 years from the due date of the report (March 1).

(3) A generator must keep records of any test results, waste analyses, or other determinations made in accordance with ARM 16.44.402 for at least 3 years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal.

(4) The periods of retention referred to in this rule are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the department.

16.44.417 ANNUAL REPORTING (1) A generator who ships his hazardous waste off-site must submit annual reports to the department, on forms obtained from the department, no later than March 1, for the preceding calendar year.

(2) Any generator who treats, stores, or disposes of hazardous waste on-site must submit an annual report covering those wastes in accordance with the provisions of sub-chapter (6) of this chapter.

16.44.418 EXCEPTION REPORTING (1) A generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the

(e) The generator complies with the requirements for owners or operators in Subparts C and D in 40 CFR, Part 265 and with 40 CFR 265.16.

(2) A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of sub-chapter (6) of this chapter.

16.44.416 RECORDKEEPING (1) A generator must keep a copy of each manifest signed in accordance with ARM 16.44.408(1) for 3 years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least 3 years from the date the waste was accepted by the initial transporter.

(2) A generator must keep a copy of each annual report and exception report for a period of at least 3 years from the due date of the report (March 1).

(3) A generator must keep records of any test results, waste analyses, or other determinations made in accordance with ARM 16.44.402 for at least 3 years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal.

(4) The periods of retention referred to in this rule are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the department.

16.44.417 ANNUAL REPORTING (1) A generator who ships his hazardous waste off-site must submit annual reports to the department, on forms obtained from the department, no later than March 1, for the preceding calendar year.

(2) Any generator who treats, stores, or disposes of hazardous waste on-site must submit an annual report covering those wastes in accordance with the provisions of sub-chapter (6) of this chapter.

16.44.418 EXCEPTION REPORTING (1) A generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste.

(2) A generator must submit an exception report to the department if he has not received a copy of the manifest

owner or operator of the designated facility to determine the status of the hazardous waste.

(2) A generator must submit an exception report to the department if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The exception report must include:

(a) a legible copy of the manifest for which the generator does not have confirmation of delivery; and

(b) a cover letter signed by the generator or his authorized agent explaining the efforts taken to locate the hazardous waste and the results of those efforts.

Rules 16.44.419 through 16.44.424 reserved

16.44.425 INTERNATIONAL SHIPMENTS Any person who exports a hazardous waste from Montana to a foreign country or imports hazardous waste from a foreign country into Montana must comply with the provisions of 40 CFR 262.50 and any subsequent amendments thereto.

Rules 16.44.426 through 16.44.429 reserved

16.44.430 FARMERS A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards in this sub-chapter or the standards contained in 40 CFR, Parts 122, 264 or 265 and any subsequent amendments thereto for those wastes provided he triple rinses each emptied pesticide container in accordance with ARM 16.44.333(3) and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.

Sub-Chapter 5

Standards Applicable to Transporters of Hazardous Waste

16.44.501 GENERAL PROVISIONS (1) The rules in this sub-chapter do not apply to on-site transportation of hazardous waste by generators or by owners or operators of permitted hazardous waste management facilities.

(2) A transporter of hazardous waste must also comply with sub-chapter 4 of this chapter if he transports hazardous waste into Montana from a foreign country or mixes hazardous wastes of different DOT shipping descriptions by placing them into a single container.

16.44.502 EPA IDENTIFICATION NUMBER A transporter may not transport hazardous wastes without having received an EPA identification number from the department or EPA. A transporter who has not received an EPA identification number may obtain one by applying to the department. Upon receiving the request, the department will assign an EPA identification number to the transporter.

Rules 16.44.503 and 16.44.504 reserved

16.44.505 MANIFEST SYSTEM (1) A transporter may not accept hazardous waste from a generator unless it is accompanied by a manifest, signed by the generator in accordance with sub-chapter 4 of this chapter.

(2) Before transporting the hazardous waste, the transporter must sign and date the manifest acknowledging acceptance of the hazardous waste from the generator. The transporter must return a signed copy to the generator before leaving the generator's property.

(3) The transporter must ensure that the manifest accompanies the hazardous waste.

(4) A transporter who delivers a hazardous waste to another transporter or to the designated facility must:

(a) obtain the date of delivery and the handwritten signature of that transporter or of the owner or operator of the designated facility on the manifest;

(b) retain one copy of the manifest in accordance with ARM 16.44.508; and

(c) give the remaining copies of the manifest to the accepting transporter or designated facility.

(5) The requirements of subsections (3) and (4) of this rule do not apply to rail or water (bulk shipment) transporters if:

(a) the hazardous waste is delivered by rail or by bulk shipment water to the designated facility;

(b) a shipping paper containing all the information required on the manifest, excluding the EPA identification numbers, generator certification, and signatures, accompanies the hazardous waste;

(c) the delivery transporter obtains the date of delivery and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper;

(d) the person delivering the hazardous waste to the initial rail or water (bulk shipment) transporter obtains the date of delivery and signature of the rail or water (bulk shipment) transporter on the manifest and forwards it to the designated facility; and

(e) a copy of the shipping paper or manifest is retained by each rail or water (bulk shipment) transporter in accordance with ARM 16.44.508.

(6) Transporters who transport hazardous waste out of Montana to a foreign country must indicate on the manifest the date the hazardous waste left the United States; sign the manifest and retain one copy in accordance with ARM 16.44.508(3); and return a signed copy of the manifest to the generator.

16.44.506 COMPLIANCE WITH MANIFEST (1) The transporter shall deliver the entire quantity of hazardous waste which he has accepted from a generator or a transporter to:

(a) the designated facility listed on the manifest;

(b) the alternate designated facility, if the hazardous waste cannot be delivered to the designated facility because an emergency prevents delivery;

(c) the next designated tranpsorter; or

(d) the site in the foreign country designated by the generator.

(2) If the hazardous waste cannot be delivered in accordance with subsection (1) of this rule, the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.

Rule 16.44.507 reserved

16.44.508 RECORDKEEPING (1) A transporter of hazardous waste shall keep a copy of the manifest signed by the generator, himself, and the next designated transporter or the owner or operator of the designated facility for a period of 3 years from the date the hazardous waste was accepted by the initial transporter.

(2) For shipments delivered to the designated facility by rail or water (bulk shipment), each rail or water (bulk shipment) transporter must retain a copy of a shipping paper containing all the information required in ARM 16.44.505(5)(b) for a period of 3 years from the date the hazardous waste was accepted by the initial transporter.

(3) A transporter who transports hazardous waste from Montana to a foreign country must keep a copy of the manifest indicating that the hazardous waste left the United States for a period of 3 years from the date the hazardous waste was accepted by the initial transporter.

(4) The periods of retention referred to in this rule are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the department.

Rules 16.44.509 and 16.44.510 reserved

16.44.511 HAZARDOUS WASTE DISCHARGES -- IMMEDIATE ACTION (1) In the event of a discharge of hazardous waste during transportation, the transporter must take appropriate immediate action to protect human health and the environment.

(2) If a discharge of hazardous waste occurs during transportation and the department or a local government official, acting within the scope of his official responsibilities, determines that immediate removal of the waste is necessary to protect human health or the environment, the department or local government official may authorize the removal of the waste by transporters who do not have EPA identification numbers and without the preparation of a manifest.

(3) A transporter who has discharged hazardous waste must:

(a) Give notice, if required by 49 CFR 171.15 and any subsequent amendments thereto, to the National Response Center (800-424-8802 or 202-426-2675);

(b) Report in writing as required by 49 CFR 171.16 and any subsequent amendments thereto to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590; and

(c) Give notice to the department by immediately contacting the Montana hazardous materials emergency response system (449-3034).

(4) A water (bulk shipment) transporter who has discharged hazardous waste must give the same notice as required by 33 CFR 153.203 and any subsequent amendments thereto for oil and hazardous substances.

16.44.512 DISCHARGE CLEAN UP A transporter shall clean up any hazardous waste discharge that occurs during transportation or take such action as may be required or approved by the department, so that the hazardous waste discharge no longer presents a hazard to human health or the environment.

Sub-Chapter 6

Standards for Owners and Operators of
Hazardous Waste Treatment, Storage and Disposal Facilities

16.44.601 INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES (1) An owner or operator of an existing facility which treats, stores or disposes of hazardous waste must comply with the requirements for interim status under Section 3005(e) of RCRA and 40 CFR 122.22(a)(1), and, until final disposition of his permit application is made, is subject to the standards in subparts B through and including Q of Part 265, Title 40, CFR, and any subsequent amendments thereto.

(2) No person may commence construction, as defined in ARM 16.44.202(19), of a new facility which treats, stores or disposes of hazardous waste without obtaining a license from the department. Application for such license may be made after the department has promulgated licensure rules for hazardous waste management facilities.

16.44.602 EXCLUSIONS The requirements of ARM 16.44.601 do not apply to:

(1) the owner or operator of a POTW which treats, stores or disposes of hazardous waste;

(2) the owner or operator of a facility licensed by the department to manage solid waste pursuant to sub-chapter 5, Chapter 14, Title 16, ARM, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under this sub-chapter by ARM 16.44.305;

(3) the owner or operator of a facility which treats or stores hazardous waste, which treatment or storage meets the criteria in ARM 16.44.306(1), except to the extent that ARM 16.44.306(2) provides otherwise;

(4) a generator accumulating waste on-site in compliance with ARM 16.44.415, except to the extent the requirements are included in ARM 16.44.415;

(5) a farmer disposing of waste pesticides from his own use in compliance with ARM 16.44.430; or

(6) the owner or operator of a totally enclosed treatment facility, as defined in ARM 16.44.202(63).

4. The department is proposing repeal of ARM 16.14.590, 16.14.591, 16.14.592, 16.14.593, 16.14.594 and 16.14.595. and adoption of the foregoing new rules for the purposes of implementing a hazardous waste management program in Montana to obtain interim authorization for Phase I of the federal hazardous waste management program pursuant to the requirements of 40 CFR Part 123, Subpart F.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may be submitted also to Robert L. Solomon, Presiding Officer, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59601, no later than September 29, 1980.

6. Robert L. Solomon has been designated to preside over and conduct the hearing.

7. The authority of the department to repeal ARM 16.14.590, 16.14.591, 16.14.592, 16.14.593, 16.14.594 and 16.14.595 is based on section 75-10-204, MCA. The authority of the department to make the proposed rule in sub-chapter 2 above is based on section 75-10-204, MCA, and the rule implements sections 75-10-201 through 75-10-212, 75-10-214 through 75-10-225, MCA. The authority of the department to make the proposed rules in sub-chapter 3 above is based on section 75-10-204, MCA, and the rules implement sections 75-10-203 and 75-10-204, MCA. The authority of the department to make the proposed rules in sub-chapter 4 above is based on section 75-10-204, MCA, and the rules implement sections 75-10-204 and 75-10-225, MCA. The authority of the department to make the proposed rules in sub-chapters 5 and 6 above is based on section 75-10-204, MCA, and the rules implement sections 75-10-204, 75-10-212, 75-10-214, 75-10-221 and 75-10-225.

A. C. Knight

A. C. KNIGHT, M.D., Director

Certified to the Secretary of State August 19, 1980

BEFORE THE BOARD OF PERSONNEL APPEALS
OF THE STATE OF MONTANA

In the matter of the ADOPTION OF A RULE TO PROVIDE FOR THE FULL DISCLOSURE OF POSITIONS IN CLASSIFICATION APPEALS	))))	NOTICE OF PROPOSED ADOPTION OF A RULE TO PROVIDE FOR THE FULL DISCLOSURE OF POSITIONS IN CLASSIFICATION APPEALS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On or about October 9, 1980, the Board of Personnel Appeals proposes to adopt a rule which requires all parties to specifically state their positions concerning a classification appeal.

2. The proposed rule provides as follows:

RULE I FULL DISCLOSURE OF POSITIONS IN CLASSIFICATION APPEALS

In order to facilitate and expedite the grievance process the Board of Personnel Appeals has determined that it is necessary that the fullest disclosure of information be made by all parties prior to the hearing. It is also necessary for all participants in the proceedings to be educated in the process of classification. To implement these objectives the following procedure will be followed in classification appeals processed pursuant to ARM 24.26.508:

(1) The Department of Administration is responsible for the establishment and review of the classification system for state employees. The classification methodology used is the prerogative of the Department of Administration as long as the methodology is equitably applied. The Board acknowledges that more than one methodology may be applied varying with the occupational group being considered. To insure the affected employee is aware of the methodology used and its proper application the following procedure shall be followed:

(a) The Department of Administration shall, before it applies a methodology to an occupational group, file a complete description of that methodology including how it will be applied. In order to insure that any statement of methodology is specific enough to meet the intent of this rule, the Board will review the statement for specificity. Only those statements which fully explain and disclose the application of a methodology shall be accepted for filing with this Board.

(b) At step three of the grievance procedure provided for in ARM 24.26.508, the Department of Administration shall clearly set out which methodology was applied in reviewing the classification of position in question and, specifically, how that methodology was applied in reaching its conclusion. Only those responses which meet the full intent of this rule will be accepted as a proper step three response. A response found not to be in compliance with the intent of this rule will be remanded to the Department of Administration with instructions to resubmit its response with the required specificity. Such order may be issued on motion of the appellant (good cause having been shown) or on judgment of the hearing examiner. If the Department of Administration shows good cause, the Board may grant additional time to file the response. If the Department of Administration fails to file a satisfactory response within the time allotted it will be considered to have waived its rights to participate in the step four hearing procedure and will be notified of such forfeiture by order of the Board. Such order is appealable to the Board if exceptions are filed within 20 days after service of the order.

(2) If the grievant files exceptions to the Department of Administration step three response and requests a hearing on the grievance, grievant shall, within 20 days submit to the Board, a position paper specifically stating where the grievant believes the Department of Administration erred in its step three analysis. A position paper found not to be in compliance with the intent of this rule will be remanded to the grievant with instructions to resubmit the response with the required specificity. Such order may be issued on motion of the Department of Administration (good cause having been shown) or on judgment of the hearing examiner. If the appellant shows good cause, the Board may grant additional time to file the response. If the appellant fails to file a satisfactory response within the time allotted he will be considered to have waived his right to a step four hearing and will be

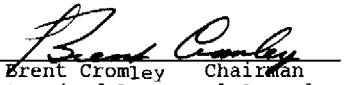
notified of such forfeiture by order of the Board. Such order is appealable to the Board if exceptions are filed within 20 days after service of the order.

3. The Board proposes this rule in an attempt to expedite its hearings and to provide participants in classification grievances with full disclosure of information prior to any hearing conducted by this Board. This Board is concerned about its backlog of hearings and would expect that this rule may expedite hearings, reduce the length of decisions by narrowing the issues to be decided, and hopefully eliminate less meritorious cases.

4. If a person who is directly affected by the proposed rule wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Jerry L. Painter, Staff Attorney, Board of Personnel Appeals, 35 South Last Chance Gulch, Helena, MT 59601, no later than September 26, 1980. 2-4-302(4).

5. If the agency receives requests for a public hearing on the proposed rule from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed rule; from the 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 1100.

6. The authority of the Board of Personnel Appeals to make the proposed rule is based on sections MCA 2-4-201 and IMP 2-18-1011.

By: 

Brent Cromley Chairman
Board of Personnel Appeals

Certified to the Secretary of State 8-15-80.

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

IN THE MATTER of the Proposed) NOTICE OF PROPOSED AMENDMENT
Amendment of ARM 40.12.811) OF ARM 40.12.811 MANAGER
concerning Manager Operators) OPERATORS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 27, 1980, the Board of Cosmetologists proposes to amendment ARM 40.12.811 concerning manager operators.

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

"40.12.811 MANAGER OPERATORS (1) A manager operator license will not be issued unless an affidavit, current operator license and the required manager operator license fee is submitted to the office of the department.

(a) The affidavit must be completed by a manager operator and notarized, stating that the applicant has worked for 1 year in the state of Montana under their direct supervision in a salon.

(i) A year shall constitute 52 active weeks at 40 hours per week or 2,000 hours as a cosmetologist.

(b) The affidavit must give the name of the salon, current license number, name of manager operator and his or her current license number.

(c) The applicant's current operator license must accompany the affidavit.

(2) Cosmetologists may not hold both a manager-operator license and an operator license at the same time."

3. The board originally published a notice of amendment of the above rule on March 27, 1980 at page 1057, Montana Administrative Register, issue number 6. At that time the board had not included the 2,000 hours. The board is proposing the amendment to implement section 37-31-203 and 302 MCA and to clearly define the meaning of 52 active weeks, because of individuals seeking a manager license, applying after having worked only 2 or 3 days a week . The board has determined that anything less than 40 hours a week does not provide adequate working experience, under supervision, for them to approve a manager license and still maintain their charge of protection of the public against unqualified practititioners.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Cosmetologists, Lalonde Building, Helena, Montana 59601 no later than September 25, 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 Cosmetologists, Lalonde Building, Helena, Montana 59601 no later than September 25, 1980.

6. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature; from a governmental agency or subdivision; 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 amendment has been determined to be 5.

7. The authority of the board to make the proposed amendment is based on section 37-31-203(3) MCA and implements section 37-31-302 (3) MCA.

BOARD OF COSMETOLOGISTS
JUNE BAKER, PRESIDENT

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

Certified to the Secretary of State, August 19, 1980.

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

IN THE MATTER of the Proposed Amendments of ARM 40.58.407 (4)) concerning applications and ARM) 40.58.410 (4) concerning minimum standards for registra-) tion.	NOTICE OF PROPOSED AMENDMENT OF ARM 40.58.407 APPLICATIONS AND ARM 40.58.410 MINIMUM STANDARDS FOR REGISTRATION NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 27, 1980 the Board of Sanitarians proposes to amend ARM 40.58.407 subsection (4) concerning applications and ARM 40.58.410 subsection (4) concerning minimum standards for registration.

2. The proposed amendment to ARM 40.59.407 deletes subsection (4) of the rule and will read as follows: (new matter underlined, deleted matter interlined)

"40.58.407 APPLICATIONS (1) A person wishing to practice the profession of a sanitarian shall obtain a probationary certificate, described in ARM 40.58.409, prior to beginning work.

(2) Applications received by the board shall be examined by the secretary for conformity with the rules governing applications as established by the board.

(a) Applications in the form prescribed, accompanied by the $75.00 fee for licensure by examination or the $35.00 fee for licensure by reciprocity shall be entered in the records of the board.

(b) Applications not accompanied by proper fees and not conforming entirely to the rules shall be returned to the applicant, with instructions as to the correction thereof, or held in abeyance until in proper form as prescribed by the board.

(c) If after one year from the date of request for such corrections, no reply has been received, the application will be rejected and a new application will be required.

(d) If information provided in the application indicates an applicant cannot comply with the provisions of Title 37, Chapter 40 MCA or with the rules of the board, the application and any fees paid shall be returned along with a notification as to why the application cannot be accepted.

(3) All applications for registration shall be made on printed forms provided by the board and no applications made otherwise will be accepted. Application forms shall inform the applicant that completion of an application examination shall be required of the applicant prior to being issued a probationary certificate.

~~(4) Applications shall be subscribed and sworn to before a Notary Public or other person qualified to administer oaths.~~

~~(5)~~ The application form may be changed or amended by the board at any meeting of the board."

3. The board is proposing the amendment to eliminate the requirement of a notary on the application to comply with a recommendation from the Committee on Government Paperwork. The recommendation of the committee was that unless required by statute notary seals were unnecessary paperwork for applicants to complete.

4. The proposed amendment of ARM 40.58.410 amends subsection (4) and will read as follows: (new matter underlined, deleted matter interlined)

"40.58.410 MINIMUM STANDARDS FOR REGISTRATION

(1) A certificate of registration (license) will be granted by the board if the applicant complies with the minimum standards required for the probationary certificate and satisfactorily completes an examination approved by the board.

(a) The certificate shall bear the registrant's name, certificate number and the date of issue, and shall be signed by each member of the board.

(2) The registration examination shall provide an evaluation of the person's knowledge of:

(a) environmental sanitation laws and regulations;

(b) administrative procedures for dealing effectively with the public on environmental health problems;

(c) the principles of sanitation applicable to food, water, and air quality, liquid and solid wastes disposal, recreation facilities, housing and institutions;

(d) the fundamentals of biostatistics, of land use planning, of occupational health, of accident prevention, and of vector and pest control; and

(e) the cause and control of environmental related diseases.

(3) Examinations will be held at a time and place designated by the board.

(4) If an applicant should fail the registration examination, the applicant will be allowed to retake the examination ~~within 30 days~~ upon payment of a $50 re-examination fee. ~~If an applicant should fail the registration examination the second time, he or she shall not be allowed to re-apply for a period of 1 year and may not work as a sanitarian during that period.~~"

5. The board is proposing the amendment to set out a re-examination fee commensurate with the costs of the examination and to eliminate the waiting period between examinations.

The board feels that the year between a second failure and being allowed to retake the examination is no longer valid based on the use of the National examination.

6. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Sanitarians, Lalonde Building, Helena, Montana 59601 no later than September 25, 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 Sanitarians, Lalonde Building, Helena, Montana 59601 no later than September 25, 1980.

8. If the board 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 agency or subdivision; 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 amendment has been determined to be 2.

9. The authority of the board to make the proposed amendments is based on section 37-40-203 MCA. The proposed amendments implement sections 37-40-301 and 302 MCA.

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

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

Certified to the Secretary of State, August 19, 1980.

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

In the matter of the repeal OF Rule 46.5.119 (46-2.6(6)-S6080) pertaining to services provided for unmarried parents	))))	NOTICE OF PROPOSED REPEAL OF A RULE PERTAINING TO SERVICES PROVIDED FOR UNMARRIED PARENTS
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 7, 1980, the Department of Social and Rehabilitation Services proposes to repeal rule 46.5.119, pertaining to services provided for unmarried parents.

2. Because the recodified rules are not available to the public, the language of the rule to be repealed is in this notice. The rule proposed to be repealed is as follows:

46.5.119 SERVICES PROVIDED FOR UNMARRIED PARENTS The department will provide the following services:

(1) counseling to the unwed mother, the unwed father and to their parents when appropriate;

(2) placement planning in foster home care or maternity home care;

(3) arrange for medical care;

(4) arrange for continued education for adolescent unwed mothers;

(5) arrange for payment while in placement;

(6) planning relinquishment and adoptive placement when appropriate; and

(7) planning related to ongoing needs of mother and child if mother elects to keep child.

3. The agency proposes to repeal this rule because it is redundant in light of the fact that rule 46.5.117, Services for Unmarried Parents, Procedures for Obtaining Services, specifies the services unmarried parents may be eligible for from this Department.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to the Office of Legal Affairs, P.O. Box 4210, Helena, Montana 59601, no later than September 26, 1980.

5. If a person who is directly affected by the proposed repeal of rule 46.5.119 wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to the Office of Legal Affairs, P.O. Box 4210, Helena, Montana 59601, no later than September 26, 1980.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons directly affected; from the Administrative Code Committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 40 persons based on the 400 unmarried parents who received services in the past year.

7. The authority of the agency to repeal this rule is based on section 53-2-201, MCA, and the rule implements section 53-5-205, MCA.

By: Jan A. Meredith
Director, Social and Rehabilitation Services

Certified to the Secretary of State August 15, 1980.

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

In the matter of the amendment of Rule 46.4.209 (46-2.6(10)-S6620) pertaining to child and youth development program, auditing procedures, federal name change	)))))	NOTICE OF PROPOSED AMENDMENT OF RULE 46.4.209 NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 7, the Department of Social and Rehabilitation Services proposes to amend rule 46.4.209 pertaining to child and youth development program, auditing procedures, federal name change.

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

46.4.209 FISCAL AND ACCOUNTING PROCEDURES (1) Fiscal procedures: The provider shall provide for the fiscal control and accounting procedures necessary to assure proper disbursement of and accounting for the federal, state and local funds paid to it. Accounts and supporting documents relating to project expenditures shall be adequate to permit an accurate audit. All provider financial records, supporting documents, statistical records and all other records supporting the services that were provided under the contract shall be retained for a period of three years from the completion date of the contract. These records shall be available at all reasonable times at the providers' general offices.

(2) Auditing procedures: The state of Montana, the Montana legislative auditor, the department of social and rehabilitation services, the United States department of health~~, education~~ and ~~welfare~~ human services, the comptroller general of the United States, and/or any of their duly authorized agents or representatives shall have the right of access to any books, documents, papers, and records of the provider which are pertinent to the services provided under contract with the bureau. The state shall, for a period of three years from the completion date of the contract, have the right to examine those books, records, documents, paper and other transactions related to the contract or those records which will permit an adequate evaulation of the cost or pricing data submitted.

3. The rule is proposed to be amended to comply with the federal government's name change of the U.S. Department of Health, Education and Welfare to the Department of Health and Human Services.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Office of Legal Affairs, P.O. Box 4210, Helena, Montana 59601, no later than September 26 , 1980.

5. If a person who is directly affected by the proposed amendment of rule 46.4.209 wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to the Office of Legal Affairs, P.O. Box 4210, Helena, Montana 59601, no later than September 26, 1980.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons directly affected; from the Administrative Code Committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 55 persons based on the 550 children involved in the child and youth development programs.

7. The authority of the department to make the proposed amendment is based on section 53-4-111, MCA, and the rule implements section 53-4-112, MCA.

By: Jon A. Meredith
Director, Social and Rehabilitation Services

Certified to the Secretary of State August 19, 1980.

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

In the matter of the amendment of Rule 46.10.317 (46-2.10(14)-S11130) pertaining to AFDC protective and vendor payments	NOTICE OF PROPOSED AMENDMENT TO RULE 46.10.317 PERTAINING TO AFDC PAYMENTS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 7, 1980, the Department of Social and Rehabilitation Services proposes to amend rule 46.10.317 pertaining to AFDC protective and vendor payments.

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

46.10.317 PROTECTIVE AND VENDOR PAYMENTS (1) When there is documentary evidence that the caretaker relative has demonstrated an inability to manage funds, refused without good cause to participate in the work incentive program (WIN), or refused to assign rights to support without good cause, a protective or vendor payment plan shall be implemented.

(a) The caretaker relative must be advised verbally and in writing of his right to a fair hearing.

(b) Selection of the protective payee will be made by the recipient, or with his participation and consent, to the extent possible. Selection of a protective payee may be made among relatives, friends of the family, the clergy, a community service group, a voluntary social service agency, or departmental staff. If it is in the best interest of the recipient for a staff member of the public welfare department to serve as protective payee, a staff member will be appointed. The selection of protective payees may not include: county commissioners; executive heads of the public welfare family; special investigative or resource staff; staff handling fiscal processes; landlords; grocers or other vendors of goods or services dealing directly with the client.

(i) The protective payee shall be bonded in an amount equal to six times the amount of the monthly payment involved, with adequate corporate surety. The department must approve the form for the bond and the county welfare department pays for the bond. The bond must run in favor of the dependent child and the state of Montana and be conditioned upon the faithful use by the protective payee of the AFDC payments for the welfare of the dependent child.

(c) Vendor payments are made to individuals selected by the recipient to the extent possible.

(d) The county welfare department reviews the family situation at least every ~~three~~ six months to determine if the payment procedure is appropriate.

(2) When it appears that protective payments or vendor payments will continue or are likely to continue beyond two years because all efforts have not resulted in sufficiently improved use of assistance in behalf of the child, the county welfare department will seek judicial appointment of a guardian or other legal representative and will terminate the protective or vendor payments when the appointment has been made.

(3) The number of individuals for whom protective payments or vendor payments are made who can be counted as recipients for federal financial participation in any month is limited to ~~ten~~ twenty percent of the number of other AFDC recipients in the state for that month.

(a) Individuals who have refused without good cause to participate in WIN or refused without good cause to assign rights to support are not to be counted in the ~~ten~~ twenty percent.

3. The rule is proposed to be amended in response to a federal rule change in the AFDC program (see 45 Fed. Reg. 20478 which amends 45 CFR, Section 234.60). The proposed amendment allows for reviews of family situations at least every six months instead of every three months. Also, the proposed amendment increases the number of individuals who can receive protective or vendor payments from 10 to 20 percent of the number of other AFDC recipients.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Office of Legal Affairs, P.O. Box 4210, Helena, Montana 59601, no later than September 26, 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, Montana 59601, no later than September 26, 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 sub-division 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 the State of Montana.

7. The authority of the agency to make the proposed amendment is based on section 53-4-212, MCA, and the rule implements sections 53-4-211 and 53-4-244, MCA.

By: Jan A. Meredith
Director, Social and Rehabilitation Services

Certified to the Secretary of State August 15, 1980.

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

In the matter of the amendment of Rule 46.9.405 (46-2.10(34)-S11930) pertaining to general assistance	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 46.9.405

TO: All Interested Persons

1. On September 22, 1980 at 9:00 a.m. a public hearing will be held in the SRS Auditorium, 111 Sanders, Helena, Montana, to consider the amendment of rule 46.9.405.

2. The proposed amendment replaces present rule 46.9.405 found in the Administrative Rules of Montana. The proposed amendment would allow counties to make general assistance payments to provide for a person or family's immediate needs but the payments could not be more than payments for AFDC.

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

46.9.405 ~~INCOME STANDARDS~~ AMOUNT OF ASSISTANCE The amount of general relief assistance ~~to be allotted to a recipient may be~~ shall be based upon need. The amount of assistance provided shall meet the household's immediate need but shall not exceed the amount of payments as found in the AFDC table of assistance standards (see ARM 46.10.403).

4. The department is proposing this amendment in order to clarify the present rule and set maximum standards for general relief assistance payments. The rule as proposed will allow counties the flexibility to administer their general assistance programs to meet the needs of a household while providing a minimum subsistence compatible with decency and health.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, P.O. Box 4210, Helena, Montana 59601, no later than September 30, 1980.

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

7. The authority of the agency to make the proposed amendment is based on section 53-3-102, MCA, and the rule implements section 53-3-301, MCA.

By: Jan A. Meredith
Director, Social and Rehabilitation Services

Certified to the Secretary of State August 15, 1980.

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

In the matter of the ADOPTION OF A RULE pertaining to citizenship and alienage requirements for AFDC	)	NOTICE OF PROPOSED ADOPTION OF A RULE
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 7, 1980, the Department of Social and Rehabiltiation Services proposes to adopt a rule pertaining to citizenship and alienage requirements for AFDC recipients.

2. The proposed rule provides as follows:

RULE I CITIZENSHIP AND ALIENAGE (1) As a condition of eligibility for AFDC assistance, an individual must be either a citizen of the United States, or an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States under authority of Section 203(a)(7) or 212 (d)(5) of the Immigration and Nationality Act).

3. The rule is proposed to comply with 45 CFR, Section 233.50, which requires as a condition of eligibility for the AFDC program that an individual be a U.S. citizen or an alien lawfully admitted for permanent residence in the United States.

4. Interested persons may submit their data, views or arguments concerning the proposed rule in writing to the Office of Legal Affairs, P.O. Box 4210, Helena, Montana 59601, no later than September 26, 1980.

5. If a person who is directly affected by the proposed rule wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Office of Legal Affairs, P.O. Box 4210, Helena, Montana 59601, no later than September 26, 1980.

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

proposed amendment; from the Administrative Code Committee of the legislature; from a governmental sub-division 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 the State of Montana.

7. The authority of the agency to make the proposed rule is based on section 53-4-212, MCA, and the rule implements sections 53-4-211 and 53-4-231, MCA.

By: Jan A. Meredith
Director, Social and Rehabilitation Services

Certified to the Secretary of State August 19, 1980.

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

In the Matter of the Adoption of New Rules for Rate Information to be Provided by Electric Utilities.	))))	NOTICE OF ADOPTION OF NEW RULES REGARDING RATE INFORMATION TO BE PROVIDED BY ELECTRIC UTILITIES

TO: All Interested Persons

1. On June 26, 1980, the Montana Public Service Commission published notice of proposed adoption of new rules for rate information to be provided by electric utilities at page 1688 of the 1980 Montana Administrative Register, issue number 12.

2. The Commission has adopted the rules with the following changes:

Rule I. 38.5.1501 EXISTING RATE INFORMATION (1) Each electric utility shall transmit to each of its consumers a clear and concise statement containing the existing rate schedule applicable to such consumer.

(2) The statement of existing applicable rate schedule shall be sent ~~to existing consumers~~ at least once each year to each consumer, the initial statement to be sent within 90 days of adoption of this rule, or within 60 days of commencement of service to new consumers, whichever is later. ~~New consumers must receive a rate statement within 60 days after commencement of service.~~ If the applicable rate schedule is changed during the course of any year, a statement of the new rate schedule shall be sent to each consumer concurrent with the bill which reflects for the first time the change in rate.

(3) Each electric utility shall transmit to each of its electric consumers not less frequently than once each year a clear and concise ~~explanation of~~ summary explaining the existing rate schedules applicable to each of the major classes of its electric consumers for which there is a separate rate and shall identify each class of consumer whose rates are not summarized.

(4) The summary may be transmitted with the consumer's bill or in such other manner that each electric utility deems appropriate.

Rule II. 38.5.1502 PROPOSED RATE CHANGES INFORMATION (1) Each electric utility shall send to each consumer a statement of proposed changes in rate schedule affecting such consumer within 60 days of an application for ~~any~~ such change in a rate schedule ~~applicable to a consumer~~. The statement shall inform the consumer that a hearing may be held on the proposed changes; shall notify the consumer that information concerning the date, time, and location of the hearing will be available from the local utility office, from the PSC, or from the Montana Consumer Counsel as soon as such hearing is scheduled; and shall advise the consumer that the Consumer Counsel is available to represent consumer interests regarding the application.

Rule III. 38.5.1503 OPTIONAL OR ALTERNATIVE RATE INFORMATION (1) ~~Whenever~~ Within 60 days of any establishment of optional or alternative rate schedules, ~~are established~~ and annually thereafter, the utility shall furnish each consumer who may be affected by them, a summary of the applicable rate schedules, together with a notice calling the attention of the consumer to the availability of alternative rate schedules for the consumer's particular class of service and stating that, upon request, the utility will assist the consumer in determining the billing for such service as is specified by the consumer under the various rate schedules.

Rule IV. 38.5.1504 INDIVIDUAL CONSUMPTION INFORMATION (1) Each electric utility, upon request of ~~its~~ a consumers, shall deliver to the consumer a clear and concise ~~statement~~ written summary of the actual consumption ~~or degree day adjusted consumption~~ of electric energy by the consumer during each billing period of the previous 12 months if such data is reasonably ascertainable by the utility.

Rule V. 38.5.1505 INFORMATION TO BE KEPT IN UTILITY OFFICES (1) No change.

Rule VI. 38.5.1506 BILLING DISPUTE INFORMATION (1) No change.

3. COMMENTS: Representatives of the Montana Department of Natural Resources, Montana Dakota Utilities, the Montana Power Company, Montana Senior Citizens Association, Inc., and the District XI Human Resource Council submitted written comments to the Commission regarding the proposed rules for rate information. In addition, one individual submitted written commentary, and a representative of the Montana Consumer Counsel offered oral comment at the hearing.

(Rule I(1).) In response to comments from two utilities, the Commission accepted the suggested qualification in the belief that, for purposes of the statement required by Rule I(1), rate schedule information pertinent only to the particular consumer will be less confusing and more useful to the consumer than a complete summary of existing rates for all classes of consumers. Furthermore, a summary of existing rate schedules for all major classes of consumers is required at least once yearly by Rule I(3).

A suggestion that the word "explaining" replace the word "containing" in Rule I(1) was rejected by the Commission. The original language conveys the intent that specific, clear information be provided to consumers.

(Rule I(2).) The Commission added clarifying language to distinguish the statement required by Rule I(1) from the summary required by Rule I(3).

In response to comments from MDU, the Commission deleted reference to existing consumers and rephrased the first sentence of Rule I(2) to correct an inconsistencey respecting the lead times permitted to utilities for the first transmittals of statements of existing rate schedules to new and existing consumers.

The Commission rejected a suggestion from the Department of Natural Resources that the statement of existing rate schedule applicable to the consumer be sent to the consumer each billing period, printed on the portion of the bill retained by the consumer. The Commission believes that the cost of such a system is unlikely to be justified by the repetitive nature of the information it would provide. Consumers would be better informed, and their interests best served, if they receive accurate rate information in a timely, rather than continuous, manner, and by the means likeliest to be cost effective.

The first sentence of Rule I(2) was modified, therefore, to insure adequate information at reasonable cost by requiring, at minimum, a yearly statement of applicable rate schedule to each consumer. The addition of the second sentence to Rule I(2) insures that the information possessed by consumers will at all times be accurate and current.

(Rule I(3).) The Commission rejected a suggestion from the Department of Natural Resources that utilities be required not only to identify those classes of consumers, other than the major classes, for which there is a separate rate, but to summarize the average costs of electricity for each of those separate classes. In view of the variations existing among the rates applicable to such separate classes, the difficulty of listing and explaining those variations, and the probable irrelevance of that information to members of the major classes of consumers, the Commission cannot justify an explanatory summary for any but the major classes of consumers.

Clarifying language was added to conform the rule to Rule I(4), where the word "summary" is used.

(Rule I(4).) The Commission did not adopt a suggestion of the Department of Natural Resources to delete Rule I(4), replacing it with a provision for a continuous rate schedule information system. The Commission believes it is proper, at this juncture, to allow the utilities the exercise of their judgment in providing the prescribed information by the means that prove most appropriate and least costly.

(Rule II(1).) Comments expressed concern that the proposed rule was unclear, that the rule would impose substantial administrative and economic burden on utilities by requiring frequent dissemination of insignificant kinds of information, and that the statement of proposed rate schedule changes required by the rule would serve no meaningful purpose because of the historic lack of similarity between proposed and approved rate schedules.

The Commission added language to the first sentence of Rule II(1), agreeing that the nature of the statement and the identity of the recipients should be clarified. The Commission believes that each consumer is entitled to notification of proposed rate schedule changes which will affect that consumer if approved, and that is what this rule requires. A change which affects the consumer, reasonably interpreted, is a change

affecting the consumer's existing rates or service, and such a change is always significant to the consumer. What is significant to the utility may be something else again. Therefore, the Commission rejected a suggestion that the word "significant" be inserted to describe the type of proposed change of which the consumer must be notified. Since applications for rate schedule changes rarely confine themselves to issues of minor changes, and since this rule plainly addresses itself to changes affecting the consumer, the fear expressed by one utility of frequent dissemination of insignificant information is groundless.

The Commission rejected a suggestion from one utility that the statement of proposed rate schedule changes omit reference to the specific changes sought by the utility. The Commission cannot accept the reasoning of the utility that the historical discrepancy between proposed and approved rate schedules renders meaningless any notification to consumers of the utility's specific proposed changes. On the contrary, the Commission believes that it is precisely this specific information which the consumer is entitled to know, and he is entitled to know it in time to make his views on the proposed change known.

In response to a suggestion from the MPC, the Commission added a second sentence to Rule II(1), believing that the additional information will be of considerable practical value to consumers.

(Rule III(1).) The Commission accepted a suggestion from a commentor that the information required by this rule be subject to a particular timetable. The addition of a 60-day period provides a reasonable time within which utilities may be expected to comply.

(Rule IV(1).) The Commission made minor editorial changes in the wording of this rule, and, in response to comments, deleted reference to degree day adjusted consumption. The deletion was made on the grounds that degree day adjusted consumption represents only one factor in a consumer's variations of electricity usage, that automatic inclusion of this information on a summary of actual consumption would not consistently offer a satisfactory explanation of consumption, and that this information would frequently be misleading to the consumer.

A suggestion from one commentor that the actual consumption information required by the rule be printed on consumers' bills every billing period was rejected as cumbersome, costly, and unnecessary to achieve the purpose of the rule.

(Rule V(1).) No comments were received.

(Rule VI(1).) The Commission rejected a suggestion from a commentor that the reference to personnel authorized to act on behalf of the utility in resolving complaints be deleted from the rule. The Commission is aware that practical problems respecting authority of personnel may arise in small offices, but the Commission believes that personnel in utility offices

in small towns will be able, and should be expected, to resolve disputes through the normal chain of command existing in the utility's organization.

GENERAL COMMENTS: One person stated that few consumers are interested in a breakdown of all utility charges to their customers, and that requiring such information represents government overregulation which costs the consumer more money. The Commission believes that the information required by these rules is vital to consumers. The rules allow consumers to receive necessary information by means anticipated to be most effective and least costly.

A representative of the Montana Senior Citizens Assoc., Inc., stated general support of rules requiring electric utilities to furnish annual plain-language summaries of rates to consumers.

A representative of the District XI Human Resource Council suggested that utilities be required to disclose, with all information to consumers required by these rules, that the information is provided at the direction of the Public Service Commission. The Commission does not believe such a requirement would improve the usefulness of the information to the consumer or aid the consumer to conserve energy.

GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE AUGUST 19, 1980.

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

IN THE MATTER of the Adoption of New Rules for Prohibition of Master Meters for Electricity In New Buildings.	NOTICE OF ADOPTION OF NEW RULES REGARDING MASTER METERS IN NEW BUILDINGS

TO: All Interested Persons

1. On May 29, 1980, the Montana Public Service Commission published notice of proposed adoption of new rules for prohibition of master meters for electricity in new buildings at page 1534 of the 1980 Montana Administrative Register, issue number 10.

2. The Commission has adopted the rules with the following changes:

Rule I. 38.5.1601 DEFINITIONS (1) For purposes of this rule:

(a) "New building" means:

(i) any building the construction of ~~for~~ which commenced ~~commencement of construction began~~ six months after the effective date of these rules~~,~~; and

(ii) any existing building in which the replacement of the electrical system is commenced six months after the effective date of these rules, in which there are more than one unit and the occupant of each such unit has control over a portion of the electric energy used in such unit.

(b) ~~"Commencement of "~~Construction" or "replacement" commences ~~is~~ at the time ~~at which~~ physical labor involved with the erection of the building ~~has begun~~ or the actual replacement of the electrical system begins.

(c) "Affected electric utilities" are all electric utilities subject to the jurisdiction of this Commission.

Rule II. 38.5.1602 PROHIBITION OF MASTER METERS (1) All electricity delivered to a new building ~~at which units of such premises are separately rented, leased, or owned~~ shall be sold by the electric utility on the basis of individual meter measurement for each occupancy unit, except for:

(a) Electricity delivered to Hhotels, motels, hospitals, dormitories, and other similar transient lodging~~.~~;

~~(b) Buildings where a central space and/or water heating facility serves the entire complex.~~

~~(c)~~ (b) Where the individual contractor or owner ~~establishes~~ of a new building provides to the utility, in writing, ~~to the utility,~~ before commencement of construction or replacement, data showing that the contractor's or owner's ~~of the new building that the~~ costs of purchasing and installing facilities for separate ~~meters for each unit in the building~~ metering, when added to the utility's costs of purchasing and installing separate meters, exceed the long run benefits.

(2) Each electric utility shall, by March 1, 1981, submit to the Commission for approval the criteria by which the utility proposes to analyze utility and owner or contractor costs when a determination of whether the costs of purchasing

and installing separate meters exceed the long-range benefits of separate metering is required.

Rule III. 38.5.1603 UTILITIES TO ASSURE COMPLIANCE-APPEAL TO COMMISSION (1) The affected electric utilities shall assure compliance with Rule II and shall not furnish service to a new building that does not comply with the rule. If a dispute arises between the utility and the builder or owner of a new building, either party may petition the Commission to make a determination on the appropriateness of requiring individual meters for the building.

(2) The affected electric utilities shall submit to the Public Service Commission, by March 1, 1981, and semi-annually thereafter:

(a) A list of the contractors or owners of new buildings who, during the reporting period, have submitted written data to the utility to establish exception status from ARM 38.5.1602; and

(b) A list of the contractors or owners of new buildings for which the utility has recognized such exception status during the reporting period.

3. COMMENTS: Representatives of the Montana Consumer Counsel, Montana-Dakota Utilities, and the Montana Power Company submitted written comments to the Commission.

(Rule I(1).) Accepting changes suggested by two utilities, the Commission modified the definitions to pinpoint the multiple-unit and occupant-control characteristics of buildings subject to these rules, and to bring existing buildings whose electrical systems are replaced under the provisions of the rules. The six-month lead time provision was added to Rule I(1)(a) and (b) in response to a comment that such a period would allow owners, builders, and contractors the necessary time to incorporate the requirements of these rules into construction plans. Construction already in progress at the time of adoption or within six months thereafter would not be subject to these rules, because the costs of the changes necessary to accommodate the construction or replacement to the rules would be unreasonable.

One commentor's suggestion that reference to the erection of the building be deleted from Rule I(1)(b) was rejected because it would leave the definition open to overly broad interpretation.

(Rule II(1).) The Commission deleted the phrase describing new buildings because the relevant information was incorporated into the amended definition of "new building" in Rule I(1)(a). In response to comment, Rule II(1)(a) was expanded to include hospitals and dormitories as examples of the transient types of lodging to which the exception applies. A suggested further description of transient lodging was rejected as redundant. A suggestion to include in Rule II(1)(a) reference to rest and retirement homes in which all cooking and other appliances, other than heating, are central was rejected on the basis that the practical problems of determining whether the

exception applies to these homes would be best resolved on a case by case basis under the provisions of amended Rule II(1)(b).

One commentor suggested deletion of the proposed Rule II(1)(b) in its entirety. The Commission accepted the suggested deletion, but for the reasons that central electric space and/or water heating facilities have little application in Montana at present, and because, in any case, the determination of whether a planned central heating system qualifies a building for an exception under these rules can be made under the provisions of amended Rule II(1)(b). The Commission believes that central electric air conditioning poses a greater problem in this area than does central electric heating. Whether or not such a planned air conditioning system would be allowed as an exception under amended Rule II(1)(b), is again, best addressed on a case by case basis.

Proposed Rule II(1)(c) was renumbered Rule II(1)(b). In response to a utility comment, the Commission added language to clarify that the costs of purchasing and installing meters include utility expenditures as well as costs to owners or contractors. Since utility costs in purchasing meters will be reflected in the rates paid by consumers, the Commission finds it reasonable to consider these costs in the determination of long-range benefits, which include both equitable rate benefits and conservation benefits. Certain other wording changes suggested by the commentor which would not change the meaning of the rule as amended were rejected by the Commission.

(Rule II(2).) In response to Consumer Counsel's comments that the proposed rule failed to provide any means to insure that the master metering prohibition take effect, the Commission added Rule II(2). The Commission agrees that an approved means of analyzing costs and benefits in the determination of exceptions to the general prohibition is necessary if these rules are to be effective. The Commission believes that the criteria required by Rule II(2) will provide to utilities a basis upon which to carry out their responsibilities of compliance, and will insure that exceptions to Rule II are recognized only as they conform to certain acceptable, consistent factors.

(Rule III(1).) Comments from two utilities criticized the proposed rule for placing responsibility for assuring compliance with master metering prohibitions on the utilities. Comments from the Consumer Counsel criticized the proposed rule for failing to provide a penalty to be assessed against utilities in the event of noncompliance.

In retaining Rule III(1) as written, the Commission rejected the suggestion that the rule should either provide that utilities may rely upon the certification of the owner that a new building falls within the exception of amended Rule II(1)(b), or provide that the Commission will issue "certificates of exception" to owners of new buildings to which the master metering prohibition does not apply. The Commission

also rejected a suggested deletion of the words "assure compliance" in the first sentence.

In the interests of the conservation and equitable rate benefits made possible by the general prohibition of master metering, the Commission imposes, by these rules, a requirement on utilities to sell electricity to new buildings as defined herein only on a separately-metered basis, with two exceptions set out in Rule II(a) and (b). This is a lawful and a reasonable requirement, and one for which, the Commission believes, the utilities have the personnel, the expertise, and the ability to comply.

The Commission has no power of regulation over the building industry. The Commission cannot issue certificates of exception to owners or contractors of new buildings, but it can demand that regulated utilities, in their dealings with owners and contractors, assure compliance with the conditions of service established by these rules. Only at the outset, in approving utility criteria for exceptions to Rule II, or in the event of a dispute regarding a possible exception under amended Rule II(1)(b) do these rules provide for Commission intervention. The Commission regards these activities as reasonable use of its regulatory power.

The exception to the general prohibition set out in amended Rule II(1)(b) makes it plain that utility costs, in addition to owner or contractor costs, are to be a part of the determination of whether long range benefits are exceeded by costs so clearly as to except the planned building from the master metering prohibition. Since utility expenditures will necessarily figure largely in the determination, it is sensible to require the utility to exercise its judgment and expertise to decide, within the approved criteria required by Rule II(2), whether to provide electric service under the exception provision, to refuse service, or to petition the Commission to resolve a dispute regarding an exception.

(Rule III(2).) In response to a comment that no penalty for noncompliance was included in the proposed rules, the Commission added Rule III(2). The Commission believes that semi-annual reporting by utilities of exceptions sought and exceptions recognized will inform the Commission of the utilities' activity in serving new buildings on a master-metered basis sufficiently to allow the Commission to investigate that activity, on its own initiative, if it appears necessary. No undue burden, the Commission believes, will be imposed on utilities by this limited reporting requirement. The Commission rejected the suggestion that utilities be required to pay all costs for reinstallation of separate meters if the utility is found to be selling electricity measured by a master meter in contravention of these rules. Such a requirement would wrongfully penalize the consumer.

The Commission believes that no specific penalty for noncompliance need be included in these rules, since the penalty

for utility violation of any lawful Commission requirement is prescribed by statute. 69-3-209 and 69-3-206, MCA.

GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE AUGUST 19, 1980.

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

In the matter of the Amendment of ARM 40.12.814 concerning fees.	)))	NOTICE OF AMENDMENT OF ARM 40.12.814 FEES, GENERAL INITIAL AND ANNUAL RENEWAL FEES

TO: All Interested Persons:

1. On July 17, 1980, the Board of Cosmetologists published a notice of proposed amendment of ARM 40.12.814 concerning fees at page 2188, Montana Administrative Register, issue number 13.

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

3. No comments or testimony were received.

BOARD OF COSMETOLOGISTS
JUNE BAKER, PRESIDENT

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

Certified to the Secretary of State, August 19, 1980.

DECLARATORY RULING
DEPARTMENT OF PUBLIC SERVICE REGULATION

IN THE MATTER of the Application of the City of Glendive, Montana, for a declaratory ruling on the installation of remote meter reading devices.	)))))	DECLARATORY RULING

On February 13, 1980, the Montana Public Service Commission's Customer Services Representative received a complaint from a Glendive water user questioning the City's $25.00 charge for installation of a remote meter reading device at his residence. The device was installed at the City's request.

On February 20, 1980, the Commission Staff sent a letter to Wilbur Wallace, Superintendent of the Glendive Water Department, informing him that it was the staff's position that the device was part of the meter and thus, under the relevant rules regulating water utilities, the expense of installation was the City's responsibility.

In response to a request by the City, the Commission, on March 26, 1980, informed the City that it agreed with the Staff's position.

On May 12, 1980, the City, by letter, requested a declaratory ruling regarding the cost responsibility for remote reading devices. On July 9, 1980, the Commission received from the City a formal Petition for Declaratory Ruling.

In its Petition, the City argued that the following rules authorized its charge for installation of a remote meter reading device:

> Meter rates will apply to all services not covered by the accompanying flat rate schedule. Any consumer desiring to receive water by meter measurement may have meter placed by the company under the following rules and regulations.
>
> Meters may be installed on any service when the same becomes necessary to prevent waste of water. Meters are owned by the company and are furnished to consumers and set in place, provided proper receptacles are provided for them.
>
> Rule M-3 of the same rules goes on to provide that
>
> In all cases where a meter is installed the consumer must furnish proper protection from frost or other damage, and meter must be located where it is easily accessible for reading purposes and repairs.

> Rule M-5 of the same rules goes on to provide that
>
> One meter only will be supplied for a single service, and in case a consumer desires one or more secondary meters for various tenants in a single building, the consumer will be required to pay $1.00 a month for the installation and maintenance.

The City did not request a hearing or oral argument on the matter.

Question Presented: Under the statutes and rules regulating charges made by the City of Glendive to its water utility customers, may the City assess a fee on individual customers for installation of remote meter reading devices?

Discussion and Findings

Section 69-3-305, MCA provides:

> Deviations from scheduled rates, tolls, and charges.
>
> (1) It shall be unlawful for any public utility to:
>
> (a) charge, demand, collect, or receive a greater or less compensation for any service performed by it within the state or for any service in connection therewith than is specified in such printed schedules, including schedules of joint rates, as may at the time be in force;
>
> (b) demand, collect, or receive any rate, toll, or charge not specified in such schedules; or
>
> (c) grant any rebate, concession, or special privilege to any consumer or user, which, directly or indirectly, shall or may have the effect of changing the rates, tolls, charges, or payments.
>
> (2) The rates, tolls, and charges named therein shall be the lawful rates, tolls, and charges until the same are changed, as provided in this chapter.
>
> (3) Any violation of the provisions of this section shall subject the violator to the penalty prescribed in 69-3-206. This, however, does not have the effect of suspending, rescinding, invalidating, or in any way affecting existing contracts.

The Commission has not authorized the City of Glendive to charge any amount to an individual customer for the installa-

tion of a remote meter reading device. The statute is clear: A utility customer is not required to pay any charge for any service rendered unless the Commission has approved that charge.

Further, the current rules under which the City must serve its customers provides:

> Meters are owned by the company and are furnished to customers and set in place, provided proper receptacles are provided for them.
>
> General Rules and Regulations for Water-Metered Service-Rule M-1.

The Commission has consistently held, and continues to hold, that this rule necessarily requires that the utility must provide meters without charge to the individual customer. A remote meter reading device is obviously an integral part of the meter. The function of a water meter is to record water usage so that the utility can charge the customer according to the amount of water consumed. The remote reading device is nothing more than a mechanical refinement of the traditional usage recording method of sending a meter reader to record the usage indicated by dials or other devices on the meter.

Ruling

1. The City's assessment of a $25.00 charge for installation of a remote meter reading device, without approval by the Public Service Commission, is prohibited by 69-3-305, MCA.

2. A remote meter reading device is an integral part of a meter.

3. Rule M-1, General Rules and Regulations for Water-Metered Service, prohibits the City from charging an individual customer for installation of a remote meter reading device.

APPROVED BY THE COMMISSION August 4, 1980.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION.

GORDON E. BOLLINGER, Chairman

CLYDE JARVIS, Commissioner

THOMAS J. SCHNEIDER, Commissioner

JAMES R. SHEA, Commissioner

GEORGE TURMAN, Commissioner

ATTEST:
Madeline L. Cottrill
Secretary

(SEAL)

VOLUME NO. 38 OPINION NO. 95

BOARD OF PUBLIC EDUCATION - Board is responsible for determining whether private institutions' instructional programs satisfy requirements of law;
EDUCATION - "Private institutions" do not include parents who teach their children at home;
MONTANA CODE ANNOTATED - Sections 20-4-101, 20-5-102, 20-5-103, 20-5-104, 20-5-106, 20-7-111;
MONTANA CONSTITUTION - Article 10, sections 1 and 6.

HELD: 1. The "private institution" exception to Montana's compulsory attendance law does not apply to a parent who teaches his children at home.

2. Teachers at "private institutions" need not hold Montana teaching certificates.

3. The Board of Public Education is responsible for determining whether a private institution provides instruction in the program the board prescribes pursuant to section 20-7-111, MCA.

7 August 1980

Willis M. McKeon, Esq.
Phillips County Attorney
P.O. Box 40
Malta, Montana 59538

Dear Mr. McKeon:

You have requested my opinion concerning a number of questions related to the "private institution" exception to Montana's compulsory school attendance law. I have summarized your questions and stated them in the following form:

1. Does the "private institution" exception to Montana's compulsory school attendance law apply to a parent who teaches his children at home?

2. Must teachers at "private institutions" hold Montana teaching certificates?

3. Who is responsible for determining whether "private institutions" in Montana provide instruction in the program prescribed by the Board of Public Education?

Neither the specific questions you have asked nor the particular facts out of which they arise suggest any conflict between compulsory school attendance and freedom of religion. However, consideration of that factor is essential in addressing this area of the law in light of the fact that most private educational institutions are established by religious groups.

Your questions should first be viewed against the backdrop of the applicable provisions of the Constitution of the State of Montana. Montana Constitution, Article 10, Sections 1 and 6 provide:

> Section 1. Educational goals and duties.
> (1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.
> (2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.
> (3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.
>
> Section 6. Aid prohibited to sectarian schools.
> (1) The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect or denomination.
> (2) This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to non-public education.

It is important to note at the outset that the constitution recognizes the state's legitimate interest in the education of its citizens. At the same time, the constitution implicitly recognizes the existence and legitimacy of private sectarian schools.

As the United States Supreme Court noted in Brown v. Board of Education, 347 U.S. 483, 493 (1954), "[i]n these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education." To further the goal of developing the full educational potential of each person, the legislature enacted Montana's compulsory attendance law, section 20-5-103, MCA, which provides:

> (1) Except as provided in subsection (2), any parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year shall cause the child to attend the school in which he is enrolled for the school term and each school day therein prescribed by the trustees of the district until the later of the following dates:
> (a) the child's 16th birthday;
> (b) the date of completion of the work of the 8th grade.
> (2) The provisions of subsection (1) do not apply in the following cases:
> (a) The child has been excused under one of the conditions specified in 20-5-102.
> (b) The child is absent because of illness, bereavement, or other reason prescribed by the policies of the trustees.
> (c) The child has been suspended or expelled under the provisions of 20-5-202.

(Emphasis added.)
According to section 20-5-102, MCA, a child may be excused from the operation of the compulsory attendance law if the child is:

> (a) enrolled in a private institution which provides instruction in the program prescribed by the board of public education pursuant to 20-7-111;
> (b) enrolled in a school of another district or state under any of the tuition provisions of this title;

(c) provided with supervised correspondence study or supervised home study under the transportation provisions of this title;

(d) excused from enrollment in a school of the district when it is shown that his bodily or mental condition does not permit his attendance and the child cannot be instructed under the special education provisions of this title;

(e) excused from compulsory school attendance upon a determination by a district judge that such attendance is not in the best interest of the child; or

(f) excused by the board of trustees upon a determination that such attendance by a child who has attained the age of 16 is not in the best interest of the child and the school.

(Emphasis added.)

The term "private institution" is not defined in conjunction with the "private institution" exception. Therefore, a brief look at the history of the compulsory attendance law is necessary in order to shed some light on what was contemplated by the legislature when it provided for the "private institution" exception.

Prior to the turn of the century, section 1920, Montana Codes Annotated 1895, provided:

> Every parent, guardian or other person in the state of Montana, having control of any child or children between the ages of eight and fourteen years, shall be required to send such child or children to a public school, or private school taught by a competent instructor, for a period of at least twelve weeks in each year, six weeks of which time shall be consecutive; PROVIDED, That such parent, guardian or other person having control of such child or children shall be excused from such duty by the school board of the district wherever it shall be shown to their satisfaction, subject to appeal as provided by law, that one of the following reasons exist therefor, to-wit:
>
> 1. That such child is taught at home by a competent instructor in such branches as are usually taught in the public schools.
>
> 2. That such child has already acquired the branches of learning taught in the public schools.

> 3. That such parent, guardian or other person is not able by reason of poverty, to properly clothe such child.
> 4. That such child is in such a physical or mental condition (as declared by a competent physician, if required by the board) to render such attendance inexpedient or impracticable.
> 5. That there is no school taught the requisite length of time within two and one-half miles of the residence of such child by the nearest traveled road; PROVIDED, That no child shall be refused admission to any public school on account of race or color.

(Emphasis Added.)
Section 1920 was amended in 1903 to include specific subjects in which children were to be instructed. The reference to home study was made even more explicit by the amendatory language. The law then provided in pertinent part:

> All parents, guardians and other persons who have care of children, shall instruct them, or cause them to be instructed in reading, spelling, writing, English grammar, geography, physiology and hygiene, and arithmetic. Every parent, guardian or other person having charge of any child between the ages of eight and fourteen years shall send such child to a public, private, or parochial school, ... unless the child is excused from such attendance ... upon satisfactory showing ... that the child is being instructed at home.

Section 1, Ch. 45, Laws of 1903.

The law remained in substantially that form until 1971, when the law underwent extensive revision. Ch. 5, Laws of 1971. At that time the express provision for home instruction was eliminated. The rejection of the home instruction exception in the 1971 laws buttressed by the use of the term "private institution" in the new statutory scheme leads to the conclusion that the "private institution" exception to Montana's compulsory school attendance law does not apply to a parent who teaches his children at home. Cases from other jurisdictions support this conclusion.

In State v. Hoyt, 84 N.H. 38, 146 A. 170 (1929), the Supreme Court of New Hampshire addressed the rationale underlying the state's interest in compulsory attendance at public or private institutions:

> Education in public schools is considered by many to furnish desireable and even essential training for citizenship, apart from that gained by the study of books. The association with those of all classes of society, at an early age and upon a common level, is not unreasonably urged as a preparation for discharging the duties of a citizen. The object of our school laws is not only to protect the state from the consequences of ignorance, but also to guard against the dangers of "incompetent citizenship."

In State v. Counort, 69 Wash. 361, 124 P. 910 (1912), the supreme court of Washington, addressing the definition of "private school" stated:

> We do not think that the giving of instruction by a parent to a child, conceding the competency of the parent to fully instruct the child in all that is taught in the public schools, is within the meaning of the law "to attend a private school." Such a requirement means more than home instruction. It means the same character of school as the public school, a regular, organized and existing institution, making a business of instructing children of school age in the required study and for the full time required by the laws of this state.

In Board of Education of Central School District No. 1 v. Allen, 392 U.S. 236, 245 (1968), the United States Supreme Court noted:

> ...a substantial body of case law has confirmed the power of the states to insist that attendance at private schools, if it is to satisfy state compulsory-attendance laws, be at institutions which provide minimum hours of instruction, employ teachers of specified training, and cover prescribed subjects of instruction. Indeed, the state's interest in assuring that these standards are being met has been considered a sufficient reason for refusing to accept instruction at home as compliance with compulsory education statutes. These cases were a sensible corollary of Pierce v. Society of Sisters: if the State must satisfy its interest in secular education through the instrument of private schools, it has a proper

> interest in the manner in which those schools perform their secular educational function.

Consistent with these interpretations, then, I conclude that a parent cannot comply with the compulsory attendance law by simply teaching his or her child at home.

With respect to your second question, section 20-4-101(1), MCA, provides:

> In order to establish a uniform system of quality education and to ensure the maintenance of professional standards, a system of teacher and specialist certification shall be established and maintained under the provisions of this title and no person shall be permitted to teach in the public schools of the state until he has obtained a teacher certificate or specialist certificate or the district has obtained an emergency authorization of employment from the state.

This statute applies exclusively to persons wishing to teach in public schools. While recent decisions of the United States Supreme Court indicate that the state's interest in education is such that the state can impose reasonable regulations on private schools, the Montana legislature has not addressed the minimum qualifications of those who teach in private schools. Therefore, at the present time, teachers at "private institutions" need not hold Montana teaching certificates.

Your final question arises because of the requirement that "private institutions," in order to qualify for the exception to the compulsory attendance law, must provide "instruction in the program prescribed by the board of public education." Because the Board of Public Education prescribes the program of instruction referred to in the statute, private institutions are entitled to a determination by the board as to whether their particular program complies. Therefore, the Board of Public Education may review programs which may be submitted to them annually by private institutions, to determine whether they comply with the board's requirements and issue a statement to those institutions that are in compliance. However, this review may not impose teacher certification requirements upon teachers, librarians, and guidance counselors. An institution which does not obtain a statement of compliance from the board may seek judicial review or present its justi-

fication in court during the course of the proceedings initiated by an attendance officer when he finds a child who is not enrolled in an appropriate institution.

If the attendance officer, provided for in section 20-5-104, MCA, discovers that a child subject to compulsory attendance is not enrolled in a school providing the required instruction and has not been excused under the provisions of Title 20, MCA, he must "notify in writing the parent, guardian, or other person responsible for the care of the child that the continued truancy or nonenrollment of his child shall result in his prosecution..." "If the child is not enrolled and in attendance at a school or excused from school within 2 days after the receipt of the notice, the attendance officer shall file a complaint against such person in a court of competent jurisdiction." Section 20-5-106(1), MCA.

Throughout the investigation and research of your request, I have found a great deal of concern on the part of parents and educators alike about the state's role in insuring the quality of "private institutions." What I have attempted to do in this opinion, absent any controlling decisions from our supreme court in this area, is demonstrate how courts from other jurisdictions and the United States Supreme Court have in the past interpreted language similar to that found in our statutes. However, a great many questions remain unanswered. These include constitutional questions regarding the extent to which states may impose requirements on private educational institutions. See Wisconsin v. Yoder, 406 U.S. 205 (1972). They are questions that should be addressed by the legislature.

Insofar as this opinion has clarified the current state of the law, its effect should be prospective and it should not be used to penalize parents who in good faith may have relied on interpretations of the law from other sources and may in the future wish to return their children to the public school system.

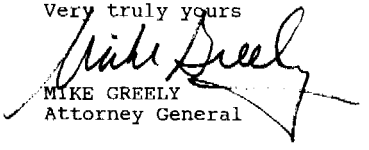
THEREFORE, IT IS MY OPINION:

1. The "private institution" exception to Montana's compulsory attendance law does not apply to a parent who teaches his children at home.

2. Teachers at "private institutions" need not hold Montana teaching certificates.

3. The Board of Public Education is responsible for determining whether a private institution provides instruction in the program the board prescribes pursuant to section 20-7-111, MCA.

Very truly yours



MIKE GREELY
Attorney General

VOLUME NO. 38 OPINION NO. 96

BAIL AND RECOGNIZANCE - Crediting forfeitures;
COUNTY OFFICERS AND EMPLOYEES - Treasurer--crediting forfeitures;
FINES - Crediting forfeitures;
RESTITUTION - Use of forfeitures;
MONTANA CODE ANNOTATED - Sections 2-7-501, et seq., 20-7-504, 20-9-331(2)(d), 46-9-401 et seq., 46-9-504, 46-18-201, 46-18-603, 53-0-109.

HELD: 1. Forfeited appearance bonds should be credited by the county treasurer to the equalization of the county elementary school district foundation programs, in the same manner as fines are credited under section 20-9-331(2)(d), MCA.

2. A judge is without the authority to order restitution to be made from a forfeited appearance bond.

8 August 1980

John T. Flynn, Esq.
Broadwater County Attorney
P.O. Box 96
Townsend, Montana 59644

Dear Mr. Flynn:

You have requested my opinion on the following questions:

1. To what account should the county treasurer credit forfeited appearance bonds?

2. May a judge order restitution to be made from a forfeited appearance bond?

From the situation you describe I assume your question concerns criminal appearance bonds, dealt with under the bail statutes set out in Title 46, chapter 9 of the Montana Code Annotated (MCA). The first question arises through the interplay of two MCA sections. Section 46-18-603, MCA, provides that all fines and forfeitures collected by courts, with the exception of city courts, be applied first to defray the costs of the case in which the fine or forfeiture arose and then deposited in the county treasury "credited as provided by law." Section 20-9-331(2)(d), MCA, provides

that all money in the county treasury resulting from "fines for violations of law" and whose use is not otherwise specified by law be used for the equalization of the county elementary school district foundation programs. Section 46-9-504, MCA, a bail statute dealing with forfeited appearance bonds, provides in part:

> If judgment be rendered or the forfeiture not discharged and the defendant has deposited money as bail, the court with whom it is deposited must, immediately after receiving notice of said judgment or order of forfeiture, pay over the money deposited to the treasury of the city or county wherein the bail was taken.

These sections indicate that while fines are credited to the equalization of the elementary school district foundation programs, forfeitures are not credited to any specific account. However, in statutes concerning non-criminal offenses, fines and forfeitures are generally required to be credited to the same account. See, e.g., §§20-7-504 and 53-9-109, MCA. Since forfeitures for criminal appearance bonds are not otherwise credited, these statutes would indicate that forfeitures be credited to the same account as fines collected for the same offenses. In criminal cases, therefore, forfeited appearance bonds should be credited by the county treasurer to the equalization of the county elementary school district foundation programs, in the same manner as fines are credited under section 20-9-331(2)(d), MCA.

Additional support for this method comes from the general practice of the Department of Community Affairs (DCA). One of the branches of DCA is the Local Government Services Division which conducts financial, budgetary, and legal compliance audits of local units of government. See §2-7-501 et seq., MCA. In conducting county audits DCA practice is to ensure forfeited appearance bonds, and forfeitures in general, are credited to the elementary district foundation program. While such a practice does not have the force of law, it does provide a standard when there is no statute on point. The Montana Supreme Court has said that "[c]ommon usage and practice is persuasive as to statutory interpretation." Holt v. Sather, 81 Mont. 442, 456, 264 P. 108 (1928). That rationale is applicable to the situation here for DCA monitors all 56 counties and the practice, therefore, is widespread. If there is dispute or disagreement regarding this practice the proper forum in which to seek clarification is the legislature.

Your second question concerns a judge's authority to order restitution to be made from the forfeited bond money. While a judge can order a convicted defendant to make restitution under section 46-18-201, MCA, such a sentence is not a "cost" of the case to be defrayed under section 46-18-603, MCA. That statute refers specifically to "costs incurred by the county", not by the victim. Furthermore, in many situations it is not the defendant who posts the bond but an insurance company or some other surety. See §§46-9-401 et seq., MCA. Thus, even though restitution may be a desirable result, it may not be the defendant who pays, but a third party. Since there is no authority for this type of restitution the judge cannot order payments from forfeitures. The money is authorized by law to be paid to the county treasurer.

THEREFORE, IT IS MY OPINION:

1. Forfeited appearance bonds should be credited by the county treasurer to the equalization of the county elementary school district foundation programs, in the same manner as fines are credited under section 20-9-331(2)(d), MCA.

2. A judge is without the authority to order restitution to be made from a forfeited appearance bond.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 38 OPINION NO. 97

PUBLIC FUNDS - P.L. 81-874 funds, allocation to any operating budget of school district;
SCHOOL DISTRICTS - P.L. 81-874 funds, permissible allocation to any operating budget; mandatory reduction of permissive levy if allocated to general fund;
FEDERAL LAW - P.L. 81-874, 20 U.S.C. § 238(g) (1980);
MONTANA CODE ANNOTATED - Sections 20-9-143, 20-9-201, 20-9-352, 20-9-353(3);
ATTORNEY GENERAL OPINIONS - 24 OP. ATT'Y GEN. NO. 46 (1951), 28 OP. ATT'Y GEN. NO. 58 (1960).

HELD: 1. Federal funds received under P.L. 81-874 may be allocated by the trustees of a school district to any of its operating budgets that are supported by levies on property in the district. If such funds are allocated to the general fund budget, they must first be applied toward the permissive levy amount.

2. Due to the statutory changes in section 20-9-353, MCA, 28 OP. ATT'Y GEN. NO. 58 is modified to delete the requirement of electorate approval for the use of P.L. 81-874 funds in excess of the amount that a 15-mill levy would produce.

11 August 1980

Ted O. Lympus, Esq.
Flathead County Attorney
Flathead County Courthouse
P.O. Box 1516
Kalispell, Montana 59901

Dear Mr. Lympus:

You have requested my opinion concerning:

1. For what purposes may a school district use P.L. 81-874 funds?

2. Does the passage of section 20-9-353, MCA, as it relates to the use of P.L. 874 funds, require the reversal of 24 OP. ATT'Y GEN. No.46 (1951) and 28 OP. ATT'Y GEN. NO. 58 (1960)?

P.L. 81-874 funds are distributed by the federal government to local school districts to relieve in part the increased tax burdens placed on such districts due to the existence of federal installations, activities, or property in the area. That purpose has been recognized by two previous Attorney General opinions, 24 OP. ATT'Y GEN. NO. 46 (1951) and 28 OP. ATT'Y GEN. NO. 58 (1960). The general purpose of tax relief must be kept in mind whenever a school district is dealing with P.L. 81-874 funds.

Your letter states that the Superintendent of Public Instruction has concluded that "impact" funds received from the federal government under P.L. 81-874 must first be used to reduce the school district's permissive levy for the support of the general fund budget. That ruling is based on the Attorney General opinions mentioned above. You go on to state that under this interpretation, P.L. 81-874 funds would not be available to meet transportation needs of a district because transportation costs are not paid from the general fund budget. Section 20-9-143, MCA, states:

> Federal funds received by a district under the provisions of Title I of P.L. 81-874 or funds designated in lieu of such federal act by the Congress of the United States may be allocated to the various operating budgets of the district by the trustees.

The superintendent's interpretation is basically consistent with that statute. P.L. 81-874 funds may be used by a school district in any of its operating budgets -- that is, in any of those funds designated as "budgeted" in section 20-9-201, MCA. The general rule for allocation of the federal money, however, is that the funds are to provide taxpayer relief. As a result, if the monies are allocated to the general fund, they must be used to reduce the district's permissive levy for the support of the general fund. To allow a school district to apply P.L. 81-874 funds on top of the permissive levy would increase the general fund budget but diminish the possibility of taxpayer relief. Only if some or all of the permissive levy is reduced by the federal funds does the taxpayer receive any monetary relief.

The two Attorney General opinions relied on by the superintendent do not deprive the trustees of the authority granted them under section 20-9-352, MCA, as it relates to the permissive levy. Section 20-9-352, MCA, provides that if the trustees of any district find it necessary to adopt a

general fund budget in excess of the foundation program amount, but within the maximum amount allowed by law, they may levy up to 15 mills without electorate permission (9 mills maximum for elementary school, 6 mills maximum for high schools). The requirement that P.L. 81-874 funds used in the general fund budget first offset the permissive levy does not deprive the trustees of this power. The statutory purpose of P.L. 81-874 must be met regardless of the authority of 20-9-352. The trustees can levy the maximum permissive amount by simply applying the funds elsewhere. 28 OP. ATT'Y GEN. NO. 58 states only that P.L. 81-874 monies may be used in the permissive area, the operative word being "may", thus indicating a choice. The opinion goes on to hold that P.L. 81-874 monies may be used in all independent budgets which are supported by levies on the property in the district.

The final point in your letter suggests that in light of the recent amendments to section 20-9-353, MCA, the earlier Attorney General opinions dealing with P.L. 81-874 funds should be reversed. Section 20-9-353(3), MCA, in relevant part, provides:

> When the trustees of any district determine that an additional amount of financing is required for the general fund budget that is in excess of the statutory schedule amount, the trustees shall submit the proposition of an additional levy to raise such excess amount of general fund financing to the electors...to vote upon such proposition except that no election shall be required to permit the school trustees to use federal funds received under Title I of Public Law 81-874 to increase the school district's general fund budget...by the amount of these funds.

The language concerning P.L. 81-874 funds was added in 1979 to conform state law to federal law, 20 U.S.C. § 238(g) (1980), which provides that "no state may require that a vote of the qualified electors of a heavily impacted school district of a local educational agency be held to determine if such school district will spend the amounts to which the local educational agency is entitled under this chapter."

24 OP. ATT'Y GEN. NO. 46 is not affected by the amendment to section 20-9-353, MCA. That opinion was relied upon by the superintendent for its articulation of the purpose of P.L. 81-874, but the rest of the opinion deals with an issue not applicable here.

28 OP. ATT'Y GEN. No. 58 does require some modification in light of section 20-9-353, MCA. That opinion held that P.L. 81-874 monies may not be used above the amount the permissive levy would produce without electorate approval. In view of the present statutory scheme, both federal and state, Opinion No. 58 is now modified to delete the requirement of electorate approval for the expenditure of P.L. 81-874 funds above the statutory limit. Disregarding that holding, the opinion continues to state the law.

THEREFORE, IT IS MY OPINION:

1. Federal funds received under P.L. 81-874 may be allocated by the trustees of a school district to any of its operating budgets that are supported by levies on property in the district. If such funds are allocated to the general fund budget, they must first be applied toward the permissive levy amount.

2. Due to the statutory changes in section 20-9-353, MCA, 28 OP. ATT'Y GEN. NO. 58 is modified to delete the requirement of electorate approval for the use of P.L. 81-874 funds in excess of the amount that a 15 mill levy would produce.

Very truly yours,

MIKE GREELY
Attorney General