MONTANA ADMINISTRATIVE REGISTER

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NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 24

TABLE OF CONTENTS

NOTICE SECTION

BEFORE THE WORKERS' COMPENSATION COURT
OF THE STATE OF MONTANA

In the matter of the amendment of procedural rules.	))))	NOTICE OF PROPOSED AMENDMENT OF ARM 2.52.213 AND ARM 2.52.220 (No Public Hearing Contemplated)

TO: All Interested Persons

1. On January 25, 1981, the Workers' Compensation Court proposes to amend the procedural rules of the Court.

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

2.52.213 PRETRIAL CONFERENCE (1) A pretrial conference shall precede every trial unless otherwise ordered by the Court.

(2) The Court shall designate one of the parties to prepare a Pretrial Order which recites the actions taken at the pretrial conference. This Pretrial Order must be signed by both parties and submitted to the Court for approval. The Pretrial Order shall supersede all other pleadings and shall set forth the following:

(a) statement of jurisdiction pursuant to the appropriate statutes and rules;

(b) motions made by either party;

(c) uncontested facts;

(d) petitioner's and defendant's issues of fact and law;

(e) all exhibits known to the parties at the time of the pretrial conference which may be introduced, whether stipulated to or not;

(f) witnesses which may be called and a brief summary of their testimony;

(g) pretrial discovery desired, e.g., depositions and interrogatories;

(h) estimated length of trial and the time and place for trial; and

(i) such other matters as may aid in the disposition of the matter. (History: Sec. 2-4-201 MCA; IMP, Sec. 2-4-201 MCA; NEW, 1979 MAR p.798, Eff. 7/27/79; AMD, 1980 MAR p.2635, Eff. 9/26/80; AMD, 1980 MAR p. , Eff. 11/29/80.)

2.52.220 FINDINGS OF FACT AND CONCLUSIONS OF LAW AND BRIEFS (1) The Court may require briefs or other documents to be filed by either or both parties.

(2) The Court may require either or both parties to

file findings of fact and conclusions of law.

(3) Briefs and findings of fact and conclusions of law will be filed at a date set by the Judge or hearing examiner.

(4) If parties are directed to file proposed findings of fact and conclusions of law and briefs simultaneously, Rule ARM 2.52.203(3) will apply. The Clerk will return all proposed findings of fact and conclusions of law and briefs received or postmarked after the due date. ~~by-a-certain date,-any-documents-reaching-the-Court-more-than-three days-after-the-deadline-or-mailed-after-the-deadline will-not-be-accepted-or-filed.~~ (History: Sec. 2-4-201 MCA; IMP, Sec. 2-4-201 MCA; NEW, 1979 MAR p.798, Eff. 7/27/79; AMD, 1980 MAR p.2636, Eff. 9/26/80.)

3. The rationale for amending these rules is to clarify requirements for Pretrial Orders and requirements for filing proposed findings of fact and conclusions of law.

4. Interested parties may submit their data, views or arguments concerning these changes in writing to the Workers' Compensation Court, 1422 Cedar-Airport Way, P. O. Box 4127, Helena, Montana, 59604, by January 25, 1981.

5. The authority of the Court to make the proposed changes in the rules is based on and implements 2-4-201 MCA.

William E. Hunt

WILLIAM E. HUNT
JUDGE

CERTIFIED TO THE SECRETARY OF STATE: December 16, 1980
Date

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 10.7.111 specifying criteria for state reimbursement for bus transportation for the first-aid requirement.	)	NOTICE OF PROPOSED AMENDMENT OF RULE 10.7.111 QUALIFICATIONS FOR BUS DRIVERS
	)	NO PUBLIC HEARING CONTEMPLATED

1. On January 27, 1981 the superintendent of public instruction proposes to amend rule 10.7.111 Qualifications for Bus Drivers on pages 10-76 and 10-77 of the Administrative Rules of Montana.

2. The proposed rules provides as follows:

10.7.111 QUALIFICATIONS OF BUS DRIVERS. (1) School bus drivers must be fully qualified in order for a district to receive state reimbursement for the bus. Qualifications for bus drivers are prescribed by Sec. 20-10-103 MCA and by the board of public education. These require that the driver:

(i) have five years of licensed driving experience;

(ii) be of good moral character;

(iii) hold the proper chaufeur's license;

(iv) have filed with the board of trustees a satisfactory report of a physical examination, signed by a licensed physician in the state of Montana, on a form provided by the superintendent of public instruction;

(v) hold a valid standard first-aid certificate;

(vi) hold a valid certificate as evidence of meeting the qualifications.

(2) The holding a a first-aid certificate is of no less importance than the other legally prescribed qualifications. Sec. 20-10-103 MCA, requires that "...he had completed a standard first-aid course and holds a valid standard first-aid certificate from an authorized instructor."

(3) State reimbursement for bus transportation for the full school year will be made only when a new driver of the bus has completed the first-aid requirement ~~by January 31~~ within two months from the employment date. Any bus operated by a driver not so qualified ~~by January 31~~ will not be eligible for state reimbursement for ~~any~~ that portion of the year that the driver is not qualified. Drivers who have driven the previous year must have the first-aid requirement completed before the expiration date on their certificate.

(4) In the event that, ~~after November 30~~, a district (or contractor) is obligated to employ a driver as a replacement for a driver employed at the beginning of the school year, or must employ an additional driver, a period of two months will be permitted for the new driver to acquire the first-aid certificate. If after two months following the date of first employment of the additional or replacement driver, the first-aid requirement has not been met, the bus operated by the driver will not qualify for state reimbursement for ~~the~~ that portion of the year ~~beginning with the date of the uncertified driver's employment~~ that the driver is not qualified.

(5) Districts may obtain information about the offering of first-aid courses from the American Red Cross or the office of public instruction.

(6) The holding of a Montana School Bus Driver Certificate is proof that the driver meets all the qualifications of the school transportation law. The Bus Driver Certificate forms are provided by the superintendent of public instruction for use by the board of trustees. The board issues a certificate to each driver who is authorized and qualified to drive, and files a copy with the county superintendent and a copy with the superintendent of public instruction.

(7) A School Bus Driver Certificate remains valid until the earliest expiration date of the chauffeur's license, the first-aid certificate, and/or physical examination. A new certificate must be issued to the driver when any of the above items expires and is renewed.

(8) The qualifications of all bus drivers are reviewed at the time the state audit of transportation claims is made, as the qualifications of the bus driver are one of the criteria for eligibility for reimbursement. (History: Sec. 20-3-106, (18) MCA; IMP, Sec. 20-10-112, Eff. 2/26/53; Sec. 20-10-111, Eff. 7/1/47; ARM Pub. 11/26/77.)

3. The superintendent proposes to amend these rules to remove inequitable requirements for bus drivers employed after the beginning of the school year.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal to Mr. Terry Brown, Pupil Transportation Safety Consultant, Office of the Superintendent of Public Instruction, State Capitol, Helena, Montana, 59620 by January 30, 1981.

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, that person must make a written request for a public hearing and submit to Mr. Terry Brown, Financial Services Department, Office of the Superintendent of Public Instruction, State Capitol, Helena, Montana, 59620 no later than January 30, 1981.

6. If the Superintendent of Public Instruction receives requests for a public hearing on the proposed amendment from 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 directly affected has been estimated to be at least 120 persons based upon the number of bus drivers and school administrators in school districts offering pupil transportation services.

7. The authority of the superintendent to make the proposed rule is based on Sections 20-3-106(18), 20-10-112, 20-10-111 MCA.

GEORGIA RICE
SUPERINTENDENT OF PUBLIC INSTRUCTION

By Georgia Rice

Certified to the Secretary of State December 12, 1980.

BEFORE THE COAL BOARD
OF THE STATE OF MONTANA

In the matter of the adoption) of rules regarding the eligi-) bility of water and sewer) projects proposed by county) water and sewer districts and) improvement districts.)	NOTICE OF PROPOSED ADOPTION OF RULES (Water and sewer systems to be provided by improvement districts - funding) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On March 1, 1981 the Montana Coal Board proposes to adopt rules specifying eligibility and funding levels for water and sewer systems to be provided by improvement districts and county water and sewer districts.

2. The proposed rules provide as follows:

RULE I WATER AND/OR SEWER SYSTEMS PROVIDED BY DISTRICTS (1) Improvement districts and county water and sewer districts are eligible for grants to provide for the construction, reconstruction, expansion, and maintenance of a water and/or sewer system that serves:

(a) a new townsite which is needed as a direct consequence of coal development;

(b) a new residential development which is needed as a direct consequence of coal development; or

(c) an existing residential area where it can be demonstrated by the applicant that existing facilities are inadequate as a result of population growth which is a direct consequence of coal development.

(2) Counties may apply for and receive grants to pay for the expenses of rural improvement districts.

(3) Cities, towns, and consolidated units of local government may apply for and receive grants to pay for the expenses of special improvement districts.

RULE II FUNDING OF WATER AND/OR SEWER SYSTEMS TO BE PROVIDED BY DISTRICTS (1) The Board may fund up to 80% of the costs of main water and/or sewer transmission lines, storage and treatment facilities, and other portions of a water and/or sewer system which the Board determines to be essential to the primary function of the system.

3. The new rules are being proposed to implement the provisions of Section 90-6-205, MCA, which authorize the board to adopt rules governing its proceedings, and to award grants to local governments.

4. Any person may submit data, views, or comments in writing to Montana Coal Board, 1424 9th Avenue, Helena, Montana 59601, no later than January 30, 1981.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to address in paragraph 4, no later than January 30, 1981.

6. If the agency receives requests for a public hearing on the proposed adoption 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 15 persons.

7. The authority of the board to adopt these rules is Section 90-6-205, MCA. These rules implement Section 90-6-205, MCA.

MURDO A. CAMPBELL

Certified to the Secretary of State Dec. 16, 1980.

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

IN THE MATTER of Proposed Adoption of rules eliminating the nonessential use of Natural Gas for Outdoor Lighting.	))))	NOTICE OF PROPOSED ADOPTION OF NEW RULES ELIMINATING USE OF NATURAL GAS FOR OUTDOOR LIGHTING. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On February 16, 1981, the Department of Public Service Regulation proposes to adopt new rules eliminating the nonessential use of natural gas for outdoor lighting.

2. The proposed rules provide as follows:

Rule I. PURPOSE AND OBJECT OF RULES. (1) The purpose of these Rules is to implement Section 402 of Pub. L. 95-620, the Powerplant and Industrial Fuel Use Act of 1978 (the Act), and the delegation of authority to this Commission made therein and by 10 CFR Part 516. The objective of Section 402 of the Act and of these Rules, is to eliminate the nonessential use of natural gas for outdoor lighting and to conserve such gas for the benefit of present and future generations.

Rule II. DEFINITIONS. (1) The term "natural gas utility" means any person or firm engaged in the business of interstate or intrastate transportation and local distribution of natural gas for ultimate consumption subject to this Commission's jurisdiction under Title 69 of the Montana Code Annotated.

(2) The term "natural gas outdoor lighting fixture" means a complete stationary natural gas outdoor lighting unit.

(3) The term "residence" means any single or multiple family dwelling unit, including commonly held areas associated with such unit and including multiple family dwelling units which may be classified by the natural gas utility as "commercial" customers.

(4) The term "substitute lighting" means outdoor lighting which does not directly burn natural gas.

Rule III. PROHIBITIONS. (1) No natural gas utility shall install any natural gas outdoor lighting fixture. The prohibition stated in this paragraph (1) shall be effective November 9, 1978, as required by Section 402 of Pub. L. 95-620.

(2) No local distribution company shall supply natural gas for use in outdoor lighting.

(a) In the case of any residential, commercial or industrial customer, the prohibition stated in this paragraph (2) of this section is effective on May 8, 1979 under the terms of Pub. L. 95-620 unless a later effective date is applicable under paragraphs (2)(b) or (2)(c) of this section.

(b) In the case of any industrial or commercial structure to which natural gas was being supplied by a natural gas utility for outdoor lighting use on November 9, 1978, the prohibition stated in paragraph (2) of this section is effective

on November 5, 1979.

(c) In the case of any outdoor lighting fixture used in connection with a residence to which natural gas was being supplied by a natural gas utility for outdoor lighting use on November 9, 1978, the prohibition stated in paragraph (1) of this section is effective January 1, 1982.

Rule IV. EXEMPTIONS. (1) Basis. An order exempting certain natural gas outdoor lighting fixtures from the prohibitions set forth in Rule III may be issued, in response to a Petition writing, on the basis of:

(a) Lighting of historical significance;

(b) Memorial lighting;

(c) Commercial lighting of historical significance;

(d) Lighting which is necessary to protect the safety of persons and property;

(e) The necessity to permit the installation of substitute lighting where no adequate outdoor lighting (other than that natural gas) existed on November 9, 1978;

(f) Substantial expense which would not be cost justified; or

(g) The public interest and consistency with the purposes of the Act.

(2) Form. Substantial compliance with the following form will be considered to meet the formal requirements of these rules.

Utility Division
Montana Public Service Commission
1227 11th Avenue
Helena, Montana 59601

Dear Sirs:

I hereby request an exemption from your rules eliminating use of natural gas for outdoor lighting for the following:

(specifically identify the natural gas lighting fixture)

The basis for this request is that (specify one of the criteria listed in Rule IV(1)(a)-(g)and give specific facts which support your request.)

In order to meet the criteria established for the rules, I hereby certify that the specifically identified outdoor lighting fixtures (describe petitioner's individual case so as to comply with the criteria established for the particular exemption; these criteria appear as subsection (2) of Rules V-XI).

Signed: _____
(Petitioner)

Rule V. EXEMPTIONS BASED ON HISTORICAL SIGNIFICANCE.

(1) A federal, state or local governmental agency, or an appropriate historical association, may petition the Commission for an exemption from the prohibitions set forth in Rule III for any property on the basis of historical significance. In the case of a petition for an exemption from the general prohibition on installation of natural gas outdoor lighting fixtures set forth in Rule III (1), an exemption may be granted only for replacement of a natural gas outdoor lighting fixture(s) that was installed prior to November 9, 1978. A replacement fixture will not be approved unless it consumes the same or less natural gas than the existing fixture. Such replacement shall include:

(a) Replacement of an existing original reproduction fixture; or

(b) Installation of an original or reproduction fixture to replace a fixture which existed during the life of the specified historic property.

(2) Criteria. The criteria for an exemption on the basis of historic significance shall be satisfied upon certification, by the petitioner, that the specifically identified natural gas outdoor lighting fixture(s) directly contributes to the quality of significance of the specifically identified historic property or district, as applicable; and upon a finding that the specifically identified historic property:

(a) Is listed on the National Register of Historic Places maintained by the Heritage Conservation and Recreation Service, Department of Interior, or is officially determined eligible for listing by the Secretary of Interior, pursuant to the National Historic Preservation Act (16 U.S.C. 470 as amended), applicable regulations (36 CFR Parts 60 and 63), and Executive Order 11593; or

(b) Is in a district whose state statutes or local ordinances are certified as providing adequate protection of historic places by the Secretary of the Department of Interior, pursuant to the Tax Reform Act of 1976 (26 U.S.C. 191, 280B) and applicable regulations.

(3) Stays. An exemption request shall result in a stay from the prohibitions set forth in Rule III if:

(a) The petitioner has certified that the specifically identified natural gas outdoor lighting fixture(s) directly contributes to the quality of significance of the specifically identified historic property or district, as applicable; and

(b) An application is pending, before the Department of Interior, for inclusion in one of the categories specified in subparagraphs (a) or (b) of paragraph (2) of this section.

Rule VI. EXEMPTIONS BASED ON MEMORIAL LIGHTING. (1) A federal, state or local government agency, or an appropriate historical association, may petition the Commission for an exemption from the prohibitions set forth in Rule III on the basis of memorial lighting. In the case of a petition for an exemption from the general prohibition on installation of

natural gas for outdoor lighting fixtures set forth in Rule III (1), an exemption may be granted only for the replacement of a natural gas outdoor lighting fixture(s) that was installed prior to November 9, 1978. Such replacement shall include replacement of an extant fixture only. A replacement fixture will not be approved unless it consumes the same or less natural gas than the existing fixture.

(2) Criteria. The criteria for an exemption on the basis of memorial lighting shall be satisfied upon a finding that the specifically identified outdoor lighting fixture(s) directly contributes to preserving the memory of a deceased person or persons.

Rule VII. EXEMPTIONS BASED ON COMMERCIAL LIGHTING OF TRADITIONAL SIGNIFICANCE. (1) Scope. A person using natural gas outdoor lighting which is used for commercial purposes and which is of a traditional nature and conforms with the cultural or architectural style of the area in which it is located, may petition for an exemption from the prohibitions set forth in Rule III. In the case of a petition for an exemption from the general prohibition on installation of natural gas outdoor lighting fixtures, an exemption shall be granted only to replace a natural gas outdoor lighting fixture which had been installed prior to November 9, 1978. Such replacement shall include:

(a) Replacement of an existing natural gas light; or

(b) Replacement of a natural gas light which does not presently exist but which existed at some previous time upon the specified property.

(2) Criteria. The criteria for an exemption on the basis of commercial lighting of a traditional nature shall be satisfied upon certification by the petitioner that the specifically identified natural gas outdoor lighting fixture(s) which is used for commercial purposes and which is of a traditional nature and conforms with the cultural or architectural style of the area in which such light is located presently exists or will be used to replace a natural gas lighting fixture of a traditional nature.

(3) Stays. An exemption request shall result in a stay from the prohibitions set forth in Rule III if the petitioner has certified that the specifically identified natural gas outdoor lighting fixtures(s) used for commercial purposes:

(a) is of a traditional nature and conforms with the cultural or architectural style of the area in which such light(s) is located, and

(b) presently exists or will be used to replace a natural gas lighting fixture of a traditional nature.

Rule VIII. EXEMPTION BASED ON SAFETY OF PERSONS AND PROPERTY (1) Scope. A natural gas utility, any of its customers, or an interested person may petition the Commission for an exemption from the prohibitions set forth in Rule III on the basis of the necessity to protect the safety of persons and property if such natural gas was being supplied on November 9,

1978.

(2) Criteria. The criteria for an exemption on the basis of necessity to protect persons and property shall be satisfied upon a demonstration that an exemption for the natural gas fixture(s) is essential:

(a) To prevent an increase in the likelihood of bodily injury or damage to property;

(b) To prevent an increase in the likelihood of the occurrence of crime in the location served by the light; or

(c) Because other existing lighting in the location does not provide lighting adequate to insure conformance with the American National Standards Institute (ANSI) Standard No. D 12.1 "The American National Standard Practice for Roadway Lighting."

Rule IX. TEMPORARY EXEMPTION BASED ON TIME NEEDED TO INSTALL SUBSTITUTE LIGHTING (1) Scope. A customer, or an interested person, may petition the Commission for a temporary exemption from the prohibitions set forth in Rule III. Such an exemption shall be on the basis of the time needed to permit the installation of substitute lighting where no adequate outdoor lighting (other than that using natural gas) exists, if such natural gas was being supplied on November 9, 1978.

(2) Criteria. The criteria for an exemption on the basis of time to install substitute lighting shall be satisfied upon a finding that:

(a) No adequate outdoor lighting (other than that using natural gas) is available at the time the applicable prohibition became effective; and

(b) The time required for installation of the substitute lighting will not extend beyond one year from the date the applicable prohibition became effective, unless facts and circumstances warrant a longer period.

Rule X. EXEMPTION BASED ON SUBSTANTIAL EXPENSE.

(1) Scope. Any customer or an interested person may petition the Commission for an exemption from the prohibitions set forth in Rule III on the basis of substantial expense which would not be cost justified, if such natural gas was being supplied on November 9, 1978.

(2) Criteria. The criteria for an exemption on the basis of substantial expense which would not be cost justified shall be satisfied upon a showing by the petitioner that compliance with the prohibitions in Rule III would:

(a) Entail substantial expense; and

(b) That such expense would outweigh the benefits to be derived from compliance.

Rule XI. EXEMPTION BASED ON THE PUBLIC INTEREST

(1) Scope. A customer, or any interested person, may petition the Commission for an exemption from the prohibitions set forth in Rule III on the basis of the public interest and consistency with the purposes of the Act, if such natural gas was being supplied on November 9, 1978.

(2) Criteria. The criteria for an exemption on the basis

of the public interest and consistency with the purposes of the Act shall be satisfied upon a finding that converting a specific natural gas outdoor lighting fixture(s) to substitute lighting would not reduce the use of natural gas.

3. The purpose of these Rules is to implement Section 402 of Public Law 96-62, the Powerplant and Industrial Fuel Use Act of 1978 (the Act), and the delegation of authority to this Commission made therein and by 10 CFR Part 516. The objective of Section 402 of the Act and of these Rules, is to eliminate the nonessential use of natural gas for outdoor lighting and to conserve such gas for the benefit of present and future generations.

4. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to Rob Smith, 1227 11th Avenue, no later than January 26, 1981.

5. If the agency receives requests for a public hearing on the proposed rules from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed rules, or from the Administrative Code Committee of the legislature, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Aministrative Register.

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

7. The authority for the Commission to make these proposed rules is based on Sections 69-3-102, MCA, 69-3-101, MCA, 69-3-103(1), MCA, 69-3-106, MCA, IMP, Pub. L. No. 95-620, Sec. 402, 92 Stat. 3290, (1978).

GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE December 16, 1980.

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

IN THE MATTER of Proposed Adoption of New Rules Governing Water Service.	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES GOVERNING WATER SERVICE.

TO: All Interested Persons

1. On February 18, 1981, at 10:00 a.m., a public hearing will be held in the Highway Department Auditorium, Helena, Montana, to consider the adoption of rules governing water service.

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

3. The proposed rules provide as follows:

Rule I. AUTHORIZATION OF RULES (1) These rules are intended to define good practice, which can normally be expected.

(2) They are intended to insure adequate service and to prevent unfair charges to the public, and to protect the utilities from unreasonable demands.

(3) The adoption of these rules and regulations shall in no way preclude the Public Service Commission from altering or amending them in whole or in part, or from requiring any other or additional service, equipment, facility, or standard either upon complaint or upon its own motion, or upon the application of any utility.

(4) These regulations shall not relieve in any way a utility from any of its duties under the laws of this state.

Rule II. APPLICATION OF RULES (1) These rules apply to water utilities as defined in Section 69-3-101 et seq., MCA.

(2) If hardship results from the application of any rule herein prescribed, or if unusual difficulty is involved in immediately complying with any rule, application may be made to the Commission for the modification of the rule or for temporary or permanent exemption from its provisions; provided, that no utility shall submit application for such modification or exemption without submitting therewith a full and complete justification for such action.

(3) If a utility makes application to the Commission for permanent modification of or exemption from these rules pursuant to subsection (2) above, the utility must submit the text of the modification or exemption transcribed on the Commission Form entitled Special Rules and Regulations, along with the justification required in subsection (2) above. Any Special Rules and Regulations of a utility must be approved by the Commission and included in the utility's tariff book.

Rule III. DEFINITIONS (1) Commission. Whenever in these rules and regulations the words "Commission" or "Public Service Commission" occur, such word or words shall, unless a different intent clearly appears from the context, be taken to mean the Montana Public Service Commission.

(2) A "Governmental Unit" is any municipality or other political sub-division or agency of the state of Montana or the Federal Government.

(3) "Distribution Main" means water pipe owned, operated, or maintained by the utility which is used for the purpose of distribution of water from which service connections with customers are taken.

(4) "Utility Service Pipe" shall mean that portion of the service pipe between the distribution main and the curb cock when installed at or near the property line, right-of-way, and/or easement line, installed at the cost and expense of the utility.

(5) "Customer's Service Pipe" shall be that portion of the service pipe from the end of the utility's service pipe to the structure or premises supplied, installed at the cost and expense of the customer.

(6) A "Private Fire Service Connection" is one to which is attached fixtures from which water is taken only for the extinguishment of fire.

(7) A "Temporary Service Connection" is one which is installed for the temporary use of water, provided that the customer's premises is located on a lot having a curb line abutting on that part of a street or public right-of-way in which there is located a distribution main of the utility extending for the total frontage of the lot on said street or right-of-way, unless otherwise agreed to by the utility.

(8) "Public Utility." Except where a different meaning clearly appears from the context, the word or words "utility" or "public utility" when used in these rules and regulations shall embrace every corporation, both public and private, company, individual, association of individuals, their lessees, trustees, or receivers appointed by any court whatsoever, that owns, operates, or controls any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal, water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities, towns, or villages or elsewhere.

(9) "Service Connection." The term "service connection" means the utility's pipe and appurtenances which connect any water main in a public highway, street, alley, or private right-of-way with the inlet connection of a customer's service line at or near the property line.

(10) "Consumer" or "customer" shall mean any individual, partnership, association, firm, public or private corporation or governmental agency receiving water service. In the case of a tenant/landlord, the property owner is considered the ultimate customer.

Rule IV. RECORDS AND REPORTS (1) Preservation of Records. All records required by these rules shall be preserved by the utility in accordance with the "Rules to Govern

the Preservation of Records of Public Utilities and Licensees" as prescribed by The National Association of Regulatory Utility Commissioners (NARUC) dated April, 1972, and adopted by the Commission.

(2) Location of Records. Such records shall be kept at the office or offices of the utility, and shall be open at all reasonable hours for examination by the Commission or its representative, or by others authorized by the Commission.

Rule V. FILING OF RATE SCHEDULES (1) Filing Required. No rules, regulations or schedules of rates or charges, or modification of the same, shall be effective until filed with the Commission as provided by law.

(2) Where Filed. Copies of all schedules of rate and other charges, and copies of all rules and regulations, covering the relation of customer and utility, shall be filed by every utility in the office of the Commission.

(3) Manner of Filing. Tariffs containing all the rates, rules and regulations of each utility shall be filed in the manner prescribed by the Commission.

(4) A utility may adopt, subject to the approval of the Public Service Commission, either a flat rate or meter rate schedule, or both.

(5) A utility shall not supply free water to any customer.

(6) Forms for Filing. The Commission will, upon application, furnish proper blanks to be used for the filing of tariffs or tariff sheets and any changes thereof and additions thereto.

(7) Utility's Special Rules. A utility desiring to establish any rule or requirement supplementing the rules of the Commission shall first make application to/or file tariff sheets with the Commission for authority for such rule or rules, clearly stating in its application the reason for such establishment and substantiating data.

Rule VI. FINANCIAL AND STATISTICAL REPORT (1) Every utility shall file annually a financial and statistical report upon forms to be furnished by the Commission. This report shall be filed on or before March 15th for December closing and September 15th for June closing of each year and fees paid as set forth in Section 69-3-204, MCA.

Rule VII. USES (1) The flat rate will cover the use of water for domestic uses, lawn sprinkling and any other purposes enumerated on the rate sheet covering flat rate services. The utility agrees to furnish water for certain specified uses for a certain specified sum. If, therefore, a consumer furnishes other people with water without permission from the company or uses it for other purposes than those he is paying for, it is a violation of his contract and the consumer offending, after reasonable notice, may have his water shut off and service discontinued until such time as the additional service furnished has been paid for, together with the payment as set forth in the tariff for reconnecting charge.

Rule VIII. EXTENSIONS (1) Should any consumer on a flat rate schedule wish to install additional fixtures or should he desire to apply the water to purposes not stated in the original application, written notice must be given the utility prior to make such installation or change of use. Special extension permits are issued for any extension of pipes within a building. In case a consumer places new fixtures on his premises without securing an extension permit from the company, when such fixtures are discovered, a charge will be made for such extra fixtures at schedule rates for the full length of time such fixtures have been installed.

Rule IX. UTILITY TO PROVIDE METERS (1) Unless otherwise authorized by the Commission, each utility shall provide and install at its own expense (except as provided in Rule XXIX) and shall continue to own, maintain, and operate all equipment necessary for the regulation and measurement of water, in accordance with tariff or contract provisions, to its customers. Where additional meters are requested by the customer and are furnished by the utility for the convenience of the customer, a charge for such meters may be made.

(2) The utility will not make collections for any secondary meters, and all water rents of any single building must be paid by one consumer when supplied by meter measurement from one service. The company, however, may inclose the readings of secondary meters with the bill for the whole building.

(3) In no case will the utility furnish water from one meter to two or more houses, whether the same are owned by one person or not.

(4) The utility may replace any meter at such time as it may see fit and shall be the judge of the size of any meter installed.

Rule X. LOCATION OF METERS (1) In all cases where a meter is installed the consumer must furnish proper protection from frost or other damage, and the meter must be located where it is easily accessible for reading purposes and repairs. Where necessary for protection a standard form of meter box will be placed by the company. The actual cost of same shall be paid by the consumer After such protective receptacle is placed the company will furnish and connect the meter, and maintain the same in good condition.

(2) Remote Meters. When a meter is located inside a home or building, the utility may install, at utility's expense, a remote register or dial on the exterior of a home or building accessible for meter reading.

Rule XI. CUSTOMER INFORMATION (1) Information as to Service. Each utility shall, upon request, give its customers such information and assistance as is reasonable, in order that customers may secure safe and efficient service.

(2) Explanation of Rates. It shall be the duty of the utility to explain to the customer, at the beginning of service, or whenever the customer shall request the utility to do so, the utility's rates applicable to the type of service

furnished the customer, and to assist him in obtaining the rate which is most advantageous for his requirement for service. The utility shall also supply the customer, when he so requests, with a copy of the utility's rate or rates applicable to the type of service to be furnished.

(3) Posting of Law, Rates, Rules and Regulations.

(a) Every utility shall maintain in its office for inspection by the public the following:

(i) A copy of the rates, rules and regulations of the utility, and of forms of contracts and applications applicable to the territory served from that office.

(ii) A copy of these rules and regulations.

(b) A suitable placard, in large type, shall be exhibited in a conspicuous location, giving information to customers that a copy of the rules and regulations of the Public Service Commission and the schedule of rates are kept for their inspection and the utility is regulated by the Montana Public Service Commission, with current address and telephone number.

Rule XII. APPLICATION FOR WATER SERVICE (1) All customers desiring water service must make written application at the office of the utility on printed forms provided therefor, setting forth in said application all purposes for which water will be used upon their premises. In cases where the customer is not the owner of the premises, the customer is primarily liable for payment for his water service, and the property owner is ultimately liable for such payment.

(2) All applications for the introduction of water service to any premise must be signed by the property owner.

(3) Any change in the identity of the contracting customer at a premises will require a new application for water.

(4) No charge may be made for turning on the water to new customers during regular working hours.

(5) Accepted applications for water to be supplied to any premises shall constitute a right to the customer to take and receive a supply of water for said premises for the purposes specified in the application; (i.e., Domestic, Commercial, and Industrial) subject only to the fulfillment of the conditions of these rules and regulations by the customer.

Rule XIII. SPECIAL APPLICATIONS FOR WATER SERVICE

(1) Water for building, construction or other temporary purposes must be specially applied for.

(2) Connections for private fire service must be specially applied for.

(3) Where water is desired for only a short period of time, and not continuously throughout the year, such as for vacation homes, building purposes, cleaning property, filling tanks or other uses of this kind, an application shall be made as set forth in Rule XIII, and payment made in accordance with the applicable schedule of rates and charges, in which case a suitable deposit shall be made.

(4) Whenever a street connecton is made to the mains for

temporary service or for temporary private fire service, the applicant shall bear the entire cost and expense of labor and material for tapping the main and intalling the service pipe and meter and its removal, if required.

Rule XIV. PRIVATE FIRE PROTECTION SERVICE (1) Service connections for water to be taken for the extinguishment of fire shall be made only under the terms and conditions contained in the "Special Applications" for such service, a copy of which is on file in the utility's office. (See Rule XIII.)

(2) The customer must agree to obtain in advance the approval of the utility for any change, alteration or addition in the fixtures, openings and uses specified in the application.

(3) The utility shall determine the size and location of any connections made to its distribution mains for private fire protection service, and will, at the cost and expense of the customer, make the connection to its mains and install the service connection from the distribution main to a point at or near the property line.

(4) The extent of the rights of the private fire protection service customer is to receive, but only at times of fire on his premises, such supply of water as shall then be available. The utility shall not be considered in any manner an insurer of property or persons, or to have undertaken to extinguish fire or to protect any persons or property against loss or damage by fire or otherwise, and it shall be free and exempt from any and all claims for damages on account of any injury to property or persons by reason of fire, water, failure to supply water or pressure, or for any other cause whatsoever.

(5) No pipe or fixtures connected with a private fire service served by the utility shall be connected with pipes or fixtures supplied with water from any other source.

(6) Unless otherwise provided in a written agreement between the applicant and the utility, service lines for private fire protection service should be distinct and separate from the regular or general water service line. A private fire service connection is furnished for the sole purpose of supplying water for the extinguishment of fires, and the use of water from such a connection for any other purpose is absolutely forbidden.

(7) Where one service pipe is used for both general and fire purposes, separate charges will be made for each type of use, in accordance with the applicable schedule of rates, the charge for private fire protection service being based on the schedule of Rates for Private Fire Protection, and that for general water service being based on the consumption through and the size of the meter or meters installed.

(8) The entire private fire service system on the customer's premises shall be installed and maintained by and at the expense of customer and shall be subject to the inspection, test and approval of the utility before the service is made effective, and at such times thereafter as may be deemed neces-

sary or appropriate by the utility.

(9) Hydrants and other fixtures connected with a private fire service system may be sealed by the utility, and such seals may be broken only in case of fire or as specially permitted by the utility, and the customer shall immediately notify the utility of the breaking of any such seal.

(10) Whenever a fire service system is to be tested, the customer shall notify the utility of such proposed test, designating the day and hour when same is to be made, so that, if desired, the company may have an inspector present during the test.

Rule XV. BILLING INFORMATION (1) Billing periods.

(a) Bills shall show the readings of the meter at the beginning and end of the period for which the bill is rendered, the date of the meter readings, the number of cubic feet or gallons of water supplied, and the authorized rate or the approved flat rate.

(b) Opening and closing bills, monthly or quarterly, for water service rendered for periods of five days more or five days less than the normal billing period will be computed in accordance with the rate applicable to that service, by the amount of water blocks, and the minimum charge as set forth in that rate will be prorated on the basis of the number of days in the period in question, to the total number of days in the normal period.

(2) The utility shall normally read meters for all urban customers at monthly or bimonthly intervals and for all rural customers at regular intervals up to six months. The day of the month for reading any meter as determined by the utility shall as closely as practicable be the same for each reading. The utility at its option and subject to the approval of the Commission may read the meters at less frequent intervals if in the opinion of the utility such procedure tends to certain operating economies, but in no instance shall a meter be read less than once in six months.

(3) In months when meters are not read, utility may provide customer with a postcard and request customer to read the meter and return the card to the utility. If such postcard is not received by the utility in time for billing, utility may estimate meter reading and render bill accordingly.

(4) Each bill may bear upon its face the latest date upon which it may be paid.

Rule XVI. ADJUSTMENT OF BILLS (1) In case of a dispute as to the accuracy of a meter, the consumer, upon depositing the estimated cost of making a test, may demand that the meter be removed, and tested as to accuracy, in his presence. If the meter is found to be registering correctly or in favor of the consumer, the cost of such testing and replacing of the meter shall be borne by the consumer. If the meter is found to be recording incorrectly and against the consumer, the amount deposited by the consumer will be refunded.

(2) Fast Meters. If, upon test of any meter, the meter

is found to have an average error of more than two percent fast, the utility shall refund to the customer the overcharge, based upon the corrected meter reading for a period equal to one-half the time elapsed since the last previous test, but not to exceed six months. If it can be shown that the error was due to some cause, the date of which can be fixed, the overcharge shall be computed back to but not beyond such date.

(3) Dead Meters. If a meter is found not to register for any period, the utility shall compute the water used by taking the average of the water used for the meter-reading period preceding and the meter-reading period following the date when the meter was found to be dead, which amount shall be assumed to be the amount of water used by the customer during the billing period in which the meter was found dead. Exceptions will be made to this rule if the facts clearly show that the above method does not give the correct consumption for the period.

(4) If an error in the billing has been made the utility may go back six months to recover any erroneous billing or must go back six months of over-collected or as may be directed by the Commission.

Rule XVII. COMPLAINTS (1) Investigation of Complaints. Each utility shall make a full and prompt investigation of all complaints made to it by its customers, either directly or through the Commission. In the event that the complaint is not adjusted, the utility shall notify the customer that he has the privilege of appeal to the Consumer Service Representative of the Public Service Commission.

Rule XVIII. DISPUTED BILLS (1) In the event of a dispute between the customer and the utility respecting any bill, the utility shall make forthwith such investigation as shall be required by the particular case, and report the result thereof to the customer. In the event that the complaint is not adjusted, the utility shall notify the customer that he has the privilege of appeal to the Consumer Service Representative of the Public Service Commission.

Rule XIX. CUSTOMER DISCONTINUANCE OF SERVICE (1) Every customer who is about to vacate any premises supplied with service by the utility, or who for any reason wishes to have service discontinued, shall give at least 24 hours' notice thereof to the utility, specifying the date on which it is desired that service be discontinued. Until the utility shall have such notice, the customer shall be held responsible for all service rendered.

(2) Should the consumer desire to discontinue the use of water temporarily, the utility when notified to do so in writing, will shut off the water at the curb and allowance will be made on the bill for such time as the water is not in use. No deduction in bills will be made for the time any service pipes may be frozen.

Rule XX. UTILITY DISCONTINUANCE OF SERVICE (1) Notice of Discontinuance.

(a) No utility shall discontinue service to any customer for violation of rules and regulations or for nonpayment of bills, without first having tried diligently to induce the customer to comply with its rules and regulations, or to pay his bills. A record of such effort must be maintained.

(b) Service shall actually be discontinued only after at least seven days written notice shall have been given to the customer by the utility that bills are ten or more days delinquent, or that the violation of rules must cease; provided, however, that where fraudulent use of water is detected, or where the utility's regulating or measuring equipment has been tampered with, or where a dangerous condition is found to exist on the customer's premises, the water may be shut off without notice in advance. In no case shall the utility discontinue service on Friday, Saturday, Sunday, or day prior to holiday or if an emergency exists. All disconnections shall be performed between the hours of 8:00 a.m. and 12:00 a.m.

(2) Charge for Reconnection.

(a) Whenever the supply of water is turned off for violation of rules and regulations, nonpayment of bills, or fraudulent use of water, the utility may make a charge as set forth in its tariff for reestablished service.

(b) After service has been turned off because of nonpayment, service shall not be turned on again until all back water bills have been paid or an agreeable pay arrangement has been made, together with a turn-on charge as set forth in its tariff.

(c) If service is discontinued at the request of the customer, the utility may refuse service to such customer, at the same premises, within eight months, unless it shall first receive payment as set forth in the tariff for reconnecting charge.

Rule XXI. REFUSAL TO SERVE APPLICANT (1) Noncompliance with Rules and Regulations. Any utility may decline to serve an applicant until he has complied with the rules and regulations governing water service as approved by the Commission.

(2) Applicant's Facilities Inadequate. The utility may refuse to serve an applicant if, in its judgment, the applicant's installation of piping equipment is regarded as hazardous or of such character that satisfactory service cannot be given.

(3) Applicant's Recourse. In the event that the utility shall refuse to serve an applicant under the provisions of this rule, the utility must inform the applicant that the question may be submitted to the Commission for decision.

Rule XXII. CHANGE IN CHARACTER OF SERVICE (1) In case any substantial change is made by a utility in the pressure, or other conditions which would affect the efficiency of operation or adjustment of appliances, the appliances of all customers in the district affected shall be inspected and shall be readjusted, if necessary, by the utility for the new conditions without charge. Where circumstances require, the utility shall furnish

and install suitable pressure regulating devices.

Rule XXIII. ACCESS TO PROPERTY (1) The utility shall at all reasonable times have access to meters, service connections and other property owned by it on customer's premises, for the purpose of maintenance and operation. Where reasonable notice by the utility has been given, neglect or refusal on the part of customers to provide reasonable access to their premises for the above purposes shall be deemed to be sufficient cause for discontinuance of service on the part of the utility.

(2) Identification for Employees. Every employee, whose duties regularly require him to enter the homes of customers shall carry on his person an identification card which contains a photograph of said employee, and which will identify him as an employee of the utility. The identification card shall contain the telephone number of the utility as well as other pertinent information necessary to identify the employee. All other employees, whose duties require occasional entry into the homes or premises of customers shall carry an identification card containing informatin as herein required.

Rule XXIV. SERVICE INTERRUPTIONS (1) Notification to Customer. Every customer affected shall be notified in advance of contemplated work which will result in an interruption of service.

(2) Utility shall make reasonable effort to avoid interruptions of service, and when such interruptions occur, shall reestablish service with reasonable diligence.

(3) Utility shall not be liable to customer or others for failure or interruption of water service due to acts of God, governmental regulations, court or Commission orders, acts of a public enemy, strikes or labor difficulties, accidents, weather conditions, acts of third parties, droughts, or, without limitation by the foregoing, any other cause beyond the reasonable control of utility, as determined by the Commission.

(4) In case of fire or an alarm of fire and while the fire pressure is on the pipes, the use of water for fountains, yard sprinkling and all other places where a constant flow of water is maintained, is positively prohibited.

(5) Adjustment of Rate for Interruptions. Interruptions of service covered by Rule XXIV(1) or frozen facilities of customer shall not render the utility liable for any adjustment in bill if the interruption is less than 24 hours.

Rule XXV. RESALE OF WATER (1) Water furnished on approved rates or contracts by a public utility shall not be resold or caused to be resold by any customer unless the said customer is engaged in the business of distributing water as a public utility, water association, or county water district.

Rule XXVI. INTERPRETATIONS (1) Residential Service. Residential Service is defined as service to a householder or tenant living in a separate apartment in an apartment building or shall mean any room or combination of rooms, including trailers and mobile homes, with facilities for cooking, designed for occupancy by one family.

(2) Commercial Service. Commercial Service is defined to include service to each separate business enterprise, occupation or institution occupying for its exclusive use any units or units of space as an entire building, entire floor, suite of rooms or a single room, and using water for such incidental use as the schedule of rates applicable to the particular installation may permit. Commercial Service shall apply to all stores, offices, hotels, wholesale houses, garages, theaters, barber and beauty shops, churches, opera house, auditoriums, lodge halls, school houses, banks, bakeries and any other space occupied for commercial purposes. Any rooming house, lodging house, resort, inn or tavern renting rooms to strangers or transients without any previous agreement for accommodation or as to the duration of stay shall be classed as a hotel and as such it comes under the commercial classification.

(3) Dual Service. In cases where a householder or tenant devotes some portion of the occupied building to commercial use and uses the remainder as a residence then the predominate use of water shall constitute the basis for classification as either residential or commercial.

(4) Notice. Where possible, the utility shall give individual notice of service interruption is urged. However, a general advice by newspaper of circulation in the affected area, or radio or television announcement meets the notice requirement.

Rule XXVII. ADEQUACY OF FACILITIES (1) Construction and Maintenance of Plant. Each utility shall at all times construct and maintain its entire plant and system in such condition that it will furnish safe, adequate and continuous service.

Rule XXVIII. EXTENSION OF MAINS (1) Before a utility commences construction of a new water system or major alteration or extension of an existing public water system, an engineering report along with necessary plans and specifications for the public water system shall be submitted to the Department of Health and Environmental Sciences, Water Quality Bureau, for review and approval pursuant to Section 75-6-112(4), MCA, and the Rules of the Department.

(2) No municipality may refuse to provide water service within its corporate limits; conversely, extensions of water service beyond corporate limits are discretionary with the municipality, except where a main is in place. The following rules govern only the financing of extension of water service facilities.

(a) Free Extensions.

(i) The utility will, upon written request for service by a prospective customer or group of prospective customers located in the same neighborhood, determine the necessary size of main required to give service and make an estimate of the cost of the proposed extension including pipe, valves, fittings, necessary materials, and all other costs such as labor, permits, and related costs. The length of the extension

required shall be that length required to extend from the new proposed service area to the nearest main having sufficient excess capacity to provide service at maximum demand or said condition satisfied by other means such as storage.

(ii) Where the cost of the extension does not exceed three and one-half times the estimated normal annual revenue from hydrants and prospective customers whose service pipes will immediately be connected directly to the extension and from whom the utility has received applications for service upon forms provided by the utility for this purpose, the utility will install, at its own cost and expense, the necessary extension; provided that the patronage or demand will be of such permanency as to warrant the capital expenditure involved.

(b) Extensions Beyond Free Limit of General Water Service and Public Fire Service. If the estimated cost of the proposed extension required in order to furnish general water service exceeds three and one-half times the utility's estimate of immediate normal annual revenue, such extension will be made if the applicant or the applicant's authorized agent shall contract for such extension and shall deposit in advance with the utility the estimated cost of the extension over and above the free extension limit. At the end of each fiscal year the utility will, in such case, for each bona fide customer directly connected to the extension between its original beginning and original terminus within a period of ten years from the making of such extension, refund to the original depositor or depositors, an amount equal to three and one-half times the annual revenue of the new customer, but in no event shall the aggregate refund made to any depositor exceed the original deposit of such depositor.

(c) Adjustment of Cost of Extension.

(i) Should the actual cost of the extension be less than the estimated cost, the utility will refund the difference as soon as the actual cost has been ascertained. When the actual cost of the extension exceeds the estimated cost, then the utility will bill the depositor for the difference between the estimated and the actual cost. No interest will be paid by the utility on the applicant's payment or on any unrefunded balances.

(ii) In estimating the cost of an extension, the estimate shall be based on the diameter of the pipe to be used; provided, however, that the estimated cost to the customer or customers shall not be based on a pipe in diameter of less than six inches or greater than the diameter of the main from which the extension is to be made, unless actual consumption estimated for the proposed customer or customers requires a larger pipe.

(iii) At the expiration of the ten year period, the refund account will be closed and no further refunds will be made.

(iv) Extensions made under this rule shall be and

remain the property of the utility.

(v) The utility reserves the right to further extend its water mains from and beyond the terminus of each water main extension made under this rule, and the depositor or the depositor's agent paying for an extension shall not be entitled to any refund for the attaching of customers to any further extension or branch mains so installed.

(d) Extensions to Real Estate Subdivisions or Housing Projects. Where a line extension is requested for a subdivision or housing project, the utility may require the principal thereof to advance the entire cost of construction and will subsequently refund this amount at the rate of three years' estimated revenue for each active water customer served from these facilities within 60 months from the date the basic extension is completed.

Rule XXIX. SERVICE CONNECTIONS (1) Where its distribution mains are now or may hereafter be installed, the utility will install the service pipe and appurtenances between the water main in the street up to and including the stop cock and curb box, near the property line or right-of-way at or near 90 degree to the main, provided that the service pipe is required for the immediate and continuous supply of water for general water service to premises abutting the public street or highway in which such mains are located; and all such service pipes and appurtenances shall be installed only by the utility unless otherwise agreed to.

(2) The utility shall not make any charge for furnishing and installing any permanent service connection, meter or other applicance necessary to deliver and measure the water furnished.

(3) Temporary service connections for construction or other temporary purposes shall be installed by the utility at the cost of the applicant.

(4) Service pipes supplying a premise shall not pass through or across any premises or property other than that to be supplied, nor across any portion of the property that could practicably be sold separately from the immediate premises supplied, and no water pipes or plumbing in any premises shall be extended therefrom to adjacent or other premises.

(5) The utility will make all connections to its distribution mains and will specify the size, kind, quality and location of all materials used in the service line.

(6) The corporation cock, curb cock, curb box, and the utility's service pipe from the distribution main to the curb cock will be furnished, installed and maintained by the utility and shall remain under its sole control and jurisdiction.

(7) The utility will not, at its own cost and expense, install service pipes for private fire service or temporary service connections.

(8) The curb box or meter box shall be set at a location approved by the utility and shall be accessible at all times.

(9) The customer's service pipe from the curb cock to the

place of consumption shall be installed in a workmanlike manner and shall be furnished, installed and maintained by the customer at his own expense and risk. At the request of the owner of the premises, the water utility may install the customer's service line and shall charge the consumer for actual costs incurred.

(10) The customer's service pipe and all connections and fixtures attached thereto shall be subject to the inspection of the utility before the water will be turned on, and all premises receiving a supply of water and all service pipes, meters and fixtures, including any and all fixtures within the said premises, shall at all reasonable hours be subject to inspection by any duly authorized employees of the utility.

(11) The customer shall install and properly maintain in good working condition a stop and waste cock of a type approved by the utility on the customer's service pipe at some convenient point inside the building in a readily accessible location and in a place protected from the possibility of freezing and so placed that it will shut off and drain all plumbing within any and all buildings in the premises.

(12) The customer shall install his service pipe to the point of service and/or meter at a point as designated by the utility, after which the utility will install the service from the main to the designated point of service.

(13) Where the utility's service pipe is already installed to the point of service, the customer shall connect with the service pipe as installed.

(14) The customer shall not be required to make changes in his service pipe or meter location required because of changes of grade, relocation of mains, and other causes not related to the customer. Such changes shall be accomplished by the utility and the utility shall bear the full costs related thereto.

(15) No fixture shall be attached to, or any branch made in, the service pipe between the meter and the distribution main.

(16) Each premise shall be supplied through an independent service pipe from a separate curb cock, unless otherwise approved by the utility in writing.

(17) Customer's service pipes must be kept and maintained in good condition and free from all leaks and defects at the customer's cost and expense, and for failure so to do, water service may be discontinued.

(18) Multiple Service. Where water is now supplied through one service to several houses, families or persons, such as a trailer court or motel, and the owner or operator of the property does not wish to go to the expense of making the arrangement for separate supplies as provided for in Rule XXIX(16), the utility may continue to furnish water under the condition that one person shall pay for all on the same service. In such cases, however, no allowance will be made for vacancies except when the water is turned off.

(i) Certain multiple building complexes such as trailer courts, apartment complexes, etc., under one ownership may be metered at one metering point at the option of the utility.

(ii) Where a motel owner subject to a flat rate schedule closes a number of cabin units during the nontourist season and physically turns off the water in such units and notifies the utility in writing, the utility will, upon verification of this fact, discontinue the billing for such closed units until the water is turned on again. Should it be discovered that the motel owner used some of these closed units during the period of no charge without notifying the utility in advance, this concession will be withdrawn and all units will be billed on a year-round basis.

(19) In the interest of preventing waste and promoting conservation of water, utility: may specify the hours and days during which sprinkling will be permitted and will publish notice thereof in newspapers at the start of the sprinkling season, or whenever conditions require a change, and will prominently post such notice in its local office; and may make reasonable determination based upon existing facts whether a customer is using water in a wasteful manner. When the utility discovers any customer failing to observe the hours or days for sprinkling service or wasting water, he shall deliver to such customer a copy of the notice of hours and days of sprinkling and shall advise the customer of the conservation fee which is to be charged if water is wasted or the specified sprinkling hours or days are not observed by the customer. If the customer is not at home at the time the utility discovers the customer's waste of water or failure to observe the specified sprinkling times, then the utility shall leave a notice of the violation at the customer's door and it shall be deemed the customer has been adequately notified. If this customer is found to be wasting water or failing to observe specified sprinkling times at any subsequent time in the sprinkling season, utility may charge and bill the customer a "conservation fee" in the amount of $10 for each subsequent violation. This charge is intended to represent the approximate average cost which would be incurred had the utility actually disconnected and reconnected the customer's water service. If the customer does not pay the charge(s) after a reasonable time, the utility may discontinue service until paid. Extraordinary expense incurred by the utility to discontinue service and subsequent reconnecting shall be paid by the customer.

Rule XXX. DEAD ENDS (1) "Dead Ends" in the distribution mains should be avoided so far as possible. If such "Dead Ends" exist the utility shall provide facilities for flushing.

Rule XXXI. LONG SERVICE LINES (1) To assure the orderly development of its system, and to provide adequate service to its customers, the utility should ordinarily provide water service only at the property line of the customer requesting service, and in those instances where the utility's service does not extend to the customer's property line, an extension should

be made by the utility in accordance with these Rules. In unusual and exceptional cases where the property line of the customer requesting service is excessive distance from the existing main of the utility, and the cost to be borne by the prospective customer under Rule XXVIII is prohibitive, and there is no reasonable prospect of further growth and development in the area, or for any one of the above reasons, the utility may serve the customer by installing a meter in the utility's right-of-way at its main nearest the customer's property, and connecting the meter to the customer's privately owned service line. The customer shall extend his service line to an existing main of the utility and shall be solely responsible for service beyond the meter. The customer shall not permit others to connect their water lines or receive water service from his privately owned service line. In the event the utility's main is later extended to the customer's property line under Rule XXVIII, the customer shall discontinue the use of his privately owned service line and shall pay all costs and charges authorized by the rules of the Public Service Commission and the rules and tariffs of the utility for water service from such extension, the same as if the customer had not previously laid and received service through a private service line. The provisions of this rule shall apply to all persons now or hereafter receiving water service through a privately owned service line extending from the utility's main to the property to be served.

Rule. XXXII. QUALITY OF WATER (1) Purity. All water furnished by any utility for domestic use, shall be pure, wholesome, potable and in no way dangerous to the health of the consumer.

(2) Health Department. Every water utility shall comply with the rules of the State Department of Health governing purity of water, testing of water, operation of filter plants and such other rules they may prescribe, pursuant to law, having as their ultimate end the purity of water.

Rule XXXIII. METER TESTING FACILITIES AND EQUIPMENT

(1) Testing Facilities. Each utility shall provide or have access to such laboratory meter-testing equipment and other equipment and facilities as may be necessary to make the test required of it by these rules or other orders of the Commission. The apparatus and equipment so provided shall be subject to the approval of the Commission, and it shall be available at all times for the inspection or use of any member or authorized representative of the Commission.

(2) Tests Required. Each utility shall, as a minimum requirement, make such tests as are prescribed under these rules with such frequency, and in such manner, and at such places as are herein provided or as may be approved or ordered by the Commission.

(3) General Testing Equipment. Each utility furnishing metered water service shall own and maintain the equipment and facilities necessary for accurately testing all types and sizes

of meters employed for the measurement of water unless arrangements shall have been made to have such testing done in a shop or laboratory containing equipment that is acceptable to the Commission. All alterations or repairs to meter-testing equipment, which might affect the accuracy of such equipment or the method of operating it, shall be promptly reported in writing to the Commission.

Rule. XXXIV. TAGGING AND SEALING (1) Meters Sealed. All meters will be sealed by the utility. The breaking of seals by unauthorized persons or tampering with meter or meter piping is prohibited by law.

Rule XXXV. ACCURACY REQUIREMENTS FOR WATER METERS

(1) Installation Accuracy. Before being installed for the use of any customer every water meter, whether new, repaired, or removed from the service for any cause, shall be in good order and shall be adjusted to be as nearly correct as is commercially practical. A manufacturer's certified test may be accepted in lieu of utilities' test of new meters of one-inch or less in size.

(2) Whenever, on installation, periodic or any other test, a meter is found to exceed a limit of two percent fast or slow, it must be adjusted so as to register as nearly one hundred percent as is commercially practicable.

(3) The custom of putting a meter into service without adjusting it, if it is found to be less than two percent in error, is prohibited. It is required that meters be adjusted to the highest degree of accuracy, commercially practicable, before installation. A tolerance of one percent fast or slow is sufficient.

(4) The utility shall test all meters in service at regular intervals designed to test all meters not less frequently than once in ten years.

(5) After all necessary repairs, adjustments and final tests have been made so that the meter registers accurately, such meter shall be sealed. It is recommended that all meters of the disc or displacement type, two inch or less in size, be tested before being installed on the premises of any customer.

(6) Meters of the larger sizes may, at the discretion of the utility, be tested after installation. It is recommended that for those installations requiring a three inch or larger meter that there be installed, at the expense of the utility, a "Test Tee" for use in testing large disc, current and compound current and disc meters.

(7) Meters of the current type can be tested and calibrated more accurately in place. The accuracy of current meters is affected by changes in distribution of velocities through the meter. Such variation of velocity may occur to an appreciable degree through change of nature of inlet piping. All tests to determine the accuracy of registration of any water meter shall be made with a suitable meter prover.

Rule XXXVI. FROZEN MAINS (1) In all cases where the utility's main freezes, except when the conditions of Rule

XXXVIII have been met, it shall be the utility's responsibility to thaw the main and all frozen service lines connected thereto. The cost of such thawing shall be borne by the utility.

Rule XXXVII. FROZEN SERVICE LINES (1) When a customer's service line is frozen, the Commission adopts the rebuttable presumption that unless the utility's portion of the service line extends 15 feet or more, the freezing of the service line is the customer's responsibility and he shall bear the cost of thawing the line.

Rule XXXVIII. PREVENTION OF FREEZING (1) If there is a general danger of freezing of a utility's mains and/or service lines, the utility shall inform its customers that water may be run sufficiently to prevent such freezing at no additional cost to the customer. Metered customers informing the utility that they intend to run water to prevent freezing shall be billed only for an amount based on the customer's average use, instead of for the actual amounts as determined by meter readings during the period elapsing until determination that freezing danger has passed.

Rule XXXIX. HYDRANT OWNERSHIP (1) It is declared to be the policy of the Montana Public Service Commission and it will be presumed unless evidence to the contrary is presented, that all fire hydrants are the property of the utility, which shall be responsible for maintaining those hydrants in good repair; the cost of hydrant ownership and maintenance shall be considered in the rates to the applicable local government unit. Local governments not now in conformance with this policy are strongly urged to adopt it.

4. The Commission is proposing these rules in order to give both utilities and consumers a clear indication of their rights, privileges, and obligations under the Law as enforced by the Montana Public Service Commission.

5. Interested persons may submit their data, views or arguments concerning the appropriateness of these proposed rules at the hearing above notice or in writing to Robert Smith, 1227 11th Avenue, Helena, Montana 59601, no later than February 18, 1981.

6. The Montana Consumer Counsel, 34 West 6th Avenue, Helena, Montana 59601 (telephone 4492771), is available and may be contacted to represent consumer interests in this matter.

7. Authority for the Department to make and adopt the proposed rules is based on 69-3-102, MCA, IMP, 69-3-102, MCA.

GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE December 16, 1980.

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

IN THE MATTER of the proposed amendments of ARM 40.26.501 concerning approval of schools and ARM 40.26.502 concerning requirements for licensure.	NOTICE OF PROPOSED AMENDMENTS OF ARM 40.26.501 APPROVAL OF SCHOOLS and 40.26.502 REQUIREMENTS FOR LICENSURE NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 25, 1981, the Montana State Board of Medical Examiners proposes to amend ARM 40.26.501 concerning approval of schools and ARM 40.26.502 concerning requirements for licensure.

2. The proposed amendment to ARM 40.26.501 will read as follows: (new matter underlined, deleted matter interlined)

"40.26.501 APPROVAL OF SCHOOLS (1) Acupuncture schools or colleges which offer a minimum course of 50 hours in recognized branches of acupuncture and are approved by the American Medical Association or have any equivalent curricula as determined by the board, will be approved by the board.

(2) The board will review any ~~questioned~~- questionable curricula on an individual basis, using acceptable curricula existing at the time of the individual's study as a guide for evaluation."

3. The board is proposing the amendment to make the rule more understandable. The authority of the board to make the proposed amendment is based on section 37-13-201, MCA. The proposed rule implements sections 37-13-103, 201 (2), MCA.

4. The proposed amendment to ARM 40.26.502 will read as follows: (new matter underlined, deleted matter interlined)

"40.26.502 REQUIREMENTS FOR LICENSURE (1) Applicants for licensure must meet the following requirements:

(a) Have a basic science certificate as defined by the National Board of Medical Examiners or its equivalent as approved by the board or:~~-~~

(b) Have completed at an approved school, college or university ~~at least 15 semester hours in~~ each of the following courses or their substantial equivalent in the board's judgement~~-~~:

(c) Human Anatomy
(d) Biochemistry
(e) Microbiology or Bacteriology
(f) Pharmacology
(g) Physiology
~~(h) Chemistry~~
~~(i) Materia Medica~~ "

5. The board is proposing the deletion of the 15 semester hour in each subject requirement because it would consist of 105 hours which is more than twice the minimum hours required

under rule ARM 40.26.501. The board is proposing the deletion of chemistry as it is covered under biochemistry, and materia medica as it is the same as pharmacology. The authority of the board to make the proposed change is based on section 37-13-201, MCA and implements sections 37-13-201, and 302, MCA.

6. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to the Montana State Board of Medical Examiners, Lalonde Building, Helena, Montana 59620 no later than January 23, 1981.

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 Montana State Board of Medical Examiners, Lalonde Building, Helena, Montana 59620 no later than January 23, 1981.

8. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; from the Administrative Code Committee of the legislature; from a governmental 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.

9. The authority and implementing sections are listed after each proposed rule change.

MONTANA STATE BOARD OF
MEDICAL EXAMINERS
JOHN W. STRIZICH, M.D., PRESIDENT

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

Certified to the Secretary of State, December 16, 1980.

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

IN THE MATTER of the Proposed Amendments of ARM 40.30.402 subsection (7) concerning licensure by examination and 40.30.408 subsection (1)(a) concerning temporary permits	NOTICE OF PROPOSED AMENDMENTS OF ARM 40.30.402 (7) LICENSURE BY EXAMINATION and 40.30.408 (1)(a) TEMPORARY PERMIT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 25, 1981, the Board of Nursing proposes to amend ARM 40.30.402 subsection (7) concerning licensure by examination and ARM 40.30.408 subsection (1)(a) concerning temporary permits.

2. The proposed amendment of subsection (7) of ARM 40.30.402 will read as follows: (the entire rule is located at page 40-525 Administrative Rules of Montana) (new matter underlined, deleted matter interlined)

"40.30.402 LICENSURE BY EXAMINATION.....

...

(7) The fee for licensure by examination is ~~$25.00~~ $35.00 payable at the time the application is submitted. Five dollars of this fee is retained by the board if the application is withdrawn prior to the examination."

3. The board is proposing the amendment to comply with statutory fees. The rule implements sections 37-8-406, and 416, MCA. The authority of the board to make the change is based on section 37-8-202 (2), MCA.

4. The proposed amendment of subsection (1)(a) of ARM 40.30.408 also changes the fee. The entire text of the rule is located at page 40-528 Administrative Rules of Montana. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined)

"40.30.408 TEMPORARY PERMIT (1).....

(a) such graduate submits application for the licensing examination on the required form together with the statutory fee of ~~$25.00~~ $35.00; and

....."

5. The board is proposing the change in fee to comply with statutory fees. The rule implements section 37-8-103 (d), MCA. The authority of the board to make the proposed amendment is based on section 37-8-202, MCA.

6. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Nursing, Lalonde Building, Helena, Montana 59620 no later than January 23, 1981.

7. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Nursing, Lalonde Building, Helena,

Montana 59620 no later than January 23, 1981.

8. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; from the Administrative Code Committee of the legislature; from a governmental 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.

9. The authority and implementing sections are listed after each proposed amendment.

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

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

Certified to the Secretary of State, December 16, 1980.

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT OF RULE 42.21.132, relating to the valuation of mining machinery and equipment and manufacturing machinery.	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS TO RULE 42.21.132, relating to the valuation of mining machinery and equipment and manufacturing machinery.

TO: All Interested Persons:

1. On January 28, 1981, at 10.00 a.m., a public hearing will be held in the Fourth Floor Conference Room in the Mitchell Building, Helena, Montana, to consider the amendment of Rule 42.21.132, relating to the valuation of mining machinery and equipment and manufacturing machinery.

2. The proposed amendments replace present rule 42.21.132, found in the Administrative Rules of Montana. The proposed amendments provide the basis for determining market value for mining equipment for the tax year beginning January 1, 1981.

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

42.21.132 MINING ~~MACHINERY AND~~ EQUIPMENT ~~AND MANUFACTURING MACHINERY~~. (1)(a) The average market value for the mobile equipment used in mining, including coal and ore haulers, shall be the average resale value of such property as shown in "Green Guides", Volumes I and II, Older Equipment, Off Highway Trucks and Trailers, and Lift Trucks, using the current volumes of the year of assessment. This guide may be reviewed in the Department or purchased from the publisher: Equipment Guide Book Company; 3980 Fabian Way; P. O. Box 10113; Palo Alto, California 94303.

(b) If the above-named guides cannot be used to value these properties, then trended depreciation tables established by the department of revenue shall be used to determine the average market value. The tables are found in subsection (2).

(2)(a)~~(i) For the calendar year commencing January 1, 1979, the following table is used for mobile mining equipment:~~

~~TABLE 1A~~

~~AGE~~	~~PERCENTAGE DEPRECIATION~~	~~TREND FACTOR~~	~~PERCENTAGE TRENDED DEPRECIATION~~
~~1 Year Old~~	~~92%~~	~~1.000~~	~~92%~~
~~2 Years Old~~	~~84%~~	~~1.053~~	~~88%~~
~~3 Years Old~~	~~76%~~	~~1.119~~	~~85%~~
~~4 Years Old~~	~~67%~~	~~1.248~~	~~84%~~
~~5 Years Old~~	~~58%~~	~~1.446~~	~~84%~~

~~6 Years Old~~	~~49%~~	~~1.497~~	~~73%~~
~~7 Years Old~~	~~39%~~	~~1.547~~	~~60%~~
~~8 Years Old~~	~~30%~~	~~1.639~~	~~49%~~
~~9 Years Old~~	~~24%~~	~~1.744~~	~~42%~~
~~10 Years Old and Older~~	~~20%~~	~~1.820~~	~~36%~~

~~(ii) For 1979 models, a percentage trended depreciation figure of 95% is used.~~

~~(b)(i)~~ For the calendar year commencing January 1, ~~1980~~ 1981, the following ~~table is~~ tables are used for mobile mining equipment:

~~TABLE IB~~ ~~WHEEL LOADERS~~ ~~LIFT TRUCKS~~ ~~CRAWLER TRACTORS~~ ~~LOG SKIDDERS~~ ~~CONCRETE EQUIPMENT~~ ~~BELT LOADERS~~ ~~HYDRAULIC CRANES~~ ~~CRAWLER CRANES AND SHOVELS~~ ~~TRUCK MOUNTED CRANES AND SHOVELS~~ ~~OFF HIGHWAY HAUL UNITS~~		~~TABLE IIB~~ ~~CRUSHING EQUIPMENT~~ ~~ROAD MAINTENANCE EQUIPMENT~~ ~~MOTOR GRADERS~~ ~~CRAWLER LOADERS~~ ~~ASPHALT FINISHERS~~ ~~ALL OTHER MISC. EQUIPMENT NOT INCLUDED IN TABLE IB OR IIIB~~		~~TABLE IIIB~~ ~~AIR EQUIPMENT~~ ~~HYDRAULIC EXCAVATORS~~ ~~MOTOR SCRAPERS~~ ~~WHEEL TRACTORS~~ ~~DITCHERS~~ ~~ROLLERS~~ ~~OTHER COMPACTION EQUIPMENT~~	
~~YEAR OF PURCHASE~~	~~R.C.L.N.D. MARKET VALUE~~	~~YEAR OF PURCHASE~~	~~R.C.L.N.D. MARKET VALUE~~	~~YEAR OF PURCHASE~~	~~R.C.L.N.D MARKET VALUE~~
~~1980~~	~~100%~~	~~1980~~	~~100%~~	~~1980~~	~~100%~~
~~1979~~	~~96%~~	~~1979~~	~~78%~~	~~1979~~	~~74%~~
~~1978~~	~~93%~~	~~1978~~	~~75%~~	~~1978~~	~~72%~~
~~1977~~	~~89%~~	~~1977~~	~~72%~~	~~1977~~	~~68%~~
~~1976~~	~~86%~~	~~1976~~	~~66%~~	~~1976~~	~~64%~~
~~1975~~	~~81%~~	~~1975~~	~~65%~~	~~1975~~	~~59%~~
~~1974~~	~~78%~~	~~1974~~	~~59%~~	~~1974~~	~~57%~~
~~1973~~	~~86%~~	~~1973~~	~~66%~~	~~1973~~	~~63%~~
~~1972~~	~~77%~~	~~1972~~	~~60%~~	~~1972~~	~~56%~~
~~1971~~	~~74%~~	~~1971~~	~~52%~~	~~1971~~	~~52%~~
~~1970~~	~~69%~~	~~1970~~	~~52%~~	~~1970~~	~~46%~~
~~1969~~	~~65%~~	~~1969~~	~~51%~~	~~1969~~	~~36%~~
~~1968~~	~~61%~~	~~1968~~	~~51%~~	~~1968~~	~~33%~~
~~1967~~	~~57%~~	~~1967~~	~~49%~~	~~1967~~	~~30%~~
~~1966~~	~~56%~~	~~1966~~	~~48%~~	~~1966~~	~~28%~~

~~1965~~	~~50%~~	~~1965~~	~~45%~~	~~1965~~	~~24%~~
~~1964~~	~~46%~~	~~1964~~	~~44%~~	~~1964~~	~~22%~~
~~1963~~	~~44%~~	~~1963~~	~~44%~~	~~1963~~	~~22%~~
~~1962~~	~~40%~~	~~1962~~	~~40%~~	~~1962~~	~~17%~~
~~1961~~	~~34%~~	~~1961~~	~~34%~~	~~1961~~	~~17%~~
~~1960~~	~~34%~~	~~1960~~	~~32%~~	~~1960~~	~~14%~~
~~& Older~~	~~——~~	~~& Older~~	~~——~~	~~& Older~~	~~——~~
~~R.G.L.N.D. - REPLACEMENT COST LESS NORMAL DEPRECIATION~~					

TABLE I

Wheel Loaders, ~~Life Trucks,~~ Crawler Tractors, ~~Log Skidders, Concrete Equipment,~~ Belt Loaders, Hydraulic Cranes, Crawler Cranes and Shovels, Truck Mounted Cranes and Shovels, ~~Off-Highway Haul Units~~.

Year of Purchase	Percentage Depreciation	Trend Factor	Percentage Trended Depreciation
1981	----	-----	100%
1980	96%	1.000	96%
1979	84%	1.051	88%
1978	74%	1.161	86%
1977	67%	1.261	84%
1976	59%	1.356	80%
1975	53%	1.444	77%
1974	47%	1.545	73%
1973	40%	1.935	77%
1972	37%	2.037	75%
1971	33%	2.108	70%
1970	29%	2.187	63%
1969	26%	2.344	61%
1968	23%	2.458	57%
1967	22%	2.595	57%
1966	19%	2.684	51%
1965	17%	2.789	47%
1964	16%	2.862	46%
1963	14%	2.911	41%
1962	12%	2.984	36%
1961 and older	12%	2.991	36%

TABLE II

~~Crushing Equipment, Road Maintenance Equipment, Motor Graders,~~ Crawler Loaders, ~~Asphalt Finishers,~~ All Other Miscellaneous Equipment not Included in Table I or III.

Year of Purchase	Percentage Depreciation	Trend Factor	Percentage Trended Depreciation
1981	----	-----	100%
1980	78%	1.000	78%
1979	68%	1.051	71%
1978	60%	1.161	70%
1977	51%	1.261	64%
1976	47%	1.356	64%
1975	40%	1.444	58%
1974	36%	1.545	56%
1973	31%	1.935	60%
1972	26%	2.037	53%
1971	25%	2.108	53%
1970	23%	2.187	50%
1969	22%	2.344	52%
1968	20%	2.458	49%
1967	19%	2.595	49%
1966	17%	2.684	46%
1965	16%	2.789	45%
1964	16%	2.862	46%
1963	14%	2.911	41%
1962	12%	2.984	36%
1961 and older	11%	2.991	33%

TABLE III

Air Equipment, Hydraulic Excavators, ~~Motor Scrapers,~~ Wheel Tractors, Ditchers, ~~Rollers, Other Compaction Equipment~~.

Year of Purchase	Percentage Depreciation	Trend Factor	Percentage Trended Depreciation
1981	----	-----	100%
1980	74%	1.000	74%
1979	65%	1.051	68%
1978	57%	1.161	66%
1977	50%	1.261	63%
1976	43%	1.356	58%
1975	39%	1.444	56%
1974	34%	1.545	53%
1973	29%	1.935	56%
1972	26%	2.037	53%
1971	22%	2.108	46%

1970	16%	2.187	35%
1969	14%	2.344	33%
1968	12%	2.458	29%
1967	11%	2.595	29%
1966	9%	2.684	24%
1965	8%	2.789	22%
1964	8%	2.862	23%
1963	6%	2.911	17%
1962	6%	2.984	18%
1961 and older	5%	2.991	15%

~~(11)~~(b) In addition, for mobile mining equipment, ~~to the schedule in subsection (2)(b)(i)~~ the department multiplies the ~~R.C.L.N.D. market value~~ ~~percentages~~ percentage trended depreciation in tables ~~IB, IIB, and IIIB~~ I, II, and III or the Green Guide value, as appropriate, by a factor based on equipment use. The multiplier is determined from the following table:

ANNUAL HOURS OF USE (T)	MULTIPLIER
$0 \leq T \leq 3,120$	1
$3,120 < T \leq 4,680$	.8
$4,680 < T$	.667

(3) ~~The average market value for stationary machinery and equipment used in mining shall be determined using trended depreciation tables established by the department of revenue. These are 10-year tables and reflect the average life of these properties. The tables are found in subsection (4).~~ Fixtures and accessories adjunct to a mine are valued by trending the original installed cost to reflect a current replacement cost using Table II above.

~~(4)(a) For the calendar year commencing January 1, 1979, the following table is used for stationary mining machinery and equipment:~~

~~TABLE 2A~~

~~AGE~~	~~PERCENTAGE DEPRECIATION~~	~~TREND FACTOR~~	~~PERCENTAGE TRENDED DEPRECIATION~~
~~1 Year Old~~	~~92%~~	~~1.000~~	~~92%~~
~~2 Years Old~~	~~84%~~	~~1.078~~	~~91%~~
~~3 Years Old~~	~~76%~~	~~1.140~~	~~87%~~

4 Years Old	67%	1.216	81%
5 Years Old	58%	1.392	81%
6 Years Old	49%	1.610	79%
7 Years Old	39%	1.667	65%
8 Years Old	30%	1.725	52%
9 Years Old	24%	1.829	44%
10 Years Old and Older	20%	1.949	39%

(b) For the calendar year commencing January 1, 1980, the following table is used for stationary mining machinery and equipment:

TABLE 2B

AGE	PERCENTAGE DEPRECIATION	TREND FACTOR	PERCENTAGE TRENDED DEPRECIATION
1 Year Old	92%	1.000	92%
2 Years Old	84%	1.053	88%
3 Years Old	76%	1.145	87%
4 Years Old	67%	1.232	83%
5 Years Old	58%	1.324	77%
6 Years Old	49%	1.416	69%
7 Years Old	39%	1.746	68%
8 Years Old	30%	1.821	55%
9 Years Old	24%	1.885	45%
10 Years Old and Older	20%	1.966	39%

(5)(4) The tables in subsections (2)(a) and (4) were compiled using depreciation schedules with a residual value of 20%. The tables in subsection (2)(b)(i) were compiled to approximate depreciation as given by the resale values of the green guides. The trend factors were compiled using comparative cost multipliers based on data published by the Marshall and Swift Publication Company. More detailed information concerning the table entries can be obtained from the department.

(6) The term "manufacturing machinery", as used in [Class 4, Section 84-301, R.C.M. 1947] shall include all equipment, whether permanently or temporarily in place (other than hand tools), that is used to transform raw or finished materials into something possessing a new nature and name and adopted to a new use.

(5) As used in this rule, mining equipment is equipment that digs, excavates, burrows, and actually frees raw materials from

the earth. Mobile mining equipment is mining equipment that moves freely about under its own power and on its own wheels and chassis, including any attachments used with the equipment. Mobile equipment does not require a foundation for the performance of the function for which it was designed and built.

4. On October 30, 1980, the Department published notice of a proposed amendment to Rule 42.21.132, at page 2862 of the 1980 MAR, issue no. 20. Comments received by the Department subsequent to formulation of the amendments indicated that the proposal was not adequate. Consequently at a public hearing held on December 9, 1980, the Department announced the withdrawal of the proposed amendments to Rule 42.21.132. The present announcement represents the Department's current proposal for amendment. The proposal includes a definition of mining equipment and mobile mining equipment. The trended depreciation tables are the same as those used for heavy equipment. A factor to reflect usage is retained. Fixtures are valued using the 20-year table contained as Table II of the rule. Additionally, a meaningless reference to manufacturing equipment is deleted.

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 no later than January 23, 1981, to:

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

6. Ross Cannon has been designated to preside over and conduct the hearing.

7. Authority of the Department to make the proposed amendments is based on Section 15-1-201, MCA. The proposed amendments implement Section 15-6-138, MCA.

Mary L Craig
by John M Clark
MARY L. CRAIG, Director

Certified to the Secretary of State 12-16-80

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

In the matter of the amendment of Rule 46.12.1204(3) pertaining to the reimbursement for skilled nursing and intermediate care services, reimbursement method and procedures.	) NOTICE OF PUBLIC HEARING) ON PROPOSED AMENDMENT OF) RULE 46.12.1204(3) FOR) SKILLED AND INTERMEDIATE) CARE SERVICES, REIM-) BURSEMENT METHOD AND) PROCEDURE

TO: All Interested Persons

1. On January 19, 1981, at 9 a.m. a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, at 111 Sanders, Helena, Montana, to consider the amendment of Rule 46.12.1204(3) pertaining to reimbursement for skilled and intermediate care services.

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

46.12.1204(3) Retrospective Rate. The retrospective rate shall be issued upon audit of a cost report for the rate year and shall be determined as follows:

~~(a) The retrospective rate for not-for-profit facilities shall be the lesser of the actual allowable cost per day experienced during a provider's rate year or the actual allowable cost from the applicable prior fiscal year plus a trend factor (see ARM 46.12.1204(3)(d)).~~

(a) ~~(b)~~ The retrospective rate for ~~for-profit~~ all facilities shall be the lesser of the actual allowable costs per day experienced during the provider's rate year plus a performance incentive factor (see ARM 46.12.1204(b)(i)) or the actual allowable cost per day from the applicable prior fiscal year plus a trend factor (see ARM 46.12.1204(3)(d) plus a performance incentive factor (see ARM 46.12.1204(3)(b)~~(ii)~~).

(i) To the extent that an interim rate is based on a cost report which did not include return on net invested equity as an allowable cost, for periods beginning January 1, 1981, the interim rate shall be adjusted to allow for the inclusion of this cost when necessary in calculating the retrospective rate.

~~(ii) The performance incentive factor is the amount which is added to a for-profit facility's retrospectively determined rate if the facility meets the department's definition of cost containment. A facility shall have met the definition of cost containment if its operating cost per day is less than the maximum reimbursable operating cost per day as defined in ARM 46.12.1204(3)(c).~~

~~(iii) The performance incentive factor for a facility is determined by the relationship of its allowable operating cost per day in the rate year to the allowable operating costs per day of all participating Montana facilities from the applicable prior fiscal year plus a trend factor (see ARM 46.12.1204 (d)). A facility with operating costs per day which are equal to or less than the 66th percentile of all reported costs plus the applicable trend factor shall receive a performance incentive factor of $1.50 per patient day. A facility with operating costs per day which fall between the 66th percentile and the 76th percentile of all reported operating costs per day plus the applicable trend factor shall receive a performance incentive factor of $1.00 per patient day. A facility with operating costs per day which are equal to or greater than the 76th percentile of all reported costs per day plus the applicable trend factor, but which are less than the maximum reimbursable cost per day, shall receive a performance incentive factor of $0.50 per patient day.~~

(b) The performance incentive factor is the amount which is included in a provider's retrospectively determined rate if the provider meets the department's definition of cost containment. A facility shall have met the definition of cost containment if its operating cost per day is less than the maximum reimbursable operating cost per day as defined in ARM 46.12.1204(3)(c) and if the facility has been operated economically as defined in 46.12.1202(1).

(i) The performance incentive factor to be included in the retrospectively determined rate of a provider which has operated economically (see ARM 46.12.1202(1)) is determined by the relationship of its allowable operating cost per day in the rate year to the allowable operating costs per day of all participating Montana facilities from the applicable prior fiscal year plus a trend factor (see ARM 46.12.1204(3)(d)). A facility with operating costs per day which are equal to or less than the 66th percentile of all reported operating costs plus the applicable trend factor shall receive a performance incentive factor of $1.50 per patient day. A facility with operating costs per day which fall between the 66th percentile and the 76th percentile of all reported operating costs per day plus the applicable trend factor shall receive a performance incentive factor of $1.00 per patient day. A facility with operating costs per day which are equal to or greater than the 76th percentile of all reported operating costs per day plus the applicable trend factor, but which are less than the maximum reimbursable cost per day, shall receive a performance incentive factor of $0.50 per patient day.

(ii) The performance incentive factor to be included in the retrospectively determined rate of a provider which has not operated economically (see ARM 46.12.1202(2)) is determined by the relationship of its allowable operating cost per

day in the rate year to the allowable operating cost per day of all participating Montana facilities from the applicable prior fiscal year plus a trend factor (see ARM 46.12.1204 (3)(d)) and by the relationship of its allowable operating cost per day of the rate year to its allowable operating cost per day of the applicable prior fiscal year plus a trend factor. The maximum performance incentive factor for this provider will be determined under the method indicated in ARM 46.12.1204(3)(b)(i), however, this maximum performance incentive factor shall be adjusted by subtracting from it twice the difference between the allowable operating cost per day for the rate year and the allowable cost per day from the applicable prior fiscal year plus a trend factor (see ARM 46.12.1204(3)(d)). The amount of the adjustment shall not exceed the maximum performance incentive factor. Any amounts overpaid by the department under this section shall be recovered by the department in accordance with ARM 46.12.1205 (8)(b) through (g).

(iii) An estimation of the performance incentive factor includable in the retrospective rate shall be included in the interim rate except where a provider requests that the rate not include the performance incentive factor. The amount of estimated performance incentive factor to be included in the interim rate will be determined by the relationship of a provider's allowable operating cost per day from the applicable prior fiscal year to the allowable operating cost per day of all participating Montana facilities for the same period. The amount of performance incentive to be included in the interim rate will be determined through the method set forth in 46.12.1204.3(b)(i).

3. The department is proposing these amendments to its rules to allow for the inclusion of a performance incentive factor in the rates paid to not-for-profit nursing homes. The rules in effect for the period April 1, 1979 through December 31, 1980, which allowed for the payment of this incentive were amended on December 2, 1980, in response to a determination made by the Denver Regional Office of Health Care Financing Administration that the payment of incentive to not-for-profit facilities was not allowable under Medicaid regulations. On November 14, 1980, this Department was informed by the Office of Health Care Financing Administration that its earlier determination was an error and that Medicaid regulations do allow the opportunity for profit to be paid to non-profit providers. The department has determined that allowing not-for-profit facilities a cost containment incentive would be beneficial under the circumstances specified in this rule.

4. Interested persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, Montana, 59604, no later than January 26, 1980.

5. The Office of Legal Affairs, Department of Social and Rehabilitation Services, 111 Sanders, Helena, Montana, 59604 has been designated to preside over and conduct the hearing.

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

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

Certified to the Secretary of State December 16, 1980.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of 2.21.4901 tnrough 2.21.4905 and the adoption of rules 2.21.4906, 2.21.4907, 2.21.4911 through 2.21.4914 and 2.21.4922	)))))))	NOTICE OF THE REPEAL OF RULES ARM 2.21.4901 THROUGH 2.21.4905 AND THE ADOPTION OF RULES 2.21.4906, 2.21.4907, 2.21.4911 THROUGH 2.21.4914 AND 2.21.4922

TO: All Interested Persons:

1. On August 14, 1980, the Department of Administration published notice of proposed repeal of rules 2.21.4903 through 2.21.4905 relating to moving and relocation expenses for state employees and the adoption of new rules in the matter at pages 2319 through 2322 of the Montana Administrative Register, issue number 15. On November 11, 1980, the Department of Administration published notice of the repeal of additional rules 2.21.4901 and 2.21.4902 relating to moving and relocation expenses at pages 2885 and 2886 of the Montana Administrative Register, issue number 21.

2. The department has repealed and adopted the rules as proposed.

3. No comments or testimony were received.

J. Michael Young, Acting Director
Department of Administration

Certified to the Secretary of State December 16, 1980.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of rules relating to employee performance appraisal	)))))	NOTICE OF THE ADOPTION OF RULES 2.21.6402, 2.21.6411 THROUGH 2.21.6415 and 2.21.6422 RELATING TO EMPLOYEE PERFORMANCE APPRAISAL

TO: All Interested Persons:

1. On August 14, 1980, the Department of Administration published notice of the proposed adoption of new rules relating to employee performance appraisal. The notice appeared at pages 2300 through 2305 of the Montana Administrative Register, issue number 15. The rule implements section 2-18-102, MCA.

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

2.21.6402 DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "Appraiser" means an employee's immediate supervisor or person with the responsibility for assigning, directing, reviewing and evaluating the employee's work.

(2) "Performance standard" means the level of performance considered acceptable against which an employee's actual performance can be measured.

2.21.6411 APPRAISAL PROCESS (1) The performance of each permanent employee who has completed probation shall be appraised during established appraisal periods of no more than one year's duration.

(2) The performance appraisal of permanent probationary employees shall be completed at or before the end of the probationary period. The appraisal period should begin before the second month of employment.

(3) Seasonal employees who are scheduled to work at least six months in a year and who are expected to return in subsequent seasons shall be appraised at least once during the employment season.

(4) Temporary and intermittent employees need not be given performance appraisals.

(5) ~~When a new appraiser is appointed, the appraisal period shall begin anew.~~ When an employee is given a new appraiser, the appraiser shall either establish new performance standards and begin a new appraisal period or review preestablished standards with the employee to ensure mutual understanding. A new appraisal period should be established where inadequate assessment time remains in the former period.

(6) At the beginning of each appraisal period the appraiser shall inform the employee of the duties and responsibilities for which performance will be appraised, their order of priority and the performance standards for each. Identifying and prioritizing duties and responsibilities and developing performance standards may be done jointly with the employee or employees.

(7) During the appraisal period, the appraiser shall either directly observe and note the employee's performance of each specified duty and responsibility or note performance from review of reports, logs or other work samples. ~~Incidents of poor performance that will contribute to an unacceptable performance rating should be identified to the employee as observed or at intervals far enough in advance to allow the employee to improve performance prior to the written evaluation.~~ The appraiser should communicate with the employee on an ongoing basis both about observed superior and deficient performance and adjust the originally-selected performance standards, job duties and responsibilities for any significant changes in work assignment.

(8) When a supervisor plans to give an unacceptable rating, the supervisor shall give the employee written notice at least two months prior to issuing ratings in order to give the employee time to improve performance.

~~(8)~~ (9) At the the end of the appraisal period the appraiser shall determine whether the employee's performance on each specified duty/responsibility was outstanding, above standard, standard (met the performance standard), needs improvement or was unacceptable.

~~(9)~~ (10) These determinations and comments supporting them shall be stated in a written appraisal and signed by the appraiser.

~~(10)~~ (11) A post-appraisal meeting shall be held privately with the employee to review the written appraisal. The meeting should be as constructive as possible and concentrate on both superior and deficient performance, employee training needs and desires, employee career objectives and ways of improving agency operations. The post-appraisal meeting may be combined with a pre-appraisal planning session for the next appraisal period.

~~(11)~~ (12) The employee shall be asked to sign a statement on the appraisal document indicating that it was reviewed with the employee and if the employee refuses, the appraiser shall note the refusal on the appraisal document.

~~(12)~~ (13) The employee shall be advised of the right to submit a written rebuttal to the appraisal.

2.21.6412 PERFORMANCE STANDARDS (1) Except in the case of a new employee or an employee who is assigned new duties, the appraiser shall establish equivalent performance standards for all employees performing equivalent duties which:

(a) must be expressed as a product to be produced (quality or quantity), result to be achieved or other consequence to be brought about or specific job behavior to be displayed; and

(b) may not be expressed as personal traits.

(c) When making personnel decisions, the assumption ~~may~~ should not be made that performance ratings assigned to two or more employees by different appraisers can be meaningfully compared, since performance standards may vary according to the appraiser.

2.21.6413 REVIEW (1) The written appraisal and employee rebuttal, if any, shall be reviewed by the supervisor's immediate supervisor or other appropriate agency authority for compliance with procedural steps and/or application of performance standards.

(2) The reviewer may not change the appraisal by substituting the reviewer's judgment for that of the appraiser.

(3) When serious procedural errors or misapplication of performance standards are made which could significantly distort the written appraisal, ~~the appraisal shall be invalidated and the errors or misapplication corrected for the next appraisal period.~~ the reviewer may attach comments to the appraisal which must be made available to the employee and must be kept in the employee's personnel file.

2.21.6414 GRIEVANCE (1) If the employee disagrees with the appraisal, the employee has the right to submit a written rebuttal to be attached to the document.

(2) The employee may grieve the appraisal in accordance with the Rules ARM 2.21.8001 through 2.21.8009, relating to grievances, if:

(a) adverse employment actions are taken as a result of the appraisal;

(b) employee believes the appraisal was conducted in an unlawfully discriminatory manner; or

(c) the employee believes the appraiser made critical procedural errors in evaluating the employee's performance.

(3) Grievable procedural errors are:

(a) failure of the appraiser to inform the employee of the duties and responsibilities to be assessed and the performance standards for each at the beginning of the appraisal period;

(b) failure of the appraiser to make written comments explaining ~~ratings other than standards, needs improvement or above standard,~~ unacceptable or outstanding ratings (supporting comments should be made for all ratings);

(c) failure of the appraiser to provide the employee with an opportunity to review ratings and supporting comments, when completed;

(d) failure of the appraiser to advise the employee of the right to submit a written rebuttal to be attached to the original copy of the written appraisal, (the notice of the right to file a rebuttal on the second page of the employee performance form is sufficient notice of the right to submit a rebuttal);

(e) failure of the appraiser to have written appraisal and rebuttal, if any, reviewed by a superior; ~~or~~

(f) failure of the appraiser to make a copy of the written appraisal and reviewer's comments available to the employee for the employee's personal records~~.~~, or

(g) failure of the appraiser to give an employee written notice at least two months prior to issuing ratings that the appraiser plans to give the employee an unacceptable rating.

(3) Probationary employees may not grieve the appraisal unless alleging discrimination.

2.21.6415 RECORDS (1) A copy of the written performance appraisal, attached documentation and rebuttal statement, if any, shall be given to the employee.

(2) The original copy shall be retained in the employee's personnel file for a minimum of three years and may be used for appropriate personnel decisions during that period. After the last date it was used in an employment decision, the form shall be retained as an inactive record for two years.

(3) Supervisors shall keep appraisal information confidential, except:

(a) in discussion with superiors;

(b) in discussion with prospective employers of the employee (when other than state agencies, this must be authorized by the employee); and

(c) when disclosure is required in administrative or court proceedings.

2.21.6422 CLOSING (1) These rules shall be followed unless they conflict with negotiated labor contracts, which shall take precedence to the extent applicable.

(2) Forms mentioned are available from the department of administration publications and graphics division.

3. On September 17, 1980, the department of administration held a public hearing regarding the adoption of these rules at the request of the Montana Public Employees Association, which made the only comments at the hearing. Written comments were received from MPEA and from Department of Labor and Industry Commissioner David Fuller.

COMMENT: (MPEA) For employees represented by a bargaining unit, implementation of the performance appraisal system is subject to negotiation.
RESPONSE: The department does not agree. Implementation of the performance appraisal system without negotiation is consistent with current contract language.

COMMENT: (MPEA) The proposed rules substantially weaken significant elements of the supervisor's guide which would engender and facilitate open communications.
RESPONSE: The department does not agree. MPEA's claim represents an erroneous view of the purpose of the supervisor's guide, which is instructional. It is designed to teach supervisors to communicate effectively. The purpose of the rule is to establish minimum standards for a functional and fair system. The rule by itself cannot improve human relationships, including communication. It can establish requirements that allow for communication and protect employee rights in the process.

COMMENT: (MPEA) Rule II.6 (2.21.6411) should be modified to allow joint identification and prioritization of duties by both employer and employee.
RESPONSE: The department does not agree. Joint identification and prioritization of duties is recommended strongly in the training, but it remains the final prerogative of management to establish the duties and responsibilities of a job.

COMMENT: (MPEA) In Rule II.7 (2.21.6411), the rule should be modified to require that advance notice of poor performance be identified to an employee to allow the employee time to correct the performance.
RESPONSE: The department agrees and has modified the rule to reflect this comment.

COMMENT: (MPEA) The scope of the review seems to have been diminished from the supervisor's guide. The reviewer's role should be enlarged.
RESPONSE: The department agrees. Following extensive discussion of this question by the Personnel Policy Network, it was recommended that the reviewer not be allowed to substitute his rating for the appraiser's rating when there is disagreement, but that the reviewer attach comments to an appraisal he feels clearly is erroneous. The reviewer's comments will be retained with the appraisal and also used to make any future personnel decisions based on the appraisal. The rule has been modified to reflect this comment.

COMMENT: (MPEA) The employee should be allowed to have a representative of his choosing at any review meeting or at any post-appraisal meeting.
RESPONSE: The department does not agree. Providing for an employee representative at the post-appraisal meeting would transform this meeting into an adversary proceeding which would inhibit communication.

COMMENT: (MPEA) In Rule V (2.21.6414) the scope of the grievance procedure has been significantly reduced. The only grievable items are discrimination or procedural. Employees should be allowed to grieve the substance of the evaluation. Specifically, in subsection 2c, the employee should be allowed to grieve procedural errors made by the reviewer; in subsection 3, an employee should be allowed to grieve the failure of the appraiser to inform the employee of unacceptable performance with sufficient time to allow the employee to improve the performance, and under subsection 2, an employee should be allowed to grieve if the performance standards used are unattainable and an employee should be allowed to grieve if performance standards are used which are not validated.
RESPONSE: The department agrees in part. The right to grieve the substance of the appraisal would be a deterrent to honest supervisory evaluation. Grievances are unnecessary where no adverse employment actions are taken. There are no procedural steps for the reviewer comparable to those the appraiser must take which would be grounds for a grievance based on critical procedural error. The rule will be modified to allow the employee to grieve failure of the supervisor to give two month's advance notice of a potential unacceptable rating, but not the rating itself. In reference to the comment about unattainable standards, an employee may grieve adverse employment actions which are a result of the performance appraisal. As a practical matter, validation of each performance criteria would be impossible.

COMMENT: (Mr. Fuller) In regard to Rule II.5 (2.21.6411) whether or not to begin a new appraisal period with the appointment of a new appraiser should be decided on a case-by-case basis, taking into account such factors as length of time elapsed in the appraisal period, the new appraiser's familiarity with the employee's duties and performance and the nature of the transfer of appraisal responsibilities. RESPONSE: The department agrees and has modified Rule II.5 (2.21.6411) to reflect this comment.

J. Michael Young, Acting Director
Department of Administration

Certified to the Secretary of State December 16, 1980

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 10.16.801 Establishment of a Special Education Program	))))	NOTICE OF THE AMENDMENT OF RULE 10.16.801 ESTABLISHMENT OF A SPECIAL EDUCATION PROGRAM

TO: All Interested Persons

1. On July 17, 1980 the superintendent of public instruction published notice of the proposed amendment of Rule 10.16.801 concerning the establishment of a special education program at pages 2692 and 2693, Issue No. 19, Montana Administrative Register.

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

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

GEORGIA RICE
SUPERINTENDENT OF PUBLIC INSTRUCTION

BY Georgia Rice

Certified to the Secretary of State December 12, 1980

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the repeal of Rule 10.16.802 Establishment of an Individual District Special Education Program	)	NOTICE OF REPEAL OF RULE 10.16.802 ESTABLISHMENT OF AN INDIVIDUAL DISTRICT SPECIAL EDUCATION PROGRAM

TO: All Interested Persons

1. On July 17, 1980 the superintendent of public instruction published notice of the proposed repeal of Rule 10.16.802 concerning the establishment of an individual district special education program at pages 2690 and 2691, Issue #19 of the Montana Administrative Register.

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

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

GEORGIA RICE
SUPERINTENDENT OF PUBLIC INSTRUCTION

BY Georgia Rice

Certified to the Secretary of State December 12, 1980

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the repeal of rules OF 10.16.1401, 10.16.1402, 10.16.1403, 10.16.1404, 10.16.1405, 10.16.1406, 10.16.1407, 10.16.1408, 10.16.1409, 10.16.1410, 10.16.1501, 10.16.1502, 10.16.1503, 10.16.1504, 10.16.1505, 10.15.1506, 10.16.1507, 10.16.1508, 10.15.1509, 10.16.1510, 10.16.1511, 10.16.1512, 10.16.1513, 10.16.1601, 48-2.18(42)-P18720, 48-2.18(42)-P18730, 48-2.18(42)-P18740.	)	NOTICE OF REPEAL DUPLICATE RULES PERTAINING TO HEARING PROCEDURES IN SPECIAL EDUCATION

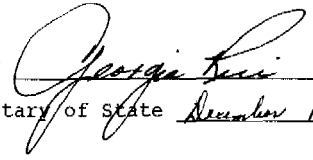
TO: All Interested Persons.

1. On August 30, 1980 the superintendent of public instruction proposed to repeal rules 10.16.1401, 10.16.1402, 10.16.1403, 10.16.1404, 10.16.1405, 10.16.1406, 10.16.1407, 10.16.1408, 10.16.1409, 10.16.1410, 10.16.1501, 10.16.1502, 10.16.1503, 10.16.1504, 10.16.1505, 10.16.1506, 10.16.1507, 10.16.1508, 10.16.1509, 10.16.1510, 10.16.1511, 10.16.1512, 10.16.1513, 10.16.1601 pertaining to hearing procedures in special education at pages 2217 and 2218, Issue #14 of the Montana Administrative Register.

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

3. One request for hearing was received from Dr. Mike Jakiyscak of the Western Montana Comprehensive Developmental Center, who acknowledged to Jayne Mitchell, Legal Intern, Office of Public Instruction, in a letter dated August 18, 1970 that "while I agree with your conclusion that my request for a hearing on the old sections is out of order, I would strongly urge your office to at least consider revision of the new sections at some time in the very near future.

GEORGIA RICE
SUPERINTENDENT OF PUBLIC INSTRUCTION

BY 

Certified to the Secretary of State December 12, 1980.

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES

In the matter of the adoption of rules establishing procedures for public comment on applications for air and MPDES permits under the Major Facility Siting Act	NOTICE OF THE ADOPTION OF RULES SETTING PROCEDURE FOR PUBLIC COMMENT ON MAJOR FACILITY SITING ACT/ AIR/MPDES JOINT APPLICATIONS

TO: All Interested Persons

1. On June 26, 1980, the Board of Health and Environmental Sciences published notice of a proposed adoption of rules concerning public participation in decisions whether to grant MPDES or air quality permits for facilities which are subject to the Major Facility Siting Act, at page 1663 of the 1980 Montana Administrative Register, issue number 12.

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

16.2.501 DEFINITIONS

(1) "Department of health" means the department of health and environmental sciences.

(2) "Application" means a written request for a certificate of environmental compatibility and public need from the board of natural resources and conservation and for any air or ~~water~~ MPDES permits necessary under Title 75, Chapters 2 and 5, MCA, for a facility defined in section 75-20-104(10), MCA.

16.2.502 OPPORTUNITY FOR PUBLIC COMMENT AFTER APPLICATION COMPLETE (1) Within one month after an application is declared complete pursuant to section 75-20-216, MCA, the department of health shall publish notice of the following:

(a) the name and address of the applicant; a general description of the size, purpose and pollutants discharged from the proposed facility; and the location of the alternative sites;

(b) if ~~a water quality~~ an MPDES permit must be obtained, the name of the state water receiving the discharge, a brief description of the discharge's location, and whether the discharge is new or existing.

(c) that the department of health will accept written public comment on the application;

(d) the deadlines by which the above comments must be submitted, which must be no less than 30 days after the date the notice is first published in a legal advertisement pursuant to (2)(a) below;

(e) the name, address and phone number of the department of health and the person within each bureau from whom information on the application may be obtained;

(f) the name and address of the person to whom comments may be submitted;

(g) the fact that a public hearing will be held after a preliminary decision to grant or deny the relevant air or ~~water quality~~ MPDES permits is made.

(2) Notice of the opportunity for public comment described in (1) above must be published as follows:

(a) publishing legal notice 2 times within 2 weeks in a newspaper of general circulation in Butte, Missoula, Helena, Great Falls, Miles City, Kalispell, and Billings, ~~2 times within one week~~ and in a newspaper of general circulation published within 50 miles of the site of the proposed facility and any alternative site;

(b) submitting the notice to a state-wide wire service;

(c) mailing to any person, group, or agency upon written request, and to the following state agencies:

(i) environmental quality council

(ii) department of public service regulation

(iii) department of fish, wildlife and parks

(iv) department of state lands

(v) department of community affairs

(vi) department of highways

(vii) department of revenue.

16.2.503 PUBLIC HEARING AFTER PRELIMINARY DECISION

(1) Within 7 months after an application is accepted as complete, the department of health shall:

(a) make a preliminary decision whether to grant or deny air or ~~water~~ MPDES permits for the primary site and each alternative site for which approval is sought; and

(b) hold a hearing to receive public comments on those decisions.

(2) The notice of public hearing shall be published as follows:

(a) publishing legal notice 2 times within 2 weeks in a newspaper of general circulation in Butte, Missoula, Helena, Great Falls, Miles City, Kalispell, and Billings, ~~two times within one week~~ and in a newspaper of general circulation published within 50 miles of the site of the proposed facility and any alternative site;

(b) submitting the notice to a state-wide wire service;

(c) at least 30 days prior to the date of hearing, mailing to any person or group upon written request, the environmental quality council; the state departments of public service regulation; fish, wildlife and parks; state lands;

community affairs; highways; and revenue; ~~at least 30 days prior to the date of hearing,~~ and, in the case of an application for ~~a water quality~~ an MPDES permit, those listed in ARM ~~16-2.14(10)-S14460(10)(a)~~ 16.20.913(1)(a).

(3) The notice of public hearing shall contain the following:

(a) the name and address of the applicant, a general description of the size, purpose, and pollutants discharged from the proposed facility, the location of the alternative sites, the preliminary decision for each site to grant or deny an air or ~~water quality~~ MPDES permit, and the fact that only one site will be approved by the board of natural resources and conservation;

(b) if ~~a water quality~~ an MPDES permit is applied for, the name and address of the discharger, if different from the applicant.

(c) if ~~a water quality~~ an MPDES permit must be obtained, the name of the state water receiving the discharge and a brief description of the discharge's location;

(d) the name, address and phone number of the department of health;

(e) the time, date and location of the public hearing, the date to be at least 30 days after the notice is first published; and the fact that written comments may be submitted until that date.

(f) the name and address of the presiding officer and the fact that written comments should be submitted to him;

(g) the name, address and phone number of the person from whom information concerning each relevant permit may be obtained, including, if ~~a water quality~~ an MPDES permit is applied for, a draft permit, a fact sheet as required by ARM ~~16-2.14(10)-S14460(5)(d)~~ 16.20.905(5), and copies of MPDES forms and related documents.

(h) a brief description of the nature and purpose of the hearing, including the rules and procedure to be followed.

(4) The presiding officer shall accept information, comments and data from members of the public relevant to air or water quality at the primary and alternative sites orally or in writing at the hearing and in writing prior to the hearing. The hearing is not subject to the contested case procedure of the Montana Administrative Procedure Act, and no cross-examination will be allowed. The presiding officer has the discretion to limit repetitive testimony and prescribe rules to ensure orderly submission of statements.

(5) All written and oral comments submitted to the department of health from the date the above notice is issued until the termination of the public hearing must be retained by the department of health and considered in the formation of its final decision on relevant air or ~~water~~ MPDES permits. The department of health shall issue a response to all significant comments.

3. Joan Miles of the Environmental Information Center (EIC) proposed in writing (as did Richard Steffel, graduate student at the University of Montana, and Steve Doherty of Northern Plains Resource Council (NPRC)) that, in addition to the major newspapers listed, any other newspaper of general circulation in the "area(s) affected" by the proposed facility and its alternative sites must carry the required legal notices 4 times within 3 weeks. The board accepted the concept of advertising in local newspapers, but made the following changes:

(a) limited advertising to "a newspaper" near the site, rather than "any other newspaper" in order to preclude argument about which newspapers should have gotten notices and avoid raising a question whether the rule's requirements were met.

(b) to avoid dispute over what constituted the "area affected" by a proposed facility, defined it to be within 50 miles of the primary site and each alternative site.

(c) restricted the number of times notice had to appear to 2 times within 2 weeks, because weeklies would have difficulty publishing notice 4 times in 3 weeks, and because the board thought 2 times was sufficient and wanted to hold down the cost.

Mr. Steffel proposed that "plain English" display advertising, containing "essential" information and referring readers to the legal ads, be bought in the newspapers within the impacted area to appear twice in two weeks, and that such advertising be bought to appear at least once statewide concurrently with the legal notice if the news release submitted to the wire services was not picked up and used in at least three newspapers of general circulation. The board turned down the proposal on the grounds that such advertising was more expensive and had not proven to be of any greater value than legal ads in attracting public participation. (This comment, and all of the others by Mr. Steffel, noted below, were supported by EIC and NPRC.)

Mr. Steffel requested public service announcements (PSAs) in "plain English" be provided to radio and television stations in the affected area. The board approved of the concept, but left PSAs to DHES' discretion, declining to add it to the rules on grounds that what constituted "plain English" was too subject to dispute and its addition might unnecessarily complicate notice requirements.

Mr. Steffel requested the notice be specifically mailed to, in addition to "any person, group or agency upon written request", all those on the "mailing list of interested persons".

The board rejected the proposal because of the difficulty of determining who on the Department of Health and Environmental Sciences' present mailing lists would be considered "interested" and the probability that notice mailings would become voluminous because the department would have to send one to anyone potentially, if not in fact, interested; and decided to limit mailing to those individuals, groups or agencies who expressed in writing the desire to be notified of Major Facility Siting Act applications.

Mr. Steffel wanted the public hearing required by proposed Rule III to be held in Helena and/or the county in which the majority of the impacts from the facility would occur, with preference given to the latter. Because there was room for argument over which county would be most impacted, and therefore a possibility of invalidation of a hearing, and the effect of the preference would be to have the hearing always in the impacted area, at additional cost to the department, the board rejected the proposal in favor of the existing language, which leaves localized hearings optional.

Mr. Steffel also wanted the hearing to be "held at a time conducive to maximum public participation". While recognizing the proposal's value in principal, the board did not adopt it because of the potential for dispute over what time was most "conducive" to public participation in a given case.

EIC and NPRC both requested notice of applications and hearings be sent to the same state agencies which receive notice of applications to DNRC for certificates of public need under the Major Facility Siting Act. The board agreed to the change.

EIC also requested that "department of health" be used in place of "department", whenever it appears in the rules, to prevent confusion among those utilizing DNRC's siting act rules at the same time, a situation which would easily occur since a siting act application is processed within both departments at the same time. The board agreed the suggestion was valuable and adopted it.

4. The authority for the rules is in Sections 75-2-111, 75-5-201, and 75-20-216(3), MCA.

JOHN F. McGREGOR, M.D., Chairman

By RITA ANN SHEEHY

Certified to the Secretary of State December 16, 1980.

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES

In the matter of the amendment of rules 16.20.905, 16.20.912, (processing and public notice requirements for MPDES permits) and 16.8.1107 (public review of air quality permit applications)	NOTICE OF AMENDMENT OF RULE 16.20.905, MPDES Permit Processing Procedure; RULE 16.20.912, Public Notice of MPDES Permit Applications; AND RULE 16.8.1107, Public Review of Air Quality Permit Applications

TO: All Interested Persons

1. On September 11, 1980, the Board of Health and Environmental Sciences published notice of proposed amendments to rules 16.20.905, 16.20.912, and 16.8.1107 concerning excepting Major Facility Siting Act applications from the time and procedural requirements of the air and MPDES permit rules at page 2533 of the 1980 Montana Administrative Register, issue number 17.

2. The board has amended the rules as proposed.

3. No adverse comments or testimony were received. Written statements declining comment and finding the amendments satisfactory were received, respectively, from the U.S. Environmental Protection Agency and Robert M. Culver, DNRC's Water Resources Division Administrator.

4. The authorities for the rules are Sections 75-5-401 and 75-20-216(3), MCA, (for ARM 16.20.905 and 16.20.912) and Sections 75-2-111 and 75-20-216(3), MCA, (for ARM 16.8.1107).

John F. McGregor
JOHN F. McGREGOR, M.D., Chairman

By Rita Ann Sheehy
RITA ANN SHEEHY

Certified to the Secretary of State December 16, 1980

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 23.3.212 providing for suspension for possession of altered driver's license	)))))	NOTICE OF AMENDMENT OF RULE 23.3.212

TO: All Interested Persons:

1. On November 14, 1980 The Department of Justice published notice of a proposed amendment of rule 23.3.212 at page 2887-88 of the 1980 Montana Administrative Register, issue number 21.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

MIKE GREELY
Attorney General

Certified to the Secretary of State December 15, 1980.

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

In the Matter of the repeal of rules 26.3.218, 26.3.221 and 26.3.222 concerning oil and gas leasing	))))	NOTICE OF REPEAL of ARM 26.3.218, 26.3.221 and 26.3.222 (oil and gas leasing)

TO: All Interested Persons:

1. On September 25, 1980 the board of land commissioners and department of state lands published notice of proposed repeal of rules 26.3.218, 26.3.221 and 26.3.222 concerning oil and gas leasing at page 2625 of the 1980 Montana Administrative Register, issue no. 18.

2. The agency has repealed the rule as proposed.

3. No comments or testimony were received.

By _____
Leo Berry, Jr., Commissioner
Department of State Lands

CERTIFIED TO THE SECRETARY OF STATE December 16, 1980.

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

In the matter of the adoption of NEW RULES relating to seismographic permits	)))	NOTICE OF THE ADOPTION OF RULES RELATING TO SEISMOGRAPHIC PERMITS

TO: All Interested Persons:

1. On September 25, 1980 the board of land commissioners and the department of state lands published a notice of proposed adoption of rules concerning seismographic permits at page 2620 of the 1980 Montana Administrative Register issue no. 18.

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

~~Rule I~~ 26.3.230 APPLICATION FOR SEISMOGRAPHIC PERMIT A person wishing to prospect for oil and gas by geophysical methods on state lands for which it does not hold an oil and gas lease is required to sign and submit two executed copies of a seismographic exploration permit application, on forms provided by the department, with a $10.00 fee, to the mineral leasing bureau of the department.

~~Rule II~~ 26.3.231 PROCEDURE FOR ISSUANCE OF SEISMOGRAPHIC PERMIT (1) In order to obtain a permit the applicant shall:

(a) be qualified to do business in the state as shown by records of the secretary of state;

(b) file a surety bond, as required, with the secretary of state;

(c) furnish proof (such as copies of letters) that it has notified the surface owner or lessee of the approximate time schedule of activities on the land;

(d) provide the name and permanent address of the geophysical exploration firm which will be doing the actual work on the land, and the name and address of any designated agent of the geophysical exploration firm;

(e) provide a legal description of the surface areas where geophysical activity will take place; and

(f) provide written or oral notification from the oil and gas lessee of permission to conduct exploration on lands covered by an oil and gase lease.

(2) A permit is valid for one calendar year from the date it is granted.

(3) The permit does not grant any rights to an oil and gas lease on or any interests of any kind in the land covered by the permit.

~~Rule III~~ 26.3.232 SURFACE LIMITATIONS FOR SEISMOGRAPHIC PERMIT (1) The permittee shall confine all surface

activity to improved roads during periods when the land surface is wet or is in such a condition that it may be damaged from travel by heavy vehicles or trucks. During all other periods, the permittee shall confine all activity which may disturb the surface to existing trails and terrain which is easily accessible to normal four-wheel drive travel without winching or other artificial means. The permittee shall not conduct any type of road construction activity, including but not limited to, blading and dozing existing roads and trails, constructing stream crossings, or removal of brush and trees, without the written permission of the department ~~commissioner of state lands~~. The department may grant such permission only after the permittee has submitted evidence of conditions which require such road construction and a plan for the road construction which protects the land surface as much as practicable. The department may impose requirements on such construction in order to protect the land surface from erosion or other damage.

(2) The permittee shall not conduct any type of geophysical testing or measuring which will disturb the surface or move the earth within 300 feet of any springs, streams, lakes, water wells, or water storage reservoir facilities. The permittee shall not conduct any drilling or blasting activities within 1320 feet of any building, structure, water well or spring or within 660 feet of any reservoir dam without the written consent of the department. The department may impose further restrictions when the particular situation warrants other precautions.

(3) In all operations on the lands covered by the permit, the permittee shall interfere as little as practical with the use of the premises for any other purpose to which the same may have been leased or sold by the state. All necessary precautions shall be taken to avoid any damage other than normal wear and tear to gates, bridges, roads, cattle guards, fences, dams and other improvements.

~~Rule IV~~ 26.3.233 OPERATIONS PURSUANT TO A SEISMOGRAPHIC PERMIT (1) Exploration operations shall be conducted in compliance with all federal, state, and local laws, and all ordinances, rules and regulations which are applicable to such operations. Particularly, permittee shall comply with the oil and gas rules on state lands, oil and gas lease stipulations, if any, on those lands, and the bonding requirements before commencing operations.

(2) The permittee shall take such measures for the prevention and suppression of fire on the permit area and other adjacent lands used or traversed by the permittee as are required by applicable laws and regulations. When in the

opinion of the department weather and other conditions affecting fire incidence and control make special precautions necessary to protect the area, the permittee shall take such additional or other fire prevention and control measures as may be required by the department.

(3) The permittee shall obtain appropriate permission to use water necessary for the exploration activities. This normally will require a permit from the owner of the water right.

(4) The permittee shall make satisfactory adjustment of any damages sustained by the owner to the surface of the lands or sustained by the surface lessee to his leasehold interest in connection with operations by the permittee. The surface lessee should not receive damages over and above his annual rental unless special circumstances are demonstrated.

Rule-V 26.3.234 SEISMOGRAPH PLUGGING AND ABANDONMENT

(1) Except as hereinafter provided, all seismic holes shall be plugged as soon after being utilized as reasonably practicable; however, in no event shall they remain unplugged for a period of more than 120 days after being drilled and shot.

(2) The permittee shall notify the department, in writing, of its intent to plug and abandon, including the date such activities are expected to commence, the location by section, township, and range of the holes to be plugged and the name and telephone number of the person in charge of the plugging operations.

(3) All seismic shot holes shall be plugged in accordance with the board of oil and gas conservation rules. All cuttings not placed in the hole shall be spread out over the surrounding area at a depth not to exceed 1 inch.

(4) If an artesian water flow is encountered in any of the drill holes located on state land, the permittee shall immediately notify the department so that a decision can be made by the department as to whether the well will be developed. The department shall make a decision within 24 hours of notification. If the well is not developed, or if damage is occurring or is imminent, it is the permittee's responsibility to plug the hole with cement of sufficient density to contain the waters to their native strata as required by the board of oil and gas conservation rules. If a nonflowing aquifer is encountered in any of the drill holes on state land, the permittee shall notify the department in writing of the location and depth.

(5) The permittee shall leave the land covered by the permit in as nearly the same condition as it was prior to the effective date of the permit as is practically possible. All refuse, including, but not limited to, oil cans, shot wire,

powder boxes, flagging, cement or mud sacks, stakes, and primacord shall be removed from the lands and shall be properly disposed of by the permittee.

(6) A seismic shot hole may be left unplugged at the request of the surface lessee or owner for conversion to a fresh water well provided the surface lessee or owner executes a release on a form provided by the department relieving the permittee from any liability for damages that may thereafter result from the hole remaining unplugged.

~~Rule-VI~~ 26.3.235 CANCELLATION OF SEISMOGRAPHIC PERMIT If the department determines that any person has violated any of the provisions of these rules or the permit, the department shall take the necessary action to assure compliance, including cancellation of the permit. Such cancellation is not a waiver of other remedies available to the state.

~~Rule-VII~~ 26.3.236 SEISMOGRAPHIC PERMIT CHARGES Charges for exploration purposes on state lands on which the state owns the surface shall be paid to the department at the rate of at least $50.00 per hole or $100.00 per mile for vibroseis, surface charges or other surface activity, depending on the exploration procedures used.

~~Rule-VIII~~ 26.3.237 REPORT UPON TERMINATION OF SEISMOGRAPHIC PERMIT (1) ~~Upon~~ Within 6 months after termination of a permit, the permittee shall submit to the department an affidavit setting forth the following:

(a) The nature of the tests conducted;

(b) a narrative description of or a map showing the number and location of sites where tests were conducted; and

(c) the location and depth of any geologic formations which may be capable of producing water in usable quantities that are discovered in testing. The submission of a driller's log shall satisfy this requirement.

(2) The permittee shall maintain records (including receipts and/or check or draft numbers) of amounts paid, if any, to surface owners or lessees in settlement of damages. The permittee shall make the records available for the department's review upon requests of the department.

3. Comments were received from 3 interested parties. A summary of the comments and the department's responses are provided below.

(1) COMMENT: The International Association of Geophysical Contractors generally endorses the proposed rules.

RESPONSE: NONE

(2) COMMENT: An additional sentence should be added

to Rule VIII(1)(c) as follows: The submission of driller's logs in such cases will satisfactorily meet this requirement.
RESPONSE: Comment accepted and rule amended.

(3) COMMENT: Rule VIII(2) should be amended to allow the permittee to furnish check or draft nembers instead of receipts to show the amount paid in settlement of damages.
RESPONSE: Comment accepted and rules amended.

(4) COMMENT: Rule VIII should be amended to provide that the information received is confidential.
RESPONSE: It is not legally permissable to hold such information confidential. However the rule is amended to allow the permittee 6 months to file the required information. This will allow the permittee time to act on the information acquired before it becomes public information.

(5) COMMENT: Rule II(1)(c) needs clarification as to what is needed to prove that the surface owner or lessee has been notified.
RESPONSE: Comment accepted and rule amended.

(6) COMMENT: Rule III(1) needs clarification as to what activities are prohibited.
RESPONSE: Comment accepted and rule modified to provide that the prohibition only applies to activity which may disturb the surface of the land.

(7) COMMENT: Rule III(2) needs clarification as to what activities are prohibited.
RESPONSE: Comment accepted and rule amended to provide that geophysical activities which disturb the surface or move the earth are prohibited.

(8) COMMENT: Rule V(1) provides a reasonable time for plugging but should also provide an exception for adverse weather.
RESPONSE: Comment rejected since this rule is the same as the rules adopted by the Montana Board of Oil and Gas Conservation for plugging seismic holes.

(9) COMMENT: Rule V(4) would be costly to operators because of delays in a response by the department and the assumption of damage liability.
RESPONSE: Comment accepted and rule amended to provide that the department will make a decision within 24 hours and that the hole should be plugged if damage occurs or is imminent.

(10) COMMENT: Rule VII represents an additional cost to operators especially when the surface is leased or owned by someone other than the state.
RESPONSE: Comment is accepted but the state is required to obtain full market value for any interest disposed of and it is believed that $50.00 per hole or $100.00 per mile is a reasonable charge.

(11) COMMENT: The information required in Rule VIII should be held confidential for a 6 month period.
RESPONSE: The comment is accepted. See response to comment (4).

(12) COMMENT: Rule I should be amended to provide that a permit is needed for "seismographic" exploration only and not "geophysical" exploration which includes many activities which do not disturb the land.
RESPONSE: Comment rejected since the rules are meant to require any person conducting activities on state land to obtain a permit whether the surface is disturbed or not.

(13) COMMENT: Rule II(1)(e) should be changed by deleting "geophysical" and inserting "seismographic".
RESPONSE: Comment rejected. See response to comment (12).

(14) COMMENT: In Rule III (1), on the 11th line, "commissioner" sould be deleted and "department" inserted in order to make the rule internally consistent.
RESPONSE: Comment accepted and rule amended.

(15) COMMENT: In Rule III(2), on the 2nd line, the word "geophysical" should be deleted and "seismic" inserted.
RESPONSE: Comment rejected. See response to comment (12). However, the rule has been amended. See comment (7).

(16) COMMENT: In Rule III(2), on the 3rd line the word "reservoir" should be inserted after the word "storage".
RESPONSE: Comment accepted and rule amended.

(17) COMMENT: The word "Exploration" in Rule IV should be deleted and the word "seismic" inserted since the rules are meant to only cover seismic operations.
RESPONSE: Comment rejected. See response to comment (12).

(18) COMMENT: In Rule IV(1), on line 5, the words "oil and gas" should be inserted before "lease" and the words "if any" inserted after "stipulations".

RESPONSE: The comment is accepted and the rules amended.

(19) COMMENT: In Rule IV(3), on the 2nd line, the word "exploration" should be deleted and the word "seismic" inserted.

RESPONSE: Comment rejected. See response to comment (12).

(20) COMMENT: In Rule IV(3) the word "permit" should be deleted and the word "consent" inserted.

RESPONSE: Comment is rejected since the rule does not require that a "permit" be obtained but only states that this is what is normally required.

(21) COMMENT: In Rule VII, on line 2, the word "exploration" should be deleted and the word "seismic" inserted.

RESPONSE: Comment rejected. See response to comment (12).

By _____
Leo Berry, Jr., Commissioner
Department of State Lands

CERTIFIED TO THE SECRETARY OF STATE December 16, 1980.

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

IN THE MATTER of the Proposed) Adoption of a new rule relating to public participation in board decision making functions.)	NOTICE OF ADOPTION OF ARM 40.10.202 PUBLIC PARTICIPATION RULES

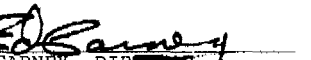
TO: All Interested Persons:

1. On November 14, 1980, the Board of Chiropractors published a notice of proposed adoption of a new rule relating to public participation in board decision making functions at page 2896, 1980 Montana Administrative Register, Issue number 21.

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

3. No comments or testimony were received.

BOARD OF CHIROPRACTORS
JARL HOKLIN, D.C., CHAIRMAN

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

Certified to the Secretary of State, December 16, 1980.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of ARM 1.2.210, regarding the format for adoption by reference in the Administrative Rules of Montana.	)))))	NOTICE OF THE ADOPTION OF ARM 1.2.210

TO: All Interested Persons:

1. On September 25, 1980, the Secretary of State published notice of a proposed adoption of a rule concerning the format for adoption by reference at page 2630, 1980 Montana Administrative Register, issue number 18.

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

1.2.210 (Rule I) ADOPTION OF AN AGENCY RULE BY INCORPORATION BY REFERENCE

(1) same as proposed rule.

(2) The (department) hereby adopts and incorporates by reference ~~(citation-to-federal-agency-rule,-model-code,-like publication)~~ (citation to incorporated material), ~~(citation to-CRF,-etc.)-is-a-(federal-agency-rule,-model-code,-like publication)-setting-forth-the-substance-of-the-rule)~~. which sets forth ~~the~~ (substance of the rule). A copy of ~~the~~ this ~~(citation-to-federal-agency-rule,-model-code,-like-publication)~~ incorporated material may be obtained from the (Department name and address).

(3) The above form will be placed in the first subsection of each rule that adopts by reference. If there is more than one citation in the same rule to the same adoption by reference citation, then a reference back to the paragraph which includes this form will be necessary for each citation.

(4) same as proposed rule.

3. Written comments were received from the Department of Health and Environmental Sciences and the Department of Social and Rehabilitation Services.

Comment: The Department of Health questioned the use of the term "like publication" as the term will be meaningless to the public and will cause confusion when read. The Department is concerned that by including the term "like publication" in the text of an adopted rule, it becomes part of the rule, i.e., part of enforceable regulatory language.

Response: The term "like publication" is taken from 2-4-307, MCA, however, the term is deleted from the proposed form.

Comment: The Departments of SRS and Health stated that the placement of the form in each rule that adopts the same documents by reference would be redundant and add length to the ARM. Placement in a rule at the beginning of a subchapter or at the beginning of a chapter was suggested.

Response: Many agencies have not reserved rules at the beginning of a chapter or a subchapter which they could assign to a rule that would list the incorporated by reference documents. This would result in a rule that lists incorporated by reference documents in the middle of an area which may already contain rules that adopt the same documents by reference. It is decided for the benefit of the reader, that each rule that incorporates by reference contain the form, placed in the first subsection of the rule. Any subsequent mention to the citation in the same rule could be referenced back to the form.

Comment: SRS proposed putting all such notices only in the Register.

Response: Putting all of the notices containing the explanation, citation, etc., only in the Register would require the retention of and continued reference to the MAR, a task that quarterly updating of the ARM was meant in part to eliminate.

Technically, only the adoption by reference need be in a "rule". Section 2-4-307, MCA, implies that the citation, statement of subject matter and how a copy may be obtained may be in a "notice", or something less than a rule. However, it is clearer to the reader if the explanation of this material follow the adoption by reference which it applies to rather than some place else.

Comment: The Department of Health asked for clarification as to the effect of this rule on existing agency rules. They assumed that no retroactive effect is intended, so that already adopted rules containing incorporation by reference remain valid.

Response: The proposed rule is not intended to be retroactive, but prospective only. Whether an agency is to amend past adoptions by reference to comply with the form of the adopted rule is a decision each agency must make.

Comment: SRS and the Department of Health inquired if the new procedures applied to an amended rule where the existing rule, containing an incorporation by reference requires amendment - but the amendment has nothing to do with that portion of the rule containing the incorporation by reference.

Response - Examples:

If the amendment appears in a subsection which contains only the adoption by reference citation, then the amendment must include the adoption by reference form and must be submitted with a cover letter by the filing deadline.

If the amendment appears in the same subsection which contains an improper adoption by reference citation, but the amended language has nothing to do with the adoption by reference, only the amended language will be considered.

If a proper adoption by reference is in one subsection and the amended language in another subsection, only the amended language will be considered.

If an improper adoption by reference is in one subsection and the amended language in another subsection, only the amended language will be considered.

Agencies should make an effort to update rules to comply with 2-4-307, MCA.

Comment: SRS stated that Federal Agency Rules (CFR) should be noticed only in the Register.
Response: The purpose of an adoption by reference is not to make CFR applicable as law, but to make it applicable as state law. If the agency intends to make violations of federal agency rules prosecutable as violations of state rules by the state agency, then the adoption by reference of federal rules must be adopted as a rule, requiring notice in MAR and printing in ARM.

Comment: SRS stated that at times federal regulations are not incorporated by reference but are cited because of the supremacy clause and their applicability to the situation. They asked if the Secretary of State wanted the same notice in these situations.
Response: Where an agency does not intend to make violations of federal regulations chargeable as violations of state regulations, there is no reason to adopt the federal regulations by reference. In this instance the requirements of 2-4-307, MCA, need not be followed.

Comment: The Department of Health questioned the need for a special cover letter.
Response: It is felt that this letter is necessary to determine the intent of the agency.

Comment: The Department of Health questioned the deadlines for filing of incorporated by reference rules.
Response: This change was made necessary due to the increased workload in my office. The additional time also gives the agency a grace period before the material must be submitted to the printer to correct any errors and resubmit the material so that their rules become effective as they planned.

Dated this 16th day of December, 1980.

Frank Murray

FRANK MURRAY, Secretary of State

VOLUME NO. 38 OPINION NO.115

STATE AUDITOR - Duty to accept writ of attachment;
ATTACHMENT - Common law writ--validity;
ATTACHMENT - Judicial authorization required;
GARNISHMENT - Common law writ of attachment;
MONTANA CODE ANNOTATED - Sections 21-18-201 et. seq., MCA.

HELD: The State Auditor may refuse to accept writs of attachment issued without judicial authorization.

10 December 1980

E. V. "Sonny" Omholt
State Auditor
Mitchell Building
Helena, Montana 59601

Dear Mr. Omholt:

You have requested my opinion on the following question:

> Must the State Auditor honor a writ of attachment which is issued without judicial supervision or authority?

The inquiry focuses upon the duty of the State Auditor to accept documents termed "common law writs of attachment." Recently, I ruled that County Clerk and Recorders are not required to file self-styled common law liens that don't conform to statute or contract, 38 OP. ATT'Y GEN. NO. 114. This question is whether wages may be attached merely by presentment of a "common law writ of attachment" based on the conclusory allegations of an individual without any determination of specific facts by a judge. The answer is no.

Montana recognizes the existence of common law, but only insofar as it does not conflict with specific statutory enactments, Section 1-1-108, MCA. Montana has established by statute the procedures for attaching property of another. The petition must be supported by an affidavit of the person seeking attachment. Section 27-18-202, MCA. The petitioner must furnish a written undertaking to be approved by a court. Section 27-18-204, MCA. Finally, a judge, not the petitioner, issues the writ of attachment. Section 27-18-205, MCA.

The attachment statutes were substantially revised in 1977, after being held unconstitutional by the Montana Supreme Court, because they failed to provide the respondent with

meaningful notice and opportunity to be heard. Williams v. Matovich, 172 Mont. 109, 114, 560 P.2d 1338 (1977).

The prejudgment common law writs of attachment which you describe are not issued under judicial supervision. This directly conflicts with the statutory requirements of this state's prejudgment attachment laws as well as Williams vs. Matovich. Thus, common law writs of attachment, issued without judicial supervision, are of no effect in the State of Montana.

THEREFORE, IT IS MY OPINION:

The State Auditor may refuse to accept writs of attachment issued without judicial authorization.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 38 OPINION NO. 116

HOLIDAYS - Public Employees may bargain for paid leave in addition to those granted by state law;
LABOR UNIONS - Public Employees may bargain for paid leave in addition to those granted by state law;
PUBLIC EMPLOYEES - Public Employees may bargain for paid leave in addition to those granted by state law;
MONTANA CODE ANNOTATED - Title 2, chapter 18, part 6; sections 1-1-216, 2-18-601(8), 2-18-618, 7-4-102, 39-31-201; 38 OP. ATT'Y GEN. No. 20 (1979); 37 OP. ATT'Y GEN. No. 113; 36 OP. ATT'Y GEN. NO. 105 (1976).

HELD: The board of county commissioners may enter into a collective bargaining agreement with county employees which grants a day of paid leave in addition to those legal holidays set forth in section 1-1-216, MCA.

10 December 1980

Harold Hanser, Esq.
Yellowstone County Attorney
Courthouse Building
Billings, Montana 59101

Dear Mr. Hanser:

You have requested my opinion on the following question:

> May the board of county commissioners enter into a collective bargaining agreement with county employees which grants days of paid leave in addition to those legal holidays set forth in section 1-1-216, MCA?

Your question involves the application of the holding in 38 OP. ATT'Y GEN. NO. 20 (1979), that the vacation and sick leave benefits of Title 2, chapter 18, part 6, MCA, may not be varied through collective bargaining or other negotiation. Your letter informs me that Yellowstone County has

entered into a collective bargaining agreement with the representative of road and bridge maintenance employees of the county which provides a holiday to allow those employees to attend the county fair, contingent on a ruling as to the legality of such an additional holiday.

38 OP. ATT'Y GEN. NO. 20 (1979) built on a consistent body of precedent in holding that vacation and sick leave benefits set by statute are not subject to variation through collective bargaining. In City of Billings v. Smith, 158 Mont. 197, 490 P.2d 221 (1971), the Montana Supreme Court held that salary levels set by statute could not be varied by contract. In Abshire v. School District No. 1, 124 Mont. 244, 220 P.2d 1058 (1950), the Court held that the school board could not alter a legislative declaration of public policy regarding the mandatory retirement age for teachers through adoption of a different policy. In School District No. 12 v. Hughes, 170 Mont. 267, 274, 552 P.2d 328 (1976), the Court stated in dicta that school boards as employers are bound by legislative expressions of policy regarding conditions of employment for their employees. None of these cases dealt explicitly with collectively bargained agreements, and they therefore fail to resolve the tension between statutes setting benefit levels and the provisions of the Public Employees Collective Bargaining Act which allow public employees to bargain for fringe benefits. Section 39-31-201, MCA. In 37 OP. ATT'Y GEN. NO. 113 (1978), I held that a school district could bargain collectively for severance pay benefits, reasoning that since such benefits were not set by statute, the board was free to act. 38 OP. ATT'Y GEN. NO. 20 (1979), decided the other side of the coin - that where benefits are set by statute, the board may not vary them by collective bargaining or otherwise.

However, it does not necessarily follow that public employees may not bargain for additional days of paid leave. The vacation and sick leave benefits dealt with in 38 OP. ATT'Y GEN. NO. 20 (1979) encompass certain statutorily defined rights. "Vacation leave" is defined as "a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer." Section 2-18-601(8). An employee accumulates leave credits at a rate set by statute, section 2-18-612, MCA, and is entitled to a cash payment upon termination for unused vacation leave. Sick leave comprises

a similar package of benefits. Section 2-18-618, MCA. 38 OP. ATT'Y GEN. NO. 20 (1979) merely holds that where the statutes define vacation and sick leave benefits and the rights which accompany those benefits and also set the rate at which the benefits accrue, that rate may not be altered by collective bargaining. Nothing in the opinion holds, however, that state statutes define all of the circumstances in which an employee may receive paid leave.

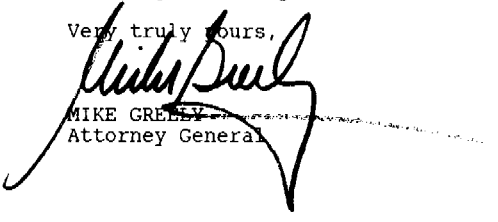
Title 2, chapter 18, part 6, MCA, encompasses all paid leave granted to public employees by statute, but it does not limit, explicitly or implicitly, the public employee's right to bargain collectively for "wages, hours, fringe benefits, and other conditions of employment" which are not expressly set by statute. See section 39-31-201, MCA. Nor does section 1-1-216, MCA, purport to be an exclusive listing of the days of paid leave allowed to public employees. The statute merely defines the term "legal holiday." The definition then takes on significance from other provisions of the law, such as the requirement that county and state offices remain open on all days "except Saturdays and legal holidays." Section 7-4-102, MCA. There is no explicit provision granting public employees a paid day off on a legal holiday, although that right is well established by implication. See 36 OP. ATT'Y GEN. NO. 105 (1976). The listing of legal holidays in section 1-1-216, MCA, is simply not a definition of employee benefits such as is found in the statutes relating to vacation and sick leave.

As I understand the "fair day" provision of the collective bargaining agreement in question here, it does not purport to grant an additional "legal holiday" on which all county offices will close. The commissioners would be powerless to enter into such a contract, since section 7-4-102, MCA, requires that county offices be kept open for business "continuously from 8 a.m. until 5 p.m. each day except Saturdays and legal holidays." (Emphasis added.) Rather, the provision in question merely provides an additional paid day off to attend the county fair for those employees covered by the contract. The provision does not make "fair day" a "legal holiday" nor does it suggest that an employee may accumulate "fair days" as vacation. The provision contravenes no statutory determination of employee benefits. I therefore conclude that it falls within the "fringe benefits and other conditions of employment" which are proper subjects of collective bargaining under section 39-31-201, MCA.

THEREFORE, IT IS MY OPINION:

The board of county commissioners may enter into a collective bargaining agreement with county employees which grants a day of paid leave in addition to those legal holidays set forth in section 1-1-216, MCA.

Very truly yours,



MIKE GREELY
Attorney General