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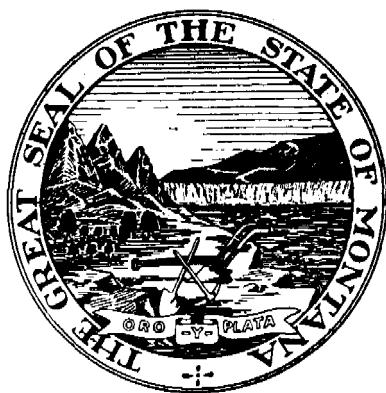
MONTANA ADMINISTRATIVE REGISTER

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MAR 31 1980

OF MONTANA

1980 ISSUE NO. 6
PAGES 995-1122



MAR 31 1980

OF MONTANA

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 6

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BEFORE THE DEPARTMENT OF BUSINESS REGULATION
OF THE STATE OF MONTANA
MILK CONTROL DIVISION

In the Matter of the Amendment of) NOTICE OF PROPOSED AMENDMENT
Rule 8-2.12(6)-S1220 Regarding) OF RULE 8-2.12(6)-S1220.
Levying and Assessment Upon)
Licensees.) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 16, 1980, the Department of Business Regulation proposes to amend Rule 8-2.12(6)-S1220 relating to an assessment to be levied upon licensees subject to the Milk Control Act. The proposed amendment will become effective July 1, 1980.

2. The purpose of the amendment is to change the effective date of the assessments already in existence in the above-identified rule. The rule as proposed to be amended would read as follows:

"8-2.12(6)-S1220 LICENSEE ASSESSMENTS -

(1) Pursuant to Section 81-23-202, MCA, as amended, the following assessments for the purpose of deriving funds to administer and enforce the Milk Control Act during the fiscal year beginning July 1, ~~1979~~ 1980, and ending June 30, ~~1980~~ 1981, are hereby levied upon the Milk Control Act licensees of this Department.

(a) A fee of eight cents (\$0.08) per hundredweight on the total volume of all milk subject to the Milk Control Act produced and sold by a producer distributor.

(b) A fee of eight cents (\$0.08) per hundredweight on the total volume of all milk subject to the Milk Control Act sold in this state by a distributor home based in another state. Said fee is to be paid either by the foreign distributor or his jobber who imports such milk for sale within this state.

(c) A fee of four cents (\$0.04) per hundredweight on the total volume of all milk subject to the Milk Control Act sold by a producer.

(d) A fee of four cents (\$0.04) per hundredweight on the total volume of milk subject to the Milk Control Act sold by a distributor, excepting that which is sold to another distributor."

3. Interested persons are asked to note that there is no change in the amount of assessment proposed for fiscal year 1980 through 1981. The purpose of the amendment is merely to change the effective dates from July 1, 1979 through June 30, 1980 to July 1, 1980 through June 30, 1981.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Department of Business Regulation, 805 North Main, Helena, Montana 59601, no later than April 30, 1980.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit along with any written comments he has to above address, no later than April 30, 1980.

6. If the agency receives requests for a public hearing on the proposed amendment for more than 10 percent or 25 or more persons who are directly affected by the proposed amendment, or from the administrative code committee of the legislature, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 32 persons based on an estimate of 323 resident and nonresident producers, producer-distributors, and jobbers subject to this assessment.

7. The authority of the agency to make the proposed amendment is based on Section 81-23-202, MCA, and implements Section 81-23-202, MCA.

Kent Kleinkopf, Director
Department of Business Regulation

By: K. M. Kelly

K. M. Kelly, Administrator
Milk Control Division

Certified to the Secretary of State MAY 12, 1980.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amend-) NOTICE OF PROPOSED AMENDMENT
ment of Rule 12-2.10(14)-) OF A RULE RELATING TO WATER
S10190 relating to water) SAFETY REGULATIONS
safety regulations) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Interested Persons.

1. At its first meeting after April 28, 1980, the Montana Fish and Game Commission proposes to amend Rule 12-2.10(14)-S10190 relating to water safety regulations.

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

12-2.10(14)-S10190 WATER SAFETY REGULATIONS (1) In the interest of public health, safety, or protection of property, the following regulations concerning the public use of certain waters of the state of Montana are hereby adopted and promulgated by the Montana fish and game commission.

(a) The following waters are closed to use of any motor-propelled water craft except in case of use for official patrol, search and rescue craft, or for scientific purposes:

~~Wood-Lake---Lewis-and-Clark-County~~
~~Arapooish-Access-Area---Big-Horn-County-~~
~~Peys-Reservoir---Toole-County~~
~~Axtman-Reservoir---Toole-County~~
~~Fitzpatrick-Reservoir---Toole-County~~
~~Henry-Reservoir---Toole-County~~
~~Twin-lakes---Ravalli-County-~~
~~Big-Hole-River~~
~~Smith-River~~

~~Forest-Lake---Monger-County~~
~~Harpers-Lake---Missoula-County~~
~~Frenchtown-Pond---Missoula-County~~
~~Bear-Mouth-Rest-Area-Pond---Granite-County~~
~~Branum-Pond---Custer-County~~
~~Park-Lake---Jefferson-County~~
~~Bearpaw-lake---Hill-County~~
~~Gartside-Reservoir---Richland-County~~

<u>Beaverhead county:</u>	<u>Big Hole river</u>
<u>Big Horn county:</u>	<u>Arapooish access area</u>
<u>Cascade county:</u>	<u>Smith river</u>
<u>Custer county:</u>	<u>Branum pond</u>
<u>Deer Lodge county:</u>	<u>Big Hole river</u>
<u>Granite county:</u>	<u>Bear Mouth rest area pond</u>
<u>Hill county:</u>	<u>Bearpaw lake</u>
<u>Jefferson county:</u>	<u>Park lake</u>

<u>Lewis & Clark county:</u>	<u>Wood lake</u>
<u>Madison county:</u>	<u>Big Hole river</u>
<u>Meagher county:</u>	<u>Forest lake</u>
	<u>Smith river</u>
<u>Missoula county:</u>	<u>Frenchtown pond</u>
	<u>Harpers lake</u>
<u>Ravalli county:</u>	<u>Twin lakes</u>
<u>Richland county:</u>	<u>Gartside reservoir</u>
<u>Silver Bow county:</u>	<u>Big Hole river</u>
<u>Toole county:</u>	<u>Axtman reservoir</u>
	<u>Feys reservoir</u>
	<u>Fitzpatrick reservoir</u>
	<u>Henry reservoir</u>

(b) (i) (ii) remains the same. (Note proposed amendment at page 448 of Montana Administrative Register, issue No. 3.)

(c) The following waters are limited to a controlled no wake speed. No wake speed is defined as a speed whereby there is no "white" water in the track or path of the vessel or in created waves immediate to the vessel:

~~Bigfork-Bay---Flathead-County~~
~~Upper-Carter-Pond---Fergus-County~~
~~Lower-Carter-Pond---Fergus-County~~
~~Cooney-Reservoir---Carbon-County---all-of-Willow~~
~~Creek-arm-as-buoyed~~
~~Canyon-Ferry-Reservoir---Lewis-&-Clark-County-and-Broad-~~
~~water-County---in-the-area-of-Yacht-Basin,-Cave-Bay,~~
~~Goose-Bay,-White-Earth,-and-Little-Hellgate-within-300~~
~~feet-of-the-docks-or-as-buoyed~~
~~Clearwater-river---Missoula-County---from-Camp-Paxson-~~
~~swim-dock-downstream-to-first-bridge~~
~~Hauser-Reservoir---Lewis-&-Clark-County---in-the-area-~~
~~of-Lakeside-Marina-within-300-feet-of-the-docks-or-as~~
~~buoyed-~~

<u>Broadwater county:</u>	(A) <u>on Canyon Ferry reservoir:</u> <u>White Earth and</u> <u>Goose bay, within 300 feet</u> <u>of dock or as buoyed;</u>
<u>Carbon county:</u>	(A) <u>on Cooney reservoir: all of</u> <u>Willow creek arm as buoyed;</u>
<u>Fergus county:</u>	(A) <u>upper & lower Carter ponds;</u> (B) <u>Crystal lake 5:00 a.m. to</u> <u>10:00 a.m. and 7:00 p.m. to</u> <u>11:00 p.m. each day;</u>
<u>Flathead county:</u>	(A) <u>on Flathead lake:</u> <u>Bigfork bay and</u> <u>Beaver lake (near Whitefish)</u> <u>5:00 a.m. to 10:00 a.m. and</u> <u>7:00 p.m. to 11:00 p.m.</u> <u>each day;</u>

Lewis & Clark county: (A) on Canyon Ferry reservoir:
Yacht basin, Cave bay, Little
Hellgate, MAGPIE BAY, and
CARP BAY within 300 feet of
dock or as buoyed;

(B) on Hauser reservoir; Lakeside
marina and BLACK SANDY BEACH
within 300 feet of the docks
or as buoyed;

(C) ON UPPER HOLTER LAKE:
GATES OF MOUNTAINS MARINA
WITHIN 300 FEET OF DOCKS
OR AS BUOYED;

(D) ON HOLTER LAKE: BUREAU OF
LAND MANAGEMENT BOAT LANDING
AS BUOYED;

Lincoln county:

(A) Savage lake during the hours of
5:00 a.m. to 10:00 a.m. and from
7:00 p.m. to 11:00 p.m. each day;

Missoula county:

(A) Clearwater river from Camp
Paxson swim dock downstream to
first bridge;

(B) ON HOLLAND LAKE: HOLLAND LAKE
LODGE AND THE BAY LOOP CAMP-
GROUND WITHIN 300 FEET OR AS
BUOYED.

~~(d)--The following waters are limited to a controlled~~
~~no-wake-speed-during-the-hours-of-5:00-a.m.-to-10:00-a.m.-and~~
~~from-7:00-p.m.-to-11:00-p.m.-each-day:~~

~~Beaver-lake-(near-Whitefish)---Flathead-County~~

~~Crystal-lake---Pergus-County~~

~~Savage-lake---Lincoln-County~~

(e) (d) On the following waters all boats pulling,
taking off with, and landing water skiers will travel in a
general, consistent counterclockwise direction:

~~Alva-lake---Missoula-County~~

~~Inez-lake---Missoula-County~~

~~Seeley-lake---Missoula-County-~~

Missoula county:

Alva lake

Inez lake

Seeley lake

3. The proposed amendments do not materially change the
rule but eliminate unnecessary wording and clarify the areas
by rearrangement. The additional areas are shown in upper
case and were added to further public safety.

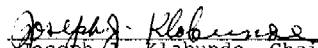
4. Interested parties may submit their data, views, or
arguments concerning the proposed amendments in writing to
Robert F. Wambach, Director, Department of Fish, Wildlife,

and Parks, 1420 E. 6 Avenue, Helena, Mt. 59601 no later than April 25, 1980.

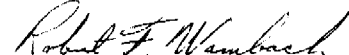
5. If a person who is directly affected by the proposed amendments wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments to Dr. Wambach at the above address no later than April 25, 1980.

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

7. The authority of the commission to make the proposed amendments is based upon 87-1-303 and 23-1-106(1), MCA, and implements sections 87-1-303 and 23-1-106(1), MCA.


Joseph D. Klabunde, Chairman
Montana Fish & Game Commission

Attest:


Robert F. Wambach, Secretary
Montana Fish & Game Commission

Certified to Secretary of State 5 - 17, 1980

6-3/27/80

MAR Notice No. 12-2-89

BEFORE THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS
OF THE STATE OF MONTANA

In the matter of the repeal)	NOTICE OF PROPOSED REPEAL
of Rule 12-2.6(3)-S6170)	OF RULE 12-2.6(3)-S6170
relating to bird art stamp)	REGARDING BIRD ART STAMP
contest rules)	CONTEST RULES
)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On April 28, 1980, the Department of Fish, Wildlife, and Parks proposes to repeal Rule 12-2.6(3)-S6170 relating to bird art stamp contest rules.

2. The rule as proposed to be repealed is on page 12-18.5 of the Administrative Rules of Montana, and as amended at page 879 of the 1979 Montana Administrative Register, issue number 16.

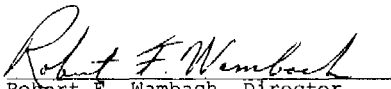
3. The department is proposing to repeal this rule because the change of license format makes the artwork incompatible with the new license forms; because of the difficulty in handling two documents for the bird license by license agents; the confusion that would result on the part of the agents and sportsmen over what is the actual license; and the increased cost of the additional bookkeeping and accounting for the artwork stamp.

4. Interested parties may submit their data, views, or arguments concerning the proposed repeal in writing to Robert F. Wambach, Director, Department of Fish, Wildlife, and Parks, 1420 E. 6 Avenue, Helena, Montana 59601. Written comments in order to be considered must be received no later than April 25, 1980.

5. If a person who is directly affected wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request along with any written comments to Dr. Wambach at the above-stated address no later than April 25, 1980.

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

7. The authority of the department to make the proposed repeal is based on Sec. 87-1-201, MCA, and implements Sec. 87-2-107, MCA.


Robert F. Wambach, Director
Dept. of Fish, Wildlife & Parks

Certified to Secretary of State March 17, 1980

6-3/27/80

MAR Notice No. 12-2-90

BEFORE THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS
OF THE STATE OF MONTANA

In the matter of the repeal) NOTICE OF PROPOSED REPEAL
of Rule 12-2.6(3)-S6180) OF RULE 12-2.6(3)-S6180
relating to sale of unused or) REGARDING SALE OF UNUSED
outdated bird art stamps) OR OUTDATED BIRD ART STAMPS
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Interested Persons.

1. On April 28, 1980, the Department of Fish, Wildlife, and Parks proposes to repeal Rule 12-2.6(3)-S6180.

2. The rule as proposed to be repealed is found on page 12-18.7 of the Administrative Rules of Montana.

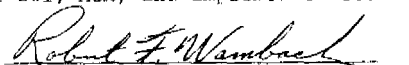
3. The department is proposing to repeal this rule on the sale of bird art stamps because if the proposed repeal of the artwork contest rule becomes effective, there will be no bird art stamps available from the department, and therefore no need for a policy related to the sale thereof.

4. Interested parties may submit their data, views, or arguments concerning the proposed repeal in writing to Robert F. Wambach, Director, Department of Fish, Wildlife, and Parks, 1420 E. 6 Avenue, Helena, Montana 59601. Written comments in order to be considered must be received no later than April 25, 1980.

5. If a person who is directly affected wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request along with any written comments to Dr. Wambach at the above-stated address no later than April 25, 1980.

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

7. The authority of the department to make the proposed repeal is based on Sec. 87-1-201, MCA, and implements Sec. 87-2-107, MCA.


Robert F. Wambach, Director
Dept. of Fish, Wildlife & Parks

Certified to Secretary of State March 17, 1980

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amend-) NOTICE OF PUBLIC HEARING FOR
ment of Rule 12-2.10(14)-) AMENDMENT OF RULE RELATING
S10190 relating to water) TO WATER SAFETY REGULATIONS
safety regulations)

TO: All Interested Persons.

The notice of proposed agency action published in the Montana Administrative Register on February 14, 1980 is amended as follows because the required number of persons designated therein requested a public hearing.

1. On April 22, 1980, at 7:30 p.m., a public hearing will be held at the Broadwater Co. Courthouse, Townsend, Mt. to consider the amendment of a rule which opens a portion of the Missouri River to use by motorboats with over 10 h.p.motors.

2. The proposed amendment provides as follows:

12-2.10(14)-S10190 WATER SAFETY REGULATIONS

(1) through (a) remains the same.

(b) The following waters are closed to the use of all boats propelled by machinery of over 10 horsepower, except in cases of use for search and rescue, official patrol, or for scientific purposes:

(i) All rivers and streams in the following counties east of the continental divide:

Silver Bow	<u>Gallatin-Exception: Missouri down-</u>
Beaverhead	<u>river from Headwaters state park</u>
Jefferson	<u>Park-Exception: Yellowstone down-</u>
Gallatin	<u>river from Interstate 90 bridge at</u>
Madison	<u>Livingston</u>
	<u>Broadwater-Exception: Missouri down-</u>
	<u>river from Toston-dam the Broadwater-</u>
	<u>Gallatin county line</u>

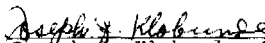
(remainder of the rule remains the same)


3. The rule is proposed to be amended in the interests of providing increased recreational opportunity to the general public.

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 Robert F. Wambach, Director, Department of Fish, Wildlife & Parks, 1420 E. 6 Avenue, Helena, Mt. 59601 no later than April 25, 1980.

5. F. Woodside Wright, Department Attorney, 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 87-1-303 and 23-1-106(1), MCA, and implements sections 87-1-303 and 23-1-106(1), MCA.


Joseph J. Klabunde, Chairman
Montana Fish & Game Commission


Robert F. Wambach, Director
Dept. of Fish, Wildlife & Parks

Certified to Secretary of State March 17, 1980

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

In the matter of the amendment) NOTICE OF PUBLIC HEARING
of rule ARM 16-2.14(10)-S14480) ON PROPOSED AMENDMENT OF
regarding surface water) RULE ARM 16-2.14(10)-S14480
quality standards) (Surface Water Quality
Standards)

TO: All Interested Persons

1. On May 9, 1980, at 9:00 a.m., or as soon thereafter as possible, a public hearing will be held in the Highway Department Auditorium, 2701 Prospect Helena, Montana, to consider the amendment of rule ARM 16-2.14(10)-S14480.

2. The proposed amendment replaces parts of the present rule 16-2.14(10)-S14480 found in the Administrative Rules of Montana. The proposed amendment would clarify, delete, and consolidate language in the present rule, add to and modify the definitions, and create a new surface water classification.

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

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

(1) Policy statement. The following standards are adopted to establish maximum allowable changes in water quality and to establish limits for a basis for limiting the discharge of pollutants which affect prescribed beneficial uses of state surface waters. The department Board adopts as a rule the policy that best practicable treatment and control of wastes, activity activities and flows is-to must be provided to maintain and improve dissolved-oxygen-and-overall water quality at to the highest possible practicable levels, and water-temperatures,-coliform-bacteria-concentrations,- dissolved-chemical-substances,-toxic-materials,-radioactivity,- turbidities,-color,-odor-and-other-deleterious-substances-at the-lowest-possible-levels.

~~43~~(2) Definitions. ~~Unless-statutory-definition-or-the context-otherwise-requires~~ In this rule the following terms shall have the meanings indicated below and shall be supplemental to the definitions given in Section 75-5-103 MCA.

(a) "Conventional water treatment" means in order of application the processes of coagulation, sedimentation, filtration and chlorination. If determined necessary by the department it also includes taste and odor control and lime softening.

(b) "Conduit" means any artificial or natural duct, either open or closed, for capable of conveying liquids or pollutants other-fluids.

(c) "Dewatered stream" means a perennial or intermittent stream whose from which water has been removed for one or more beneficial uses.

(d) "EPA" means the U.S. Environmental Protection Agency.

(e) "Ephemeral stream" means a stream or part of a stream which flows only in direct response to precipitation in the immediate water-shed or in response to the melting of a cover of snow and ice and whose channel bottom is always above the local water table.

(f) "Intermittent stream" means a stream or portion reach of a stream that flows only in direct response to precipitation; it receives little or no water from springs and no long continued supply from melting snow or other sources; is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

(g) "Mixing zone" means that volume of state water wherein any pollutant may exceed allowable water quality standards; the area of a water body contiguous to an effluent with characteristics qualitatively or quantitatively different from those of the receiving water. The mixing zone is a place where effluent and receiving water mix and not a place where effluents are treated. Water quality standards do not apply in the mixing zone for those parameters regulated by a MPDES or NPDES permit.

(h) "MPDES" means the Montana Pollutant Discharge Elimination System.

(i) "NPDES" means the National Pollutant Discharge Elimination System.

(j) "Naturally occurring" means conditions or material present from runoff or percolation over which man has no control or from developed land where all reasonable land, soil and water conservation practices have been applied. Conditions resulting from the reasonable operation of dams in existence as of July 1, 1971 are natural.

(k) "Nonpoint source" means the source of pollutants which originates from diffuse runoff, seepage, drainage, or infiltration.

(l) "Pesticide" means insecticides, herbicides, rodenticides, fungicides or any substance or mixture of substances intended for preventing, destroying, controlling, repelling, altering life processes, or mitigating any insects, rodents, nematodes, fungi, weeds and other forms of plant or animal life.

(m) "Pollutants" means sewage, industrial wastes and other wastes as defined in Sections 75-5-103(1)(2)(3), MCA.

~~"Residue" means oils, floating solids and sludge deposits;~~

(n) "Sediment" means solid material settled from suspension in a liquid; mineral or organic solid material that is being transported or has been moved from its site of origin by air, water or ice and has come to rest on the earth's surface, either above or below sea level; or inorganic

or organic particles originating from weathering, chemical precipitation or biological activity.

(o) "Settleable solids" means inorganic or organic particles that are being transported or have been transported by water from the site or sites of origin and are settled or are capable of being settled from suspension.

(p) "Sewer" means a pipe or conduit that carries wastewater or drainage water.

(q) ~~"State waters" means any body of water, irrigation system or drainage system, either surface or underground. This section shall not apply to irrigation waters where the waters are used up within the irrigation system and said waters are not returned to any other state waters. The term "state waters" as used in this rule does not include underground waters.~~ "Surface waters" means any waters on the earth's surface, including but not limited to, streams, lakes, ponds, and reservoirs; and irrigation and drainage systems discharging directly into a stream, lake, pond, reservoir or other surface water. Water bodies used solely for treating, transporting or impounding pollutants shall not be considered surface water.

(r) "Storm sewer" or "storm drain" means a sewer pipe or conduit that carries storm water and surface water and street wash washings and other wash waters, or drainage but ~~excludes sewage and industrial wastes.~~

(s) "True color" means the color of water from which the turbidity has been removed.

(t) "Turbidity" means a condition in water or wastewater caused by the presence of suspended matter resulting in the scattering and absorption of light rays.

~~(2)(3) Application and composition of surface water quality standards. The water quality standards are composed of water-use classifications (section (4)), water-use descriptions and specific water quality criteria (section (5)), and general water quality criteria (section (6)).~~

(a) ~~General water quality criteria apply to all state waters except where in this rule specific water quality criteria are more applicable to a specific water use classification.~~ The standards in this rule are adopted to establish maximum allowable changes in surface water quality and to establish a basis for limiting the discharge of pollutants which affect prescribed beneficial uses of surface waters.

(b) ~~In order to carry out the objective of the rule, existing discharges to state waters shall be brought into compliance with the standards as soon as practicable, and in no case later than three years from the effective date of the rule.~~ The surface water quality standards are composed of all subsections of this rule.

~~45~~(4) Water-use description and specific surface water quality criteria standards.

(a) General. Specific surface water quality criteria standards, along with ~~criteria~~ general provisions in section ~~46~~(5) protect the beneficial water uses set forth in the water-use descriptions for the following classifications of water. Criteria Standards for organisms of the coliform group are based on a minimum of five samples obtained during separate 24-hour periods during any consecutive 30-day period analyzed by the most probable number or equivalent membrane filter methods. ~~The metal limits on the Clark Fork River (section 6) are to govern when this section (5) imposes a conflicting requirement with that criteria.~~

(b) A-Closed classification.

(i) ~~Water-use description.~~ Water supply Waters classified A-Closed are suitable for drinking, culinary and food processing purposes ~~suitable for use~~ after simple disinfection. ~~Public access and activities such as livestock grazing and timber harvest are to be controlled by the utility owner under conditions prescribed and orders issued by the department. Only those waters on which access is presently controlled by the utility owner have been classified as A-Closed. If other uses are permitted, the waters are to be reclassified A-Open-B₁.~~

(ii) For waters classified A-Closed the following specific water quality criteria standards shall not be violated by any person;

~~46~~(A) The average geometric mean number of organisms in the coliform group ~~is must not to~~ exceed 50 per 100 milliliters.

(ab) (B) Dissolved oxygen criteria are not applicable for the classification.

(ac) (C) No change from natural pH is allowed.

(ad) (D) No increase above naturally occurring turbidity is allowed.

(ae) (E) No increase above naturally occurring water temperature is allowed.

(af) (F) No increases are allowed above naturally occurring concentrations of sediment, settleable solids, ~~or residues~~ oils, or floating solids, ~~which adversely affect the use indicated, are allowed~~ which will or are likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.

(G) No increase in true color is allowed.

(ag) (H) No increases of toxic or other deleterious substances, pesticides and organic and inorganic materials including heavy metals, above naturally occurring concentrations, are allowed.

(ah) (I) ~~No wastes are allowed which~~ increase in radio-activity above natural background levels is allowed.

(c) A-Open-B-1 A-1 classification.

(i) Water-use description--Water supply Waters classified A-1 are suitable for drinking, culinary and food processing purposes ~~suitable for use after simple disinfection and conventional treatment for~~ removal of naturally present impurities. Water quality ~~is to~~ must be maintained suitable for bathing, swimming and recreation; growth and propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply. ~~Where the waters are used for swimming or other water contact sports, analyses are to be made by the utility owner and the department to determine if a higher degree of treatment is required for potable water use.~~

~~Waters, if shown to meet the A-Closed criteria, may be so classified by the department at the request of the utility owner--State waters within the boundaries of national parks and nationally designated wild, wilderness or primitive areas in the state are classified A-Open-B-1 except these adjacent to developed areas such as Snyder Creek through the Community of Lake McDonald and Swift current Creek below the Mary Glacier Chalet, both in Glacier National Park--Also, Georgetown, Flathead and Whitefish lakes and Lake Mary-Ronan are classified A-Open-B-1 as are some streams presently used for domestic water supply--~~

(ii) For waters classified A-1 the following specific water quality criteria standards shall not be violated by any person:

(aa) (A) The average geometric mean number of organisms in the coliform group ~~is must~~ not ~~to~~ exceed 50 per 100 milliliters ~~where demonstrated to be the if~~ resulting of from domestic sewage.

(ab) (B) Dissolved oxygen concentration ~~is must~~ not to be reduced below 7.0 milligrams per liter.

(ae) (C) Induced variation of hydrogen ion concentration (pH) within the range of 6.5 to 8.5 ~~is to~~ must be less than 0.5 pH unit. Natural pH outside this range ~~is to~~ must be maintained without change. Natural pH above 7.0 ~~is to~~ must be maintained above 7.0.

(ad) (D) No increase above naturally occurring turbidity is allowed except as permitted in section (5).

(ae) (E) A 1° F maximum increase above naturally occurring water temperature is allowed within the range of 32° F to 66° F; within the naturally occurring range of 66° F to 66.5° F, no discharge is allowed which will cause the water temperature to exceed 67° F; and where the naturally occurring water temperature is 66.5° F or greater, the maximum allowable increase in water temperature is 0.5° F. A 2° F per hour

maximum decrease below naturally occurring water temperature is allowed when the water temperature is above 55° F. and a 2° F maximum decrease below naturally occurring water temperature is allowed within the range of 55° F to 32° F.

(af) (F) No increases are allowed above naturally occurring concentrations of sediment, settleable solids, ~~or residues- oils, or floating solids, which adversely affect the-use-indicated, are-allowed will or are likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.~~

(ah) (G) True color ~~is must~~ not ~~to~~ be increased more than two units above naturally occurring color.

(ag) (H) Concentrations of toxic or other deleterious substances, ~~pesticides and organic and inorganic materials including heavy metals, after treatment for domestic use, are not to exceed the recommended limits established in the 1962 U.S. Public Health Service Drinking Water Standards or subsequent editions, an increase of more than 10 percent of the concentration present in the receiving water is not allowed, also~~ which would remain in the water after conventional water treatment must not exceed the maximum contaminant levels set forth in the 1975 National Interim Primary Drinking Water Standards (40 CFR Part 141) or subsequent revisions or the 1979 National Secondary Drinking Water Standards (40 CFR Part 143) or subsequent revisions. ~~maximum allowable concentrations are to be less than acute or chronic problem levels as revealed by bioassay or other methods.~~ For the other designated beneficial uses the concentrations of toxic or deleterious substances must not exceed the levels listed in Quality Criteria for Water, published by the Office of Water And Hazardous Materials, EPA, Washington D.C. (The Red Book) unless it is demonstrated to the Department that higher values will not cause acute or chronic problems. The "Red Book" criteria for domestic water supplies do not apply.

(d) ~~B-B1~~ B-1 classification

(i) ~~Water-use description--The quality is to be maintained~~ Waters classified B-1 are suitable for drinking, culinary and food processing purposes, after adequate conventional treatment; ~~equal to coagulation, sedimentation, filtration, disinfection and any additional treatment necessary to remove naturally present impurities;~~ bathing, swimming and recreation; growth and propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply.

(ii) For waters classified B-1 the following specific water quality ~~criteria~~ standards shall not be violated by any person:

(aa)(A) The average geometric mean number of organisms in the fecal coliform group ~~is must not to~~ exceed 200 per 100 milliliters, nor are 10 percent of the total samples during any 30-day period to exceed 400 fecal coliforms per 100 milliliters. ~~The average number of organisms in the coliform group is not to exceed 1,000 per 100 milliliters; nor are 20 percent of the samples to exceed 1,000 coliforms per 100 milliliters during any 30-day period.~~

(ab)(B) Dissolved oxygen concentration is must not to be reduced below 7.0 milligrams per liter.

(ae)(C) Induced variation of hydrogen ion concentration (pH) within the range of 6.5 to 8.5 ~~is to~~ must be less than 0.5 pH unit. Natural pH outside this range ~~is to~~ must be maintained without change. Natural pH above 7.0 ~~is to~~ must be maintained above 7.0.

(ad)(D) The maximum allowable increase above naturally occurring turbidity is 5 Jackson-Candle nephelometric turbidity units except as is permitted in the general water quality criteria section (5)

(aeE) A 1° F maximum increase above naturally occurring water temperature is allowed within the range of 32° F to 66° F; within the naturally occurring range of 66° F to 66.5° F, no discharge is allowed which will cause the water temperature to exceed 67° F; and where the naturally occurring water temperature is 66.5° F or greater, the maximum allowable increase in water temperature is 0.5° F. A 2° F per hour maximum decrease below naturally occurring water temperature is allowed when the water temperature is above 55° F, and a 2° F maximum decrease below naturally occurring water temperature is allowed within the range of 55° F to 32° F. This applies to all waters in the state classified B-B₁ B-1 except for Prickly Pear Creek from McClellan Creek to the Montana Highway No. 433 crossing where a 2° F maximum increase above naturally occurring water temperature is allowed within the range of 32° F to 65° F; within the naturally occurring range of 65° F to 66.5° F, no discharge is allowed which will cause the water temperature to exceed 67° F; and where the naturally occurring water temperature is 66.5° F or greater, the maximum allowable increase in water temperature is 0.5° F.

(af)(F) No increases are allowed above naturally occurring concentrations of sediment, settleable solids, ~~or residues~~ oils, or floating solids, which adversely affect the use indicated, are allowed will or are likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.

(ah)(G) True color ~~is must not to~~ be increased more than five units above naturally occurring color.

(ag) (H) Concentrations of toxic or other deleterious substances, pesticides and organic and inorganic materials including heavy metals, after treatment for domestic use, are not to exceed the recommended limits contained in the 1962 U.S. Public Health Service Drinking Water Standards or subsequent editions; also which would remain in the water after conventional water treatment must not exceed the maximum contaminant levels set forth in the 1975 National Interim Primary Drinking Water Standards (40 CFR Part 141) or subsequent revisions or the 1979 National Secondary Drinking Water Standards (40 CFR Part 143) or subsequent revisions. maximum allowable concentrations are to be less than acute or chronic problem levels as revealed by bioassay or other methods. For the other designated beneficial uses the concentrations of toxic or deleterious substances must not exceed the levels listed in Quality Criteria for Water published by the Office of Water And Hazardous Materials, EPA, Washington D.C. (The Red Book) unless it is demonstrated to the Department that higher values will not cause acute or chronic problems. The "Red Book" criteria for domestic water supplies do not apply.

(e) B-B, B-2 classification.

(i) Water-use description. -- The quality is to be maintained Waters classified B-2 are suitable for drinking, culinary and food processing purposes, after adequate conventional treatment; equal to coagulation, sedimentation, filtration, disinfection and any additional treatment necessary to remove naturally present impurities; bathing, swimming and recreation; growth and marginal propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply.

(ii) For waters classified B-2 the following specific water quality criteria standards shall not be violated by any person:

(aa) (A) The average geometric mean number of organisms in the fecal coliform group is must not to exceed 200 per 100 milliliters, nor are 10 percent of the total samples during any 30-day period to exceed 400 fecal coliforms per 100 milliliters, The average number of organisms in the coliform group is not to exceed 1,000 per 100 milliliters; nor are 20 percent of the samples to exceed 1,000 coliforms per 100 milliliters during any 30-day period.

(ab) (B) Dissolved oxygen concentration is must not to be reduced below 7.0 milligrams per liter from October 1 through June 1 nor below 6.0 milligrams per liter from June 2 through September 30.

(ac) (C) Induced variation of hydrogen ion concentration (pH) within the range of 6.5 to 9.0 is to must be less than 0.5 pH unit. Natural pH outside this range is to must be

maintained without change. Natural pH above 7.0 ~~is to~~
must be maintained above 7.0.

(ad) (D) The maximum allowable increase above naturally occurring turbidity is 10 ~~Jackson-Candle~~ nephelometric turbidity units except as is permitted in ~~the general water quality criteria~~ section (5).

(ae) (E) A 1° F maximum increase above naturally occurring water temperature is allowed within the range of 32° F to 66° F; within the naturally occurring range of 66° F to 66.5° F, no discharge is allowed which will cause the water temperature to exceed 67° F; and where the naturally occurring water temperature is 66.5° F or greater, the maximum allowable increase in water temperature is 0.5° F. A 2° F per hour maximum decrease below naturally occurring water temperature is allowed when the water temperature is above 55° F, and a 2° F maximum decrease below naturally occurring water temperature is allowed within the range of 55° F to 32° F.

(af) (F) No increases are allowed above naturally occurring concentrations of sediment, settleable solids, ~~or residues~~ oils, or floating solids, which adversely affect the use indicated, are allowed will or are likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.

(ah) (G) True color ~~is must not to~~ be increased more than five units above naturally occurring color.

(ag) (H) Concentrations of toxic or other deleterious substances, ~~pesticides and organic and inorganic materials including heavy metals, after treatment for domestic use, are not to exceed the recommended limits contained in the 1962 U.S. Public Health Service Drinking Water Standards or subsequent editions, also~~ which would remain in the water after conventional water treatment must not exceed the maximum contaminant levels set forth in the 1975 National Interim Primary Drinking Water Standards (40 CFR Part 141) or subsequent revisions or the 1979 National Secondary Drinking Water Standards (40 CFR Part 143) or subsequent revisions. maximum allowable concentrations are to be less than acute or chronic problem levels as revealed by bioassay or other methods. For the other designated beneficial uses the concentrations of toxic or deleterious substances must not exceed the levels listed in Quality Criteria for Water, published by the Office of Water And Hazardous Materials, EPA, Washington D.C. (The Red Book) unless it is demonstrated to the Department that higher values will not cause acute or chronic problems. The "Red Book" criteria for domestic water supplies do not apply.

(f) B-B₂ B-3 classification.

(i) ~~Water use description--The quality is to be main-~~

tained Waters classified B-3 are suitable for drinking, culinary and food processing purposes, after adequate conventional treatment; equal-to-coagulation, sedimentation, filtration, disinfection and any additional treatment necessary to remove naturally present impurities; bathing, swimming and recreation; growth and propagation of non-salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply.

(ii) For waters classified B-3 the following specific water quality criteria standards shall not be violated by any person:

(aa) (A) The average geometric mean number of organisms in the fecal coliform group is must not to exceed 200 per 100 milliliters, nor are 10 percent of the total samples during any 30-day period to exceed 400 fecal coliforms per 100 milliliters. The average number of organisms in the coliform group is not to exceed 1,000 per 100 milliliters, nor are 20 percent of the samples to exceed 1,000 coliforms per 100 milliliters during any 30-day period.

(ab) (B) Dissolved oxygen concentration is must not to be reduced below 5.0 milligrams per liter.

(ac) (C) Induced variation of hydrogen ion concentration (pH) within the range of 6.5 to 9.0 is-to must be less than 0.5 pH unit. Natural pH outside this range is-to must be maintained without change. Natural pH above 7.0 is-to must be maintained above 7.0.

(ad) (D) The maximum allowable increase above naturally occurring turbidity is 10 Jackson-Candle nephelometric turbidity units except as is permitted in the general water quality criteria section (5).

(ae) (E) A 3° F maximum increase above naturally occurring water temperature is allowed within the range of 32° F to 77° F; within the naturally occurring range of 77° F to 79.5° F, no thermal discharge is allowed which will cause the water temperature to exceed 80° F; and where the naturally occurring water temperature is 79.5° F or greater, the maximum allowable increase in water temperature is 0.5° F. A 2° F per hour maximum decrease below naturally occurring water temperature is allowed when the water temperature is above 55° F, and a 2° F maximum decrease below naturally occurring water temperature is allowed within the range of 55° F to 32° F. This-applies-to These allowable increases apply to all waters in the state classified B-B₃, B-3, except for the mainstem of the Yellowstone River from the Billings water supply intake to the water diversion at Intake, where a 3° F maximum increase above naturally occurring water temperature is allowed within the range of 32° F to 79° F; within the range of 79° F to 81.5° F, no thermal discharge is allowed which will cause the water temperature to exceed 82° F; and where the naturally occurring water

temperature is 81.5° F or greater, the maximum allowable increase in water temperature is 0.5° F. From the water diversion at Intake to the North Dakota state line, a 3° F maximum increase above naturally occurring water temperature is allowed within the range of 32° F to 82° F; within the range of 82° F to 84.5° F, no thermal discharge is allowed which will cause the water temperature to exceed 85° F; and where the naturally occurring water temperature is 84.5° F or greater, the maximum allowable increase in water temperature is 0.5° F.

(af)(F) No increases are allowed above naturally occurring concentrations of sediment, settleable solids, or residues oils, or floating solids, which adversely affect the use indicated, are allowed will or are likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.

(ah)(G) True color is must not to be increased more than five units above naturally occurring color.

(ag)(H) Concentrations of toxic or other deleterious substances, pesticides and organic and inorganic materials including heavy metals, after treatment for domestic use are not to exceed the recommended limits contained in the 1962 U.S. Public Health Service Drinking Water Standards or subsequent editions, also which would remain in the water after conventional water treatment must not exceed the maximum contaminant levels set forth in the 1975 National Interim Primary Drinking Water Standards (40 CFR Part 141) or subsequent revisions or the 1979 National Drinking Water Standards (40 CFR Part 143) or subsequent revisions. maximum allowable concentrations are to be less than acute or chronic problem levels as revealed by bioassay or other methods. For the other designated beneficial uses the concentrations of toxic or deleterious substances must not exceed the levels listed in Quality Criteria for Water, published by the Office of Water And Hazardous Materials, EPA, Washington D.C. (The Red Book) unless it is demonstrated to the Department that higher values will not cause acute or chronic problems. The "Red Book" criteria for domestic water supplies do not apply.

(g) ~~E-B1~~ C-1 classification.

(i) Water-use description--The quality is to be maintained Waters classified C-1 are suitable for bathing, swimming and recreation; growth and propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply.

(ii) For waters classified C-1 the following specific water quality criteria standards shall not be violated by any person:

(aa)(A) The average geometric mean number of organisms in the fecal coliform group ~~is must not to exceed 200 per 100 milliliters, nor are 10 percent of the total samples during any 30-day period to exceed 400 fecal coliforms per 100 milliliters. The average number of organisms in the coliform group is not to exceed 1,000 per 100 milliliters during any 30-day period.~~

(ab)(B) Dissolved oxygen concentration ~~is must not to be~~ reduced below 7.0 milligrams per liter.

(ac)(C) Induced variation of hydrogen ion concentration (pH) within the range of 6.5 to 8.5 ~~is to~~ must be less than 0.5 pH unit. Natural pH outside this range ~~is to~~ must be maintained without change. Natural pH above 7.0 ~~is to~~ must be maintained above 7.0.

(ad)(D) The maximum allowable increase above naturally occurring turbidity is 5 ~~Jackson-Candle nephelometric turbidity units except as is permitted in the general water quality criteria section (5).~~

(ae)(E) A 1° F maximum increase above naturally occurring water temperature is allowed within the range of 32° F to 66° F; within the naturally occurring range of 66° F to 66.5° F, no discharge is allowed which will cause the water temperature to exceed 67° F; and where the naturally occurring water temperature is 66.5° F or greater, the maximum allowable increase in water temperature is 0.5° F. A 2° F per hour maximum decrease below naturally occurring water temperature is allowed when the water temperature is above 55° F, and a 2° F maximum decrease below naturally occurring water temperature is allowed within the range of 55° F to 32° F.

(af)(F) No increases are allowed above naturally occurring concentrations of sediment, settleable solids, ~~or residues~~ oils, or floating solids, which ~~adversely affect the use indicated, are allowed will or are likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.~~

(ah)(G) True color ~~is must not to~~ be increased more than five units above naturally occurring color.

(ag)(H) Concentrations of toxic or ~~ether~~ deleterious substances, pesticides and organic and inorganic materials including heavy metals, ~~are must not to exceed levels known or demonstrated to be of public health significance; also maximum allowable concentrations are to be less than acute or chronic problem levels as revealed by bioassay or other methods.~~ For the designated uses the concentrations of toxic or deleterious substances must not exceed the levels listed in Quality Criteria for Water, published by the Office of Water and Hazardous Materials, EPA, Washington D.C. (The "Red Book") unless it is demonstrated to the

Department that higher values will not cause acute or chronic problems. The "Red Book" criteria for domestic water supplies do not apply.

In the segment of the Clark Fork River classified C-1, the parameter limits set forth below apply rather than the limits listed for these parameters in the Red Book:

Parameter	Maximum Instantaneous Concentration ug/l
Total copper	90
Total zinc	300
Total iron	1300
Total lead	100
Total cadmium	10
Total arsenic	50
Total mercury	1

(h) E-B2 C-2 classification.

(i) Water-use-description--The quality is to be maintained Waters classified C-2 are suitable for bathing, swimming and recreation; growth and marginal propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply.

(ii) For waters classified C-2 the following specific water quality criteria standards shall not be violated by any person:

(aa) (A) The average geometric mean number of organisms in the fecal coliform group is must not to exceed 200 per 100 milliliters, nor are 10 percent of the total samples during any 30-day period to exceed 400 fecal coliforms per 100 milliliters. The average number of organisms in the coliform group is not to exceed 1,000 per 100 milliliters nor are 20 percent of the samples to exceed 1,000 coliforms per 100 milliliters during any 30-day period.

(ab) (B) Dissolved oxygen concentration is must not to be reduced below 7.0 milligrams per liter from October 1 through June 1 nor below 6.0 milligrams per liter from June 2 through September 30.

(ac) (C) Induced variation of hydrogen ion concentration (pH) within the range of 6.5 to 9.0 is to must be less than 0.5 pH unit. Natural pH outside this range is to must be maintained without change. Natural pH above 7.0 is to must be maintained above 7.0.

(ad) (D) The maximum allowable increase above naturally occurring turbidity is 10 Jackson-Candle nephelometric turbidity units except as is permitted in the general water quality criteria section (5).

(ae) (E) A 1° F maximum increase above naturally occurring

water temperature is allowed within the range of 32° F to 66° F; within the naturally occurring range of 66° F to 66.5° F, no discharge is allowed which will cause the water temperature to exceed 67° F; and where the naturally occurring water temperature is 66.5° F or greater, the maximum allowable increase in water temperature is 0.5° F. A 2° F per hour maximum decrease below naturally occurring water temperature is allowed when the water temperature is above 55° F, and a 2° F maximum decrease below naturally occurring water temperature is allowed within the range of 55° F to 32° F.

(af)(F) No increases are allowed above naturally occurring concentrations of sediment, settleable solids, ~~or residues~~ oils, or floating solids, which ~~adversely-affect-the-use indicated, are allowed~~ will or are likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.

(ah)(G) True color ~~is~~ must not ~~to~~ be increased more than five units above naturally occurring color.

(ag)(H) Concentrations of toxic or ~~other deleterious substances, pesticides-and-organic-and-inorganic-materials including heavy-metals, are must~~ not ~~to exceed levels known or demonstrated to be of public health significance. also maximum-allowable-concentrations-are-to-be-less-than-acute or chronic-problem-levels-as-revealed-by-bioassay-or-other methods.~~ For the designated uses the concentrations of toxic or deleterious substances must not exceed the levels listed in Quality Criteria for Water, published by the Office of Water and Hazardous Materials, EPA, Washington D.C. (The "Red Book") unless it is demonstrated to the Department that higher values will not cause acute or chronic problems. The "Red Book" criteria for domestic water supplies do not apply.

In the segment of the Clark Fork River classified C-2, the parameter limits set forth below apply rather than the limits listed for these parameters in the Red Book:

<u>Parameter</u>	<u>Maximum Instantaneous Concentration</u> <u>ug/l</u>
Total copper	90
Total zinc	300
Total iron	2200
Total lead	100
Total cadmium	10
Total arsenic	50
Total mercury	1

(i) C-3 classification.

(1) Waters classified C-3 are suitable for bathing, swimming and recreation; growth and propagation of non-salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply.

(ii) For waters classified C-3 the following specific water quality standards shall not be violated by any person.

(A) The geometric mean number of organisms in the fecal coliform group must not exceed 200 per 100 milliliters, nor are 10 percent of the total samples during any 30-day period to exceed 400 fecal coliforms per 100 milliliters

(B) Dissolved oxygen concentration must not be reduced below 5.0 milligrams per liter.

(C) Induced variation of hydrogen ion concentration (pH) within the range of 6.5 to 9.0 must be less than 0.5 pH unit. Natural pH outside this range must be maintained without change. Natural pH above 7.0 must be maintained above 7.0.

(D) The maximum allowable increase above naturally occurring turbidity is 10 nephelometric turbidity units, except as permitted in section (5).

(E) A 3° F maximum increase above naturally occurring water temperature is allowed within the range of 32° F to 77° F; within the range of 77° F to 79.5° F, no thermal discharge is allowed which will cause the water temperature to exceed 80° F; and where the naturally occurring water temperature is 79.5° F or greater, the maximum allowable increase in water temperature is 0.5° F. A 2° F per hour maximum decrease below naturally occurring water temperature is allowed when the water temperature is above 55° F, and a 2° F maximum decrease below naturally occurring water temperature is allowed within the range of 55° F to 32° F.

(F) No increases are allowed above naturally occurring concentrations of sediment, settleable solids, oils or floating solids, which will or are likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.

(G) True color must not be increased more than five units above naturally occurring color.

(H) Concentrations of toxic or other deleterious substances must not exceed levels known or demonstrated to be of public health significance; also maximum allowable concentrations of toxic or deleterious substances must not exceed the levels listed in Quality Criteria for Water, published by the Office of Water and Hazardous Materials, EPA, Washington, D.C. (The "Red Book") unless it is demonstrated to the Department that higher values will not cause acute or chronic problems. The "Red Book" criteria for domestic water supplies do not apply.

(j) E-F E classification.

(i) Water use description. ~~The quality is to be maintained.~~ Waters classified E are suitable for agricultural and industrial water uses other than food processing.

(ii) For waters classified E the following specific water quality criteria standards shall not be violated by any person:

(aa) (A) The average geometric mean number of organisms in the fecal coliform group is must not to exceed 200 per 100 milliliters, nor are 10 percent of the total samples during any 30-day period to exceed 400 fecal coliforms per 100 milliliters. The average number of organisms in the coliform group is not to exceed 1,000 per 100 milliliters during any 30-day period.

(ab) (B) Dissolved oxygen concentration is must not to be reduced below 3.0 milligrams per liter.

(ac) (C) ~~Induced variation of~~ Hydrogen ion concentration must be maintained within the range of 6.5 to 9.5. ~~is to be less than 0.5 pH unit. Natural pH outside this range is to be maintained without change. Natural pH above 7.0 is to be maintained above 7.0.~~

(ad) (D) No increase in naturally occurring turbidity is allowed naturally occurring water temperatures and naturally occurring concentrations of sediments, settleable solids or residues are not to be increased in quantity or amounts which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.

(E) No increase in naturally occurring temperature is allowed which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.

(F) No increases above naturally occurring concentrations of sediment and settleable solids, oils, or floating solids are allowed which will or are likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.

(G) No increase above naturally occurring true color is allowed which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.

(ae) (H) Concentrations of toxic or deleterious substances, pathogens, pesticides and organic and inorganic materials including heavy metals, ~~are to~~ must be less than those demonstrated to be deleterious to livestock or plants or their subsequent consumptions to humans who may consume

such livestock or plants or to adversely affect other indicated uses.

(6) (5) General water-quality-criteria provisions. The provisions of this subsection apply to all surface waters unless they conflict with subsection (4) in which case the requirements of subsection (4) prevail.

(a) The degree of waste treatment required to restore and maintain the quality of surface waters to the standards is-to shall be-determined-by-the-department-and-is-to be based on the surface water quality standards and the following:

(i) The state's policy of nondegradation of existing high water quality as described in Section 69-4808-2, R-E-M--1947 75-5-303, MCA;

(ii) Present and anticipated beneficial uses of the receiving water;

(iii) The quality and nature of flow of the receiving water;

(iv) The quantity and quality of the sewage, industrial waste or other waste to be treated; and

(v) The presence or absence of other sources of pollution on the same watershed.

(b) Sewage is-to must receive a minimum of secondary treatment as defined by EPA in accordance with requirements as set forth in the Federal Water Pollution Control Act 33 U.S.C. et. seq. (Supp. 1973), as amended and Amendments-of 1972 40 CFR Part 133 and subsequent amendments. Copies of 40 CFR Part 133 and subsequent amendments may be obtained from the department.

(c) Industrial waste is-to must receive, as a minimum, treatment equivalent to the best practicable control technology currently available (BPCTCA) as defined by-EPA in 40 CFR Subchapter N and subsequent amendments. Copies of 40 CFR subchapter N and subsequent amendments may be obtained from the Department. In cases where BPCTCA is not defined by EPA, industrial waste is-to must receive, after-maximum practicable-in-plant-control, a minimum of secondary treatment or equivalent, as determined by the department.

(d) For design of disposal systems, stream flow dilution requirements are-to must be based on the minimum consecutive seven-day average flow which may be expected to occur on the average of once in ten years. When-dilution flows-are-less-than-the-above-design-flow-at-a-point-discharge, the-discharge-is-to-be-governed-by-the-permit-conditions-developed-for-the-discharge-through-the-waste-discharge permit-program. If the flow records on an affected surface water are insufficient to calculate a ten-year seven-day low flow, the department shall determine an acceptable stream flow for disposal system design. The department shall determine the acceptable stream flow for disposal system

design for controlling nitrogen and phosphorus concentrations.

(e) State surface waters ~~are-to~~ must be free from substances attributable to municipal, industrial, agricultural practices or other discharges that will:

(i) Settle to form objectionable sludge deposits or emulsions beneath the surface of the water or upon adjoining shorelines;

(ii) Create floating debris, scum, a visible oil film (or be present in concentrations at or in excess of 10 milligrams per liter) or globules of grease or other floating materials;

(iii) Produce odors, colors or other conditions as to which create a nuisance or render undesirable tastes to fish ~~fish~~ or make fish inedible;

(iv) Create concentrations or combinations of materials which are toxic or harmful to human, animal, plant or aquatic life; and

(v) Create conditions which produce undesirable aquatic life.

(f) No wastes ~~are-to~~ may be discharged and no activities conducted such that the wastes or activities, either alone or in combination with other wastes or activities, will violate, or can reasonably be expected to violate, any of the standards. ~~(e.g., in a reach of stream classified B-B, the total allowable cumulative increase to naturally occurring turbidity conditions in the reach is 5 Jackson Candle Units.)~~

(g) No wastes are to be discharged and no activities conducted which, either alone or in combination with other wastes or activities, will cause ~~turbidities to exceed those allowed by specific water quality criteria~~ violations of surface water quality standards; provided, a short term exemption from a surface water quality standard ~~activities necessary to accommodate essential dredging, channel or bank alterations, stream diversions or other construction where turbidities in excess of the criteria are unavailable,~~ may be authorized by the department under ~~conditions as it may prescribe~~ the following conditions:

(i) If the Department of Fish, Wildlife and Parks reviews a short-term construction or hydraulic project under Section 76-5-501 et seq., MCA, or Section 75-7-101 et seq., MCA, an increase in turbidity caused by the project will be exempt from the applicable turbidity standard unless the department is advised by the Department of Fish, Wildlife and Parks that the project may result in a significant increase in turbidity. If the department is advised that the project may cause a significant increase in turbidity, the project will be exempt from the applicable turbidity standard only if it is carried out in accordance with conditions prescribed by the department in a (5)(g) authorization.

(A) A (5)(g) application form must be submitted to the department by the applicant and a (5)(g) authorization issued by the department prior to the day on which the applicant commences the short-term construction or hydraulic project.

(ii) If the department approves the location, timing, and methods of game fish population restoration authorized by the Department of Fish, Wildlife and Parks, restoration activities causing violations of surface water quality standards may be exempt from the standards.

(iii) If a short-term activity other than those described in (i) and (ii) above cause short-term changes or violations in surface water quality standards the activity may be exempt from the standard if carried out in accordance with conditions prescribed by the department in a (5)(g) authorization form.

(A) A (5)(g) application form must be submitted to the department by the applicant and a (5)(g) authorization issued by the department prior to the day on which the applicant commences the short-term activity.

(h) Methods of sample collection, preservation and analysis used to determine compliance with the standards are to must be in accordance with the latest edition of Standard Methods for the Examination of Water and Wastewater published by the American Public Health Association or in accordance with tests or procedures that have been found to be equally or more applicable by EPA as set forth in 40 CFR 136 and subsequent amendments. Copies of 40 CFR 136 and subsequent amendments may be obtained at the department.

(i) For Owners and operations operators of existing water impoundments operating prior to July 1971 that cause conditions harmful to prescribed beneficial uses of state water, ~~it is to be demonstrated~~ shall demonstrate to the satisfaction of the department that continued operations will be done in the best practicable manner to minimize harmful effects. ~~and will not violate state laws or department rules.~~ New water impoundments shall must be designed to provide temperature variations in discharging water that maintain or enhance the existing propagating fishery and associated aquatic life. As a guide, the following temperature variations are recommended: Continuously less than 40° F during the months of January and February, and continuously greater than 44° F during the months of June through September.

(j) ~~Ponds for waste treatment purposes are not to be located in drainage ways where the volume of drainage water from a 10-year storm entering the ponds exceeds one-half the volume of the pond, provided that, subject to approval by the department as to design and maintenance, ponds located~~

~~in-drainage-ways-for-the-express-purpose-of-containing emergency-oil-spills-are-permitted.~~ Leaching pads, tailing ponds or holding facilities utilized in the processing of ore and coal must be located, constructed, operated and maintained in such a manner and of such materials so as to prevent the discharge, seepage, drainage, infiltration, or flow which may result in the pollution of surface waters. The department may require that a monitoring system be installed and operated if the department determines that pollutants are likely to reach surface waters or present a substantial risk to public health.

(i) Plans and specifications for proposed leaching pads, tailings ponds or holding facilities utilized in the processing of ore and coal must be submitted to the department no less than 180 days prior to the day on which it is desired to commence their construction.

(ii) Leaching pads, tailings ponds or holding facilities operating as of the effective date of this rule utilized in the processing of ore and coal must be operated and maintained in such a manner so as to prevent the discharge, seepage, drainage, infiltration or flow which may result in the pollution of surface waters.

(k) Dumping of snow from municipal and/or parking lot snow removal activities directly into surface waters or placing snow in a location where it is likely to cause pollution of surface waters of the state is prohibited without a permit from unless authorized in writing by the department.

(l) ~~Existing~~ Discharges to state surface waters will may be entitled a mixing zone which will have a minimum impact on surface water quality, as determined by the department.

(m) Until such time as minimum stream flows are established for dewatered streams, the minimum treatment requirements for discharges to dewatered receiving streams ~~are-to~~ must be no less than the minimum treatment requirements set forth in (b) and (c) of subsection (5).

(n) Treatment requirements for discharges to ~~intermittent~~ ephemeral streams ~~are-to~~ must be no less than the minimum treatment requirements set forth in (b) and (c) of subsection (5).

(o) Pollution resulting from storm drainage, storm sewer discharges, and non-point sources, including irrigation practices, road building, construction, logging practices, overgrazing and other practices, ~~are-to~~ must be eliminated or minimized as ordered by the department.

(p) Application of pesticides in or adjacent to state surface waters ~~is-to~~ must be in compliance with the labeled direction, and in accordance with provisions of the Montana Pesticides Act (~~Title-27-Chapter-27-R-C-M-1947~~ Title 80, Chapter 8, MCA) and the Federal Environmental Pesticides

Control Act (~~Public Law 92-516~~ 7 U.S.C. 136 et seq. (Supp. 1973) as amended). Excess pesticides and pesticide containers are must not ~~to~~ be disposed of in a manner or in a location where they are likely to pollute state surface waters.

~~(g)--The following radiological criteria shall apply to all waters except those classified as A-Closed--~~

~~(i)--The average dissolved concentrations (including the naturally occurring or background contribution) of iodine-131, radium-226, strontium-89, strontium-90 and tritium are not to exceed the following concentration limits:~~

~~Iodine-131-----5-pCi/L
Radium-226-----1-pCi/L
Strontium-89-----100-pCi/L
Strontium-90-----10-pCi/L
Tritium-----37000-pCi/L~~

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For all other radionuclides, the average dissolved concentration limits are to be $1/150$ of the corresponding maximum permissible concentration in water for continuous occupational exposure as recommended by the National Committee on Radiation Protection (National Bureau of Standards Handbook-69 or subsequent revisions.)

(ii) -- For a mixture of radionuclides, the following relationship is to be satisfied:

$$\frac{C_1}{L_1} + \frac{C_2}{L_2} + \dots + \frac{C_n}{L_n} \leq 1.00$$

C denotes the average concentration of the respective radionuclide, and L denotes its concentration limit.

(iii) -- Where alpha-emitters, strontium-90, radium-226, iodine-129, iodine-130 and lead-210 are known to be absent, routine analyses for dissolved gross beta radioactivity (excluding potassium-40 contribution) may be employed to monitor and show compliance with this criterion (except for tritium) as long as the gross concentration does not exceed 100 pCi/l . When these conditions are not met, routine quantitative analyses of individual radionuclides are to be performed to show compliance. -- Except in cases where tritium from other than natural sources is known to be absent, routine tritium analyses are to be performed to show compliance. -- (Note: "Absence" means a negligibly small fraction of the specific concentration limit, where the limit for unidentified alpha-emitters is taken as the limit for radium-226.)

(iv) -- For radionuclides associated with suspended material in transport, the average concentration limits are to be $1/150$ of the corresponding maximum permissible concentration in water (insoluble form) for continuous occupational exposure as recommended by the National Committee on Radiation Protection. -- In stream sedimentation of these materials is not to produce solids beds that are not in compliance with subsections (q) (i) and (q) (ii) (because of leaching) and/or excessive accumulation in native flora and fauna.

(v) -- Average concentrations are to be computed from monitoring data acquired during the previous 12 months; maximum concentrations are not to exceed three times the average concentration limits specified.

(vi) -- Variances from concentration limits specified will be permitted only if the contributing source is non-controllable or a natural source. -- Best available treatment must be provided for man-made discharges, and the exposure received by affected population groups must be within established dose limits.

(g) No person shall cause radioactive materials in surface waters to:

(i) Be present in any amount which reflects failure in any case to apply all controls which are physically feasible;

(ii) Exceed a concentration of 5 pCi/L of total Radium 226 plus Radium 228;

(iii) Exceed a concentration of 8 pCi/L of total Strontium 90;

(iv) Be present in the water or in sediments in amounts which could cause harmful accumulations of radioactivity in plants, wildlife, stock or aquatic life;

(v) Exceed the radiological limits established in the National Interim Drinking Water Standards (40 CFR Part 141) and subsequent amendments. Copies of the National Interim Drinking Water Standards and subsequent amendments may be obtained from the department.

(r) No wastes pollutants are-to may be discharged and no activities may be conducted which, either alone or in combination with other wastes or activities, will result in the total dissolved gas content pressure relative to the water surface, to exceeding 110 percent of saturation.

(s) Bioassay median tolerance concentrations are to must be based-on determined using the latest available research results for the materials, by bioassay tests procedures for simulating actual stream conditions as set forth in the latest edition of Standard Methods for the Examination of Water and Wastewater published by the American Public Health Association, ASTM Standards Part 31, or in accordance with tests or analytical procedures that have-been are found to be equal or more applicable by EPA. Any bioassay studies made are to must be made using the-most a representative sensitive local species and life stages of economic or ecological importance; provided other species whose relative sensitivity is known may be used when there is difficulty in providing the most more sensitive species in sufficient numbers or when such species are unsatisfactory for routine confined bioassays. All bioassay methods and species selections must be approved by the department.

When specific application factors are not available, the factor is to be determined by using methods listed in Water Quality Criteria published by the Federal Water Pollution Control Administration (1968), or by using other methods accepted as equal or applicable by EPA.

(t) For A-Closed watersheds, public access and activities such as livestock grazing and timber harvest will be controlled by the utility owner as ordered by the Department. On other public water supply watersheds, detailed plans and specifications for the construction and operation of logging roads

will be submitted to the Department for its approval as required by Title 75, Chapter 6, MCA.

~~Metal limits for the Clark Fork River (mainstem) from the confluence of Warm Springs Creek to the confluence with Cottonwood Creek are:~~

<u>Material</u>	<u>Average-Daily-Concentration-ug/l</u>	<u>Maximum-Instantaneous Concentration-ug/l</u>
Total-copper-----	90-----	180-----
Dissolved-copper-----	30-----	40-----
Total-zinc-----	300-----	1,000-----
Dissolved-zinc-----	80-----	140-----
Total-iron-----	1,300-----	2,200-----
Dissolved-iron-----	150-----	160-----
Total-lead-----	100-----	100-----
Dissolved-lead-----	100-----	100-----
Total-cadmium-----	10-----	10-----
Total-arsenic-----	10-----	16-----
Total-mercury-----	1-----	1-----

~~Metal limits for Clark Fork River (mainstem) from the confluence of Cottonwood Creek to the Idaho state line are:~~

<u>Material-</u>	<u>Average-Daily-Concentration--ug/l-</u>	<u>Maximum-Instantaneous Concentration-ug/l</u>
Total-copper-----	50-----	90-----
Dissolved-copper-----	30-----	30-----
Total-zinc-----	100-----	200-----
Dissolved-zinc-----	70-----	80-----
Total-iron-----	300-----	1,300-----
Dissolved-iron-----	150-----	150-----
Total-lead-----	50-----	50-----
Dissolved-lead-----	50-----	50-----
Total-cadmium-----	10-----	10-----
Total-arsenic-----	10-----	10-----
Total-mercury-----	1-----	1-----

(4) (6) Water-use classifications.

(a) NATIONAL PARK, WILDERNESS AND PRIMITIVE AREA WATERS

(i) All waters even if classifications listed below in subsections (6)(b) through (i) imply or state otherwise A-1

(b) CLARK FORK OF THE COLUMBIA RIVER DRAINAGE

(1) Clark Fork River drainage except the Flathead River drainage and waters listed below in (b)(i)(A) through (b)(i)(N). B-1

(A) Warm Springs drainage to Myers Dam near Anaconda A-Open-B1 A-1

~~Remainder of Warm Springs drainage. B-D1~~

Silver-Bow-Creek-drainage-to-Anacanda
Company-leach-dump-----B-B₁
(B) Silver Bow Creek (mainstem) from the
confluence of Blacktail Deer Creek to Warm Springs
Creek.B-F E
(The Anacanda Company tailings pond and Silver Bow
Creek drainage from this pond to Blacktail Deer
Creek and the tailings ponds at Warm Springs have
no classification.)
(C) Yankee Doodle Creek drainage to and
including the North Butte water supply reservoir . . .A-Closed
Remainder-of-Yankee-Doodle-Creek-drainage-to
Anacanda-Company-tailings-pond-----B-B₁
Blacktail-Deer-Creek-drainage-except-portion
of-Basin-Creek-listed-below-----B-B₁
(D) Basin Creek drainage to and including
the South Butte water supply reservoirA-Closed
Remainder-of-Basin-Creek-drainage-----B-B₁
All-other-tributaries-to-Silver-Bow-Creek
from-the-confluence-of-Blacktail-Deer-Creek-to
Warm-Springs-Creek-----B-B₁
(E) Clark Fork River (mainstem) from Warm
Springs Creek to Cottonwood Creek (near Deer
Lodge).E-B₂ C-2
(F) Clark Fork River (mainstem) from Cottonwood
Creek to the Little Blackfoot River. . . .E-B₁ C-1
(G) Tin Cup Joe Creek drainage to the Deer
Lodge water supply intake.A-Closed
Remainder-of-Tin-Cup-Joe-drainage-----B-B₁
Clark-Fork-River-drainage-from-the-Little
Blackfoot-River-to-the-Idaho-state-line-except
those-portions-of-tributaries-listed-below--B-B₁
(H) Georgetown Lake and tributaries above
Georgetown Dam (headwaters of Flint Creek drain-
age).A-Open-B₁ A-1
Flint-Creek-drainage-from-Georgetown-Dam-to
Farm-to-Market-Highway-No--348-bridge-about-one
mile-west-of-Philipsburg-except-these-portions-of
tributaries-listed-below-----B-B₁
(I) Fred Burr Lake and headwaters from
source to the outlet of the lake (Philipsburg
water supply).A-Closed
Flint-Creek-(mainstem-from-Farm-to-Market
Highway-No--348-bridge-about-one-mile-west-of
Philipsburg-to-the-Clark-Fork-River-----B-B₁
(J) South Boulder Creek drainage to the
Philipsburg water supply intakeA-Open-B₁ A-1

~~Remainder-of-South-Boulder-drainage---B-B1~~
~~All-other-tributaries-to-Flint-Creek-from~~
~~Farm-to-Market-Highway-No--348-bridge-to-the~~
~~Clark-Fork-River-----B-B1~~
 (K) Rattlesnake drainage to the Missoula
 water supply intake A-Closed
~~Remainder-of-Rattlesnake-drainage---B-B1~~
 (L) Packer and Silver Creek drainage
 (tributaries to the St. Regis River) to the
 Saltese water supply intake A-Open-B1 A-1
~~Remainder-of-Packer-and-Silver-Creek~~
~~drainages-----B-B1~~
 (M) Ashley Creek drainage to the Thompson
 Falls water supply intake A-Closed
~~Remainder-of-Ashley-Creek-drainage---B-B1~~
 (N) Pilgrim Creek drainage to the Noxon
 water supply intake A-Open-D1 A-1
~~Remainder-of-Pilgrim-Creek-drainage---B-B1-~~
~~All-tributaries-of-Clark-Fork-River-not~~
~~otherwise-mentioned-----B-B1~~
~~Flathead-River-~~
 (ii) Flathead River drainage (except
~~tributaries-in-Glacier-National-Park-or-in~~
~~nationally-designated-wild-wilderness-or~~
~~primitive-areas) above Flathead Lake except~~
~~tributaries-and-lakes-or-reservoirs waters~~
 listed below in (b) (ii) (A) through (b) (ii) (G) B-B1 B-1
 (A) Essex Creek drainage to the Essex water
 supply intake A-Closed
~~Remainder-of-Essex-Creek-drainage---B-B1~~
~~Snyder-Creek-(mainstem)-through-the-community~~
~~of-Lake-McDonald-in-Glacier-National-Park-to-Lake~~
~~McDonald-----B-B1~~
 (B) Stillwater River (mainstem) from but
 excluding Logan Creek to the Flathead River B-D2 B-2
 (C) Whitefish Lake and its tributaries A-Open-B1 A-1
 (D) Whitefish River (mainstem) from the
 outlet of Whitefish Lake to the Stillwater
 River B-D2 B-2
 (E) Haskill Creek drainage to the Whitefish
 water supply intake A-Open-B1 A-1
~~Remainder-of-Haskill-Creek-drainage---B-B1~~
~~Remainder-of-Whitefish-River-drainage---B-B1~~
~~Remainder-of-Stillwater-River-drainage---B-B1~~
~~Ashley-Creek-drainage-to-and-including~~
~~Smith-(Kila)-Lake-----B-B1~~
 (F) Ashley Creek (mainstem) from Smith Lake
 to bridge crossing on the airport road about one
 mile south of Kalispell B-B2 B-2

(G) Ashley Creek (mainstem) from bridge crossing on airport road to the Flathead River E-F C-2
~~All tributaries to Ashley Creek from Smith lake to the Flathead River~~ B-D1
(iii) Flathead Lake and its tributaries from Flathead River inlet to U.S. Highway 93 bridge at Polson except ~~Flathead River above the lake (as listed above)~~, Swan River and portions of Hellroaring Creek as listed below in (b)(iii) (A) through (b)(iii)(C), but including Swan Lake proper and Lake Mary Ronan proper . . . A-Open-B1 A-1
(A) Swan River drainage (except Swan Lake proper) . . . B-B1 B-1
(B) Hellroaring Creek drainage to the Polson water supply intake . . . A-Closed
(C) Remainder of Hellroaring Creek drainage . . . B-B1 B-1
~~(Simply as a note for clarification, the Flathead River below the highway bridge at Polson to Paradise is included in the B-B1 classification of the Flathead River drainage listed above.)~~
(iv) Flathead River drainage below the highway bridge at Polson to confluence with Clark Fork River except tributaries listed in (b)(iv)(A) through (b)(iv)(G) . . . B-1
~~Crow Creek drainage to road crossing at Section 16, T20N, R20W about 2.5 miles southwest of Ronan except the portion of Second Creek listed below~~ B-D1
(A) Second Creek drainage to the Ronan water supply intake . . . A-Closed
~~Remainder of Second Creek drainage~~ B-D1
(B) Crow Creek (mainstem) from road crossing in Section 16, T20N, R20W to the Flathead River B-B2 B-2
~~Tributaries to Crow Creek from road crossing in Section 16 to the Flathead River~~ B-D1
~~Little Bitterroot River drainage to Hubbard Reservoir~~ B-D1
(C) Little Bitterroot River (mainstem) from Hubbard Reservoir dam to the Flathead River B-B2 B-2
~~Tributaries to the Little Bitterroot River from Hubbard Reservoir to the Flathead River except Hot Springs Creek listed below~~ B-D1
(D) Hot Springs Creek drainage to the Hot Springs water supply intake . . . A-Closed
(E) Hot Springs Creek (mainstem) from the Hot Springs water supply intake to the Little Bitterroot River. . . E-F E

Tributaries to Hot Springs Creek (if any)
 from the Hot Springs water supply intake to the
 Little Bitterroot River B-D₁
 (F) Mission Creek drainage to the St.
 Ignatius water supply intake A-Open-B₁ A-1
~~Mission-Creek-drainage-from-the-St-Ignatius~~
~~water-supply-intake-to-U.S.-Highway-No.-93-crossing~~
~~about-one-mile-west-of-St-Ignatius-----B-D₁~~
 (G) Mission Creek (mainstem) from U.S. Highway
 No. 93 crossing to the Flathead River . . . B-B₂ B-2
~~Tributaries-to-Mission-Creek-from-the-U.S.-~~
~~Highway-No.-93-crossing-to-the-Flathead-River-B-B₂~~
 (c) KOOTENAI RIVER DRAINAGE
 (i) All waters except those listed in
 (c) (i) (A) through (c) (i) (D) B-1
~~Kootenai-River-drainage-from-the-border-of~~
~~Canada-to-the-Idaho-border-(including-the-Yaak~~
~~-River)-except-the-tributaries-listed-below-----B-D₁~~
 (A) Deep Creek drainage (tributary to the
 Tobacco River) to the Fortine water supply
 intake A-Open-B₁ A-1
~~Sullivan-Creek-drainage-to-the-Rexford-water~~
~~supply-intake-----A-Closed-~~
 (B) Rainy Creek drainage to the Senelike
 W.R. Grace Company water supply intake . . . A-Open-B₁ A-1
 (C) Rainy Creek (mainstem) from the Senelike
 W.R. Grace Company water supply intake to the
 Kootenai River C-B₁ C-1
 (D) Flower Creek drainage to the Libby
 water supply intake A-Open-B₁ A-1
 (d) MISSOURI RIVER DRAINAGE EXCEPT YELLOWSTONE,
 BELLE FOURCHE, AND LITTLE MISSOURI RIVER DRAINAGES
 (i) Missouri River drainage to and including
 the Sun River drainage in Great Falls except
 tributaries listed below in (d) (i) (A) through
 (d) (i) (N) B-B₁ B-1
 (A) East Gallatin River (mainstem)
~~(tributary-to-the-Gallatin-River, tributary~~
~~to-the-Missouri-River) from Montana Highway~~
 No. 293 crossing about one-half mile north of
 Bozeman to but excluding Dry Creek about five
 miles east of Manhattan B-B₂ B-2
~~Remainder-of-East-Gallatin-River-drainage~~
~~except-the-tributaries-listed-below-----B-B₁~~
 (B) Lyman and Sourdough (Bozeman) Creek
 drainages to the Bozeman water supply intakes. A-Closed

(C) Remainder of the Lyman and Sourdough Creek drainages . . . . .	.B-B ₂	<u>B-2</u>
(D) Hyalite Creek drainage to the Bozeman water supply intake	A-Open-B _I	<u>A-1</u>
Remainder-of-Hyalite-Creek-drainage-----B-B _I		
(E) Big Hole River drainage {tributary-to-the-Jefferson-River}-tributary-to-the-Missouri-River-to Butte Water Company intake above Divide	A-Open-B _I	<u>A-1</u>
Remainder-of-the-Big-Hole-drainage-----B-B _I		
(F) Rattlesnake Creek drainage {tributary-to-the-Beaverhead-River}-tributary-to-the-Jefferson River to the Dillon water supply intake . .	A-Open-B _I	<u>A-1</u>
Remainder-of-Rattlesnake-Creek-drainage---B-B _I		
(G) Indian Creek drainage {tributary-to-the-Ruby-River}-tributary-to-the-Beaverhead-River to the Sheridan water supply intake	A-Open-B _I	<u>A-1</u>
Remainder-of-Indian-Creek-drainage-----B-B _I		
(H) Basin Creek drainage {tributary-to-the-Boulder River}-tributary-to-the-Jefferson-River to the Basin water supply intake	A-Open-B _I	<u>A-1</u>
Remainder-of-Basin-Creek-drainage-----B-B _I		
Prickly-Pear-Creek-drainage-to-the-Montana-Highway-No--433-crossing-about-one-mile-northwest of-East-Helena-except-the-tributaries-listed below-----B-B _I		
(I) McClellan Creek drainage to the East Helena water supply intake	A-Open-B _I	<u>A-1</u>
Remainder-of-McClellan-Creek-drainage---B-B _I		
(J) Prickly Pear Creek (mainstem) from the Montana Highway No. 433 crossing about one mile northwest of East Helena to Lake HelenaE-F		<u>E</u>
Tributaries-of-Prickly-Pear-Creek-from-the-Montana-Highway-No-433-crossing-to-its-mouth except-these-tributaries-listed-below-----B-B _I		
(K) Ten Mile Creek drainage to the Helena water supply intake	A-Open-B _I	<u>A-1</u>
Remainder-of-Ten-Mile-Creek-drainage---B-B _I		
(L) Willow Creek drainage {tributary-of-the-Smith-River}-tributary-to-the-Missouri-River to the White Sulphur Springs water supply intake	A-Closed	
Remainder-of-the-Willow-Creek-drainage--B-B _I		
Missouri-River-(mainstem)-from-Sun-River-to-Rainbow-Dam-----B-B ₂		
Missouri-River-drainage-from-Rainbow-Dam-in-Great-Falls-to-the-North-Dakota-state-line-except the-portion-of-the-mainstem-and-the-tributaries listed-below-----B-B ₃		

~~Sun-River-drainage-to-but-excluding-Muddy--~~
~~Creek-near-Vaughn-----B-B₁~~
~~(M) Muddy Creek drainage (tributary to Sun~~
~~River) E-F E~~
~~(N) Sun River (mainstem) from Muddy Creek to~~
~~the Missouri River B-B₂ B-3~~
~~Tributaries-(if-any)-to-the-Sun-River-from~~
~~Muddy-Creek-to-the-Missouri-River-----B-B₁~~
~~(ii) Missouri River drainage from Sun River~~
~~to Rainbow Dam B-2~~
~~(iii) Missouri River drainage from Rainbow~~
~~Dam in Great Falls to the Marias River except~~
~~waters listed in (d)(iii)(A) through~~
~~(d)(iii)(D). B-3~~
~~(A) Belt Creek drainage to an including~~
~~Otter Creek drainage except portion of O'Brien~~
~~Creek listed below in (d)(iii)(A)(I) B-B₁ B-1~~
~~(I) O'Brien Creek drainage to the Neihart~~
~~water supply intake A-Open-B₁ A-1~~
~~Remainder-of-O'Brien-Creek-drainage-----B-B₁~~
~~(B) Belt Creek (mainstem) from Otter Creek~~
~~to the Missouri River B-B₂ B-2~~
~~(C) Tributaries to Belt Creek from Otter~~
~~Creek to the Missouri River B-B₁ B-1~~
~~(D) Highwood and Shonkin Creek drainages B-B₁ B-1~~
~~(iv) Marias River drainage except the tributaries~~
~~listed below in (d)(iv)(A) through (d)(iv)(D). B-B₂ B-2~~
~~(A) Cutbank Creek drainage to-but-excluding-~~
~~Old-Maid-Miller-Coulee-in-Cut-Bank except the~~
~~portion-of-Willow-Creek waters listed below in~~
~~(d)(iv)(A)(I) and (II) B-B₁ B-1~~
~~Willow-Creek-drainage-to-the-Montana-Highway~~
~~No--464-crossing-about-one-half-mile-north-of~~
~~Browning-----B-B₁~~
~~(I) Willow Creek (mainstem) from the~~
~~Montana Highway No. 464 crossing about one-half~~
~~mile north of Browning to Cutbank Creek (also~~
~~included-in-the-Marias-River-drainage-classi-~~
~~fication-above). B-B₂ B-2~~
~~Tributaries-(if-any)-to-Willow-Creek-from~~
~~Montana-Highway-No--464-crossing-to-Cutbank~~
~~Creek-----B-B₁~~
~~(II) Cutbank Creek (mainstem) from Old~~
~~Maid Miller Coulee near Cut Bank to Birch Creek~~
~~(also-listed-under-Marias-River-drainage-classi-~~
~~fication-above) B-B₂ B-2~~
~~Tributaries-to-Cutbank-Creek-from-but--~~
~~excluding-Old-Maid-Miller-Coulee-(which-is-B-B₂)~~
~~to-Birch-Creek-----B-B₁~~

Birch-Creek-drainage-except-tributaries
listed below-----B-B₂
 (B) Two Medicine Creek drainage to and including the Badger Creek drainage except for the following waters listed in (d)(iv)(B)(I), (II) and (III) B-B₁ B-1
 (I) Midvale Creek drainage to the East
 Glacier water supply intake A-Closed
Remainder-of-Midvale-Creek-drainage-----B-B₁
 (II) Summit Creek drainage to the Summit water supply intake A-Closed
Remainder-of-Summit-Creek-drainage-----B-B₁
 (III) Two Medicine Creek (mainstem) from Badger Creek to Birch Creek B-B₂ B-2
Tributaries-to-Two-Medicine-Creek-from-Badger Creek-to-Cutbank-Creek-----B-B₁
 (C) Dry Fork Marias River (mainstem) from Interstate 15 crossing near Conrad to Marias River . . . B-3
 (D) Teton River drainage to and including Deep Creek near Choteau B-B₁ B-1
Remainder-of-Teton-River-drainage-----B-B₂
 (v) Missouri River drainage from Marias River to Fort Peck Dam except waters listed in (d)(v)(A) through (d)(v)(E) C-3
 (A) Missouri River (mainstem) from Marias River to Fort Peck Dam B-3
 (B) Eagle Creek drainage to but excluding Dog Creek B-B₁ B-1
Remainder-of-Eagle-Creek-drainage-----B-B₃
 (C) Judith River drainage to Big Spring Creek except waters listed in (d)(i)(C)(I) through (d)(v)(C)(V) B-B₁ B-1
Big-Spring-Creek-drainage-to-the-Mill-Ditch-headgate-near-the-southern-city-limits-of-Lewistown-----B-B₁
 (I) Big Spring Creek (mainstem) from the Mill Ditch headgate to the Judith River . B-B₂ B-2
Tributaries-to-Big-Spring-Creek-from-the-Mill-Ditch-headgate-to-the-Judith-River-----B-B₁
 (II) Judith River (mainstem) from Big Spring Creek to the Missouri River B-B₂ B-2
 (III) Sage Creek drainage below U.S.
 Highway 87 C-3
 (IV) Wolf Creek drainage below U.S.
 Highway 87 C-3
Tributaries-to-the-Judith-River-from-Big-Spring-Creek-to-the-Missouri-River-----B-B₁
 (V) Tributaries to Judith River from Big Spring Creek to the Missouri River C-3

(D) Cow Creek drainage to but excluding
 Al's Creek B-B₁ B-1
~~Remainder of Cow Creek drainage~~ B-B₃
 (E) Musselshell River drainage except for
 the waters listed in (d) (v) (E) (I) through
 (d) (v) (E) (v) B-1
~~Musselshell River drainage to and including~~
 Hopley Creek near Harlowton B-B₁
 (I) Musselshell River mainstem drainage
 from Hopley Creek to but excluding Half-Breed
 Creek near Roundup except American Fork listed
 below to Deadman's Basin Diversion Canal near
 Shawmut B-B₂ B-2
~~American Fork drainage~~ B-B₁
~~Musselshell River drainage from and including~~
 Half-Breed Creek to Fort Peck Reservoir except
 Flatwillow Creek drainage listed below B-B₃
 (II) Musselshell River drainage below Deadman's
 Basin diversion canal above Shawmut except portions of
 Careless, Swimming Woman, Flatwillow and South
 Willow Creek drainages listed below C-3
 (III) Careless and Swimming Woman Creek drainage
 above their confluence north of Ryegate B-1
 (IV) Flatwillow Creek drainage above U.S.
 Highway 87 crossing south of Grassrange B-2
 (V) South Willow Creek drainage above county
 road bridge in T10N, R24E, Section 7 B-1
~~Flatwillow Creek drainage (may be the Box~~
~~Elder Creek drainage) near Mosby~~ B-B₂
 (vi) Missouri River (mainstem) drainage from
 Fort Peck Dam to the Milk River B-B₂ B-2
 (vii) Milk River drainage from source (or
 from the Glacier National Park Boundary) to
 the International Boundary B-B₁ B-1
 (viii) Milk River drainage from the International
 Boundary to the Missouri River except the tributaries
 listed below in (d) (viii) (A) through (d) (viii) (C) B-B₃ B-3
 (A) Big Sandy Creek drainage above Big
 Sandy to Town of Big Sandy infiltration wells. B-B₁ B-1
~~Remainder of Big Sandy Creek drainage~~ B-B₃
 (B) Beaver, Little Box Elder and Clear
 Creek drainage (all near Havre) B-B₁ B-1
 (C) People's Creek drainage to and including
 the South Fork of People's Creek drainage B-B₁ B-1
~~Remainder of People's Creek drainage~~ B-B₃

(ix) Missouri River drainage from Milk River to North Dakota boundary except waters listed in (d) (ix) (A) through (d) (ix) (C)	C-3
(A) Missouri River (mainstem) from Milk River to North Dakota boundary	B-3
(B) Wolf Creek drainage near Wolf Point	B-2
(C) Antelope Creek drainage near Antelope	B-3
Poplar River drainage	B-B₂
(e) YELLOWSTONE RIVER DRAINAGE	
(i) Yellowstone River drainage from the Yellowstone-Park-Boundary to the Laurel water supply intake.	B-B ₁ B-1
(ii) Yellowstone River drainage from the Laurel water supply intake to the Billings water supply intake except the tributaries listed below in (e) (ii) (A) through (e) (ii) (B)	B-B ₂ B-2
(A) Clarks Fork Yellowstone River drainage from source to the Wyoming state line and from the Wyoming state line to and including Jack Creek near Bridger	B-B ₁ B-1
Clarks-Fork-Yellowstone-River-(mainstem)-from-Jack-Creek-to-the-Yellowstone-River	B-B₂
(B) Tributaries to the Clarks Fork Yellowstone River from Jack Creek (mainstem is B-2) to the Yellowstone River except the portion of West Fork of Rock Creek listed below in (e) (ii) (B) (I)	B-B ₁ B-1
(I) West Fork of Rock Creek drainage to the Red Lodge water supply intake	A-Open-B ₁ A-1
Remainder-of-West-Fork-of-Rock-Creek drainage	B-B₁
(iii) Yellowstone River drainage from the Billings water supply intake to the North-Dakota state-line and including the Big Horn River drainage except the tributaries waters listed below in (e) (iii) (A) through (e) (iii) (F)	B-B ₃ C-3
(A) Yellowstone River mainstem	B-3
(B) Pryor Creek drainage to Interstate 90	B-B ₁ B-1
(C) Big Horn drainage above but excluding Williams Coulee near Hardin	B-B ₁ B-1
Big-Horn-drainage-from-and-including-Williams-Coulee-to-the-Yellowstone-River-except-the-Little-Big-Horn-listed-below	B-B₂
(D) Little Big Horn drainage above and including Lodgegrass Creek drainage near Lodge Grass	B-B ₁ B-1
(E) Remainder of the Little Big Horn drainage.	B-B ₂ B-2

(F) Big Horn River mainstem from Williams Coulee to Yellowstone River	B-2
(iv) Yellowstone River drainage from Big Horn River to North Dakota boundary except waters listed in (e) (iv) (A) through (e) (iv) (D)	C-3
(A) Yellowstone River mainstem from Big Horn River to North Dakota boundary	B-3
(B) Tongue River (mainstem) from Tongue River-Reservoir Wyoming boundary to but-excluding Prairie Dog Coulee	B-B2 B-2
(C) Tongue River mainstem from Prairie Dog Coulee To Yellowstone River	B-2
Remainder-of-the-Tongue-River-drainage---	B-B2
(D) Fox Creek drainage near Sidney	B-B2 B-2
Little-Missouri-and-Belle-Fourche-drainages	
all-waters-----	B-B2
(f) LITTLE MISSOURI RIVER DRAINAGE	
(i) All waters	C-3
(g) BELLE FOURCHE RIVER DRAINAGE	
(i) All waters	C-3
(h) HUDSON BAY DRAINAGE	
(i) All waters outside Glacier National Park	B-1
Hudson-Bay-drainage	
All-waters-within-Glacier-National-Park	
except-the-portion-of-Swiftcurrent-Creek-listed	
below-----	A-Open-B1--
Swiftcurrent-Creek-(mainstem)-from-the-	
Many-Glacier-Chalet-to-Lake-Sherbourne-----	B-B1
All-waters-outside-park-from-park-boundary	
to-the-International-Boundary-----	B-B1--

4. The Board is proposing this amendment to the water quality standards rule pursuant to Section 75-5-301, MCA, which requires the Board to review classifications of state waters and standards of water purity every three years. The proposed amendments to the existing water quality standards rule are the result of this legislative requirement.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Mr. Steven Pilcher, Chief, Water Quality Bureau, 555 Fuller Avenue, Helena, Montana, 59601, by no later than May 9, 1980.

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

7. The authority of the Board to make the proposed amendments is based on Section 75-5-201 and 75-5-301, MCA, and the rule implements Section 75-5-301, MCA.

John F. McGregor
JOHN F. MCGREGOR, Chairman

By Rita Ann Sheehy
RITA ANN SHEEHY

Certified to the Secretary of State March 18, 1980

6-3/27/80

MAR Notice No. 16-2-137

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the repeal of rules)
24-3.10(18)-S10200, experience rat-)
ing; 24-3.10(18)-S10210, first fac-)
tor in experience rating;)
24-3.10(18)-S10220, second factor)
in experience rating; 24-3.10(18)-)
S10230, third factor in experience)
rating; 24-3.10(18)-S10240, classi-)
fication of employers and assigning)
rates; 24-3.10(18)-S10250, notice to)
employers of classification and rate;))
24-3.10(18)-S10260, substitution of)
new account for existing account;)
24-3.10(18)-S10270, merging of)
existing accounts; 24-3.10(18)-)
S10280, forms for substitutions,)
merging, acquisitions; 24-3.10(22)-)
S10321, other reports by employers;)
24-3.10(34)-S10590, processing of)
bonuses and/or lump sum payments and)
bi-weekly pay periods.)

NOTICE OF PROPOSED REPEAL
OF RULES

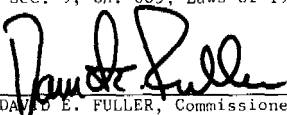
ARM 24-3.10(18)-S10200,
ARM 24-3.10(18)-S10210,
ARM 24-3.10(18)-S10220,
ARM 24-3.10(18)-S10230,
ARM 24-3.10(18)-S10240,
ARM 24-3.10(18)-S10250,
ARM 24-3.10(18)-S10260,
ARM 24-3.10(18)-S10270,
ARM 24-3.10(18)-S10280,
ARM 24-3.10(22)-S10321,
and ARM 24-3.10(34)-S10590

TO: All Interested Persons

1. On May 16, 1980, the department of labor and industry proposes to repeal rules 24-3.10(18)-S10200, experience rating; 24-3.10(18)-S10210, first factor in experience rating; 24-3.10(18)-S10220, second factor in experience rating; 24-3.10(18)-S10230, third factor in experience rating; 24-3.10(18)-S10240, classification of employers and assigning rates; 24-3.10(18)-S10250, notice to employers of classification and rate; 24-3.10(18)-S10260, substitution of new account for existing account; 24-3.10(18)-S10270, merging of existing accounts; 24-3.10(18)-S10280, forms for substitutions, merging, acquisitions; 24-3.10(22)-S10321, other reports by employers; 24-3.10(34)-S10590, processing of bonuses and/or lump sum payments and bi-weekly pay periods.

2. The foregoing rules may be found on pages 24-47 through and including 24-51, page 24-54, and page 24-56.5, Administrative Rules of Montana.

3. The department of labor and industry proposes to repeal these rules because they all became invalid when the 1979 legislature repealed sections 39-51-1201 through 39-51-1205, MCA in Sec. 21, Ch. 685, Laws of 1979. The replacement sections 39-51-1212 through 39-51-1219, MCA do not need rules for enforcement and were enacted in Sec. 9, Ch. 685, Laws of 1979.


DAVID E. FULLER, Commissioner
Department of Labor and Industry

Certified to Secretary of State March 14, 1980.

MAR Notice No. 24-3-32

6-3/27/80

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the ADOP-	)	NOTICE OF PROPOSED ADOPTION
TION OF A RULE requalifying	)	OF A RULE
a person for unemployment	)	School as the basis for
benefits where school was	)	requalifying for benefits
the reason for voluntary)	
quit.	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On May 16, 1980, the Department of Labor and Industry proposes to adopt a rule specifying the three (3) requirements for a person to requalify for unemployment benefits where school was the reason for the voluntary quit.

2. The proposed rule is as follows:

Rule 24.11.411 SCHOOL AS REASON FOR VOLUNTARY QUIT
To requalify for benefits under Section 39-51-2302 (3) MCA, the student must establish:

- (1) That the student voluntarily quit work to attend school, and
- (2) The school schedule would have interfered with the previous employment and,
- (3) The school must be an accredited educational institution by the state, at which the student has had regular attendance for at least three (3) consecutive months from the date of enrollment.

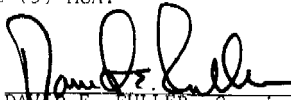
3. The rule is to implement Section 39-51-2302 (3) MCA, enacted by Section 4, Chapter 688, Laws of 1979.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Robert J. Campbell, general counsel, Employment Security Division, P.O. Box 1728, Helena, Montana, 59601, not later than April 26, 1980.

5. If a person who is directly affected by the proposed adoption of this rule wishes to express his data, views and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request along with any written comments he has to Robert J. Campbell, general counsel, Employment Security Division, P.O. Box 1728, Helena, Montana, 59601, not later than April 26, 1980.

6. If the agency receives requests for a public hearing on the proposed rule from either ten percent or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected a hearing will be held at a later date. Notice of the hearing will then be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 50.

7. The authority of the department to make the proposed rule is based on Section 39-51-301 (1) MCA, and the rule implements Section 39-51-2302 (3) MCA.



DAVID E. FULLER, Commissioner
Department of Labor and Industry

Certified to Secretary of State March , 1980.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

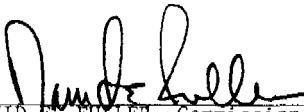
In the matter of the repeal)
of rules 24-3.10(10)-S10050,) NOTICE OF PROPOSED REPEAL
definition of total unemploy-) OF RULES
ment; 24-3.10(10)-S10086,)
self-employment; 24-3.10(10)-) ARM 24-3.10(10)-S10050,
S10120, additional compensa-) ARM 24-3.10(10)-S10086,
tion.)and ARM 24-3.10(10)-S10120

TO: All Interested Persons

1. On May 16, 1980, the department of labor and industry through the employment security division proposes to repeal rules 24-3.10(10)-S10050, definition of total unemployment; 24-3.10(10)-S10086, self-employment; 24-3.10(10)-S10120, additional compensation.

2. The foregoing rules may be found on pages 24-40, 24-41, and 24-43, of the Administrative Rules of Montana.

3. The department of labor and industry proposes to repeal these rules because they are all invalid after the 1977 legislative action in invalidating rule 24-3.10(10)-S10050 in Sec. 1, Ch. 115, Laws of 1977; rule 24-3.10(10)-S10086 in Sec. 1, Ch. 133, Laws of 1977; and rule 24-3.10(10)-S10120 in Sec. 2, Ch. 528, Laws of 1977.



DAVID E. FULLER, Commissioner
Department of Labor and Industry

Certified to Secretary of State March , 1980.

6-3/27/80

MAR Notice No. 24-3-34

BEFORE THE BOARD AND DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION OF
THE STATE OF MONTANA

In the matter of the repeal of) NOTICE OF PUBLIC HEARING
Rule. 36-2.10A(1)-S1000pertain-) FOR THE REPEAL OF THE PRESENT
ing to fire regulation on forest) FOREST FIRE RULES; AND ADOPT-
lands; and the adoption of new) TION OF REVISED FOREST FIRE
rules I through XI revising the) RULES
forest fire rules)

TO: All Interested Persons

1. On April 21, 1980, at 7:30 p.m. at the Community Room, Darigold Farm Building, 1001 North 7th Avenue, Bozeman, Montana; on April 22, 1980, at 7:30 p.m. at the Copper Room, Student Union Building, Eastern Montana College, Billings, Montana; on April 23, 1980, at 7:30 p.m. at the Montana Power Company Building, 1903 Russell Street, Missoula, Montana; and on April 24, 1980, at 7:30 p.m. at the Hideout Room, Outlaw Inn, Kalispell, Montana, public hearings will be held to consider the repeal of the present rules pertaining to fire regulations on forest lands, and the adoption of new rules pertaining to forest fires.

2. Although the new rules are similar in many respects to the present rules, the many changes, including some extensive changes, dictate that they be published as new rules. The new rules as proposed for adoption are as follows:

RULE I FIREFIGHTING EQUIPMENT REQUIRED (1) Except when in designated improved campgrounds or when traveling as a pedestrian, all persons or parties igniting campfires or warming fires on forested lands shall be equipped with a serviceable shovel and bucket as follows:

(a) a shovel 24 inches (60.96 centimeters) in length, blade width 6 inches (15.24 centimeters); and

(b) a bucket, capacity 1 gallon (3.785 liters) (motor-cycle crash helmets qualify).

(2) The requirement of subsections (1)(a) and (1)(b) apply to all operators of motorcycles, trail bikes, and similar type vehicles and persons traveling with pack animals.

(3) Other mobile or stationary power equipment, including trucks of 23,000 GVW or greater, engaged in commercial activities must be equipped with one operable fire extinguisher of a dry chemical type of not less than 2 1/2 pound (1.125 kilogram) capacity with 4BC or higher rating.

(4) Power saw operators shall maintain in their immediate possession a fully charged operable fire extinguisher and a serviceable round pointed No. 0 shovel or larger. The extinguisher shall be a liquid chemical type of at least 8 ounces (224 grams) capacity or a dry chemical type of at least 1 pound (0.454 kilograms) capacity.

RULE II VEHICLE EXHAUST AND SPARK ARRESTOR REQUIREMENTS

(1) All internal combustion engines operated on forested lands must be equipped with an approved and effective spark arresting device.

(2) Motorbikes, trail cycles, scooters and other vehicles of this type, all stationary and mobile power equipment, and heavy duty trucks of 23,000 GVW or greater must be equipped with spark arresting devices listed as approved in the U.S. Forest Service Spark Arrestor Guide. Spark arresting devices must be plainly marked with the manufacturer's name and model number and must be properly installed and maintained in accordance with the guide. Heavy duty trucks may have a vertical stack exhaust system and muffler, provided the exhaust stack extends above the cab of the vehicle.

(3) Power saws must be equipped with a muffler and screen type spark arrestor in accordance with the standards set forth in the U.S. Forest Service Spark Arrestor Guide.

(4) Exhaust driven turbochargers qualify as efficient spark arrestors provided all exhaust gases pass through the turbine impeller. The turbine impeller must be turning at all times and there may be no exhaust bypass. A straight-mechanical-driven supercharger does not qualify.

(5) Automobiles and light trucks of GVW less than 23,000 with complete standard exhaust systems properly mounted and maintained, including a baffle-type muffler and tailpipe through which all exhaust gases pass, also qualify.

RULE III FIRE CACHE All persons, firms, or corporations engaged in any commercial activity on forest lands shall have available for firefighting purposes a fire cache. The fire cache shall consist of one shovel (round pointed No. 0 or larger) and one pulaski tool for each person employed. All tools shall be in good condition and immediately accessible for firefighting purposes. The fire cache tools shall be enclosed in a separate box marked specifically "FOR FIRE USE ONLY."

RULE IV CORRECTION OF HAZARDS AND PATROLLING

(1) Whenever in the judgment of a recognized agency as defined in 76-13-102(11), MCA, a dangerous fire hazard or risk exists, the agency may require that any industrial operation, burning, outdoor welding, blasting, or other activity known to cause fires be halted until such hazard or risk is removed, abated or corrected.

(2) The recognized agency during periods of high fire danger may require any party engaged in activities within the forest lands to designate an able individual in their employment as a patrolman whose duties shall be to patrol the operation as specified by the recognized agency, extinguish small fires, and report immediately all fires to the recognized agency.

RULE V FIRE CREW On all crew operations of 10 or more employees on forest lands, all persons, firms, or corporations

responsible for the operations shall designate, train, and equip a fire crew and crew boss with the powers to act for his employer, to take immediate initial action to suppress any fire starting on the operation area, and to report immediately all fires to the recognized agency.

RULE VI SMOKING AND LUNCH FIRES (1) Smoking is prohibited on all operations on forest lands except at safe places free of flammable material, e.g., a cleared area such as a road or skid trail. Smoking while walking, riding horses, motorbikes or bicycles, or other unenclosed equipment and conveyances is prohibited.

(2) Lunch and warming fires shall be limited to cleared or bare areas, and such fires may not be allowed to spread or be left unattended until completely extinguished.

RULE VII DEBRIS DISPOSAL (1) The operator, owner, or resident of any camp, wood processing plant, establishment, or residence located upon or within forested land shall dispose of any accumulation of flammable debris that in the judgment of the recognized agency constitutes a fire hazard.

(2) Operators of sawmills or other wood processing plants erected or operated during the fire season on or immediately adjacent to forest lands may not begin sawing or other utilization operations until the recognized agency is satisfied that conditions surrounding the mill are such or have been made such that sparks from the operation will not set fires in the adjacent forest areas.

(3) Prior to each fire season, all persons, firms, or corporations creating or responsible for sawmill waste within the forest areas will treat, dispose of, remove, or reduce the hazard created until the recognized agency is satisfied that such accumulation of sawmilling waste does not constitute a fire hazard.

(4) In the event that burning is the disposal method selected, the piles shall be prepared for burning by cribbing the base with slabs. The recognized agency shall determine when and how the piles will be burned.

(5) During the fire season, flammable material and debris may not be burned, excepting under a written fire permit issued by the recognized agency for that forested land. All burning must be carried out in accordance with the department of health and environmental sciences' open burning restrictions.

RULE VIII POWERLINE INSPECTIONS All persons, firms, or corporations who own, control, operate, or maintain electrical transmission or distribution lines shall prior to the beginning of the fire season each year inspect said powerlines for fire hazards and risks, correct the fire hazards and risks found, and inform the recognized agency that necessary remedial actions have been accomplished.

RULE IX FOREST ACTIVITY RESTRICTIONS In areas designated by public proclamation by the administrator, division of forestry, as areas of high fire hazard, the administrator may request all persons, firms, or corporations present or engaged in any activity in the areas to voluntarily cease operations or to adjust working hours to less critical periods of the day. In the event such a request is refused, the administrator may issue a written order directing compliance.

RULE X FOREST CLOSURE (1) During periods of dangerous fire conditions, no person may enter or be upon those forest lands designated by public proclamation by the governor of the state of Montana as areas of dangerous fire hazard except under written permit issued by a recognized agency.

(2) Permits to enter upon such areas during the closure may be issued by the recognized agency upon a showing of real need by the applicant. Permits may be issued to those persons having actual residence as a permanent or principal place of abode in the forest lands designated or to persons engaged in non-fire hazardous employment.

(3) However, no permit may be required of persons engaged in either firefighting, fire prevention, or law enforcement who are engaged in official business.

RULE XI REQUEST FOR REVIEW If any operator believes that in his case any requirement of a recognized agency is excessive, the operator may request the administrator, division of forestry, to review the requirements. If in the opinion of the administrator any or all are not necessary in the interest of public safety, he may make such changes as he considers advisable.

RULE XII APPLICABILITY The forest fire rules, Rule I through Rule XI, are in effect each year during the forest fire season May 1st to September 30th inclusive, or any legal extension thereof. Requirements pertaining to motor vehicles do not apply to those being operated solely on roads that are a part of federal or state maintained highway systems or on any paved public road.

4. The repealed rule is found at page 36-17 of ARM.

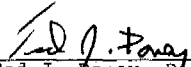
5. The new rules are being proposed to clarify the present rules, to comply with changes in the law, to recognize changes in technology as it affects forest fires, to require powerline inspections, and to make numerous other changes in the forest fire rules.

6. Any person may submit data, views, or comments concerning the proposed new rules either orally or in writing at the hearings. Written data, views, or arguments may be submitted to Gary Brown, Assistant Administrator, Division of Forestry, Montana Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, Montana 59801 anytime before May 1, 1980. To be considered mailed, comments must be postmarked

on or before May 1, 1980.

7. Gary Brown, Assistant Administrator, Division of Forestry, Department of Natural Resources and Conservation has been designated to preside over and conduct the hearings.

8. The authority of the board to repeal and adopt is Section 76-13-109, MCA. The code provisions implemented are Part 1 and 2, Chapter 13, Title 76, MCA.



Ted J. Doney, Director
Department of Natural Resources
Conservation

Certified to the Secretary of State March 18, 1980.

BEFORE THE BOARD AND DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION

In the matter of the repeal of)	NOTICE OF PUBLIC HEARING
Rule 36-2.10B(2)-S1070 pertain-)	FOR THE REPEAL OF ARM 36-
ing to clearing rights-of-way)	2.10B(2)-S1070 AND THE
and the amendment of rules 36.2.)	AMENDMENT OF ARM 36-2.10B(2)
10B(2)-S1040, 36-2.10B(2)-S1050)	-S1040, 36-2.10B(2)-S1050,
36-2.10B(2)-S1060, and 36-2.10B)	36-2.10B(2)-S1060 AND 36-2.
(2)-S1080 pertaining to fire)	10B(2)-S1080
hazard reduction or management)	

TO: All Interested Persons

1. On April 21, 1980, at 7:30 p.m. at the Community Room, Darigold Farm Building, 1001 North 7th Avenue, Bozeman, Montana; on April 22, 1980, at 7:30 p.m. at the Copper Room, Student Union Building, Eastern Montana College, Billings, Montana; on April 23, 1980, at 7:30 p.m. at the Montana Power Company Building, 1903 Russell Street, Missoula, Montana; and on April 24, 1980, at the Hideout Room, Outlaw Inn, Kalispell, Montana, public hearings will be held to consider repeal of ARM 36-2.10B(2)-S1070 pertaining to clearing rights-of-way and the amendment of ARM 36-2.10B(2)-S1040, 36-2.10B(2)-S1050, 36-2.10B(2)-S1060, and 36-2.10B(2)-S1080, pertaining to fire hazard reduction or management. **The repealed rule is found at page 36-28 of the ARM.**

2. The rules as proposed to be amended provide as follows (stricken material is interlined, new material is underlined):

36-2.10B(2)-S1040 PURPOSE OF FIRE HAZARD REDUCTION OR MANAGEMENT LAW AND THIS SUB-CHAPTER (1) The primary objectives of Sections 76-13-401 through 76-13-413, MCA, hereinafter referred to as the "fire hazard reduction or management law" ~~{Section-28-403-i-et-seq.,-R-E-M-1947}~~ are to:

(a) Provide fire hazard reduction, protection or management to the extent necessary for reasonable safety of the residual timber stand, future stands, and the property of others, and to reduce the fire hazard created by the cutting of forest products, clearing right-of-way or conducting timber stand improvement upon private forest lands, by methods found to be economical and yet accomplish the objectives.

(b) Reduce, protect or manage slash fire hazards with the entire-forest-management-picture-in-mind. within the constraints of proper land management.

(2) The purpose of this sub-chapter is to set forth rules implementing the fire hazard reduction or management law under the objectives stated above.

36-2.10B(2)-S1050 DEFINITIONS (1) Unless the context clearly requires otherwise, as used in ~~the Fire-Hazard-Reduction-or Management-Law~~, this sub-chapter, and the forms and procedures

adopted hereunder:

~~{a}--"Department"-means-the-Department-of-Natural-Resources and-Conservation-~~

~~{b}(1)~~ "Division" means the division of forestry of the department.

~~{c}--"Person"-means-an-individual,-association,-partner-ship,-corporation,-estate,-or-any-other-entity-~~

~~{d}(2)~~ "Slash" means tree tops, limbs, and down trees ~~remaining-on-a~~ resulting from timber cutting, right-of-way clearing, thinning or pruning operations.

~~{e}(3)~~ "Landowner" means any person owning land within the state ~~where~~ on which forest products are or have been removed and a fire hazard has been or will be created.

~~{f}(4)~~ "Operator" means any person who cuts for commercial purposes any forest products on private forest land within the state including right-of-way clearing, thinning, or pruning operations.

~~{g}(5)~~ "Purchaser" means any person who purchases or contracts to purchase any forest products cut from private forest land within the state. The term includes persons purchasing cants, studs, cross ties, or other products manufactured on the cutting area.

~~{h}(6)~~ "Timber owner" means any person purchasing stumpage from any private forest land in the state or holding title to the stumpage.

~~{i}(7)~~ "Fire hazard reduction agreement" means the agreement made to insure compliance with the fire hazard ~~and~~ or management law for the orderly and efficient reduction of the fire hazard created (Form 1023).

~~{j}(8)~~ "Fire hazard reduction agreement (state do)" means the agreement in which the department assumes the responsibility to reduce, dispose, manage, or protect the fire hazard created by timber cutting operations (Form 1037).

~~{k}(9)~~ "Contractor" means the person who signs the hazard reduction agreement and thus is responsible to fulfill his obligations established by the agreement.

~~{l}(10)~~ "Slash Fire hazard" means sufficient slash and debris resulting from timber cutting, timber stand improvement, or right-of-way clearing operations, which produces a cover of flammable material in which fire could spread through a cutting or the adjacent area.

~~{m}(11)~~ "Fire hazard reduction" means the treatment of the fire hazard by methods such as lopping and scattering, hand or dozer piling, burning, or chipping to the extent necessary for reasonable safety of the residual timber stand, future stands, and the property of others.

~~{n}(12)~~ "Management-of-fire-hazard"-means-the-constructing of-roads-and-skid-trails-to-mineral-soil-inside-the-logging-area and-connecting-them-to-a-fireline-around-the-perimeter--This method-can-be-used-with,-or-in-lieu-of,-other-slash-treatment. Burning-may-or-may-not-be-necessary. "Management of the fire hazard" means treatment of the slash without physical handling

or burning, such as connecting fuel breaks, fire breaks, roads and skid-trails together to reduce or stop the rapid spread of fire through slash or protect the residual timber, future stands, and property of others without reducing the hazard.

~~(e) -- "Protection of fire hazard" means taking protective measures without actual abatement of the hazard, by turning the slash deposits over to the appropriate fire protection agency. This practice is generally used where the Department has taken over the hazard reduction responsibility but it is not feasible for the department to do the hazard reduction work or the land owner does not want burning to be done on his land or in areas where burning will extensively damage stands of young growth timber.~~

~~(p)~~ (13) "Reasonably concurrent" means 18 months, unless special circumstances warrant an extension from the department.

~~(q)~~ (14) "Certification of clearance" means a certification issued by the department when acknowledging that the fire hazard has been reduced in accordance with the law and this sub-chapter.

36-2.10B(2)-S1060 HAZARD REDUCTION OR MANAGEMENT RULES

(1) As required by Section ~~20-404, R.C.M.-1947~~ 76-13-408, MCA, any person; prior to cutting a forest product or conducting timber stand improvement shall enter into a fire hazard reduction agreement with the department. (The agreement entered into with the department shall be made under Form 1023, Form 1037, or such other agreement as the department provides, and may be made upon application ~~on~~ of Form 1038).

(2) ~~Slash hazard reduction or management shall be completed reasonably concurrent with timber cutting and timber stand improvement operations, and may not exceed a period greater than eighteen (18) months after these operations have been completed in the immediate area;~~ the creation of the fire hazard, i.e., cutting the tree. ~~Slash hazard reduction or management shall be done under commonly acceptable methods of treatment approved by the department.~~

~~(3) -- In lieu of the reduction or management of the slash hazard the protection of fire hazard method may be used upon agreement with the department in appropriate cases.~~

~~(4) (3) If an operator does not perform the hazard reduction responsibilities as prescribed in the fire hazard agreement within the eighteen (18) months, time limit, the reasonably concurrent with the creation of the fire hazard, i.e., cutting the tree, the department, after thirty (30) days following notice may assume the responsibility to reduce or manage the hazard, or turn the deposit over to the appropriate agency for protection in lieu of reduction or management.~~

~~(5) (4) The department shall enter into a fire hazard reduction agreement (state do) only when it is to the department's advantage to do so.~~

~~(6) -- A letter of certification of clearance shall be issued~~

~~by the Department when the hazard has been reduced in accordance with the hazard reduction law and this subchapter.~~

36-2.10B(2)-S1080 FORMS (1) The following forms shall be used in the administration of these rules

- (a) Form 1023 Hazard Reduction Agreement
- (b) Form 1037 Hazard Reduction Agreement (State Do)
- (c) Form 1038 Hazard Reduction Agreement Application
- (d) Form 1006 Hazard Reduction Fact Sheet
- (e) Form 1039 Purchaser Withholding Report
- (f) Form 1041 Right-of-Way Clearing Notice
- (g) Form 1024 Certification of Clearance Letter
- (h) Form 1042 Certification of Compliance Affidavit

(by operator)

(i) Form 1043 Hazard Reduction Agreement Assignment
(owner-operator)

(j) Form 1044 Purchaser Non-Compliance Notification

(k) Form 1045 ~~Eighteen-(18)-Month-Notice~~ Non-Compliance

Notice

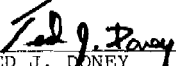
(2) The above forms are available at the divisions's offices.

3. The rules are being amended to comply with the changes in the slash hazard management or reduction law; to expand the objectives of the rules; and to define contractor, fire hazard reduction, and reasonably concurrent and to clarify the definition of Management of Fire Hazard and Certificate of Clearance. Rule 36-2.10B(2)-S1070 is being repealed because it unnecessarily repeats statutory language.

4. Any person may submit data, views, or comments concerning the proposed repeal and amendments to the rules either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Gary Brown, Assistant Administrator, Division of Forestry, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, Montana 59801, any time before May 1, 1980. To be considered, mailed comments must be postmarked on or before May 1, 1980.

5. Gary Brown, Assistant Administrator, Division of Forestry, Department of Natural Resources and Conservation, has been designated to preside over and conduct the hearing.

6. The authority of the board to repeal and amend the rules is Section 76-13-403, MCA. The code provisions implemented are part 4, Chapter 13, Title 76, MCA.


TED J. DONEY
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

Certified to the Secretary of State March 18, 1980.

MAR Notice No. 36-20

6-3/27/80

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

IN THE MATTER of the Proposed)	NOTICE OF PROPOSED REPEAL
Repeal of the Overall Depart-)	OF THE OVERALL DEPARTMENT
ment rules ARM 40-2.2(1)-P200)	RULES ARM 40-2.2(1)-P200
through ARM 40-2.2(10)-P2390)	through 40-2.2(10)-P2390 and
and the proposed adoption of)	the PROPOSED ADOPTION OF THE
the Attorney General's Model)	ATTORNEY GENERAL'S MODEL PRO-
Procedural rules 1.3.101)	CEDURAL RULES 1.3.101 through
through 1.3.234.)	1.3.234

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Parties:

1. On March 13, 1980, the Department of Professional and Occupational Licensing published a notice of proposed repeal and adoption of the above stated procedural rules. That notice is being amended as it has been determined an exception and an addition should be made. The deadline dates for comments in that notice are no longer effective as this notice replaces the original.

2. On April 26, 1980, the Department of Professional and Occupational Licensing proposes to repeal overall department rules ARM 40-2.2(1)-P200 through ARM 40-2.2(10)-P2390 and adopt the attorney general's model procedural rules 1.3.101 through 1.3.234 with one exception and one addition.

3. The rules to be repealed are the department procedural rules 40-2.2(1)-P200 through 40-2.2(10)-P2390 and are currently located at pages 40-13 through 40-52 Administrative Rules of Montana.

4. The proposed adoption will read as follows:

"40.2.201 PROCEDURAL RULES (1) The department of professional and occupational licensing adopts the attorney general's model procedural rules, 1.3.101 through 1.3.234 and all subsequent amendments to the model procedural rules, and incorporates herein those rules by reference with the exceptions and additions noted herein:

(a) 40.2.202 exception - Final orders - ARM 1.3.226

(b) 40.2.203 addition - Complaints - verified and un-verified forms. "

5. ARM 1.3.226 is modified to read as follows:

"40.2.202 MODEL RULE 21 - CONTESTED CASES, NOTICE AND DATE OF FINAL DECISION - MOTIONS FOR REHEARING OR RECONSIDERATION NOT ALLOWED (1) Parties to contested

cases and their attorneys shall be notified of any final decision or order pursuant to section 2-4-623(5) MCA.

(2) For purposes of appeal, the date of service of a final decision is the date of receipt on a postal service return receipt form. Motions to rehear or reconsider a final decision are not in order and will not be acted on."

6-3/27/80

MAR Notice No. 40-2-7

"40.2.203 COMPLAINTS - VERIFICATION (1) A person may file an unverified complaint against a licensee in writing, by letter or by filling out the department's form. The department shall advise such persons that the complaint will be referred to the appropriate board for investigation, and that if the board finds probable cause to believe that the licensee named in the complaint has acted in a manner which would warrant disciplinary proceedings, the board will initiate such proceedings upon its own motion.

(2) A person may file a verified complaint against a licensee by filling out the department's form or a facsimile and swearing to the truth thereof before a notary public who attests to the same. The department shall advise such persons that the complaint will be referred to the appropriate board for investigation and if the board does not dismiss the complaint as unfounded, trivial, or outside its jurisdiction, that a hearing examiner will be appointed who will fix a date on which the complainant must come forward and be examined."

6. Under the directive of the Administrative Procedures Act, the Department of Professional and Occupational Licensing adopted and filed rules of procedure with its initial filing in 1972. At that time the department, rather than avail itself of the use of the attorney general's model rules, drew up its own set of rules, which remain in existence. The department has determined that because of the number of inconsistencies in said rules, along with provisions which questionably either violate or go beyond requirements of statute, and because of the interest in uniformity throughout this department and with other agencies, the department has proposed to replace the existing rules with the model rules, with the exception and addition as noted.

The modification of Model Rule 21 is proposed because of ambiguity in the attorney general's rule as to the effective date of a final order for purposes of appeal. Since the boards in this department only meet on the average 3 or 4 times per year, motions for rehearing or reconsideration would significantly delay the effective date of final orders.

The addition of a rule defining procedures for verified and unverified complaints is proposed because the statutes under which several boards operate contain expressed procedures for responding to verified complaints.


7. Interested parties may submit their data, views or arguments concerning the proposed repeal and adoption in writing to the Department of Professional and Occupational Licensing, Lalonde Building, Helena, Montana 59601 no later than April 24, 1980.

8. If a person who is directly affected by the proposed repeal and adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make

written request for a hearing and submit this request along with any written comments he has to the Department of Professional and Occupational Licensing, Lalonde Building, Helena, Montana 59601 no later than April 24, 1980.

9. If the department receives requests for a public hearing on the proposed repeal and adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal and adoption; 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.

10. The authority of the department to make the proposed repeal and adoption is based on section 2-4-201 MCA and implements the same.

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

Certified to the Secretary of State, March 18, 1980.

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

IN THE MATTER of the Proposed) NOTICE OF PROPOSED AMENDMENT
Amendment of ARM 40-3.30(8)-) OF ARM 40-3.30(8)-S30095
S30095 concerning manager) MANAGER OPERATOR
operators, subsection (3))

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On April 26, 1980, the Board of Cosmetologists proposes to amend ARM 40-3.30(8)-S30095 concerning manager operators, subsection (3).

2. The proposed amendment to subsection (3) will read as follows: (new matter underlined)

"40-3.30(8)-S30095 MANAGER OPERATOR

(1).....

(3) A year shall constitute fifty-two (52) active weeks, (2000 hours) as a cosmetologist.

...."

3. The board is proposing the amendment to implement section 37-31-203 & 302 MCA and to clearly define the meaning of 52 active weeks, because of individuals, seeking a manager license, applying after having worked only 2 or 3 days a week or less. The board feels that anything less than 2000 hours does not provide adequate working experience, under supervision, for them to approve a manager license and still maintain their charge of protection to the public against unqualified practitioners.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Cosmetologists, Lalonde Building, Helena, Montana 59601 no later than April 24, 1980.


5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Cosmetologists, Lalonde Building, Helena, Montana 59601 no later than April 24, 1980.

6. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency, or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected by the proposed amendment has been determined to be

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

section 37-31-302 (3) MCA.

BOARD OF COSMETOLOGISTS
JUNE BAKER, PRESIDENT

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

Certified to the Secretary of State, March 18, 1980.

6-3/27/80

MAR Notice No. 40-30-32

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF FINAL ACTION ON
AMENDMENT OF RULES RELATING	)	CERTAIN RULES AND CONTINUATION
TO THE ASSESSMENT AND	)	OF RULE-MAKING PROCEEDING WITH
TAXATION OF INTERSTATE AND	)	RESPECT TO RULE 42-2.22(46)
INTERCOUNTY PROPERTY.	)	-S22940

TO: All Interested Persons:

1. On December 27, 1979, the Department of Revenue published notice of the proposed amendment of rules relating to the assessment and taxation of interstate and intercounty property, commonly referred to as centrally assessed property, at pages 1641 through 1644 of the 1979 Montana Administrative Register, issue no. 24.

2. The department has taken final action on a portion of the proposal but is continuing the rule-making proceeding with respect to the amendment of rule 42-2.22(46)-S22940. This continuation is to permit the Revenue Oversight Committee to review certain Department recommendations. More details can be found at pages 1091 through 1093 of this issue of the Register.


MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State 3/17/80.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION

OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF PROPOSED
of Rule 10.7.111, subsections	)	AMENDMENT OF RULE
(3) and (4) (Qualification of	)	10.7.11, subsections
Bus Drivers).	)	(3) and (4) (Qualifica-
The grace period for obtaining	)	tion of Bus Drivers)
a First-Aid Certificate and the	)	NO PUBLIC HEARING
penalties for failure to do so.	)	CONTEMPLATED

TO: All Interested Persons.

1. On May 2, 1980, the superintendent of public instruction proposes to amend Rule 10.7.111, subsections (3) and (4), which sets forth the requirements for a person to qualify as a bus driver of Montana school buses. It further sets the grace periods for acquiring a first-aid certificate and the penalties for failure to do so.

2. The subsections of the rule as proposed to be amended provide as follows:

10.7.11 QUALIFICATION OF BUS DRIVERS.

~~(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. Any bus operated by a driver not so qualified by January 31 will not be eligible for state reimbursement for any portion of the year, regardless of when thereafter the driver completes the first-aid requirement. Drivers who have driven the previous year must have the first-aid requirement completed before the expiration date on their certificate. In the event that, at the beginning of school, a district (or contractor) is obligated to employ a new driver who has not completed the first-aid requirement for a school bus driver, a period of three months will be permitted for the new driver to acquire the first-aid certificate. If, after three months following the date of first employment of the new driver, the first-aid requirement has not been met, the bus operated by the driver will not qualify for state reimbursement for that portion of the year the unqualified driver operated the bus, regardless of when thereafter the driver obtains the first-aid 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~~ three months will be permitted for the new driver to acquire the first-aid certificate. If, after ~~two~~ three 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 portion of the year beginning with the date of the uncertified~~

driver's--employment for that portion of the year the unqualified driver operated the bus, regardless of when thereafter the driver obtains the first-aid certificate.

3. The rule is proposed to be amended to respond to requests to make the rule more equitable in allowing new drivers, whether or not they come at the beginning of the school year or during it, to meet the same criteria for certification.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to the Superintendent of Public Instruction, Capitol, Helena, Montana, no later than April 30, 1980.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written requests for a hearing and submit this request along with any written comments he has to the Superintendent of Public Instruction, Capitol, Helena, Montana, no later than April 30, 1980.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; 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 42 persons based on 419 elementary school districts in the state of Montana.

7. The authority of the agency to make the proposed amendment is based upon Section 20-10-103, MCA, and the rule implements subsection (5) of Section 20-10-103, MCA.

By: _____

GEORGIA RICE

SUPERINTENDENT OF PUBLIC INSTRUCTION

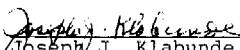
Certified to the Secretary of State March 18, 1980.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

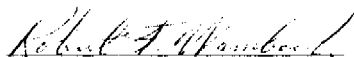
In the matter of the repeal	)	NOTICE OF REPEAL OF RULE
of Rule 12-2.6(1)-S680 relat-	)	12-2.6(1)-S680 AGE AT
ing to age at time of applica-	)	TIME OF APPLICATION
tion for special licenses)	

TO: All Interested Persons.

1. On February 14, 1980, the Fish and Game Commission published notice of a proposed repeal of a rule relating to age at time of application for special licenses at page 445 of the 1980 Montana Administrative Register, issue number 3.
2. The agency has repealed the rule as proposed.
3. No comments or testimony were received.



Joseph J. Klabunde, Chairman
Fish and Game Commission



Robert F. Wambach, Director
Dept. of Fish, Wildlife & Parks

Certified to Secretary of State March 17, 1980.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the repeal of) NOTICE OF REPEAL OF RULE
Rule 12-2.10(14)-S10110 and the) RELATING TO MOTORBOAT
adoption of a new revised rule) AND VESSEL REQUIREMENTS
relating to motorboat and vessel) AND ADOPTION OF A NEW
equipment requirements) REVISED RULE

TO: All Interested Persons.

1. On February 14, 1980, the Fish and Game Commission published notice of a proposed repeal of a rule relating to motorboat and vessel equipment requirements and adoption of a new rule at page 450 of the 1980 Montana Administrative Register, issue number 3.

2. The agency has repealed the old rule and adopted the new rule as proposed.

3. No comments or testimony were received.

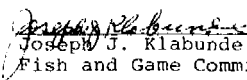
In the matter of the amendment) NOTICE OF AMENDMENT OF
of Rule 12-2.10(14)-S10120) RULE RELATING TO
relating to boating regulations) BOATING REGULATIONS

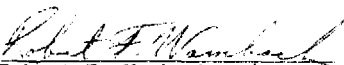
TO: All Interested Persons.

1. On February 14, 1980, the Fish and Game Commission published notice of a proposed amendment of a rule relating to boating regulations at page 454 of the 1980 Montana Administrative Register, issue number 3.

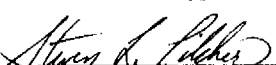
2. The agency has amended the rule as proposed.

3. No comments or testimony were received.


Joseph J. Klabunde, Chairman
Fish and Game Commission


Robert F. Wambach, Director
Dept. of Fish, Wildlife & Parks

Reviewed and Approved:


Steven A. Fisher
Water Quality Bureau
Environmental Sciences Division
Dept. of Health & Environmental Sciences

Certified to Secretary of State March 17, 1980

6-3/27/80

Montana Administrative Register

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the repeal of	)	NOTICE OF REPEAL OF RULES
Rules 12-2.2(10)-P290 through	)	RELATING TO THE MONTANA
-P2060 pertaining to rules	)	ENVIRONMENTAL POLICY ACT
implementing the Montana Envir-	)	AND ADOPTION OF NEW RULES
onmental Policy Act; and the	)	IMPLEMENTING THAT ACT
adoption of new Rules I through)	
XX implementing MEPA)	

TO: All Interested Persons.

1. On February 14, 1980, the Fish and Game Commission published notice of a proposed repeal of rules relating to the Montana Environmental Policy Act and adoption of new rules implementing that Act at page 446 of the 1980 Montana Administrative Register, issue number 3.

2. The agency has repealed the old rules and adopted the new rules as proposed except for minor modifications as set forth herein.

3. No comments have been received other than those by department staff review. Comments and responses are as follows in summary:

Rule II(1) Comment: By what method will this department or any other department to which the rules apply determine the existence of proposed actions?

Response: This decision will be made on a case-by-case basis as the situation is presented to the department.

Rule II(8) Comment: Change the wording following "(PER)" to "means a brief narrative or checklist on a proposed action ...".

Response: The suggestion was a valid one. However, there is no substantive change to be made by this request; thus in the interest of maintaining uniformity throughout state agencies on MEPA rules, this request is denied.

Rule III(3)(b) Comment: How does department determine what is "growth-inducing and growth-inhibiting"?

Response: This determination will be made on a case-by-case basis as the proposed situation presents itself to the department.

Rule III(4) Comment: Include "PER" following "EIS". Thus, it would start, "An EIS or PER is not ...".

Response: The suggestion does not require a substantive change as a clear reading of the rule shows that logically if an EIS is not required, a PER will not be required.

Rule III(4)(b) Comment: Include the following, "and improvements", after the words, "minor repairs".

Response: This item should be treated and considered under the list set forth in Rule III(6).

Rule III(6) Comment: The department should be required to adopt a list of the activities that normally require an

EIS, a fairly straightforward task for the agency. However, to list all of those things which do not require an EIS or PER may well be monumental and also not particularly informative of the department's activities.

Response: Denied. It is incumbent upon the department to provide the general public with as much information as reasonably possible regarding its position on performance of environmental reviews. The lists required in this rule are an attempt to provide that information. If the inclusion of a list of activities or functions that do not require an EIS or a PER becomes, or is, burdensome to department or is of limited assistance to the general public, the rule then can be modified.

Rule IV(1)(a) Comment: Delete "an adequate" and insert "a" before "description" as this wording might provoke unnecessary challenges to a PER.

Response: Denied. The inclusion of the word "adequate" is no more likely to provoke a challenge than not including it. For without the word, there is high likelihood that the description called for in the rule must meet a reasonableness test. Such test may be compared to the requirement that the description be "adequate".

Rule IV(1)(b) Comment: Reverse the order of words to read, "through the use of a brief narrative or a checklist, including ...".

Response: Denied. See response to Rule II(8) above.

Rule IV(1)(c) Same comment and response as to Rule IV(1)(b).

Rule V(3)(e) Comment: Change the wording to read "economic and environmental benefits and costs of the proposed action when appropriate (if a benefit-cost ...".

Response: Denied. The requirement to review the economic and environmental benefits and cost of a proposed department action will generally be an appropriate task. When such review has no application or appropriateness to specific environmental review, that lack of application or appropriateness should be stated in the review.

Rule V(3)(g) Comment: The provisions of (3)(g) may well be covered by (3)(b) of this same rule. If so, (3)(g) should be deleted.

Response: Concur. Subsection (3)(g) will be deleted.

Rule IV(2) Comment: Change the wording in the last sentence as follows, "The applicant whose project is being evaluated in the EIS may request a reasonable extension ... in order to ...".

Response: Denied. The flexibility requested by this comment is available in the rule as written.

Rule VIII(1) Break up this sentence into two sentences as follows: first sentence would end, "...state and federal

agencies and the applicant."

Response: Denied. See response to Rule II(8).

Rule VIII(6) Comment: In the last line, insert "draft" before "EIS".

Response. Concur. "Draft" is to be inserted as suggested.

Rule VIII(8) Comment: This subsection more logically would fit under Rule VII at the end.

Response: Denied. While this subsection might not be appropriate where it is presently placed, it does not fit where the commenter suggests either.

Rule X(2) Comment: The list kept for reference of location of full text of EIS's should refer to public places.

Response: Denied. That the places be public ones is implied. Further see response to Rule II(8).

Rule XI(3) Comment: Change the requirement for preparation of a brief summary to permit use of the draft summary as the summary for the final EIS where there have been no revisions.

Response: Denied. This suggestion is implied from the present wording.

Rule XVII Comment: Change to read, "This proposed course of action shall be prepared by the department within 45 days after final decision on the project, proposal, or major state action."

Response. Concur. The rule is modified as requested.

Rule XVIII Comment: To what extent does this disclosure statement invade the individual's private financial status?

Response: The concern is recognized and the form for affidavits prepared under this rule will be prepared to elicit only the information necessary to determine whether the individual contracting to prepare an EIS has a financial interest in the outcome of the project.

Rule XIX(1) Comment: Isn't the last sentence redundant in light of the provisions of subsection (2)?

Response: Denied. See response to next comment.

Rule XIX(2) Comment: The time limits provided and the opportunity for people to require a public hearing are going to make it almost impossible for people to comply with the rule.

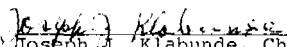
Response: Denied. The comment reflects a misreading of the rule. The 20-day limitation applies to the time within which a request for hearing must be made. Those requests for hearing on a DEIS made after 20 days will be denied.

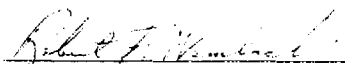
Rule XX Comment: The wording in this rule apparently applies the revisions to applications. Agency-initiated activity that comes under MEPA provisions has been overlooked. Change this rule as follows:

"These amended rules adopted to implement MEPA apply to all proposed actions, applications, or other

activities covered by the Montana Environmental Policy Act initiated after the effective date of these rules and to all such actions or activities for which a draft EIS has not been filed with the governor prior to the effective date of these rules."

Response: Concur. The rule is changed as suggested.


Joseph J. Klabunde, Chairman
Fish and Game Commission


Robert F. Wambach, Director
Dept. of Fish, Wildlife & Parks

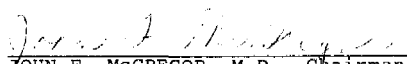
Certified to Secretary of State March 17, 1980.

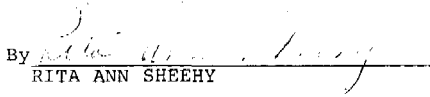
BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the repeal)	NOTICE OF REPEAL
of rule ARM 16-2.14(10)-S14471)	OF RULE
relating to reimbursement of)	ARM 16-2.14(10)-S14471
state grant money for water)	
pollution control facilities)	

TO: All Interested Persons

1. On January 31, 1980, the Board of Health and Environmental Sciences published notice of a proposed repeal of ARM 16-2.14(10)-S14471 relating to reimbursement of state grant money for water pollution control facilities at page 140 of the 1980 Montana Administrative Register, issue number 2.
2. The Board has repealed the rule as proposed.
3. No comments or testimony were received.


JOHN F. MCGREGOR, M.D., Chairman

By 
RITA ANN SHEEHY

Certified to the Secretary of State March 18, 1980

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

In the matter of the repeal	)	NOTICE OF REPEAL OF RULE
of rule ARM 16-2.14(6)-S14270,	)	ARM 16-2.14(6)-S14270,
radiation control, and the	)	(Radiation Control)
adoption of new rules for	)	AND THE ADOPTION OF NEW RULES
radiation control	)	16-2.12(1)-S12101 through
		16-2.12(11)-S121103

TO: All Interested Persons

1. On January 31, 1980, the Department of Health and Environmental Sciences ("Department") published notice of the proposed repeal of rule 16-2.14(6)-S14270, ARM, concerning radiation control, and the proposed adoption of new rules concerning radiation control at pages 159-342 of the 1980 Montana Administrative Register, issue number 2.

2. The Department has repealed rule 16-2.14(6)-S14270 as proposed, and adopted rules 16-2.12(1)-S12101 through 16-2.12(11)-S121103 with the following changes:

16-2.12(1)-S12101 POLICY
Same as proposed rule.

16-2.12(1)-S12102 DEFINITIONS

(1) - (5) Same as proposed.

(6) "Byproduct material" means any "a radioactive material (except special nuclear material ~~in quantities not sufficient to form a critical mass~~) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material."

(7) - (30) Same as proposed.

(31) "Person" means "any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision ~~of this state, any other state or political subdivision,~~ or agency thereof, and any legal successor, representative, agent or agency of the foregoing, other than the United States nuclear regulatory commission, any successor thereto, or federal agencies licensed by the nuclear regulatory commission."

(32) - (42) Same as proposed.

(43) "Registration" means registration-with-the department-in-accordance-with-the-rules-adopted-by-the department "the registering with the department by the legal owner, user, or authorized representative of sources of ionizing radiation in the manner prescribed by rule."

(44) - (49) Same as proposed.

(50) "Source material" means:
~~(a)--uranium-or-thorium, or any other combination thereof, in any physical or chemical form, or~~
~~(b)--ores which contain by weight one-twentieth of one percent (0.05 percent) or more of:~~
~~(i)--uranium,~~
~~(ii)--thorium, or~~
~~(iii)--any combination thereof.~~

Source material does not include special nuclear material: uranium, thorium, or any other material which the department or the United States nuclear regulatory commission declares by order to be source material or ores containing one or more of the foregoing materials in such concentration as the department or the nuclear regulatory commission declares by order to be source material after the nuclear regulatory commission has determined the material in such concentration to be source material."

(51) - (61) Same as proposed.

16-2.12(1)-S12103 EXEMPTIONS
Same as proposed.

16-2.12(1)-S12104 RECORDS
Same as proposed.

16-2.12(1)-S12105 INSPECTIONS
Same as proposed.

16-2.12(1)-S12106 TESTS
Same as proposed.

16-2.12(1)-S12107 ADDITIONAL REQUIREMENTS--The department may, by rule, regulation, or order, impose upon any licensee or registrant such requirements in addition to those established in this chapter as it deems appropriate or necessary to minimize danger to the public health and safety or property. Reserved.

16-2.12(1)-S12108 PROHIBITED USES
Same as proposed.

16-2.12(1)-S12109 COMMUNICATIONS
Same as proposed.

Sub-Chapter 2, Registration of Radiation Machine Facilities, rules 16-2.12(2)-S12201 through 16-2.12(2)-S12205, same as proposed.

Sub-Chapter 3, Licensing of Radioactive Material, rules 16-2.12(3)-S12301 through 16-2.12(3)-S12305, same as proposed.

16-2.12(3)-S12306 GENERAL LICENSES -- RADIOACTIVE
MATERIAL OTHER THAN SOURCE MATERIAL

- (1) - (7) Same as proposed.
- (8) (a) (i) - (iii) Same as proposed.
- (iv) ~~subpart 57 for the measurement of intestinal absorption of cyano-cobalamin~~; reserved;
- (v) - (vii) Same as proposed.
- (b) - (e) Same as proposed.
- (9) - (10) Same as proposed.

16-2.12(3)-S12307 through 16-2.12(3)-S12324, same as proposed.

Sub-Chapter 4, Standards for Protection against Radiation, rules 16-2.12(4)-S12401 through 16-2.12(4)-S12426, same as proposed.

Sub-Chapter 5, Radiation Safety Requirements for Industrial Radiographic Operations, rules 16-2.12(5)-S12501 through 16-2.12(5)-S12520, same as proposed.

Sub-Chapter 6, X-Rays in the Healing Arts, rules 16-2.12(6)-S12601 through 16-2.12(6)-S12611, same as proposed.

Sub-Chapter 7, Use of Sealed Radioactive Sources in the Healing Arts, rules 16-2.12(7)-S12701 through 16-2.12(7)-S12703, same as proposed.

Sub-Chapter 8, Radiation Safety Requirements for Analytical X-Ray Equipment, rules 16-2.12(8)-S12801 through 16-2.12(8)-S12806, same as proposed.

Sub-Chapter 9, Radiation Safety Requirements for Particle Accelerators, rules 16-2.12(9)-S12901 through 16-2.12(9)-S12912, same as proposed.

Sub-Chapter 10, Notices, Instructions and Reports to Workers; Inspections, rules 16-2.12(10)-S121001 through 16-2.12(10)-S121006, same as proposed.

Sub-Chapter 11, Stabilization of Mill Tailings Piles, rules 16-2.12(11)-S121101 through 16-2.12(11)-S121103, same as proposed.

3. No persons attended the public hearing for purposes of commenting on the proposed repeal of 16-2.14(6)-S14270 or the proposed adoption of the new rules, however, one written comment was received from David Niss, attorney, representing the Administrative Code Committee of the Legislature.

The Committee suggested that the definitions found in rule 16-2.12(1)-S12102 conform to those statutory definitions found in section 75-3-103, MCA. The Department agrees with this suggestion and has made the definitions in the rules conform to those found in the statute.

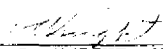
The Committee questioned whether proposed rule 16-2.12(1)-S12107 exceeded legislative authority by granting the Department unlimited rule-making powers. Upon review of the proposed rule, the Department finds the rule unnecessary, and has eliminated it from consideration by withdrawing the proposed rule and reserving this rule number for future use.

The Committee expressed concern that several provisions of the proposed rules conflicted with section 75-3-104(3), MCA, by limiting the kind or amount of radiation that may be intentionally applied to a person for diagnostic or therapeutic purposes by or under the direction of a licensed practitioner of the healing arts. The Department responded to this concern by appearing before the Committee at its February, 1980 meeting and calling attention to section 75-3-104(2), MCA. This section provides that no exemption can be granted under the radiation control act which does not comply with the rules of the federal nuclear regulatory commission (NRC).

The NRC restricts access to and controls the use of radioactive materials produced by nuclear reactors including their availability and use by physicians at the present time. The Department's proposed rules as proposed do not place any additional restrictions on physician's application of radiation except for cobalt-57 which can be produced electronically by an accelerator and do not have to be produced in a nuclear reactor which is under NRC control. Therefore, the Department is not including cobalt-57 in rule 16-2.12(3)-S12306(8) (a)(iv) and will reserve that subsection until legislation can be passed which amends section 75-3-104(3), MCA. Other references to cobalt-57 in the rule have been retained as they do not restrict application of radiation directly to a person but rather to in vitro applications, i.e., those in the laboratory, and to the possession and not use of radiation, actions which do not conflict with 75-3-104(3), MCA.

The Department also notes that a physician qualified in nuclear medicine may apply for and be granted a special license which removes restrictions on the use and application of certain types of radiation.

No other persons submitted comments to the hearings officer on the proposed rules.


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

Certified to the Secretary of State March 18, 1980

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of Rule)	NOTICE OF AMEND-
18-2.10(1)-S1000 regarding Highway)	MENT OF RULE
Department G.V.W. enforcement)	18-2.10(1)-S1000,
officers.)	DIVISION EMPLOYEES
)	AS PEACE OFFICERS.

TO: All Interested Persons:

1. On January 31, 1980, the Department of Highways published notice of proposed amendment of Rule 18-2.10(1)-S1000 regarding Highway Department G.V.W. enforcement officers at pages 353 and 354 of the 1980 Montana Administrative Register, issue number 2.

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

18-2.10(1)-S1000 DIVISION EMPLOYEES AS PEACE OFFICERS

(1) Training for G.V.W. Personnel as Peace Officers

(a) Each employee shall be of good moral character and integrity.

(b) Each employee shall, unless he has previous acceptable law enforcement experience, complete the basic law enforcement academy training course at Bozeman and, in addition, shall serve a ninety (90) day apprenticeship as a G.V.W. Enforcement Officer before he is authorized to make the arrests provided for in 61-12-206, MCA.

~~(2)--Official Uniform for G.V.W. Personnel Authorized to Arrest~~

~~(a)--Summer Uniform--A shirt and trousers of military suntan--style, with insignia upon both shoulders stating Department of Highways--G.V.W.--Division.~~

~~(b)--A silver six-pointed star, which contains the words "Department of Highways", official title of officer, and badge number shall be worn upon the left side of the shirt above the breast pocket.~~

~~(c)--In addition, a name plate designating the officer's name shall be worn upon the left right side of the shirt.~~

~~(b)-(d)--Winter Uniform--Shirt, trousers, and jacket of military style with insignia, badge, and name plate similar to summer uniform.~~

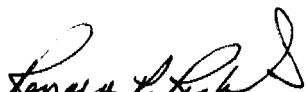
~~(3)--Forms Used--G.V.W. Form 8, "Notice to Appear", and G.V.W. Form 161, "G.V.W. Weighing Station Report", are both issued to the public.~~

3. Oral comments were received from the staff of the Administrative Code Committee questioning the rulemaking authority cited in paragraph 7 of the Notice of Proposed Amendment. Questions were also raised by them relative to paragraphs (2) and (3) of the rule since these concerned the internal management of the agency. The Department agrees with their comments and have amended paragraphs (2) and (3) out of

the Rule as adopted. The staff also questioned the implemented sections contained in paragraph 7 of the Notice of Proposed Amendment. The Department agrees that the only implemented section is 61-12-202, MCA.

4. Reference to sections 61-12-201 through 61-12-208, MCA as implemented sections will be deleted in the replacement page history section.

By


Ronald R. Richards, Director
Department of Highways

Certified to the Secretary of State, March 18, 1980.

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of Rule)	NOTICE OF AMEND-
18-2.10(6)-S1050 regarding G.V.W.)	MENT OF RULE
Validating Identification.)	18-2.10(6)-S1050,
)	G.V.W. VALIDATING
)	IDENTIFICATION.

TO: All Interested Persons:

1. On January 31, 1980, the Department of Highways published notice of proposed amendment of Rule 18-2.10(6)-S1050 regarding Gross Vehicle Weight Validating Identification at pages 351 and 352 of the 1980 Montana Administrative Register, issue number 2.

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

18-2.10(6)-S1050 G.V.W. VALIDATING IDENTIFICATION

(1) Each truck, truck tractor, trailer, semi trailer or three unit trailer with a gross weight in excess of 24,000 pounds (or non-resident paying a G.V.W. fee ONLY) will be issued a G.V.W. validating decal and cab card showing the expiration of the G.V.W. fees paid. G.V.W. validating plates will no longer be issued. ~~Busses-paying-G.V.W.-fees will-also-be-issued-a-decal-and-cab-card.~~

(2) The decal is to be placed in the upper right hand corner of the Montana registration plate. The renewal decal is to be placed over the expired decal.

(3) Decals will be issued in five series: A = 100% G.V.W. Fee; B = 75% G.V.W. Fee; C = 16% G.V.W. Fee (Farm); D = Schedule III Fees (Combined Gross Weight); and E = 55% G.V.W. Fees.

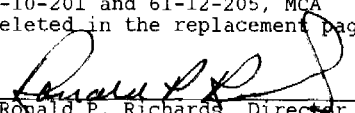
(4) Each decal will have the large figure "1", "2", "3", or "4" in the center which indicates the expiration date of the G.V.W. Fee: "1" = Expires March 31; "2" = Expires June 30; "3" = Expires September 30; and "4" = Expires December 31.

(5) The G.V.W. validating identification will be issued by the G.V.W. Division after the payment of G.V.W. fees.

3. Oral comments were received from the staff of the Administrative Code Committee questioning the implemented sections contained in paragraph 7 of the Notice of Proposed Amendment. The Department agrees that the only implemented section is 61-10-209, MCA.

4. Reference to sections 61-10-201 and 61-12-205, MCA as implemented sections will be deleted in the replacement page history section.

By


Ronald P. Richards, Director
Department of Highways

Certified to the Secretary of the State, March 18, 1980.

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of Rule)	NOTICE OF AMEND-
18-2.10(6)-S1060 regarding Delivery)	MENT OF RULE 18-2.
Zone Permits.)	10(6)-S1060,
)	DELIVERY ZONE PERMITS

TO: All Interested Persons

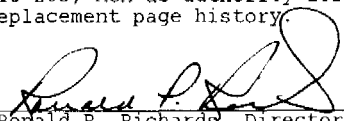
1. On January 31, 1980, the Department of Highways published notice of proposed amendment of Rule 18-2.10(6)-S1060 regarding delivery zone permits, at pages 349 and 350 of the Montana Administrative Register, issue number 2.

2. The Department has amended the rule as proposed.

3. Oral comments were received from the staff of the Administrative Code Committee questioning the rulemaking authority cited in paragraph 7, of the Notice of Proposed Amendment. The Department agrees that there may be some question as to the section cited for authority.

4. Reference to section 61-10-203, MCA as authority for adoption will be deleted in the replacement page history.

By


Ronald P. Richards, Director
Department of Highways

Certified to the Secretary of State, March 18, 1980.

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of Rule)	NOTICE OF AMEND-
18-2.10(6)-S10040 regarding combines.)	MENT OF RULE
)	18-2.10(6)-S10040,
)	COMBINES.

TO: All Interested Persons:

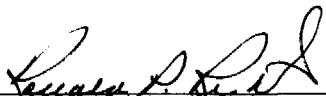
1. On January 31, 1980, the Department of Highways published notice of a proposed amendment to Rule 18-2.10(6)-S10040 regarding the licensing of combines, at pages 346 and 347 of the 1980 Montana Administrative Register, issue number 2.

2. The Department has amended the rule as proposed.

3. Oral comments were received from the staff of the Administrative Code Committee questioning the rulemaking authority cited in paragraph 7 of the Notice of Proposed Amendment and the implemented sections. The Department agrees that there may be some question as to the section cited for authority and agrees that section 61-10-214, MCA should be cited as an implemented section.

4. Reference to section 61-10-214, MCA as authority for adoption will be deleted and section 61-10-214, MCA will be added as an implemented section in the replacement page history section.

By


Ronald P. Richards, Director
Department of Highways

Certified to the Secretary of the State, March 18, 1980.

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of Rule)	NOTICE OF ADMEND-
18-2.10(6)-S10070 regarding fertilizer)	MENT OF RULE
vehicles.)	18-2.10(6)-S10070,
)	FERTILIZER VEHICLES.

TO: All Interested Persons:

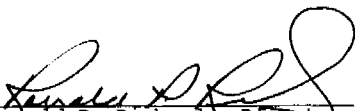
1. On January 31, 1980 the Department of Highways published notice of a proposed amendment to Rule 18-2.10(6)-S10070 to make the rule current. The proposal was published at pages 347 and 348 of the 1980 Montana Administrative Register, issue number 2.

2. The Department has amended the rule as proposed.

3. Oral comments were received from the staff of the Administrative Code Committee questioning the implementing authority cited in paragraph 7 of the Notice of Proposed Amendment and the implemented sections. The Department agrees that there may be some question as to the section cited for authority and agrees to cite 61-3-431, MCA as an additional implemented section.

4. Reference to section 61-10-206, MCA as authority for adoption will be deleted and section 61-3-431, MCA will be added as an implemented section in the replacement page history section.

By


Ronald P. Richards, Director
Department of Highways

Certified to the Secretary of State, March 18, 1980.

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL of Rules)	NOTICE OF REPEAL
18-2.10(6)-S1020 and 18-2.10(14)-S10110)	OF RULE 18-2.
regarding definitions used in sub-	) 10(6)-S1020, DEFINI-
chapters (6) & (14).	) TIONS, and RULE 18-2.
)	) 10(14)-S10110, DEF-
)	INITIONS

TO: All Interested Persons:


1. On January 31, 1980, the Department of Highways published notice of proposed amendment of Rules 18-2.10(6)-S1020, Definitions and 18-2.10(14)-S10110, Definitions at page 343 of the 1980 Montana Administrative Register, issue number 2. The reason given for the repeal was that the definitions were repetitious of statutory definitions.

2. The Department proposes to repeal Rule 18-2.10(6)-S1020, except for the following definition (1) Gross Vehicle Weight. The agency proposes to repeal Rule 18-2.10(14)-S10110 except for the following definitions (1) Axle Measurement; (7) Holidays; (15) Restricted Route-Load Permit; (17) Single Axle; (18) Single Axle Load; (20) Special Permit; (21) Tandem Axle and (22) Tandem Axle Load.

3. Oral comments were received from the staff of the Administrative Code Committee questioning the rulemaking authority cited in paragraph 7 of the Notice of Proposed Repeal. The Department agrees that there may be some question as to their authority. Reference to section 61-10-101 will be deleted in the replacement page history section.

4. It was discovered that some of the definitions contained in the two rules were not repetitious of statutory definitions. These definitions are going to be retained.

By


Ronald P. Richards, Director
Department of Highways

Certified to the Secretary of State, March 18, 1980.

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL of Rules	)	NOTICE OF REPEAL
18-2.10(6)-S1080, G.V.W. Half Year	)	OF RULES 18-2.10(6)-
fees; 18-2.10(6)-S1090, G.V.W. Fees	)	S1080, G.V.W. HALF
Transferable; and 18-2.10(6)-S10050,	)	YEAR FEES; 18-2.10
S. M. Plates.	)	(6)-S1090, G.V.W.
	)	FEES TRANSFERABLE;
	)	and 18-2.10(6)-
	)	S10050, S.M. PLATES.

TO: All Interested Persons:

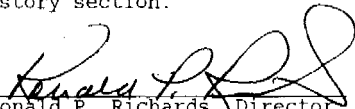
1. On January 31, 1980, the Department of Highways published notice of a proposed repeal of Rules 18-2.10(6)-S1080; 18-2.10(6)-S1090, and 18-2.10(6)-S10050 regarding G.V.W. licensing, at page 344 of the 1980 Montana Administrative Register, issue number 2.

2. The Department has repealed the rules as proposed.

3. Oral comments were received from the staff of the Administrative Code Committee questioning the rulemaking authority cited in paragraph 7 of the Notice of Proposed Repeal. The Department agrees that there may be some question as to the authority for adoption of the rule.

4. Reference to section 61-10-201, MCA will be deleted on the replacement page history section.

By


Ronald P. Richards, Director
Department of Highways

Certified to the Secretary of State, March 18, 1980.

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL of Rule)	NOTICE OF REPEAL OF
18-2.10(6)-S10020 regarding sales)	RULE 18-2.10(6)-
tax on new motor vehicles paid by)	S10020, SALES TAX ON
servicemen and disabled veterans.)	NEW MOTOR VEHICLES.

TO: All Interested Persons:

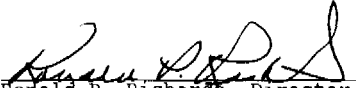
1. On January 31, 1980, the Department of Highways published notice of a proposed repeal of rule 18-2.10(6)-S10020 regarding sales tax on new motor vehicles paid by servicemen and disabled veterans, at page 345 of the 1980 Montana Administrative Register, issue number 2.

2. The Department has repealed the rule as proposed.

3. Oral comments were received from the staff of the Administrative Code Committee questioning the rulemaking authority cited in paragraph 7 of the Notice of Proposed Repeal. The Department agrees that there may be some question as to the section cited as authority for adoption of the rule. The Department states that there is authority under 61-3-506, MCA.

4. Reference to section 61-3-502, MCA as authority for adoption will be changed to section 61-3-506, MCA in the replacement page history section.

By


Ronald P. Richards, Director
Department of Highways

Certified to the Secretary of State, March 18, 1980.

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

In the matter of the amendment) NOTICE OF THE AMEND-
of rule 32-2.6A(22)-S6010 re-) MENT OF RULE 32-2.6A(22)
lating to brands and ear marks.) -S6010

TO: All interested Persons.

1. On January 31, 1980 the Department of Livestock published notice of a proposed amendment to rule 32-2.6A(22)-S6010 BRANDS AND EARMARKS concerning the brands and ear marks registered to the Department of Livestock on page 355 of the 1980 Montana Administrative Register, Issue No. 2.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

In the matter of the amendment) NOTICE OF AMENDMENT OF
of rules 32-2.6A(26)-S6020,) RULES 32-2.6A(26)-S6020,
32-2.6A(26)-S6025, 32-2.6A(26)-) 32-2.6A(26)-S6025, 32-2
S6032, 32-2.6A(26)-S6040, 32-2.6A) .6A(26)-S6032, 32-2.6A
(26)-S6050, 32-2.6A(26)-S6070,) (26)-6040, 32-2.6A(26)-
32-2.6A(26)-S6105 relating to) S6050, 32-2.6A(26)-S6070,
brucellosis control.) 32-2.6A(26)-S6105

1. On January 31, 1980 the Department of Livestock published notice of the proposed amendments to rules 32-2.6A(26)-S6020, 32-2.6A(26)-S6025, 32-2.6A(26)-S6032, 32-2.6A(26)-S6040, 32-2.6A(26)-S6050, 32-2.6A(26)-S6070, 32-2.6A(26)-S6105 concerning brucellosis control beginning at page 357 of the Montana Administrative Register, Issue No. 2.

2. The agency has amended 32-2.6A(26)-S6020, 32-2.6A(26)-S6032, 32-2.6A(26)-S6040, 32-2.6A(26)-S6050, 32-2.6A(26)-S6070 and 32-2.6A(26)-S6105 as proposed.

3. The agency has amended rule 32-2.6A(26)-S6025 with the following changes: Paragraphs 1, 2, and 3 remain the same. Paragraph 4 now reads (new material underlined).

"(4) (a) Cattle capable of breeding in which the eruption of the first pair of permanent incisor teeth has occurred or which are in the third trimester of the first pregnancy owned or managed by an investment service or a cooperation, the majority of who shareholders are not primarily engaged in the production of livestock, which are moved from one premise to another noncontiguous premise shall be found negative to an official test for brucellosis made not more than 30 days prior to such a movement. The owner or manager of such cattle may petition the state veterinarian for a waiver of such test requirements. Upon a finding that the interest of animal disease control will not be harmed, the waiver may be granted. The language of this paragraph does not apply to corporations, the majority whose shareholders are not principally engaged in production of livestock when one or more of the shareholders are directly involved in the management or operation of the ranch enterprise."

Paragraph (b) remains the same.

4. No comments or testimony were received with respect to any of the rules except rule 32-2.6A(26)-S6025. A comment was received through the Montana Stockgrower's Association on the last mentioned rule to the effect that the proposed change would require unnecessary testing of cattle owned by a number of Montana corporations which were family ranches, the shareholders of which had mostly retired or were principally engaged in other kinds of enterprises. Because the purpose of this rule is to require the testing of livestock in movements that are very similar to changes of ownership when those owning the livestock have a limited interest in animal health consideration, the department believes that the language added in this notice of amendment properly protects the interest of disease control by allowing an exception to the test requirement on a ranch corporation the majority of whose shareholders are not engaged in the production of livestock when one or more of the shareholders are engaged actively in the management of the ranch operation.

In the matter of the amendment) NOTICE OF AMENDMENT OF
of rule 32-2.6A(30)-S6160 relating) RULE 32-2.6A(30)-S6160
to biologics.)

1. On January 31, 1980 the Department of Livestock published notice of a proposed amendment to rule 32-2.6A(30)-S6160 concerning biologics at page 368 of the 1980 Administrative Register, Issue No. 2.
2. The agency has amended the rule as proposed.
3. No comments or testimony were received.

In the matter of the repeal of rule) NOTICE OF REPEAL OF
32-2.6A(42)-S6220 and the amend-) RULE 32-2.6A(42)-S6220
ment of rule 32-2.6A(42)-S6230 re-) AND THE AMENDMENT OF
lating to the disposal of animal) RULE 32-2.6A(42)-S6230
carcasses.)

1. On January 31, 1980 the Department of Livestock published notice of a proposed repeal of rule 32-2.6A(42)-S6220 and the amendment to rule 32-2.6A(42)-S6230 concerning disposal of animal carcasses at page 371 of the 1980 Montana Administrative Register, Issue No. 2.
2. The agency has repealed and amended the rules as proposed.
3. No comments or testimony were received.

In the matter of the repeal of ARM) NOTICE OF REPEAL OF
32-2.6C(1)-S610 and the adoption of) ARM 32-2.6C(1)-S610
the new rule relating to animal) AND THE ADOPTION OF THE
diagnostic laboratory fees.) NEW RULE

1. On January 31, 1980 the Department of Livestock published notice of the proposed repeal of rule 32-2.6C(1)-S610 and the adoption of a new rule to be numbered 32-2.6C(1)-S611 LABORATORY PROCEDURES and FEES concerning fee procedures at the departments diagnostic laboratory at page 373 of the 1980 Montana Administrative Register, Issue No. 2.

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

3. No comments or testimony were received.


ROBERT G. BARTHELMESS
Chairman, Board of Livestock

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

Certified to the Secretary of State March 18, 1980.

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


In the matter of the Adoption)	NOTICE OF ADOPTION OF ARM 40-
of new rules concerning)	3.100(6)-S10065 ENVIRONMENTAL
environmental sanitation and)	SANITATION AND ARM 40-3.100(6)-
employment responsibilities)	S10066 EMPLOYMENT RESPONSIBILITIES

TO: All Interested Persons:

1. On February 14, 1980, the Board of Sanitarians published a notice of proposed adoption of new rules 40-3.100(6)-S10065 Environmental Sanitation and 40-3.100(6)-S10066 Employment Responsibilities at pages 483 and 484, Montana Administrative Register, issue no. 3.
2. The board has adopted the rules exactly as proposed.
3. No comments or testimony were received.

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

BY:


ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, March 18, 1980.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

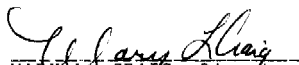
IN THE MATTER OF THE	)	NOTICE OF ADOPTION OF A RULE
ADOPTION OF A RULE for the	)	for the determination of
determination of proximity	)	proximity to a place of worship
to a place of worship or a	)	or a school
school.)	

TO: All Interested Persons:

1. On January 17, 1980, the Department of Revenue published notice of the proposed adoption of a rule for the determination of proximity to a place of worship or a school at pages 74 and 75 of the 1980 Montana Administrative Register, issue no. 1.

2. The Department has adopted Rule I (42-2.12(6)-S12009).

3. A question was raised by the Montana Tavernowners Association as to the applicability of the rule. It is the Department's intent to apply the rule to those applications for new licenses or for extensions or relocations of premises of existing licensees received on or after the effective date of the rule. The rule is not to be applied retroactively to existing, licensed premises or to transfers of existing licenses related to such premises. One letter was received concerning the same question. No other comments or testimony were received.


MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State 3/3/80

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF ADOPTION	)	NOTICE OF ADOPTION of rules
OF RULES relating to drive-	)	relating to drive-up window
up window facilities for	)	facilities for retail sales
retail sales of alcoholic	)	of alcoholic beverages.
beverages.)	

TO: All Interested Persons:

1. On February 14, 1980, the Department of Revenue published notice of the proposed adoption of rules relating to drive-up window facilities for retail sales of alcoholic beverages at pages 485 through 487 of the 1980 Montana Administrative Register, issue no. 3.

2. The Department has adopted Rule I (42-2.12(6)-S12140) and Rule II (42-2.12(6)-S12150) as proposed.

3. No comments or testimony were received.

IN THE MATTER OF THE	)	NOTICE OF REPEAL OF NUMEROUS
REPEAL OF NUMEROUS RULES	)	RULES related to income tax.
related to income tax.)	

TO: All Interested Persons:

1. On February 14, 1980, the Department of Revenue published notice of the proposed repeal of numerous rules related to income tax at pages 488 through 490 of the 1980 Montana Administrative Register, issue no. 3.

2. The Department has repealed the rules as proposed.

3. No comments or testimony were received.

IN THE MATTER OF THE	)	NOTICE OF REPEAL OF NUMEROUS
REPEAL OF NUMEROUS RULES	)	RULES related to corporation
related to corporation tax.	)	tax.

TO: All Interested Persons:

1. On February 14, 1980, the Department of Revenue published notice of the proposed repeal of numerous rules related to corporation tax at pages 491 and 492 of the 1980 Montana Administrative Register, issue no. 3.

2. The Department has repealed the rules as proposed.

3. No comments or testimony were received.

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

TO: All Interested Persons:

1. On February 14, 1980, the Department of Revenue published notice of the proposed repeal of numerous rules relating to property tax at pages 493 through 495 of the 1980 Montana Administrative Register, issue no. 3.

2. The Department has repealed the rules as proposed.

3. No comments or testimony were received.


IN THE MATTER OF THE	)	NOTICE OF REVISION OF RULES
REVISION OF RULES relating	)	relating to new industrial
to new industrial property.	)	property.

TO: All Interested Persons:

1. On February 14, 1980, the Department of Revenue published notice of the proposed revision of rules relating to new industrial property at pages 496 through 501 of the 1980 Montana Administrative Register, issue no. 3.

2. The Department has repealed rule 42-2.22(6)-S22000 and adopted Rule I (42-2.22(6)-S22201), Rule II (42-2.22(6)-S22202), Rule III (42-2.22(6)-S22203), Rule IV (42-2.22(6)-S22204), Rule V (42-2.22(6)-S22205), Rule VI (42-2.22(6)-S22206), Rule VII (42-2.22(6)-S22207), Rule VIII (42-2.22(6)-S22208), Rule IX (42-2.22(6)-S22209), Rule X (42-2.22(6)-S22211), and Rule XI (42-2.22(6)-S22212) as proposed.

3. No comments or testimony were received.


MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State 3/17/80.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF REVISION OF RULES
REVISION OF RULES relating	)	relating to energy conserva-
to energy conservation and	)	tion and nonfossil forms of
nonfossil forms of energy	)	energy conservation.
generation.)	

TO: All Interested Persons:

1. On January 31, 1980, the Department of Revenue published notice of the proposed revision of rules relating to energy conservation and nonfossil forms of energy generation at pages 388 through 390 of the 1980 Montana Administrative Register, issue no. 2.
2. The Department has repealed rules 42-2.22(26)-S22600 and 42-2.22(26)-S22610, amended rule 42-2.22(26)-S22620, and adopted Rule I (42-2.22(26)-S22621) as proposed.
3. No comments or testimony were received.

IN THE MATTER OF THE	)	NOTICE OF REVISION OF RULES
REVISION OF RULES relating	)	relating to the special fuel
to the special fuel user's	)	user's permit and the confis-
permit and the confiscation	)	cation of illegible copies of
of illegible copies of such	)	such permits.
permit.)	

TO: All Interested Persons:

1. On January 31, 1980, the Department of Revenue published notice of the proposed revision of rules relating to the special fuel user's permit and the confiscation of illegible copies of such permit at pages 391 through 397 of the 1980 Montana Administrative Register, issue no. 2.
2. The department has adopted Rule I (42-2.18(6)-S18200) as proposed and amended rules 42-2.18(6)-S18100, 42-2.18(6)-S18110, 42-2.18(6)-S18120, and 42-2.18(6)-S18190 with the following changes (deletions interlined and additions capitalized and underlined):

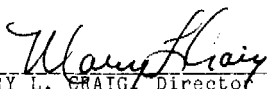
42.2.18(6)-S18120 CANCELLATION OR REVOCATION OF SPECIAL FUEL LICENSE- AND- VEHICLE USER'S PERMIT. (1) Upon ceasing operations in Montana each user shall submit a final return requesting cancellation of the special fuel license user's permit. In order to cancel a Montana fuel tax account, and be released of any further obligations, a return must be filed for each calendar month quarter up to and including the month quarter that all valid the vehicle permits are permit issued by the department is returned to this office the motor fuel tax

division, and the user shall remit and pay all tax, penalty, and interest required to be collected and which have accrued from the amount of fuel used up to and including the date of cancellation.

(2) No further changes.

~~(4)(3) Any licensed special fuel user who is in possession of a valid special fuel permit(s) shall, at the time he discontinues use of one or more vehicles, return to this agency the special fuel vehicle permit assigned to the vehicles involved for cancellation. Any outstanding vehicle permits which are not returned to this office for cancellation will be listed on An invalid permit list which is maintained by the department and is distributed to all duly authorized law enforcement officers in Montana. Any vehicle permit(s) on the invalid list are A vehicle permit on the invalid list or a reproduction of such a permit is subject to confiscation by enforcement officers, and a fine may be imposed at the discretion of the arresting officer.~~

3. No comments or testimony were received. The additional changes made in rule 42-2.18(6)-S18120 represent the correction of oversights in preparing the original notice. The word "vehicle" is deleted in line 7 of subsection (1) and in line 9 of subsection (3) to reflect the fact that there are no longer vehicle permits under the new laws.


MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State 3/17/80.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF AMENDMENT OF RULES
AMENDMENT OF RULES RELATING	)	42-2.22(46)-S22890, 42-2.22(46)
TO THE ASSESSMENT AND	)	-S22900, 42-2.22(46)-S22910,
TAXATION OF INTERSTATE AND	)	and 42-2.22(46)-S22930;
INTERCOUNTY PROPERTY.	)	ADOPTION OF A NEW RULE relating
		to motor vehicles; and INTERIM
		AMENDMENT OF RULE 42-2.22(46)
		-S22940, all relating to
		centrally assessed companies,
		AND CONTINUATION OF RULE-MAKING
		PROCEEDING AS TO INTERIM AMEND-
		MENT.

TO: All Interested Persons:

1. On December 27, 1979, the Department of Revenue published notice of the proposed amendment of rules relating to the assessment and taxation of interstate and intercounty property, commonly referred to as centrally assessed property, at pages 1641 through 1644 of the 1979 Montana Administrative Register, issue no. 24.

2. The Department has amended rules 42-2.22(46)-S22890, 42-2.22(46)-S22910, and 42-2.22(46)-S22930 as proposed.

The Department has amended rule 42-2.22(46)-S22900 with the following changes (deletions interlined and additions underlined and capitalized):

42-2.22(46)-S22900 DEFINITIONS (1) through (13): No changes from proposal.

(14) Situs property is all operating property used by a centrally assessed company that is not part of a roadway or a transmission or distribution system, that is not rolling stock or airplanes, or that by nature is immovable. Situs property includes but is not limited to: buildings, dams, powerhouses, depots, stations, shops, furniture, fixtures, tools, substations, ELECTRONIC SWITCHING EQUIPMENT, machinery, meters, transformers, and operating lands not in the right-of-way. Situs property does not include automobiles, trucks, and special mobile equipment (as defined in 61-1-104, MCA) upon which property taxes have been assessed and paid.

(15) No changes from proposal.

The Department has adopted a new rule (42-2.22(46)-S22901) that provides as follows:

42-2.22(46)-S22901 TREATMENT OF MOTOR VEHICLES AND MOBILE EQUIPMENT (1) Automobiles, trucks, and special mobile equipment excluded from the definition of situs property are to be reported

to the department by each county. The county assessor shall transmit to the department a statement showing the total market and taxable value for all automobiles, trucks, and special mobile equipment assessed in the county for each centrally assessed company.

(2) Each centrally assessed company having such equipment shall provide the department with a statement showing the total market and taxable value for this type of equipment for each county. This statement is to be filed at the same time the report required by Rule 42-2.22(46)-S22910 is filed.

(3) The total market value for these assessed automobiles, trucks, and special mobile equipment is deducted from the Montana unit value, as defined in Rule 42-2.22(46)-S22930, to determine the amount of the Montana unit value to be allocated under the provisions of Rule 42-2.22(46)-S22940.

The Department has amended rule 42-2.22(46)-S22940 on an interim basis with the following changes (deletions interlined and additions underlined and capitalized):

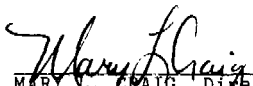
42-2.22(46)-S22940 EQUALIZATION-AND APPORTIONMENT (1) and (2): No changes from proposal.

(3) The Montana situs property value is apportioned to the taxing units in which the property is situated by use of a factor based on installed cost. The factor is the ratio of the installed cost within the taxing unit to the total installed cost of situs property in Montana. TO ACCOMPLISH THIS, THE TOTAL INSTALLED COST OF SITUS PROPERTY IN EACH TAXING UNIT IS MULTIPLIED BY THE PERCENTAGE COMPUTED BY DIVIDING THE MSPV DEVELOPED IN SUBSECTION (1)(C) BY THE TOTAL INSTALLED COST OF MONTANA SITUS PROPERTY. Recognizing the difficulty in generating installed cost data, the department will, upon written request, grant an extension until December 31, 1980, to any centrally assessed company in order to enable the company to provide the necessary cost information. If an extension is granted, the company is required to assist the department in developing an acceptable method of apportioning the 1980 valuation.

3. The Department has received numerous comments from interested parties concerning the amendment of the rules relating to centrally assessed property. Mountain Bell requested that the definition of "situs property" be amended to include switching equipment. The Department is agreeable to this change and consequently subsection (14) of rule 42-2.22(46)-S22900 is amended. Mountain Bell also suggested that the first two sentences of subsection (3) of rule 42-2.22(46)-S22940 be rewritten for clarity, and this has been done. Numerous parties commented that the taxing status of motor vehicles and mobile equipment was not clear under the proposed amendments. In response the Department has drafted a new rule to clarify the status of such vehicles and equipment.

The principal source of contention was the use of "original cost" as opposed to "market value" or some other measure in the apportionment process. Those speaking to this issue, principally the power utility and the railroad representatives, claimed that the determination of original cost was unduly burdensome and hence unreasonable within the meaning of section 15-23-105, MCA. The Department agrees that the computation of original cost will present some problems to companies who have not maintained their records in a suitable manner. The Department disagrees, however, that this accounting burden renders the use of original cost "unreasonable" within the meaning of section 15-23-105, MCA. The use of "reasonable" in that section refers to the use of original cost as a reasonable method of apportionment not as a reasonable method of computation. So long as original cost provides a reasonable basis for apportionment, the Department lacks authority to adopt another standard, such as market value. Recognizing, however, the bookkeeping task involved, the Department has expressed a willingness to extend the deadline for compliance from December 31, 1980, to December 31, 1981. In reviewing this recommendation for an extension to 1981, the Revenue Oversight Committee requested that the Department delay such action until the Committee had an opportunity to review the need for and consequences of an extension. It is because of this request that the amendment of rule 42-2.22(46)-S22940 is termed an interim amendment. In order to permit the Revenue Oversight Committee to review the proposed extension, the Department will delay taking final action on the proposed amendment to rule 42-2.22(46)-S22940. The changes in rule 42-2.22(46)-S22940 suggested by Mountain Bell will be retained when final action is taken. Notice of final action will be published in the Montana Administrative Register.

4. The authority of the Department to make the proposed amendments and to adopt the new rule is given by 15-1-201 and 15-23-108, MCA. The rules implement Title 15, chapter 23, MCA.



MARY C. CRAIG, Director
Department of Revenue

Certified to the Secretary of State 3/17/80.

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

In the matter of the adoption of	)	NOTICE OF ADOPTION
Rules 46-2.6(1)-S640, 46-2.6(1)-S641,	)	OF RULES PERTAINING
46-2.6(1)-S642, 46-2.6(1)-S643,	)	TO THE AGING SER-
46-2.6(1)-S644, 46-2.6(1)-S645,	)	VICES BUREAU AND THE
46-2.6(1)-S646, 46-2.6(1)-S647,	)	REPEAL OF RULES
46-2.6(1)-S648, 46-2.6(1)-S649,	)	46-2.6(1)-S600
46-2.6(1)-S650, 46-2.6(1)-S651,	)	THROUGH 46-2.6(1)-
46-2.6(1)-S652, 46-2.6(1)-S653,	)	S635.
46-2.6(1)-S654, 46-2.6(1)-S655, and)	
46-2.6(1)-S656 pertaining to the Aging)	
Services Bureau and Area Agencies and)	
the repeal of Rule 46-2.6(1)-S600)	
through 46-2.6(1)-S635.)	

TO: All Interested Persons

1. On February 14, 1980, the Department of Social and Rehabilitation Services published notice of a proposed adoption of Rules 46-2.6(1)-S640 through 46-2.6(1)-S656 and the repeal of Rules 46-2.6(1)-S600 through 46-2.6(1)-S635 pertaining to the Aging Services Bureau and Area Agencies at page 518 of the 1980 Montana Administrative Register, issue number 3.

2. The agency has repealed the rules as proposed.

3. The agency has adopted Rules 46-2.6(1)-S640 through 46-2.6(1)-S656 with the following changes:

46-2.6(1)-S640 ~~RULE-I~~ PURPOSE The purpose of the aging services bureau is to develop and administer the state plan; coordinate all activities in the state relating to the purposes of the act; serve as the advocate for all older persons in the state; direct area agencies and service providers in the development of comprehensive and coordinated service delivery systems throughout the state.

46-2.6(1)-S641 ~~RULE-II~~ DEFINITIONS For purposes of this sub-chapter, the following definitions apply:

(1) "Act" means the Older Americans Act of 1965, as amended.

(2) "Administration on Aging" means the agency established in the office of the secretary, department of health and welfare, as part of the office of human development services which is responsible for administering the provisions of the act and whose address is North Building, 330 Independence Avenue, Southwest, Washington, D.C. 20201.

(3) "Federal Department" means the department of health and welfare.

(4) "Department" means the department of social and rehabilitation services.

(5) "Bureau" means the aging services bureau of the department of social and rehabilitation services.

(6) "Commissioner" means the commissioner on aging of the administration on aging.

(7) "Area Agency" means the agency designated by the bureau in a planning and service area to develop and administer an area plan for a comprehensive and coordinated system of services for older persons.

(8) "Community Focal Point" means a place or mobile unit in a community or neighborhood designated by an area agency for the collocation and coordination of services to older persons.

(9) "Comprehensive and Coordinated System" means a program of interrelated social and nutrition services designed to meet the needs of older persons in a planning and service area.

(10) "Indian Tribal Organization" means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned or chartered by the governing body.

(11) "Indian Tribe" means any tribe, band, nation or other organized group or community of Indians which is recognized as eligible for the special programs and services provided by the federal government to Indians because of their status as Indians.

(12) "Manual" means the state manual of policy and procedures for operations of programs under the Older Americans Act for the bureau.

(13) "~~Multipurpose~~ ~~Multipurpose~~ Senior Center" means a community or neighborhood facility for the organization and provision of facilities for recreational and group activities for older persons and services including, but not limited to, health, social, nutritional, and educational services.

(14) "Planning and Service Area" means the geographic area served by an area agency.

(15) "Nonprofit Organization" means a corporation, organized under Title 35, Chapter 2, ~~of the~~ MCA, in which no part of ~~the~~ its income or profit ~~of which~~ is distributable to its members, directors, or officers.

(16) "Older Person" means any person sixty years old or older.

(17) "Service Provider" means an individual, agency, or organization awarded a subgrant or contract from the bureau or an area agency to provide services under the state plan or an area plan.

(18) "Federal Fiscal Year" means the period beginning October 1 of one year and ending September 30 of the next year.

(19) "State Fiscal Year" means the period beginning July 1 of one year and ending June 30 of the next year.

(20) "State Plan" means the document submitted by the bureau to the administration on aging in order to receive grants from the state's allotments under the act.

(21) "Units of General Purpose Local Government" include, but are not limited to, counties and incorporated cities and towns and other government units as may be established by law pursuant to Title 7, Chapters 1, 2, and 3, ~~of the~~ MCA.

(22) "Area Plan" means the document submitted by an area agency to the bureau in order to receive subgrants or contracts from the bureau's grants under the act to comply with Chapters 2, 3, and 4 of the manual.

(23) "Social Services" means:

(a) access services such as:

(i) transporting older persons to and from community facilities and resources;

(ii) escorting ~~to~~ older persons unable to use conventional means of transportation;

(iii) outreach to identify hard-to-reach older persons and assist them in obtaining services; and

(iv) informing older persons of the opportunities and services available and referring them to the proper service provider.

(b) community services such as education, information and referral, health, legal, advocacy, program development, counseling, health screening, residential repair and renovation, recreation and alteration, renovation, acquisition and construction of multipurpose senior centers;

(c) home services such as home health, homemaker, home chore; and

(d) services in care providing facilities such as placement, counseling, complaint and grievance resolution.

(24) "Nutrition Services" means congregate and home delivered meals, nutrition education and shopping assistance.

(25) "Entity" means an individual, person or organization.

(26) "MCA" means the Montana Code Annotated.

(27) "District" means one of the multi-county districts established by Executive Order 2-71 and Executive Order 7-73.

46-2.6(1)-S642 ~~RULE-III~~ DESIGNATION OF PLANNING AND SERVICE AREAS

The bureau may designate as a planning and service area:

(1) any unit of general purpose local government;

(2) any district or combination of districts; or

(3) any Indian reservation.

46-2.6(1)-S643 ~~RULE-IV~~ DESIGNATION OF AREA AGENCIES

(1) The bureau may designate as an area agency in a planning and service area an entity which demonstrates its ability to:

(a) develop and administer an area plan for a comprehensive and coordinated system of services; and

(b) serve as the advocate and focal point for older persons in the planning and service area.

(2) Entity includes but is not limited to:

- (a) an established office on aging which operates within the planning and service area;
- (b) any office or agency of a unit of general purpose local government;
- (c) any combination of offices or units of general purpose local governments; or
- (d) any other public or private nonprofit agency, except any regional or local agency of the state.

46-2.6(1)-S644 RULE-V BUREAU HEARING PROCEDURES

(1) The bureau shall provide a hearing, when requested according to the provision of ARM 46-2.2(1)-P221, 46-2-202-ARM to:

- (a) a designated area agency when the bureau;
- (i) disapproves a plan or plan amendment submitted by the agency;
- (ii) disapproves an area plan for failure to comply substantially with the requirements of the act or manual; or
- (iii) withdraws the agency's designation; and
- (b) any unit of general purpose local government, district or combination of districts that is denied designation as a planning and service area.

(2) The hearing will be conducted according to the provisions of ARM 46-2.2(2)-P211 46-2-201 through 46-2.2(2)-P340. 46-2-214 of the Administrative Rules of Montana.

46-2.6(1)-S645 RULE-VI FUNCTIONS OF AREA AGENCY An area agency shall:

- (1) develop and administer an area plan for a comprehensive and coordinated delivery system in a planning and service area;
- (2) assess the kinds and levels of services needed by older persons in the planning and service area;
- (3) enter into subgrants or contracts to provide all services under the plan, except as provided under 46-2.6(1)-S651 RULE-XII(46.4.120);
- (4) provide technical assistance, monitor, and quarterly evaluate the performance of all service providers under the plan;
- (5) coordinate the administration of its plan with other federal, state and local resources;
- (6) establish an advisory council as required by 46-2.6(1)-S646 RULE VII(46.4.111);
- (7) assure that older persons in the planning and service area have access to information and referral services;
- (8) divide the entire planning and service area into community service areas and designate community focal points;
- (9) provide outreach efforts to identify older persons and inform them of the availability of services under the plan; and
- (10) develop and publish a manual of methods it uses to establish priorities for services and provide a copy of the

manual to each service provider in the planning and service area.

46-2.6(1)-S646 ~~RULE-VII~~ AREA AGENCY ADVISORY COUNCIL

(1) An area agency shall establish an advisory council to advise the agency in:

- (a) development and administration of the area plan;
- (b) conducting public hearings;
- (c) representing the interests of older persons; and
- (d) reviewing and commenting on all community policies and programs which affect older persons.

(2) The advisory council shall be made-up of:

- (a) interested citizens, more than 50 percent of whom are older persons; and
- (b) local elected officials.

(3) The agency may use the advisory council to advise it in carrying out any of its functions.

(4) The area agency shall provide staff and assistance to the advisory council.

46-2.6(1)-S647 ~~RULE-VIII~~ AREA PLAN CONTENT (1) An area plan shall provide for a comprehensive and coordinated delivery system.

(2) An area plan shall demonstrate how the area agency will meet functions required by 46-2.6(1)-S645 ~~Rule-VI~~ (46.4.108).

(3) An area plan shall provide that:

- (a) services are provided as provided in 46.4.120;
- (b) any existing state and local licensure requirements for the provision of services are met.

(4) An area plan shall provide that at least 50 percent of the area agency's allotment for social services shall be spent for access services, home services, and legal services, excluding amounts for administration.

(5) An area plan shall specify:

(a) program objectives to implement all requirements regarding delivery of services;

(b) objectives established by the bureau;

(c) a resource allocation plan indicating the proposed use of all funds directly administered by the area agency;

(d) an inventory of programs operated by other agencies in the planning and service area for services to older persons;

(e) a description of community services areas and an identification of community focal points; and

(f) methods the area agency uses to set services priorities.

46-2.6(1)-S648 ~~RULE-IX~~ AREA PLAN REVIEW The area agency shall:

(1) hold a public hearing on the area plan and any amendments to the area plan;

(2) give at least fourteen days notice to older persons, public officials and other interested parties of the times, dates, and locations of the public hearing(s); and

(3) submit the area plan and amendments to:

- (a) the area advisory council for review and comment;
- (b) the state grant clearinghouse in the governor's office of budget and program planning for review and comment;
- (c) the bureau for approval.

46-2.6(1)-S649 AREA PLAN, APPROVAL/DISAPPROVAL RULE-X

~~AREA-PLAN-APPROVAL/DISAPPROVAL~~ (1) The bureau shall approve an area plan or amendments which meet the requirements of the act.

(2) The bureau shall follow the procedures in 46-2.6(1)-S644 RULE-V(46.4.107) to terminate an area plan or area agency designation if the bureau:

- (a) finds that an area plan is unapprovable;
- (b) proposes to terminate the designation of an area agency; or
- (c) finds that the provisions or administration of an approved area plan no longer substantially comply with the requirements of the act.

46-2.6(1)-S640 AREA PLAN, AMENDMENT/DEVELOPMENT RULE-XI
AREA-PLAN--AMENDMENT--DEVELOPMENT An area agency shall:

(1) amend the area plan if:

(a) a new or amended state or federal statute or regulation requires a new provision or conflicts with any existing plan provision;

(b) local law, organization, policy or agency operation changes and is no longer accurately reflected in the area plan;

(c) the area agency proposes to add, change, or delete any area plan provisions; or,

(d) the bureau requires further annual amendments;

(2) receive subgrants or contracts only under an approved area plan; and

(3) use its subgrants or contracts only for activities under an approved area plan.

46-2.6(1)-S651 RULE-XII DIRECT PROVISION OF SERVICES
BY AN AREA AGENCY (1) The area agency shall use

subgrants or contracts with service providers to provide all services under the act unless the bureau decides that direct provision of a service by the area agency is necessary to assure an adequate supply of the service.

(2) The area agency may directly provide information and referral, outreach, advocacy, program development, coordination, individual needs assessment and case management services if the bureau decides that the area agency can perform the services more effectively and efficiently than any other agency in the planning and service area.

(3) For all other services funded under the act, the bureau may allow the area agency to directly provide services in the planning and service area if no other agency can and will provide the service.

(4) The area agency may plan, coordinate and provide services funded under other programs if:

(a) it does not use funds under the act for those services; and

(b) it continues to meet all its area agency responsibilities.

46-2.6(1)-S652 ~~RULE-XIII~~ AREA AGENCY FUNDS TERMINATION

The bureau shall withhold further payments to an area agency when the bureau, after notice and opportunity for a hearing required in ARM 46-2.6(1)-S644 46-4-107, finds that:

(1) the area agency does not meet the requirements of the act;

(2) the area plan or plan amendment is not approvable; or,

(3) there is failure in the provisions or administration of an approved area plan to comply with any provision of the act.

46-2.6(1)-S653 ~~RULE-XIV~~ SERVICE CONTINUATION BY BUREAU

(1) If the bureau terminates funding under 46-2.6(1)-S652 ~~RULE-XIII~~ (46.4.121), it shall:

(a) notify the administration on aging;

(b) provide a plan for the continuity of services in the planning and service area; and

(c) designate a new area agency in the planning and service area.

(2) The bureau may, for a period up to 180 days after its final notice to withdraw designation of an area agency:

(a) perform the responsibilities of the area agency; and

(b) assign the responsibilities of the area agency to another agency in the planning and service area.

46-2.6(1)-S654 ~~RULE-XV~~ CONTRIBUTIONS FOR SERVICES

(1) The area agency shall require each service provider under the area plan to:

(a) give each older person who receives a service, information about the cost of the service;

(b) give each older person an opportunity to contribute to part or all of the cost of the service;

(c) inform each older person that he may decide freely whether or not to contribute and how much;

(d) protect the privacy of each older person with respect to his contribution;

(e) have procedures to safeguard and account for all contributions;

(f) use all contributions to expand the services of the provider under the act; and

(g) use all contributions for nutrition services to increase the number of meals served.

(2) The area agency shall permit each service provider to develop a contribution schedule for services based on:

(a) the income ranges of older persons in the community; and

(b) the provider's other sources of income.

(3) The area agency may not allow any service provider to deny an older person a service because the older person would not contribute for the service.

46-2.6(1)-S655 ~~RULE-XVI~~ NUTRITION SERVICES: CONGREGATE NUTRITION PROVIDERS (1) An area agency may award nutrition services funds only to a nutrition services provider which:

(a) provides congregate nutrition services;

(b) can provide home delivered nutrition services directly or by contract; and

(c) agrees to coordinate its activities with, and provide some meals at, the community focal point;

(d) meets the requirements of 46-2.6(1)-S656 ~~RULE-XVI~~ (46.4.129).

(2) An area agency shall award funds to a nutrition services provider which:

(a) was a nutrition project receiving funds under the former Title VII of the act on September 30, 1978; and

(b) has carried out its nutrition services activities with demonstrated effectiveness.

(3) The nutrition services provider shall:

(a) provide a hot or other appropriate meal in a congregate setting at least once a day, five or more days a week;

(b) locate congregate nutrition services as close as possible to the majority of eligible older persons who are all other persons and the spouse of the older person regardless of age; and

(c) give preference to community facilities when locating a congregate site.

46-2.6(1)-S656 ~~RULE-XVI~~ NUTRITION SERVICES: FOOD REQUIREMENTS (1) The nutrition services provider shall: (a) follow procedures to preserve nutritional value and food safety in the purchase and preparation of food and delivery of meals;

(b) serve special meals to meet the health, religious or ethnic dietary needs of individual older persons, unless the area agency exempts the provider from this requirement when the foods and skills to provide these diets are unavailable in the planning and service area;

(c) use appropriate food containers and necessary utensils for blind and handicapped older persons; ~~when-needed~~.

(2) Each meal served by the service provider shall contain at least one-third of the current recommended dietary allowances as established by the food and nutrition board of the national academy of sciences, national research council.

(3) The bureau shall distribute all food, cash or a combination of food and cash received from the United States department of agriculture through the state department through area agencies to nutrition service providers based on each provider's proportion of the total number of meals served in the state under the act.

(4) A nutrition services provider shall:

(a) accept and use any United States department of agriculture food made available by the bureau, and;

(i) assure arrangements for the transportation, storage and use of the food.


(b) If it receives U.S.D.A. cash, the cash shall be spent only for buying food.

(5) A nutrition services provider shall:

(a) assist older persons to take advantage of benefits available to them under the food stamp program; and

(b) coordinate its activities with agencies responsible for administering the food stamp program.

4. No comments or testimony were received.



Director, Social and Rehabilitation Services

Certified to the Secretary of State March 18, 1980.

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

In the matter of the repeal of	)	NOTICE OF THE REPEAL OF
rules 46-2.10(14)-S11000 and 46-	)	RULES 46-2.10(14)-
2.10(14)-S11250 specifying the	)	S11000 AND 46-2.10(14)-
forms used for eligibility determ-	)	S11250 PERTAINING TO
ination and registration for AFDC	)	AFDC ELIGIBILITY AND
	)	REGISTRATION FORMS

TO: All Interested Persons

1. On February 14, 1980, the Department of Social and Rehabilitation Services published notice of a proposed repeal to Rules 46-2.10(14)-S11000 and 46-2.10(14)-S11250 specifying the forms used for eligibility determination and registration for AFDC at page 502 of the 1980 Montana Administrative Register, issue number 3.

2. The agency has repealed the rules as proposed.

3. No comments or testimony were received.

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

In the matter of the repeal of	)	NOTICE OF THE REPEAL OF
rule 46-2.10(14)-S11260 pertaining	)	RULE 46-2.10(14)-S11260
to registration requirements for	)	PERTAINING TO WIN REGIS-
WIN program	)	TRATION REQUIREMENTS

TO: All Interested Persons

1. On February 14, 1980, the Department of Social and Rehabilitation Services published notice of a proposed repeal to Rule 46-2.10(14)-S11260 pertaining to registration requirements for the WIN program at page 504 of the 1980 Montana Administrative Register, issue number 3.

2. The agency has repealed the rule as proposed.

3. The rationale has been reworded. The agency proposes to repeal this rule because the major provisions of the rule are covered in rule 46-2.10(14)-S11240, therefore making it redundant and unnecessary.

4. No comments or testimony were received.

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

In the matter of the repeal of) NOTICE OF THE REPEAL OF
rule 46-2.10(14)-S11370 pertaining) RULE 46-2.10(14)-S11370
to locating absent parents of) PERTAINING TO LOCATING
dependent children) AFDC PARENTS

TO: All Interested Persons

1. On February 14, 1980, the Department of Social and Rehabilitation Services published notice of a proposed repeal to Rule 46-2.10(14)-S11370 pertaining to locating absent parents of dependent children at page 506 of the 1980 Montana Administrative Register, issue number 3.

2. The agency has repealed the rule as proposed.

3. No comments or testimony were received.

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

In the matter of the repeal of) NOTICE OF THE REPEAL OF
rules 46-2.6(10)-S6610, 46-2.6(10)-) RULES 46-2.6(10)-S6610,
S6630 and 46-2.6(10)-S6640) 46-2.6(10)-S6630 AND 46-
pertaining to child and youth) 2.6(10)-S6640 PERTAINING
development bureau's record) TO CHILD AND YOUTH
keeping and project funds) DEVELOPMENT BUREAU'S
) RECORD KEEPING AND PROJECT
) FUNDS

TO: All Interested Persons

1. On February 14, 1980, the Department of Social and Rehabilitation Services published notice of a proposed repeal to Rules 46-2.6(10)-S6610, 46-2.6(10)-S6630 and 46-2.6(10)-S6640 all pertaining to child and youth development bureau's record keeping and project funds at page 508 of the 1980 Montana Administrative Register, issue number 3.

2. The agency has repealed the rules as proposed.

3. No comments or testimony were received.

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

In the matter of the repeal of) NOTICE OF THE REPEAL OF
rule 46-2.6(10)-S6580 pertaining) RULE 46-2.6(10)-S6580
to procedures for obtaining project) PERTAINING TO PROCEDURES
fund awards) FOR OBTAINING PROJECT
) FUND AWARDS

TO: All Interested Persons

1. On February 14, 1980, the Department of Social and Rehabilitation Services published notice of a proposed repeal to Rule 46-2.6(10)-S6580 pertaining to procedures for obtaining project fund awards at page 510 of the 1980 Montana Administrative Register, issue number 3.

2. The agency has repealed the rule as proposed.

3. No comments or testimony were received.

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

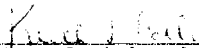
In the matter of the repeal of) NOTICE OF THE REPEAL OF
46-2.10(18)-S11447 and the adoption) RULE 46-2.10(18)-S11447
of rules 46-2.10(18)-S11497, 46-) AND THE ADOPTION OF
2.10(18)-S11498, and 46-2.10(18)-) RULES 46-2.10(18)-S11497,
S11499 all pertaining to personal) 46-2.10(18)-S11498, AND
care services in recipient's home) 46-2.10(18)-S11499
) PERTAINING TO PERSONAL
) CARE SERVICES IN
) RECIPIENT'S HOME

TO: All Interested Persons

1. On February 14, 1980, the Department of Social and Rehabilitation Services published notice of a proposed repeal of Rule 46-2.10(18)-S11447 and the adoption of Rules 46-2.10(18)-S11497 PERSONAL CARE SERVICE IN A RECIPIENT'S HOME, DEFINITION; 46-2.10(18)-S11498 PERSONAL CARE SERVICE, REQUIREMENTS; and 46-2.10(18)-S11499 PERSONAL CARE SERVICE, REIMBURSEMENT pertaining to personal care services in recipient's home at page 512 of the 1980 Montana Administrative Register, issue number 3.

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

3. No comments or testimony were received.



Director, Social and Rehabilitation Services

Certified to the Secretary of State March 18, 1980.

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

In the matter of the repeal of 46-2.10(14)-S11150 and the adoption of Rules 46-2.10(14)-S11390, 46-2.10(14)-S11391, 46-2.10(14)-S11392 and 46-2.10(14)-S11393 all pertaining to AFDC-unemployed parent.

) NOTICE OF THE
) REPEAL OF RULE 46-
) 2.10(14)-S11150 AND
) THE ADOPTION OF
) RULES PERTAINING TO
) AFDC-UNEMPLOYED
PARENT.

TO: All Interested Persons

1. On February 14, 1980, the Department of Social and Rehabilitation Services published notice of the proposed repeal of 46-2.10(14)-S11150 and the adoption of Rules 46-2.10(14)-S11390, 46-2.10(14)-S11391, 46-2.10(14)-S11392 and 46-2.10(14)-S11393 all pertaining to AFDC-unemployed parent at page 527 of the 1980 Montana Administrative Register, issue number 3.

2. The agency has repealed 46-2.10(14)-S11150 as proposed and adopted the new rules proposed with the following changes:

46-2.10(14)-S11392 RULE-1 AFDC DEPRIVATION REQUIREMENTS

(1) A dependent child must be deprived of the support of a parent or both parents due to:

- (a) death;
- (b) separation or divorce;
- (c) desertion;
- (d) parents not married to each other;
- (e) institutionalization;
- (f) military service of one parent;
- (g) physical or mental incapacity;
- (h) unemployed parent.

(2) Continued absence of a parent from the home, when the nature of the absence causes a disruption of family ties, constitutes the basic reason for deprivation of parental support in (a) through (f) above.

(3) Family ties need not be disrupted when the deprivation reason is physical Physical or mental incapacity of a parent, or unemployed unemployment of a parent constitutes deprivation though family ties are not destroyed eligibility is met, and during the 90 day continuance after the return of an absent parent if the family is otherwise eligible for such payments.

46-2.10(14)-S11393 RULE-11 UNEMPLOYED PARENT (1) An

unemployed parent is any natural or adoptive parent who:

(a) is employed less than 100 hours a month or exceeds that standard if his/her work is intermittent and the excess is of a temporary nature as evidenced by the fact that he or she was under the 100-hour standard for the prior two months

and is expected to be under the standard during the next month;

(b) or has six or more quarters of work within any thirteen calendar quarter period ending within one year prior to the application for assistance or within the ~~such~~ 1-year period, received unemployment compensation ~~law of a state or of the United States~~, or was qualified under the ~~States~~ State's unemployment compensation law.

(i) A "quarter of work" means a period ~~of~~ 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31, in which the applicant ~~he or she~~ received earned income of not less than \$50.

(ii) An individual shall be deemed "qualified" for unemployment compensation under the State's unemployment compensation law if he/~~she~~ would have been eligible to receive such benefits upon filing application, or he/~~she~~ performed work not covered by such law which, if it had been covered, ~~would~~ ~~together with any covered work he or she performed~~, would have made him/~~her~~ eligible to receive such benefits upon filing application, and

(c) A parent must have been unemployed at least 30 days, and

(d) ~~An unemployed parent~~ must apply for and accept any unemployment compensation benefits to which he ~~or she~~ is entitled. Such unemployment benefits are to be subtracted from the AFDC assistance to which he ~~or she~~ is entitled, and

(e) ~~Any parent who~~ has not, without good cause, within a prior ~~thirty~~ ~~(30)~~ day period, refused a bona fide offer of employment or training for employment. The department agency must make a determination that the ~~such~~ offer was actually made. The parent must be given an opportunity to explain why he refused to accept the ~~such~~ offer. The following factors must be considered resolved:

(i) Whether there was ~~There must have been~~ a definite offer of wages meeting minimum wage requirements, and

(ii) questions ~~Questions~~ regarding the parent's ~~parents~~ is inability to engage in such employment for physical reasons or for lack of transportation to and from such employment, and

(iii) working ~~Working~~ conditions such as risk to health, safety, or lack of workmen's compensation protection.

(2A) A parent must be currently registered with the Employment Security Division ~~Commission~~ and be available for work.

(3B) A parent who is in a training program under the Employment Security Division ~~Commission~~ is considered unemployed, if the requirements of (1) above are met.

(4E) A parent unemployed because of a lawful strike may be eligible if he ~~or she~~ meets all other eligibility requirements.

(5D) A parent unemployed because of conduct or circumstances which result or would result in disqualification for unemployment compensation under state law is disqualified for

AFDC/UPF assistance payments, unless the except where such disqualification for unemployment compensation is a result of being unemployed due to a lawful strike.

(6B) A full-time student is not eligible for AFDC/UPF payments since he ~~or she~~ is not considered available to accept full-time employment.

(7) In a two-parent household, only one parent must meet the criteria of this section.

46-2.10(14)-S11391 ~~RULE-111~~ LIVING WITH A SPECIFIED RELATIVE (1) To be eligible for assistance in other than foster care situations, the child must be living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, niece, or other individual having a blood or legal relationship with the child, in a place of residence maintained as their own home. The above named relative with whom the child is living may be included in the grant as a caretaker relative. Spouses ~~of~~ any person named above will be considered as a specified relative, even after the marriage is terminated by death or divorce.

(a) Payment of AFDC may continue in behalf of a dependent child~~ren~~ in situations that temporarily deprive the child of the care of the payee receiving payments in their behalf or the situation makes it necessary for the child to be temporarily absent from the home of the approved payee. The regular payee may continue receiving payment (and have his~~her~~ needs met as a needy caretaker relative) for a temporary period of time not to exceed ~~ninety~~ (90) days if he ~~or she~~ continues to exercise responsibility for the care and control of the child~~ren~~, this includes making plans for the children, or if ~~there is planning for~~ the payee plans to later to resume exercising responsibility for the care and control of the child~~ren~~.

(b) If it is not feasible to continue payments directly to the regular payee, then payments may be made to a person acting for the approved payee for a temporary period not to exceed ~~ninety~~ (90) days. The regular payee may continue to have his needs met in the assistance payment as a needy caretaker relative so long as his absence from the home is not due to his being institutionalized. No person may receive AFDC while in an institution.

(2) Assistance is provided to the spouse of the child's incapacitated parent if he meets all other conditions of eligibility. When a natural or adoptive parent is physically or mentally incapacitated his spouse may be included as a qualified recipient. However, the spouse also must be a natural or adoptive parent of the children included in the AFDC grant.

(a) A stepparent may only be included as a caretaker relative when both natural parents are absent from the home.

46-2.10(14)-S11390 ~~RULE-IV~~ AGE (1) A dependent child must be under the age of 18 or between the ages of 18 and 21 years regularly attending school, college, university, or vocational or technical training.

(2) There is no age requirement for the caretaker relative in an AFDC payment.

(3) The needs of an unborn child must be included in the AFDC payment, if other eligibility factors are met.

3. Written comment was received from Montana Legal Services Association and the Department responds as follows:

COMMENT: AFDC unemployed parent should not be based on eligibility for unemployment compensation benefits. Full-time students should not be disqualified.

RESPONSE: The adoption of the rules pertaining to AFDC unemployed parent are to implement the decision of the United States Supreme Court in the case of Califano v. Westcott which removed gender distinction in the program. Also, the adoption of the rules are part of the Department's overall plan to update and recodify its rules. No major substantive changes were made. The rules are substantially the same as they have been since the inception of the AFDC-UF program in 1976.

COMMENT: Clarify how the rule is to be applied in a two-parent household.

RESPONSE: The department has added language to the rule that in a two-parent household only one parent must meet the eligibility criteria.

Kenneth S. Galt
Director, Social and Rehabilitation Services

Certified to the Secretary of State March 18, 1980.

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

In the matter of the amendment of) NOTICE OF THE AMENDMENT
Rule 46-2.10(18)-S11440(r) and the) OF RULE 46-2.10(18)-
adoption of Rules 46-2.10(18)-) S11440 AND THE ADOPTION
S11500, 46-2.10(18)-S11501, and) OF RULES 46-2.10(18)-
46-2.10(18)-S11502 pertaining to) S11500, 46-2.10(18)-
medical assistance, psychological) S11501, AND 46-2.10(18)-
services) S11502 PERTAINING TO
) MEDICAL ASSISTANCE,
) PSYCHOLOGICAL SERVICES

TO: All Interested Persons

1. On February 14, 1980, the Department of Social and Rehabilitation Services published notice of a proposed amendment to Rule 46-2.10(18)-S11440(r) and the adoption of Rules 46-2.10(18)-S11500, 46-2.10(18)-S11501, and 46-2.10(18)-S11502 all pertaining to medical assistance, psychological services at page 515 of the 1980 Montana Administrative Register, issue number 3.

2. The agency has amended Rule 46-2.10(18)-S11440 as proposed. The agency has adopted Rule 46-2.10(18)-S11500 as proposed and 46-2.10(18)-S11501 and 46-2.10(18)-S11502 has been adopted as proposed with the following changes:

46-2.10(18)-S11501 ADDITIONAL REQUIREMENTS FOR
PSYCHOLOGICAL SERVICES (1) Psychological services are limited to those allowed under 37-17-102(5) MCA.

(2) Group psychological services shall consist of one and one half (1½) hour sessions with no more than eight (8) individuals participating in the group.

(3) Psychological services are limited to twenty-two (22) hourly visits or the equivalent, per fiscal year.

(4) When an eligible child receives psychological services, and the psychologist consults with the parent(s) as part of the child's treatment, time spent with the parent(s) shall be billed to Medicaid under the child's name. The provider shall indicate on the claim that the child is the patient and state the child's diagnosis. He shall also indicate consultation was with the parent(s). Any treatment done in this manner shall be charged against the twenty-two (22) hours available to the child.

46-2.10(18)-S11502 PSYCHOLOGICAL SERVICES,
REIMBURSEMENT Reimbursement for services shall be the lowest of:

(1) customary charges which are reasonable, or

~~(1)~~ (2) the amount payable by Medicare for the same
service, or

~~(2)~~ (3) thirty-two dollars and ten cents (\$32.10) for
individual psychological services, or

~~(3)~~ (4) nine dollars and sixty-three cents (\$9.63) for
group psychological services.

3. No comments or testimony were received.

W. J. ...
Director, Social and Rehabilita-
tion Services

Certified to the Secretary of State March 18, 1980.

BEFORE THE OFFICE OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF THE AMENDMENT OF
of Rule ARM 48-2.18(34)-S18540) RULE ARM 48-2.18(34)-S18540
allowing employment of speech)
pathology technicians)

TO: All Interested Persons:

1. On September 27, 1979, the Superintendent of Public Instruction proposed amendment to rule ARM 48-2.18(34)-S18540 concerning the employment of speech pathology technicians at page 1103 of the Montana Administrative Register, issue number 18.

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

48-2.18(34)-S18540 SPEECH PATHOLOGISTS AND AUDIOLOGISTS.

(1) Except as provided in subsection (2), all public school personnel employed as speech pathologists and audiologists must have their license number on file with the Office of Public Instruction, Special Education Unit. Supervision shall be in accordance with the provisions of the individual's license.

(2) If a licensed speech pathologist is not available, the Superintendent of Public Instruction may approve the employment of school personnel as speech pathology technicians to deliver speech therapy services if the following conditions are met.

(a) The speech pathology technician shall have:

(i) a bachelor's degree in speech pathology verified by official transcripts,

(ii) 175 supervised clock hours in speech pathology or equivalent training and experience.

(b) The school seeking to employ a speech pathology technician must annually document its inability, after a comprehensive recruitment effort, to employ a licensed speech pathologist. The documentation shall include:

(i) copies of correspondence with educational institutions which offer graduate level training in speech pathology.

(ii) evidence of advertising in appropriate professional journals and recruitment through professional associations.

(3) Speech pathology technicians will be supervised by a licensed speech pathologist and there will be a minimum of four documented supervisory contacts per month between the pathologist and the technician. ~~More contacts may be made as deemed necessary by the speech pathologist.~~ Additional direct supervision of the speech pathology technician will be determined by the licensed speech pathologist. It is generally recommended that there be a minimum of four documented on-site supervisory contacts per month.

(4) The speech pathologist and the speech technician shall develop the technician's program ~~and the speech pathologist shall be responsible for the appropriate supervision of the technicians program.~~ The school district shall be responsible for assuring implementation of the program.

(5) The supervising speech pathologist and speech pathology technician shall comply with regulations promulgated by the Board of Speech Pathology and Audiology, and their interactions shall be governed by rule ARM 40-3.101(6)-S10120.

3. Oral testimony was heard at the public hearing and written comments were received concerning the proposed amendment of rule ARM 48-2.18(34)-S18540. The Office responds as follows to the oral testimony and written comments.

COMMENT: Schools should be required to document attempts to employ licensed speech pathologists and audiologists before the school hires a speech pathology technician.

RESPONSE: Several comments were received concerning the need to document a search for a licensed speech pathologist. The Office concurs with the comments, and has added section 2(b) to the rule.

COMMENT: On-site contacts should be required.

RESPONSE: The need for on-site contacts will vary. For example, a speech pathologist may require more than four contacts per month in the early stages of the technician program, and as the program progresses fewer on-site contacts may be needed. Also, the need for on-site contacts will vary according to the needs of the children being served. The Office does recognize the concern for on-site contacts expressed at the hearing and has included in section 3 a recommendation for on-site contacts. The Office feels that the licensed speech pathologist can best determine the required on-site contacts per month.

COMMENT: Determination of salaries and travel expenses should be included in the rule.

RESPONSE: The Office does not concur. Salary and travel expenses are contract issues to be determined by the school and the applicant.

COMMENT: The rule should not be adopted because schools will hire speech pathology technicians rather than licensed speech pathologists in an effort to save money.

RESPONSE: The Office does not concur. The rule allows school districts to employ technicians only when licensed speech pathologists are not available. Also, the Office has the authority to approve or disapprove employment of a technician. These safeguards prevent the possibility that schools will attempt to avoid hiring licensed speech pathologists in order to save money.

COMMENT: The rule should not be adopted because employment of technicians will lower the standard of service.

RESPONSE: The Office does not concur. The required supervision by a licensed speech pathologist will assure high standards of service. Also, the addition of section 5 assures that the standards of ethical and professional conduct required by the Board of Speech Pathology and Audiology will be maintained.

COMMENT: The rule should require an annual relisting for a licensed speech pathologist and the rule should not allow the school to sign a contract with a technician exceeding one year.

RESPONSE: The Office does not concur. School board policy allows only annual contracts so it is not necessary to require contracts not exceeding one year. Since annual contracts are required, the school under the rule will have to document its search annually and yearly approval by the Office will be required.

COMMENT: Supervising speech pathologists should have the power to terminate the technicians employment.

RESPONSE: The Office does not concur. The contract of employment is between the school district and the technician. If the supervising speech pathologist finds the technician's performance inadequate, the speech pathologist can recommend to the school the necessity for employment termination.

COMMENT: The designation "technician" should be changed to "aide" to conform to the licensure laws of the Board of Speech Pathology and Audiology.

RESPONSE: The Office does not concur. The designation "technician" is necessary to distinguish speech pathology technicians from school aides. The reference in the rule to the Board of Speech Pathology rule makes it clear that speech pathology technicians and speech aides as used by the Board of Speech Pathology and Audiology refer to the same people.

COMMENT: Employment of speech pathology technicians is not necessary because licensed speech pathologists are available in the state.

RESPONSE: The Office does not concur. Even if it is true that speech pathologists are available on a statewide basis, certain rural or isolated school districts are unable to employ licensed speech pathologists. Whether the problem is with numbers or distribution of available licensed speech pathologists, the need for speech pathology technicians still exists.

BY: _____

GEORGIA RICE
SUPERINTENDENT OF PUBLIC INSTRUCTION

Certified to the Secretary of State March 11, 1980.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

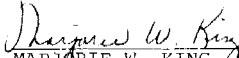
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tion of fire department in-)
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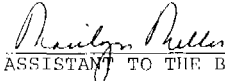
TO: All Interested Persons

1. On February 14, 1980, the Board of Public Education published notice of a proposed adoption of rules concerning certification of fire department instructors, course certification, and certification of firefighters at pages 563-567 of the Montana Administrative Register, issue number 3.

2. The agency has adopted the rules as proposed.

3. No comments or testimony were received.


MARJORIE W. KING, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: 
ASSISTANT TO THE BOARD

Certified to the Secretary of State March 18, 1980.

VOLUME NO. 38

OPINION NO. 72

TAXATION AND REVENUE - Allocation of proceeds of Montana Coal Severance Tax;
COAL - Montana Coal Severance Tax, allocation of proceeds;
MONTANA CODE ANNOTATED - Sections 15-35-104 and 15-35-108;
37 OP. ATT'Y GEN. NO. 73

- HELD: 1. The allocation of coal severance tax proceeds to the educational trust fund for coal mined in the quarter ending June 30, 1979, should be 26½ percent.
2. The coal area highway improvement account should receive 13 percent of the revenue received from taxes assessed on coal mined during the quarter ending June 30, 1979.
3. The proceeds of the severance tax allocated to the state library commission must be taken from taxes assessed on coal mined after June 30, 1979.

12 March 1980

Mary Craig, Director
Department of Revenue
S.W. Mitchell Building
Helena, Montana 59601

Dear Ms. Craig:

You have requested an opinion regarding the allocation of the proceeds of the Montana Coal Severance Tax pursuant to the provisions of section 15-35-108, MCA.

The tax is assessed on a quarter year basis, and applies to all coal mined during the quarter. However, the actual payment of the tax is not due until thirty (30) days following the end of the quarter. 15-35-104, MCA. The confusion has arisen because payments are received in one fiscal year for coal mined during the last quarter of the previous fiscal year.

Your questions can be answered with reference to 37 OP. ATT'Y GEN. NO. 73. While that opinion did not answer the specific questions presented here, it did determine the legislature's intent regarding the use of the word "collections" in the allocation formula. The opinion found that as

used in this statute, the term "collections" was intended to apply to revenue assessed on coal mined after the beginning of the fiscal year and not on all revenues received during the fiscal year. There is nothing in the subsequent amendments to section 15-35-108, MCA, that causes me to alter the prior opinion.

Your first question is whether, under the provisions of section 15-35-108 (2)(c), MCA, the allocation to the educational trust fund for the quarter ending June 30, 1979 should be 26½ percent or 37½ percent of the amount disbursed. Section 15-35-108 provides in pertinent part:

DISPOSAL OF SEVERANCE TAXES. Severance taxes collected under the provisions of this chapter are allocated as follows: ...

(2) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance: ...

(c) 26½ percent until July 1, 1979 and thereafter 37½ percent to the earmarked revenue fund to the credit of the local impact and education trust fund account;

Under the reasoning of 37 OP. ATT'Y GEN. NO. 73 the 26½ percent allocation applies to revenue from coal mined before July 1, 1979 and the 37½ percent allocation applies to revenue from coal mined after July 1, 1979.

Your second question is whether the coal area highway improvement account should receive 13 percent of the tax collected for the quarter ending June 30, 1979. Again section 15-35-108 provides in relevant part:

DISPOSAL OF SEVERANCE TAXES. Severance taxes collected under the provisions of this chapter are allocated as follows: ...

(2) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance; ...

(d) For each of the two school years following June 30, 1977, 13 percent to the earmarked revenue fund, to the credit of the coal area highway improvement account;

The coal area highway improvement account should receive 13 percent of the proceeds of the tax on coal mined in the two fiscal years following June 30, 1977. Thus, the coal area highway improvement account should receive 13 percent of the tax collected on coal mined in the quarter ending June 30, 1979.

Your final question is whether the Legislature intended to reduce the coal severance tax allocation to the general fund for the quarter ending June 30, 1979 by the enactment of chapter 694, Laws of Montana, 1979. Chapter 694 amended the statute by adding a new provision providing that one percent of the remaining proceeds be given to the state library commission for the purpose of providing library services. Section 15-35-108(2)(i), MCA.

Section 3 of chapter 694, provided:

EFFECTIVE AND APPLICABILITY DATES. This act is effective upon passage and approval and applies to all coal severance tax collections after June 30, 1979.

The act was signed by the Governor on May 11, 1979. The confusion again arises from the Legislature's use of the term collections in section 3. Did the Legislature intend that the allocations to the state library commission be made from revenues received by the Department after June 30, 1979 but taken from taxes on coal mined during the quarter ending June 30, 1979, or does the section apply only to revenue received on coal mined after June 30, 1979?

It is a fundamental rule of statutory construction that legislative intent must be ascertained from the statute taken as a whole, not just the wording of one particular section. Vita Rich Dairy Inc. v. Department of Business Regulation, 170 Mont. 341, 533 P.2d 980 (1976); Teamsters Local No. 45 v. Cascade County School District, 162 Mont. 277, 511 P.2d 339 (1973). As noted above, the Legislature's intent regarding the use of the word "collections" in the other provisions of section 15-35-108 was determined in 37 OP. ATT'Y GEN. NO. 73. Statutory construction should not lead to contrary results if reasonable construction will avoid it. State ex rel Ronish v. School District No. 1 of Fergus County, 136 Mont. 453, 348 P.2d 797 (1960). Presumably, the Legislature was aware of the construction given in the prior Attorney General's opinion before the 1979

amendments. It has been held that the Legislature's failure to change terms of a statute following an Attorney General's opinion signifies acquiescence in the opinion's holding. See Teamsters Local No. 45 v. Cascade County School District, supra. The use of the term "collections" in section 3 of chapter 694 does not indicate the legislature intended to alter the construction of the provisions of the statute. The proceeds of the coal severance tax allocated to the state library commission in section 15-35-108(2)(i), MCA, must be taken from taxes on coal mined after June 30, 1979.

THEREFORE, IT IS MY OPINION:

1. The allocation of coal severance tax proceeds to the educational trust fund for coal mined in the quarter ending June 30, 1979, should be 26 percent.
2. The coal area highway improvement account should receive 13 percent of the revenue received from taxes assessed on coal mined during the quarter ending June 30, 1979.
3. The proceeds of the severance tax allocated to the state library commission must be taken from taxes assessed on coal mined after June 30, 1979.

Very truly yours



MIKE GREELY
Attorney General

VOLUME NO. 38

OPINION NO. 73

COUNTY ATTORNEYS - Conservation districts, legal representation;
CONSERVATION DISTRICTS - Legal representation, county attorneys;
MONTANA CODE ANNOTATED - Sections 7-4-2711 and 76-15-319.

HELD: Sections 7-4-2711 and 76-15-319, MCA, require the county attorney to provide upon request such legal services as the conservation district may require.

17 March 1980

Donald D. MacIntyre, Esq.
Department of Natural Resources
and Conservation
32 South Ewing
Helena, Montana 59601

Dear Mr. MacIntyre:

You have requested my opinion on the following question:

Does a county attorney have an obligation to advise and represent a conservation district without fee upon request by the district?

Section 7-4-2711, MCA, provides in part:

(2) The county attorney must:

(c) when requested by a conservation district pursuant to 76-15-319, act as counsel, without fee.

Section 76-15-319 provides:

(1) The supervisors may call upon the county attorney of the county in which the greatest portion of the district is located or the attorney general of the state for such legal services as they may require or may employ their own counsel and legal staff.

(2) If the county attorney is unable to provide legal assistance because of lack of staff or conflict of interest, then the matter may be

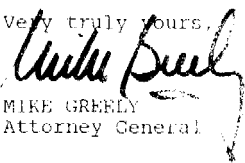
referred to the attorney general or the department of natural resources and conservation.

These sections so clearly indicate the Legislature's intent that the county attorney represent conservation districts that they require no further discussion.

THEREFORE, IT IS MY OPINION:

Sections 7-4-2711 and 76-15-319, MCA, require the county attorney to provide upon request such legal services as the conservation district may require.

Very truly yours,



MIKE GREELY
Attorney General