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RESERVE

MONTANA ADMINISTRATIVE REGISTER

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OF MONTANA

1981 ISSUE NO. 18
PAGES 1070-1119



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, 59620.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA
AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a loose-leaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statute and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|-------------------------------|---|
| Known Subject Matter | 1. Consult General Index, Montana Code Annotated to determine department or board associated with subject matter or statute number. |
| Department | 2. Refer to Chapter Table of Contents, Title 1 through 46, page i, Volume 1, ARM, to determine title number of department's or board's rules. |
| | 3. Locate volume and title. |
| Subject Matter and Title | 4. Refer to topical index, end of title, to locate rule number and catchphrase. |
| Title Number and Department | 5. Refer to table of contents, page 1 of title. Locate page number of chapter. |
| Title Number and Chapter | 6. Go to table of contents of chapter, locate rule number by reading catchphrase (short phrase describing rule.) |
| Statute Number and Department | 7. Go to cross reference table at end of each title which lists each MCA section number and corresponding rules. |
| Rule in ARM | 8. Go to rule. Update by checking the accumulative table and the table of contents for the last register issued. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1981. This table includes those rules adopted during the period July 1, 1981 through September 30, 1981, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1981, this table and the table of contents for this issue of the MAR.

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NOTICE: The July 1977 through June 1981 Montana Administrative Registers have been placed on microfiche. For information, please contact Jim Waltermire, Secretary of State, Room 202, Capitol Building, Helena, Montana, 59620.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the repeal	)	NOTICE OF PROPOSED REPEAL OF
of rules 4.9.301 through	)	RULES 4.9.301 through 4.9.306,
4.9.306, inclusive; and of	)	INCLUSIVE; AND OF THE PROPOSED
the adoption of new rules	)	ADOPTION OF NEW RULES 4.9.310
4.9.310 through 4.9.321,	)	THROUGH 4.9.321, INCLUSIVE.
inclusive.	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 30, 1981 the agency proposes to repeal the following rules:

- 4.9.301 APPLICATION FOR GRANTS;
- 4.9.302 REVIEW AND EVALUATION;
- 4.9.303 COMMITTEE DETERMINATION;
- 4.9.304 NOTIFICATION OF AWARDS;
- 4.9.305 PERFORMANCE EVALUATION;
- 4.9.306 MODIFICATION OR TERMINATION OF GRANTS.

2. The rules proposed to be repealed are on pages 4-184 and 4-185 of the Administrative Rules of Montana.

3. The agency proposes to repeal these rules because of 1981 legislative amendment to the act; the language therein is no longer appropriate.

4. On October 30, 1981 the agency proposes to adopt new rules 4.9.310 through 4.9.321, inclusive.

5. The proposed rules provide as follows:

4.9.310 PURPOSE OF RULES (1) Senate Bill 520 enacted by the 1979 Montana Legislature which provided for funding through the Department of Agriculture for research relating to development, production and marketing of fuels and food products derived from Montana wheat and barley. This statute was amended by the 1981 Legislature to remove fuels from the law. (History: Sec. 80-11-205, MCA; IMP, Sec. 80-11-222, MCA.)

4.9.311 DEFINITIONS Unless the context requires otherwise, as used in the act and in these rules:

(1) "Act" means Chapter No. 530, Montana Session laws of 1979 (also referred to as the "Wheat Research and Marketing Act"), Section 80-11-206 et seq., M.C.A., as amended.

(2) "Fuel" means ethanol or other energy source derived from Montana produced agricultural grain crops, mainly wheat or barley.

(3) "Food and feed" means a sources of energy to be consumed by humans or animals, produced as a by-product in the process of manufacturing ethanol or other energy sources.

(4) "Department" means Montana Department of Agriculture.

(5) "Contract" means to award grants for marketing development, research or construction of facilities for the production of feed or food in Montana using Montana produced products.

(6) "Application" means a written proposal to the department for grants under the terms of the act and these rules.

(7) "Research" means an extensive, systematic study to discover or revise facts or theories and which would bring to a more advanced state, the capabilities, availability and suitability for marketing of or production of feed and food from wheat and barley.

(8) "Person" means a natural person, corporation, partnership, or other business entity, association, cooperative, trust, foundation, any educational or scientific institution, or any governmental unit.

(9) "Develop or development" means a project which utilizes the basic results of research or available knowledge and applies these results or knowledge to the actual development of hardware. The term also includes the establishment of manufacturing or processing facilities to produce feed and food from wheat and barley.

(10) "Demonstrate" or "demonstration" means an extensive, systematic plan and follow through to establish that specific theories and processing or manufacturing techniques are practical and can be made to work reliably over long periods of time. These projects are primarily physical models which can be observed or examined. (History: Sec. 80-11-205, MCA; IMP, Sec. 80-11-222, MCA.)

4.9.312 STATEMENT OF ADMINISTRATIVE POLICIES (1) It is the intention of the Department to conduct the funding program in such a manner as to obtain the maximum amount of research and development possible for the moneys expended and, in addition to attract the maximum amount of federal and/or private matching funds which can be utilized in the funding program.

(2) It is the objective of the Department to only grant funding for applications which are submitted by persons who are residents of the state of Montana, and only for projects conducted in Montana. "Conducted" means that the research and development project will be headquartered in Montana and that all development will be built in Montana. This condition does not prohibit the use of expertise from outside the state of Montana.

(3) Persons who are employees or contractors of the Department, relations of such persons by consanguinity within the fourth degree or by affinity within the second degree, and public utility companies are not eligible for funding.

(4) The Department will solicit comment from the Wheat Research and Marketing Committee and other farm organizations and individuals as to which applications should be considered for funding. Final decision will be made by the Department. (History: Sec. 80-11-205, MCA; IMP, Sec. 80-11-222, MCA.)

4.9.313 APPLICATIONS - GENERAL REQUIREMENTS (1) Any Montana resident may make application for a grant to fund a proposal or project under the Act and these rules. The applicant should submit ten copies of the application at the time of filing to the Department of Agriculture, Agriculture/Livestock Building, 6th and Roberts Street, Helena, Montana 59620, in a format consistent with these rules. A lesser number of copies may be submitted upon prior approval of the Department.

(2) The application should meet the following requirements:

(a) The application should be typed, printed or otherwise legibly reproduced on 8½" x 11" paper. Maps, drawings, charts, or other documents bound in an application should be cut or folded to 8½" x 11" size. Maps, drawings, or charts may accompany an application as separate exhibits.

(b) Typed or offset material should have a one (1) inch margin on all sides.

(c) All pages in an application will be consecutively numbered. Maps, drawings, or charts accompanying the application as exhibits should be identified as "Exhibit _____", and if comprising more than one sheet should be number "sheet _____ of _____".

(3) (a) The application shall state the name, title, telephone number, and post office address of the person to whom communication in regard to the application should be made.

(b) The application shall contain a statement agreeing that all materials submitted by the applicant to the Department are subject to public scrutiny.

(4) Changes in applications may be authorized at discretion of department. (History: Sec. 80-11-205, MCA; IMP, Sec. 80-11-222, MCA.)

4.9.314 APPLICATION CONTENT (1) An application shall include a general declaratory statement indicating whether the applicant is seeking funds for marketing, research, development or construction project.

(a) The proposed research methods and construction methods if construction is a factor;

(b) The proposed facilities and equipment needed, including physical dimensions, diagrams and photographs;

(c) The proposed time schedule for project development;

(d) A description of the proposed anticipated results;

(e) A statement indicating where the project will be carried out or constructed, and why that particular site is suited to the proposed project;

(f) A statement indicating who will work on the project, and what their various qualifications are;

(g) A statement of the role of the project in meeting future energy and food needs;

(h) A statement of how the project will be feasible and applicable;

(i) An estimate of the net production yield of the project per unit of time;

(ii) An estimate of the by-products and their utilization.

(2) The application shall include an estimated maximum budget which may not be exceeded, which shall contain:

- (a) The wages and salaries of all research personnel, clerical help, craftsmen, etc. (itemized);
- (b) A list of employee benefits;
- (c) A list of building costs;
- (d) A list of equipment costs (equipment generally are permanent items);
- (e) A list of administrative and overhead costs;
- (f) A list of the cost of supplies (supplies generally are exhaustible items);
- (g) A list of communication and travel costs;
- (h) A list of any other expenses.

(3) The application should contain a copy of all contracted or subcontracted work, including budgets, who is to do the work, and what work is to be done. Above information may be submitted later with department permission. (History: Sec. 80-11-205, MCA; IMP, Sec. 80-11-222, MCA.)

4.9.315 APPLICATION SUBMITTAL DEADLINES Applications for fiscal 1980 funding shall be submitted by November 30, 1981 and June 30th thereafter. (History: Sec. 80-11-205, MCA; IMP, Sec. 80-11-222, MCA.)

4.9.316 APPLICATION EVALUATION (1) Applications will be reviewed and evaluated by the department or consultants selected by the department. Technical evaluations will be done on an anonymous and confidential basis and the results will be disclosed to the applicant upon request.

(a) The Department may request the applicant to include a patent search which cost may be included in the project funding. (History: Sec. 80-11-205, MCA; IMP, Sec. 80-11-222, MCA.)

4.9.317 AWARDING GRANTS - CRITERIA (1) Grant period will be one (1) year. Longer grant period, extensions or renewals may be granted when justified at discretion of the Department.

(2) By law, all information resulting from research, development, or demonstration projects funded by the Department under the Act and these rules shall be made available to the public and may not become the private property of or under the exclusive control of any one company or person.

(3) The Department is under no requirement to expend or commit available funds when in its judgement such expenditures or commitments would be unproductive. (History: Sec. 80-11-205, MCA; IMP, Sec. 80-11-222, MCA.)

4.9.318 CONDITIONS UNDER WHICH GRANTS MAY BE USED AND OTHER CONDITIONS (1) Applicants shall enter into a contract grant agreement with the Department if funded, under such terms and conditions the Department considers appropriate.

(2) Grant recipients shall submit periodic progress reports as specified by the Department, and shall submit final reports to the Department at end of grant period.

(3) Funds granted under the terms of the Act and these rules may be used only for the purposes outlined and described in the application and approved by the Department, and detailed records shall be kept by the recipient for all expenditures. Transfers among the budget categories expenditures will be allowed only on the approval of the Department.

(4) The grant recipient shall maintain an accounting system which adequately accounts for expenditures in a manner acceptable to the Department. Records, expenditures, book-keeping etc., for funded projects are subject to audit by the Office of the Legislative Auditor and the Department.

(5) Arrangements shall be made to assist, guide, and inform the Department during on site investigations. The Department will make such investigations at its discretion. (History: Sec. 80-11-205, MCA; IMP, Sec. 80-11-222, MCA.)

4.9.319 PAYMENT OF GRANTS (1) Payments shall be made on a monthly or quarterly basis to be established in the contract.

(2) Payments may be withheld pending compliance of grant and contract provisions. (History: Sec. 80-11-205, MCA; IMP, Sec. 80-11-222, MCA.)

4.9.320 PROJECT ADMINISTRATION (1) The results of all research, development or demonstration projects shall be made to the Department or their designee.

(2) Persons receiving funds may be required to make their projects open to the public during reasonable hours for a period of time specified by the Department.

(3) The Department may inspect and monitor all projects on a regular basis during and after completion of the project. (History: Sec. 80-11-205, MCA; IMP, Sec. 80-11-222, MCA.)

4.9.321 CONFIDENTIALITY Upon submitting an application to the Department pursuant to these rules the application becomes a government document subject to public scrutiny. The applicant waives any claim of confidentiality by filing an application with the Department. Applicant and application will be subject to all applicable State and Federal laws and rules. (History: Sec. 80-11-205, MCA; IMP, Sec. 80-11-222, MCA.)

6. The new rules as proposed are to assist persons interested in obtaining grants as to the formalities required to comply with the 1981 legislative enactment of section 80-11-222, MCA.

7. If a person who is directly affected by the proposed repeal or adoption wishes to express his data, veiw, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Jack Gunderson, Food & Fuel Coordinator, Montana Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620, no later than October 29, 1981.

8. If the agency receives requests for a public hearing on the proposed repeal of old rules and adoption of new rules from at least 25 persons who are directly affected by the proposed repeal or adoption; from the Administrative Code Committee of the legislature; from a governmental sub-division or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. The agency was unable to estimate a number equal to 10% of the people directly affected by the proposed repeal and adoption.

9. The authority of the agency to make the proposed repeal of old rules and adoption of new rules is 80-11-205, MCA, and the new rules implement section 80-11-222, MCA.

W. Gordon McOmber, Director

By:

W. Gordon McOmber, Jr. Keith Kelly

Certified to the Secretary of State, September 21, 1981.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the)
adoption of ARM 10.64.)
501 thereafter concerning)
special education vehicle)
standards)

NOTICE OF PROPOSED ADOPTION
OF ARM 10.64.501 AND FOLLOWING,
SUB-CHAPTER 5, SPECIAL EDUCATION
VEHICLE STANDARDS

NO HEARING ANTICIPATED

TO: All Interested Persons.

1. On November 3, 1981 the Board of Public Education proposes to adopt rules concerning the vehicle standards for special education.

2. The proposed rules provide as follows:

Sub-Chapter 5

Special Education Vehicle Standards

10.64.501 PURPOSES AND OBJECTIVES (1) The specifications in this section are intended to be supplementary to specifications in the chassis and body sections. In general, special education buses should meet all the requirements of those preceding sections plus those listed in this section. Since it is recognized by the entire industry that the field of transportation for special education passengers is characterized by special needs for individual cases and by a rapidly emerging technology for meeting these needs, a flexible, common-sense approach to the adoption and enforcement of specifications for these vehicles is prudent.

(2) The Ninth National Conference recognized the rapidity of change in this area of transportation and addressed this fact by passing a resolution calling for special sessions at the 1981 NAPT/NASDPTS and NSTA Conferences to update the proceedings of the conference relating to minimum standards for special education school buses and auxiliary equipment.

(3) By Federal Regulation, buses, including school buses, are defined as vehicles designed to carry ten or more passengers. Vehicles with less than ten passenger positions (including the driver) cannot be certified as buses. For this reason, the Federal vehicle classification Multipurpose Passenger Vehicle, or MPV, must be used by manufacturers in some cases for these vehicles in lieu of the classification school bus. In determining passenger capacity, wheelchair positions are counted as passenger positions. This classification system while requiring compliance with a different set of Federal Standards for school buses does not preclude the use of National School

Bus Yellow paint or School Bus warning lamp systems. (History: 20-2-121, MCA, IMP, Sec. 20-10-111, MCA.)

10.64.502 GENERAL REQUIREMENTS (1) School buses designed for transporting children with special transportation needs shall comply with National Minimum Standards applicable to school buses. Because of the use of special equipment on these buses, certain modifications and/or exceptions in these standards shall be made, particularly in the bus body.

(2) These standards address modifications as they pertain to school buses with a gross vehicle weight of ten thousand pounds or more and standard seating arrangement prior to modification that provides a capacity of ten or more children.

(3) Any school bus that is used specifically for the transportation of children who are confined to a wheelchair and/or other mechanical restraining devices prohibiting their use of the regular service entrance, shall be equipped with a power lift.

(4) Lift shall be located on the right side of the body, in no way attached to the exterior sides of the bus but confined within the perimeter of the school bus body when not extended. (History: Sec. 20-2-121, MCA; IMP, Sec. 20-10-111, MCA.)

10.64.503 SPECIAL SERVICE ENTRANCE (1) Bus bodies may have a special service entrance constructed in the body to accommodate a wheelchair lift for the loading and unloading of passengers.

(2) The opening, to accommodate the special service entrance, shall be at any convenient point on the right (curb side) of the bus and far enough to the rear to prevent the door(s), when open, from obstructing the right front regular service door (excluding a regular front service door lift).

(3) The opening may extend below the floor through the bottom of the body skirt. If such an opening is used, reinforcements shall be installed at the front and rear of the floor opening to support the floor and give the same strength as other floor openings.

(4) The opening, with doors open, shall be of sufficient width to allow the passage of wheelchairs. The minimum clear opening shall be thirty (30) inches in width.

(5) A drip moulding shall be installed above the opening to effectively divert water from entrance.

(6) Entrance shall be of sufficient width and depth to accommodate various mechanical lifts and related accessories as well as the lifting platform.

(7) Door posts and headers from entrance shall be reinforced sufficiently to provide support and strength equivalent to the areas of the side of the bus not used for service doors. (History: Sec. 20-2-121, MCA; IMP, Sec. 20-10-111, MCA.)

10.64.504. SPECIAL SERVICE ENTRANCE DOORS (1) A single door may be used if the width of the door opening does not exceed forty inches.

(2) Two doors shall be used if any single door opening would have to exceed forty inches.

(3) All doors shall open outwardly.

(4) All doors shall have positive fastening devices to hold doors in the open position.

(5) All doors shall be weather sealed and on buses with double doors, they shall be so constructed that a flange on the forward door overlaps the edge of the rear door when closed.

(a) If optional power doors are installed the design shall permit release of the doors for opening and closing by the attendant from the platform inside the bus.

(6) When manually operated dual doors are provided the rear door shall have at least a one-point fastening device to the header.

(a) The forward mounted door shall have at least three-point fastening devices. One shall be to the header, one to the floor line of the body, and the other shall be into the rear door.

(b) These locking devices shall afford maximum safety when the doors are in the closed position.

(c) The door and hinge mechanism shall be of a strength that will provide for the same type of use as that of a standard entrance door.

(7) Door materials, panels, and structural strength shall be equivalent to the conventional service and emergency doors. Color, rub rail extensions, lettering and other exterior features shall match adjacent sections of the body.

(8) Each door shall have windows set in rubber compatible within one-inch of the lower line of adjacent sash.

(9) Door(s) shall be equipped with a device that will actuate a green flashing visible signal located in the driver's compartment when door (s) is(are) not securely closed and ignition is in "on" position.

(10) A switch shall be installed so that the lifting mechanism will not operate when the lift platform door(s) is closed. (History: Sec. 20-2-121, MCA; IMP, Sec. 20-10-111, **CA.)

10.64.505. POWER LIFT (1) Lifting mechanism shall be able to lift minimum pay load of six hundred (600) pounds.

(2) When the platform is in the fully up position, it shall be locked in position mechanically by means other than a support, or lug in the door.

(3) Controls shall be provided that enable the operator to activate the lift mechanism from either inside or outside of the bus. There shall be a means of preventing the lift platform from falling while in operation due to a power failure.

(4) Power lifts shall be so equipped that they may be manually raised in the event of power failure of the power lift mechanism.

(5) Lift travel shall allow the lift platform to rest securely on the ground.

(6) All edges of the platform shall be designed to restrain wheelchair and operator's feet from being entangled during the raising and lowering process.

(7) Platform shall be fitted on both sides and rear with full width shields (which extend above the floor line of the lift platform).

(8) A restraining device shall be affixed to the outer edge (curb end) of the platform that will prohibit the wheelchair from rolling off the platform when the lift is in any position other than fully extended to ground level.

(9) A self-adjusting, skid resistant plate shall be installed on the outer edge of the platform to minimize the incline from the lift platform to the ground level. This plate, if so designed, may also suffice as the restraining device described in item 8 above. The lift platform must be skid resistant.

(10) A circuit breaker or fuse shall be installed between power source and lift motor if electrical power is used.

(11) The lift mechanism shall be equipped with adjustable limit switches or by-pass valves to prevent excessive pressure from building in the hydraulic system when the platform reaches the full up position or full down position. (History: Sec. 20-2-121, MCA; IMP, Sec. 20-10-111, MCA.)

10.64.506 FASTENING DEVICES (1) Positive fastening devices shall be provided and attached to the floor or walls or both to insure that occupied wheelchairs or any other occupied types of ambulatory devices can be securely fastened in position. (History: Sec. 20-2-121, MCA; IMP, Sec. 20-10-111, MCA.)

10.64.507 RESTRAINING DEVICES (1) Seat frames may be equipped with attachments or devices to which belts, restraining harnesses, or other devices may be attached. (History: Sec. 20-2-121, MCA; IMP, Sec. 20-10-111, MCA.)

10.64.508 SPECIAL LIGHT (1) Lights shall be placed inside the bus to sufficiently illuminate lift area and shall be activated from door area. (History: Sec. 20-2-121, MCA; IMP, Sec. 20-10-111, MCA.)

10.64.509 AISLES (1) All aisles leading to the emergency door(s) from wheelchair area shall be of sufficient width (minimum thirty inches) to permit passage of maximum size wheelchair. (History: Sec. 20-2-121, MCA; IMP, Sec. 20-10-111, MCA.)

10.64.510 SEATING ARRANGEMENTS (1) Flexibility in seat spacing to accommodate special devices shall be permitted due to the constant changing of passenger requirements. (History: Sec. 20-2-121, MCA; IMP, Sec. 20-10-111, MCA.)

10.64.511 GLAZING (1) Tinted glass may be installed in all doors, windows, and windshield. Tinted plastic may be installed in windows rear of driver's compartment. (History: Sec. 20-2-121, MCA; IMP, Sec. 20-10-111, MCA.)

10.64.512 HEATERS (1) An additional heater(s) may be installed in the rear portion of the bus (behind wheel wells). (History: Sec. 20-2-121, MCA; IMP, Sec. 20-10-111, MCA.)

10.64.513 COMMUNICATIONS (1) All special education buses may be equipped with a two-way radio communication system. (History: Sec. 20-2-121, MCA; IMP, Sec. 20-10-111, MCA.)

10.64.514 REGULAR SERVICE ENTRANCE (1) In Type C and D vehicles, there shall be three (3) step risers, of equal height, in the entrance well.

(2) An additional fold-out step may be provided which will provide for the step level to be no more than six (6) inches from the ground level. (History: Sec. 20-2-121, MCA; IMP, Sec. 20-10-111, MCA.)

10.64.515 EXHAUST SYSTEM (1) The exhaust system shall be routed to the left of the right frame rail to allow for the installation of a lift mechanism that would travel through the floor on the right side of the vehicle. (History: Sec. 20-2-121, MCA; IMP, Sec. 20-10-111, MCA.)

10.64.516 TYPE A SCHOOL BUSES USED FOR SPECIAL TRANSPORTATION (1) This section pertains to vehicles of more than ten (10) persons capacity but less than ten thousand (10,000) pounds in GVW.

(2) These vehicles shall meet the specifications of all previous sections. EXCEPTION: In lieu of a power lift, a ramp device may be installed. (History: Sec. 20-2-121, MCA; IMP, Sec. 20-10-111, MCA.)

3. The rules as proposed to agree with the newly revised national standards and to update and include special education transportation as a separate entity.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Mr. Allen D. Gunderson, 33 South Last Chance Gulch, Helena, Montana 59620, no later than October 29, 1981.

5. If a person who is directly affected by the proposed rule wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Mr. Allen D. Gunderson, 33 South Last Chance Gulch, Helena, Montana 59620, no later than October 28, 1981.

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

new rule; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be approximately 5,000 persons based on the number of handicapped students using the special education vehicles, special education vehicle drivers/owners and school districts in the state using these services.

7. The authority and implementing sections are at the end of each rule.

Allen D Gundersen

ALLEN D. GUNCHERSON, CHAIRMAN
BOARD OF PUBLIC EDUCATION

by

Wade Van Dyke

Certified to the Secretary of State September 18, 1981.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF PUBLIC HEARING ON
of ARM 10.65.301 and following) PROPOSED ADOPTION OF RULE
pertaining to school attendance) 10.65.301 AND FOLLOWING,
) COMPULSORY SCHOOL ATTENDANCE

TO: All Interested Persons.

1. On November 5, 1981 at 10:30 to 12:00 am, a public hearing will be held in the Regents' Conference Room, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana to consider the adoption of Sub-Chapter 3 of Chapter 65 of the Administrative Rules of Montana.

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

Sub-Chapter 3

Compulsory School Attendance

10.65.301 GENERAL (1) The board of public education must determine whether a private institution provides instruction in the program the board prescribes.

(2) The board of public education has designated as the basic instructional program the educational curriculum set forth in the Administrative Rules of Montana 10.55.402 and 10.55.403.

(3) Students who are not enrolled and attending a public school must be enrolled in a private institution providing a basic instructional program as prescribed by the board of public education.

(4) Instruction to children by their parents at home is not to be considered as providing a basic instructional program for the purpose of complying with the law and this policy.

AUTH: 20-2-121, MCA IMP: 20-7-111

10.65.302 PROCEDURES FOR ATTENDANCE OFFICER (1) The attendance officer is mandated to enforce the compulsory attendance provision of Montana school law and has been vested with the necessary police and investigatory powers to enforce compulsory attendance provisions of Montana law to ensure the children are enrolled and attending a public school or enrolled in a private institution which provides instruction in the programs prescribed by the board of public education.

(2) It is the responsibility of the attendance officer to ensure that all children are enrolled and attending a public school or are enrolled in a private institution which provides a basic instructional program as described in 10.55.402 and 10.55.403 of the Administrative Rules of Montana.

(3) In the capacity of enforcing compulsory school attendance law, the attendance officer shall notify the county superintendent of his county of the existence of the non-public school after determining that a child is enrolled in a non-public school.

(4) The attendance officer shall, at the discretion of the county superintendent, accompany and/or assist the county superintendent in the county in determining whether the non-public school is providing the basic instructional program as prescribed.

AUTH: 20-2-121, MCA IMP: 20-5-101, MCA; 20-5-102, MCA

10.65.303 PROCEDURES FOR COUNTY SUPERINTENDENT (1) The county superintendent as an elected local school official must meet certain teaching and administrative qualifications in school matters. The county superintendent has general supervision of the schools of his county and is responsible to perform any duty prescribed by the board of public education.

(2) The county superintendent will annually determine whether the children within his county who are attending a non-public school are receiving a basic instructional program as set forth by the board of public education.

(3) If the county superintendent determines that the non-public school is providing a basic instructional program as prescribed, the county superintendent shall notify the attendance officer that the non-public school is a private institution providing the basic instructional program to the children of that private institution and is therefore in compliance with the compulsory attendance law.

(4) Should the county superintendent of schools determine that the children attending a non-public school are not receiving a basic instructional program, he shall report the same to the local attendance officer who shall pursue the remedies provided by law to assure that proper compulsory attendance is provided.

(5) The Office of Public Instruction will provide technical assistance to all county superintendents, upon their request, so they in turn can perform the mandates of this policy.

AUTH: 20-2-121, MCA IMP: 20-3-205(22)

3. The board is proposing this adoption to further clarify the policy of the board of public education pertaining to compulsory school attendance.

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 Mr. Allen D. Gunderson, 33 South Last Chance Gulch, Helena, Montana 59620, no later than October 28, 1981.

5. Mr. Allen D. Gunderson has been designated to preside over and conduct the hearing.

6. The authority and implementing sections are listed at the end of each rule.

Allen D Gunderson

ALLEN D. GUNDERSON, CHAIRMAN
BOARD OF PUBLIC EDUCATION

by *Uddelton Dym*_____

Certified to the Secretary of State September 21, 1981.

BEFORE THE BOARD OF WATER AND WASTEWATER OPERATORS
OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF PUBLIC HEARING
of rules 16.18.201, definitions;	)	ON PROPOSED AMENDMENT OF
16.18.202, classification of	)	16.18.201, 16.18.202,
plants; 16.18.203, certification	)	16.18.203 and 16.18.204
of operators; and 16.18.204,	)	(Water and Wastewater
examinations	)	Plants and Operators)

TO: All Interested Persons

1. On October 30, 1981, at 9:00 a.m., a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of rules 16.18.201, 16.18.202, 16.18.203, and 16.18.204.

2. The proposed amendments replace present rules 16.18.201, 16.18.202, 16.18.203, and 16.18.204 found in the Administrative Rules of Montana. The proposed amendments would provide definitions relevant to the proposed new rules included in this notice, clarify existing definitions, eliminate exceptions to the requirement for certified operators, eliminate the retroactive fee for individuals certified under the grandfather clause, clarify the duration of temporary certificates and those of operators moving out-of-state, add a provision for accepting individuals certified out-of-state, add mechanisms to change classifications of operators, and clarify examination procedure.

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

16.18.201 DEFINITIONS In addition to the terms defined in Section 37-42-102, MCA:

(1) "Fully certified operator" means an operator who either has passed the certification examination and satisfies the experience requirements set forth in ARM 16.18.205; is an operator certified pursuant to ARM 16.18.203(1) who is still employed at the facility where he was employed July 1, 1967; was certified pursuant to section 37-42-305, MCA, before March 1, 1982; or is certified pursuant to ARM 16.18.203(8).

~~(1)~~ (2) "Ground water" means subsurface water occupying the saturation zone from which wells and springs are fed. In a strict sense the term applies only to water below the water table.

(3) "Operator-in-training" means an operator who has passed the certification examination but does not yet meet the experience requirements set out in ARM 16.18.205.

~~(2)~~ (4) "Primary sewage treatment" means the first major (sometimes the only) treatment in waste-water wastewater treatment works, usually sedimentation, accomplishing the removal of a substantial amount of suspended matter with little or no removal of colloids and dissolved matter. The treatment may be accomplished by the use of lagoons ponds, septic tanks, or

sedimentation basins ~~either with or without mechanical sludge removal mechanisms.~~

~~(3) (5) "Responsible charge" means responsible for the responsibility exercised by an individual in day-by-day operation and/or supervision of a waterworks water distribution system, water treatment plant, waste-water works wastewater treatment plant, or any part thereof, which may affect the performance of the works or which may affect the quality and/or quantity of the water for human consumption or the quality of the effluent produced by such works. Operator in "responsible charge" shall be available or immediately available at all times.~~

~~(4) (6) "Secondary waste-water wastewater treatment" means the stabilization of waste-water wastewater by biological or chemical processes after primary treatment by sedimentation. The treatment may be accomplished by such as sewage lagoons, aerated lagoons, trickling filters, activated sludge, intermittent sand filters, bio-discs, stabilization lagoons, or sorption (usually by activated carbon) physical-chemical treatment.~~

~~(5) (7) "Surface waters" means all water on the surface as distinguished from subterranean ground water.~~

~~(8) "Temporary certificate" means a certificate which is issued to an applicant for the certification examination whose application has been accepted by the department.~~

Authority: Section 37-42-202, MCA

Implementing: Section 37-42-202, MCA

16.18.202 CLASSIFICATION OF PLANTS (1) All water treatment plants, water distribution systems, and waste water wastewater treatment plants shall be classified according to population served and type of treatment as shown in the chart entitled "Certification Classes", copy of which follows this rule and by this reference is made a part hereof, below:

(2) -- Exceptions:

(a) -- When a single industry obtains water from a certified source, it is not necessary for that industry to have a certified operator, however, if a subdivision or municipality purchases its water from a certified source, that person in charge of the distribution system must be certified.

(b) -- The person in charge of the water or waste water for a school building does not have to be certified since the law requires a certified operator in charge when ten or more families are served, not ten or more persons. -- The same would apply to missile sites.

(a) Water distribution systems:

- (i) First class--serving over 20,000 people;
- (ii) Second class--serving 2,500-20,000 people;
- (iii) Third class--serving 500-2,500 people;
- (iv) Fourth class--serving 100-500 people;
- (v) Fifth class--serving less than 100 people.

- (b) Water treatment plants:
 - (i) First class--treatment utilizing chemical coagulation, filtration, and chlorination;
 - (ii) Second class--treatment for surface water not utilizing chemical coagulation;
 - (iii) Third class--well water supply serving over 2,500 people, with or without chlorination;
 - (iv) Fourth class--well water supply serving 100 to 2,500 people, with or without chlorination;
 - (v) Fifth class--well water supply serving less than 100 people, with or without chlorination.
 - (c) Waste water treatment plants:
 - (i) First class--conventional or high rate activated sludge and physical-chemical plants;
 - (ii) Second class--treatment such as extended aeration, oxidation ditches, trickling filters, bio-discs and primary plants discharging to surface waters;
 - (iii) Third class--aerated lagoons;
 - (iv) Fourth class--sewage lagoons not utilizing artificial aeration;
 - (v) Fifth class--none.
 - (d) Industrial wastewater treatment plants:
 - (i) First class--physical-chemical treatment facilities for precipitation and settling and/or biological treatment plants treating over 1.0 mgd.
 - (ii) Second class--biological treatment plants serving under 1.0 mgd.
 - (iii) Third class--treatment facilities primarily for oil removal.
 - (iv) Fourth class--ponding facilities for removal of sediment which do not utilize chemical treatment.
 - (v) Fifth class--none.
 - (2) In order to calculate the class of a particular water treatment plant or water distribution supply pursuant to (1)(a) and (b) above when an accurate population census is not available, the population served may be determined by multiplying the number of service connections by 3.
- Authority: Section 37-42-202, MCA
Implementing: Sections 37-42-104 and 37-42-202, MCA.

CERTIFICATION CLASSES

	1	2	3	4	5
WATER PLANT OPERATORS	Surfinge* Over 2,500 Over 20,000	500-2,500 2,500-20,000	100-500 500-2,500	less than 100 100-500	less than 100
WATER DISTRIBUTION OPERATORS	* Over 20,000	2,500-20,000	500-2,500	100-500	less than 100
WASTE WATER PLANT OPERATORS	Primary* Over 20,000 Over 2,500	2,500-20,000 20,000-500-2,500	500-2,500 100-500	100-500 less than 100	less than 100
FEE (1 year)	\$20	\$15	\$10	\$5	\$3

*According to population served.
(See definitions for surface, ground, primary, secondary.)

16.18.203 CERTIFICATION OF OPERATORS (1) Certification will be granted to ~~applicants~~ an applicant under the grandfather clause (37-42-303(2) MCA) providing ~~they submit~~ he submits a statement from the governing board or owner of a water treatment, water distribution, or ~~waste-water~~ wastewater treatment plant stating ~~they were~~ he was in a position of responsible charge of the facility on July 1, 1967. ~~The annual fee must be paid retro-active to the above date.~~

(2) If an addition to an existing facility is installed after July 1, 1967, the person who was in responsible charge of the plant on that date and has a grandfather clause certificate, may be granted a grandfather clause certificate at a higher classification, providing he participated in the installation, and providing that evidence be presented to the Board board that the operator has been trained and is qualified to operate the higher-classified plant.

(3) If an operator moves out of the state or otherwise terminates employment as an operator within Montana, he may renew his certificate annually for a period of two years beyond the expiration date of his current certificate, provided that he pays the renewal fee required by section 37-42-308, MCA, prior to July 1 of each of these years. ~~He then~~ After two years, in order to receive a new certificate, he must furnish proof to the Board board that he is still employed ~~in the water or wastewater field~~ as an operator of a water or wastewater treatment plant, or water distribution system, or submit a new application and fee to the department.

(4) ~~Upon~~ After receipt by the department of an application and fee and ~~on~~ upon approval of the application by the department, a temporary ~~certificates~~ certificate may be issued, ~~to extend~~ effective only until the board meeting following ~~to~~ the date of the next board examination, ~~at which time unless~~ the holder of a the temporary certificate ~~is required~~ fails to take the examination. In the latter case, the temporary certificate is effective only until the date of the examination unless the applicant submits or furnish to the Board board a an ~~reasonable~~ excuse in writing for not being present, and the board finds it reasonable, in which case the board will extend the effective date of the certificate to the date of the board meeting following the next examination. ~~Continuance of the certificate shall be at the discretion of the Board.~~

~~(5) --Where a plant has a qualified operator in responsible charge of a Class 1 or Class 2 facility, any other employee may be granted a certificate by examination at a lower classification.~~

~~(6) (5) In any case where the census shows a city is changed to a higher classification, the fully certified operators of the appropriate system shall take and pass the examination for may obtain the higher classification with the exception of operators holding a certificate under the grandfather clause. by~~

making written request to the board and after determination by the board that the applicant has the education and experience defined in ARM 16.18.205 as necessary to operate the facility.

(6) An operator whose facility has been changed to a higher classification due to a revision of the rules in this chapter will be given certification at that higher classification upon renewal of his annual certificate. The fee required will be for the higher classification.

(7) An operator whose facility has been changed to a lower classification due to a revision of the rules in this chapter will be given certification at that lower classification upon renewal of his annual certificate, and the fee will be for the lower classification, unless he makes a written request to the board and the board determines that he is capable of operating a higher classified facility. In that case, he will remain certified at his present classification, and the fee required shall be for that higher certification class.

(8) An operator who has obtained certification in another state may obtain certification in Montana if review of his application and supporting material indicates he has passed an examination at least equivalent to that required by Montana and has experience meeting Montana's minimum requirements.

~~(7)~~ (9) Certificates shall be renewed each year after payment of the proper fee.

Authority: Section 37-42-202, MCA;

Implementing: Sections 37-42-202 and 37-42-303, MCA.

16.18.204 EXAMINATIONS (1) A person desiring to take the examination for certification as a water treatment plant, ~~or waste-water~~ wastewater treatment plant, or water distribution system operator must complete the application form and return it to the Board department at least fifteen (15) days before the date of the next examination. The proper fee must accompany the application. Upon approval of the Board department, the applicant may take the examination.

(2) An operator who is already certified and desires to take an examination for a higher certification level shall submit fees in an amount sufficient to cover the difference between his present fee and the fee for the certification level for which he desires examination. ~~if he fails, the amount paid is forfeited.~~

(3) An operator certified under one classification by examination and another under the grandfather clause will receive one certificate with that classification held under the grandfather clause noted by "(g.c.)".

~~(4) -- Two examinations for all classifications shall be given each year.~~

~~(5)~~ (4) Class 4 and Class 5 examinations may be given by a member of the staff of the ~~Environmental Sciences Division of the State Department of Health~~ Environmental Sciences Division department or a member of

the Beard board at a time and place set by the person administering the examination.

~~(6)~~ (5) ~~All persons indicating a desire to take the examination~~ Each person submitting an application for certification will be sent a notice of the time and place ~~at least two weeks prior to~~ of the examination date.

~~(7)~~ (6) Special examinations may be held in the event that the examination date and place regularly set by the Beard board conflicts with religious beliefs of the applicant and, in that event, the applicant may petition the Beard board by letter requesting such special examination. If the Beard board allows such a special examination, it shall set a time and place thereof in its discretion.

~~(8)~~ (7) Upon written request the Beard board may give an oral examination to operators in all classifications who fail the written examination ~~upon written request~~. The Beard board will consider each written request for an oral examination on its individual merit and set the time and place the examination will be held. At the oral examination at least three (3) members of the Beard board must be present, one of which will hold a certificate of the same level or higher in the classification being examined.

~~(9)~~ (8) Examinations will not be returned to examinees, but will be on file for one year in the office where the business of the Beard board is conducted. Failing examinations will be kept two years. An applicant may review his examination in the office.

~~(10)~~ (9) An operator failing the examination two times may not be issued a temporary certificate; however, he may take the examination whenever it is given upon re-applying and upon reviewing the approval of the Beard board.

~~(11)~~ (10) Duplicate certificates shall be provided by the Beard board to persons requesting the same upon the payment of a \$2.00 fee.

4. The board is proposing these amendments to the rules because they are needed to make the present rules correlate with the two proposed new rules following this notice of amendment, to generally edit and clarify the existing rules, to cover all statutory areas of responsibility and to more rationally differentiate between classes of water and wastewater treatment plants.

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 Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, no later than October 29, 1981.

6. Robert L. Solomon, Cogswell Building, Helena, Montana, has been designated to preside over and conduct the hearing.

In the matter of the adoption	)	NOTICE OF PUBLIC HEARING
of a new rule 16.18.205, setting	)	FOR ADOPTION OF NEW RULES
experience/education requirements	)	16.18.205
for wastewater plants, water	)	(EXPERIENCE/EDUCATION)
treatment plants, and water	)	AND
distribution system operators;	)	16.18.206
and 16.18.206, requiring certified	)	(CERTIFIED OPERATOR
operators at water or wastewater	)	IN CHARGE OF
treatment plants or water	)	FACILITY; EXCEPTIONS)
distribution systems, with)	
exceptions)	

TO: All Interested Persons

1. On October 30, 1981, at 9:00 a.m., a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of rules which set experience/education requirements for the operators of water or wastewater treatment plants, or water distribution systems; and require certified operators at the plants, with certain exceptions.

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

3. The proposed rules provide as follows:

16.18.205 EXPERIENCE/EDUCATION (1) To become fully certified an operator, in addition to passing the certification examination for his specific classification, shall have the following operating experience in a facility of that classification:

- (a) First Class - 2 years experience
- (b) Second Class - 1 1/2 years experience
- (c) Third Class - 1 year experience
- (d) Fourth Class - 6 months experience
- (e) Fifth Class - No experience requirement

(2) On the determination of the board that experience gained at a lower classified facility is applicable to a higher classified facility, this experience or a portion of it may be credited toward the experience requirement for the higher classification.

(3) Two days of education in post-secondary engineering training or the equivalent may be substituted for each day of experience, up to 1/2 of the experience requirement.

(4) A person who has passed the examination but lacks the requisite experience will be issued a certificate as OPERATOR-IN-TRAINING. When the experience requirement is fulfilled, a certificate as OPERATOR will be issued.

Authority: Sec. 37-42-202, MCA

Implementing: Sec. 37-42-201 and 37-42-202, MCA

16.18.206 CERTIFIED OPERATOR IN CHARGE OF FACILITY;
EXCEPTIONS (1) Every water treatment plant, waste water treatment plant, or water distribution system must have an individual in responsible charge at the facility site or on call at all times who can be contacted immediately and be at the site within a short period of time.

(2) Except as provided in this rule, the individual in responsible charge of a facility must be a fully certified operator.

(3) An operator with a temporary certificate or an operator-in-training certificate may be the operator in responsible charge of a facility upon request to the department by the facility owner and verification by such owner that the facility is unable to employ a fully certified operator, and upon a finding by the department and the board that the operator has the basic knowledge necessary to operate the facility and that public health will be protected. The department shall base its decision upon the results of on-site inspection of the facility; review of the facility's plans and specifications; review of the operator's records, experience and training; and examination of any other reasonably available and relevant information; and will give its recommendation to the board.

(4) An industrial wastewater treatment plant which discharges to municipal facilities or removes sediment without a surface water discharge does not need a certified operator.

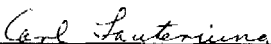
Authority: Sec. 37-42-202, MCA

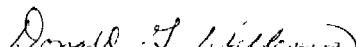
Implementing: Sec. 37-42-104, 37-42-202, MCA

4. The board is proposing these rules because an experience/education requirement for operators was advisable to ensure competence, and clarification of the level of certification and day-to-day responsibility of operators was necessary, along with certain hardship exceptions for facilities.

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 Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, no later than October 29, 1981.

6. Robert L. Solomon, Cogswell Building, Helena, Montana, has been designated to preside over and conduct the hearing.


CARL LAUTERJUNG, Chairman

BY 
DONALD G. WILLEMS

Certified to the Secretary of State September 21, 1981

18-9/30/81

MAR Notice No. 16-2-194

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

In the Matter of the Adoption)	NOTICE OF PROPOSED ADOPTION
of a Rule establishing Model)	OF A RULE (Model Procedural
Procedural Rules for the)	Rules)
Board of Natural Resources)	NO PUBLIC HEARING
and Conservation)	CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On October 30, 1981, the board proposes to adopt a rule establishing model procedural rules for the Board of Natural Resources and Conservation.

2. The proposed rule does not modify or replace any currently found in the Administrative Rules of Montana.

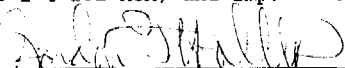
3. The rule as proposed to be adopted provides as follows:

Rule. BOARD MODEL PROCEDURAL RULES. The board of natural resources and conservation hereby adopts and incorporates by reference ARM 1.3.101 through ARM 1.3.234 which sets forth the attorney general's model rules, except such model procedural rules as are inconsistent with the Major Facility Siting Act, Section 75-20-101 et seq. MCA, and the rules adopted thereunder. Section 75-20-222, MCA provides that the contested case procedures of the Montana Administrative Procedure Act shall apply to proceedings under the Major Facility Siting Act if not in conflict with the procedures set forth in the Major Facility Siting Act, or the procedural rules adopted by the board. A copy of the model rules may be obtained from the board of natural resources and conservation, 32 South Ewing, Helena, Montana 59620.

4. The Board of Natural Resources is proposing this rule to establish procedural rules for the Board and to implement Section 2-4-201, MCA. Its intent is to provide rules of practice, not inconsistent with statutory provisions, setting forth the nature and requirements of all formal and informal procedures available.

5. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Gordon G. Holte, 32 South Ewing, Helena, Montana 59620, no later than October 28, 1981.

6. The authority of the board to make the proposed amendment is based on sections 2-4-201 MCA, and implements sections 2-4-201 MCA.


Gordon G. Holte, Chairman

Certified to the Secretary of State September 21, 1981.

BEFORE THE BOARD OF OIL
AND GAS CONSERVATION

In the Matter of the Amend-	)	NOTICE OF PROPOSED
ment of Rule 36.22.1607 per-	)	AMENDMENT OF RULE
taining to notice of exam-	)	36.22.1607, DEADLINES
iner's preliminary determina-	)	FOR ACTION ON DETER-
tions under rules implemen-	)	MINATIONS
ting the National Gas Policy)	
Act of 1978.	)	NO PUBLIC HEARING
		CONTEMPLATED

TO: All Interested Persons

1. On November 12, the Board of Oil and Gas Conservation Board proposes to amend rule 36.22.1607 concerning the mailing of the examiner's preliminary monthly determination under the Board's rules implementing the National Gas Policy Act of 1978.

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

36.22.1607 DEADLINES FOR ACTION ON DETERMINATIONS

(1) All applications for that month's determinations must be filed by the third working day of the month.

(2) On the fourth Tuesday of each month or on the following day if such day is a legal holiday, an examiner appointed by the Board shall make preliminary determinations, whether positive or negative, based solely upon the applications and any objections thereto timely filed during such month.

(3) Copies of the examiner's determination shall be mailed within two days of the date of the determination by ordinary mail to the applicant and ~~to all owners and purchasers identified on the certificate of service submitted in compliance with Rule 1(3), as well as,~~ to all objectors.

3. The Board proposes to amend the rule because notice of the examiner's determination by mail to working interest owners and to all purchasers of gas from a well or wells involved in an application for a determination has proven to be an excessively costly and administratively burdensome duplication of notice. Such information is readily available from the applicant either directly or as a result of the notice of application from the applicant as required by rule 36.22.1602 (4) (g).


4. Interested parties may submit their data, views, or arguments concerning the proposed amendment to Dee Rickman, P.O. Box 217, 25 South Ewing, Helena, Montana 59624, no later than October 28, 1981.

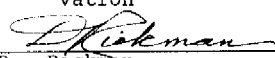
5. If a person who is directly affected by the proposed amendment wishes to enter his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written

comments he has to Dee Rickman, P.O. Box 217, 25 South Ewing, Helena, Montana 59624, no later than October 28, 1981.

6. If the Board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be at least 50 persons based on at least 500 persons or entities who are working interest owners or purchasers of gas from wells for which applications for determinations may be made in the future.

7. The authority of the Board to make the proposed amendment is based on Section 82-11-115, MCA, and the rule implements Section 82-11-115, MCA.


Richard A. Campbell, Chairman
Board of Oil and Gas Conservation

BY: 
Dee Rickman
Assistant Administrator
Oil and Gas Conservation Division

Certified to the Secretary of State Sept 21, 1981.

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

IN THE MATTER of Proposed Adop-) NOTICE OF PROPOSED ADOPTION
tion of Interpretive Rules for) OF INTERPRETIVE RULES FOR
Public Service Commission) PUBLIC SERVICE COMMISSION
Regulation of Municipally-Owned) REGULATION OF MUNICIPALLY-
Utilities.) OWNED UTILITIES
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Interested Persons

1. On November 9, 1981, the Department of Public Service Regulation proposes to adopt interpretive rules specifying the position of the Commission concerning its regulatory jurisdiction over municipally owned utilities as provided in Sections 69-7-101, 69-7-102, 69-7-113, and 69-7-201, MCA (Chapter 607, Laws of 1981).

2. The proposed interpretive rules provide as follows:

RULE I. JURISDICTIONAL POLICY (1) It is declared to be the policy of the Public Service Commission that 69-7-113 and 69-7-201, MCA (Chapter 607, Laws of 1981) preclude the Commission from regulatory jurisdiction over a municipally-owned utility, except as provided in 69-7-102, MCA. (Chapter 607, Laws of 1981).

AUTH: 69-3-102 and 69-3-103, MCA; IMP 69-7-101, 69-7-102, 69-7-113 and 69-7-201, MCA

RULE II. DETERMINATION OF PUBLIC SERVICE COMMISSION JURISDICTION (1) Rate Increase Requests. If a municipally-owned utility files a rate increase request with the Public Service Commission, and:

(a) It is clear prima facie that the request is within the jurisdiction of the Commission as provided in 69-7-102, MCA (Chapter 607, Laws of 1981), the Commission will assume jurisdiction and proceed accordingly; or,

(b) It is clear that the request is not within the jurisdiction of the Commission as provided in 69-7-102, MCA (Chapter 607, Laws of 1981), the Commission will decline to assume jurisdiction; or,

(c) It is not clear whether the request is within the jurisdiction of the Commission as provided in 69-7-102, MCA (Chapter 607, Laws of 1981), the Commission will assume it does not have jurisdiction, and the burden of proving that assumption is incorrect shall be on the requesting party, the utility, the agency or a person seeking to have the Commission assume jurisdiction.

(2) Specific Fee Increases. The Public Service Commission has regulatory jurisdiction, as provided in 69-7-102, MCA (Chapter 607, Laws of 1981) over a request by a municipally-owned utility for a rate increase that will yield an increase in total revenues in excess of 12 percent in any one year. If a municipally-owned utility imposes or increases specific fees to its consumers for such services as hook-ups or main exten-

sions, the Commission shall treat the revenues derived from such fees as part of the utility's total annual revenues when considering whether a utility has exceeded the 12 percent annual increase or when considering a utility's rate increase request to exceed a 12 percent annual increase. The Commission regards any questions concerning the reasonableness of a specific fee to be within the sole jurisdiction of the appropriate district court for determination of the matter as provided in 69-7-113, MCA (Chapter 607, Laws of 1981).

(3) Condition of Service Complaints. The Public Service Commission is precluded from all jurisdiction, as provided in 69-7-201 and 69-7-113, MCA (Chapter 607, Laws of 1981), over consumer complaints concerning the condition of service provided by a municipally-owned utility.

AUTH: 69-3-102 and 69-3-103, MCA; IMP. 69-7-101, 69-7-102, 69-7-113 and 69-7-201, MCA

3. The Public Service Commission is proposing these interpretative rules in order to provide municipally-owned utilities and their consumers a clear indication of the separate regulatory jurisdiction of the municipally-owned utilities and the Public Service Commission concerning the regulation of rates, charges and classifications for utility services, service rules and related service issues for such utilities.

It is the view of the Commission that the legislative intent of House Bill No. 765 "An Act to Provide for Municipal Regulation of Municipally-Owned Utilities" (Chapter 607, Laws of 1981) was to negate the jurisdiction of the Commission over any municipally-owned utility's regulation of rates, charges, classifications for utility services, rules of service or service related issues except as provided in 69-7-102, MCA (Chapter 607, Laws of 1981). The Commission also finds House Bill No. 765 indicates that appeals from the actions of a municipally-owned utility in the areas listed above should be made to the district court [69-7-113, MCA (Chapter 607, Laws of 1981)] rather than to the Commission except as provided in 69-7-102, MCA (Chapter 607, Laws of 1981).

4. Interested parties may submit their data views or arguments concerning the proposed adoption in writing to Opal Winebrenner, 1227 11th Avenue, Helena, Montana 59620, no later than November 9, 1981.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Opal Winebrenner, 1227 11th Avenue, Helena, Montana 59620, no later than November 9, 1981.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental sub-division or agency; or from an

association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana 59620 (Telephone 449-2771) is available and may be contacted to represent consumer interests in this matter.

8. The authority for the Department of Public Service Regulation to make and adopt these interpretive rules is based on Section 69-3-102 and 69-3103, MCA and the rules clarify Sections 69-7-101, 69-7-102, 69-7-113 and 69-7-201, MCA (Chapter 607, Laws of 1981).


THOMAS J. SCHNEIDER, Commissioner

CERTIFIED TO THE SECRETARY OF STATE SEPTEMBER 21, 1981.

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

In the matter of the amendment)	NOTICE OF THE AMENDMENT
of rules 16.2.501, 16.2.502,)	OF RULES
and 16.2.503 relating to)	16.2.501, 16.2.502
procedures for public comment)	and 16.2.503
on applications for permits)	
under the Major Facility)	(Major Facility Siting Act)
Siting Act)	

TO: All Interested Persons

1. On July 30, 1981, the department and board published notice of a proposed amendment of rules 16.2.501, 16.2.502 and 16.2.503 concerning procedures for public comment on applications for permits under the Major Facility Siting Act at pages 704 - 707 of the 1981 Montana Administrative Register, issue number 14.

2. The department and board have amended the rule as proposed.

3. With the exception of a brief, written explanation of the proposed amendments submitted by counsel for the department, no comments or testimony were received.

FOR THE BOARD:

John F. McGregor, M.D.
JOHN F. MCGREGOR, M.D., Chairman
Board of Health and Environmental
Sciences

BY: John J. Drynan, M.D.
JOHN J. DRYNAN, M.D., Director
Department of Health and
Environmental Sciences

FOR THE DEPARTMENT:

John J. Drynan, M.D.
JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State Sept. 21, 1981

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

In the matter of the amendment	)	NOTICE OF THE AMENDMENT
of rule 16.14.101 relating to	)	OF RULE
definitions for solid waste	)	ARM 16.14.101
management grants and loans)	
to local governments	)	(Definitions)

TO: All Interested Persons

1. On July 30, 1981, the Board of Health and Environmental Sciences published notice of a proposed amendment to rule 16.14.101 concerning definitions for solid waste management grants and loans to local governments at page 715 of the 1981 Montana Administrative Register, issue number 14.
2. The Board has amended the rule as proposed.
3. No comments or testimony were received.

In the matter of the amendment	)	NOTICE OF THE AMENDMENT
of rule 16.14.103 relating to	)	OF RULE
general application requirements	)	ARM 16.14.103
for solid waste management)	
grants and loans to local	)	(General Application
governments	)	Requirements)

TO: All Interested Persons

1. On July 30, 1981, the Board of Health and Environmental Sciences published notice of a proposed amendment to rule 16.14.103 concerning general application requirements for solid waste management grants and loans to local governments at page 717 of the 1981 Montana Administrative Register, issue number 14.
2. The Board has amended the rule as proposed.
3. Comment: On subsection (5), an interlocal agreement approved by the Attorney General is probably required and should be completed before an application for a grant or loan proceeds very far.
Response: Since the Board did not indicate in its notice of proposed amendment that it was considering changing the requirements for an application from two or more local governments or adding more requirements, such changes should be noticed out for public comment before action by the Board. Furthermore, if the interlocal agreement is required by statute, the requirement need not be duplicated in a rule. The Department will notify applicants of the statutory requirement for interlocal agreements after an application is received.

In the matter of the amendment	)	NOTICE OF THE AMENDMENT
of rule 16.14.104 relating to	)	OF RULE
front-end planning funds	)	ARM 16.14.104
grant applications	)	(Front-End Planning Funds
		Grant Applications)

TO: All Interested Persons

1. On July 30, 1981, the Board of Health and Environmental Sciences published notice of a proposed amendment to rule 16.14.104 concerning front-end planning funds grant applications at page 719 of the 1981 Montana Administrative Register, issue number 14.

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

- (1) Same as proposed.
- (2) Same as proposed.
- (3) The department will review applications on a first-come, first-served basis, taking into consideration the plan that:
 - (a) includes the largest population;
 - (b) states the greatest financial need;
 - (c) encompasses the largest number of local governments;
 - (d) to the fullest extent possible utilizes private enterprise for planning purposes; and
 - (e) addresses the most pressing environmental and public health concerns.

3. Comment: The criterion in (3)(a), the "largest population", be deleted because it puts rural areas at a disadvantage.

Response: Population is a critical factor that must be retained as one of the criteria since the highest volume of solid waste is correlative to population and volume dictates consequential environmental impact and problems. The situation of rural applicants is considered by the change made in this subsection due to the following comment.

Comment: to assist consideration of rural applicants, "the greatest financial need" should be a criterion.

Response: The Board accepts the comment and changed the rule accordingly.

Comment: Provision should be made in this rule for obtaining planning funds in instances where local governments have already done planning and need an update or want to do some more planning.

Response: The current rule allows a local government to submit a new application for planning funds if update monies are needed. Consideration of the financial need criterion should grant precedence to the application of a small, rural program over updating needs of a previous applicant.

In the matter of the amendment	)	NOTICE OF THE AMENDMENT
of rule 16.14.105 relating to	)	OF RULE
criteria for review of front-	)	ARM 16.14.105
end planning applications	)	(Review of Front-End Planning Applications)

TO: All Interested Persons

1. On July 30, 1981, the Board of Health and Environmental Sciences published notice of a proposed amendment to rule 16.14.105 concerning review of front-end planning applications at page 721 of the 1981 Montana Administrative Register, issue number 14.

2. The Board has amended the rule as proposed.

3. Comment: Why doesn't this rule have criteria like rule 16.14.104?

Response: Section 75-10-125(3), MCA, establishes the criteria for considering applications for front-end implementation funds.

Comment: The provisions of subsections (c), (e), (f) and (g) could be combined into one general requirement termed "good planning."

Response: The specificity of those subsections is to eliminate the guesswork that would be necessary on the part of the applicant as to what constitutes "good planning".

In the matter of the amendment	)	NOTICE OF THE AMENDMENT
of rule 16.14.109 relating to	)	OF RULE
the order of funding grants	)	ARM 16.14.109
		(Order of Funding Grants)

TO: All Interested Persons

1. On July 30, 1981, the Board of Health and Environmental Sciences published notice of a proposed amendment to rule 16.14.109 concerning the order of funding grants at page 723 of the 1981 Montana Administrative Register, issue number 14.

2. The Board has amended the rule as proposed.

3. No comments or testimony were received.

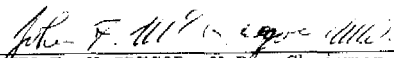
In the matter of the amendment	)	NOTICE OF THE AMENDMENT
of rule 16.14.111 relating to	)	OF RULE
noncompliance	)	ARM 16.14.111
		(Noncompliance)

18-9/30/81

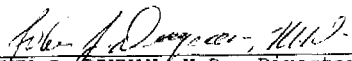
Montana Administrative Register

TO: All Interested Persons

1. On July 30, 1981, the Board of Health and Environmental Sciences published notice of a proposed amendment to rule 16.14.111 concerning noncompliance at page 724 of the 1981 Montana Administrative Register, issue number 14.
2. The Board has amended the rule as proposed.
3. No comments or testimony were received.



JOHN F. MCGREGOR, M.D., Chairman
Board of Health and Environmental
Sciences



JOHN J. DRYNAN, M.D., Director
Department of Health and
Environmental Sciences

Certified to the Secretary of State Sept. 21, 1981

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

In the matter of the) NOTICE OF THE ADOPTION OF
adoption rules relating) RULES 26.3.223, 26.3.224
to conditions on state) and 26.3.225
oil and gas leases.)

TO: All Interested Persons:

1. On May 28, 1981, the board of land commissioners and department of state lands published a notice of proposed adoption of rules concerning conditions on state oil and gas leases at page 497 of the 1981 Montana Administrative Register, issue no. 10.

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

Rule-1 26.3.223 MINIMUM RESTRICTIONS ON SURFACE ACTIVITY

(1) The lessee shall not conduct any seismic surface activity which will disturb the surface or move the earth within 300 feet of any water source including but not limited to wells, springs, streams lakes or reservoirs unless permission is received in writing from the commissioner.

(2) The lessee shall not conduct any seismic drilling or blasting activity within 1320 feet 660 feet-(1/8-mile) of any building or similar structure, water well or spring or within 660 feet of any reservoir dam unless permission is received in writing from the commissioner.

(3) The lessee shall not be allowed to occupy, utilize or conduct any activity on the surface of any river or lake bed or island unless permission is received in writing from the commissioner.

(4) The written permission specified in this rule shall not be unreasonably withheld; however, the commissioner shall not grant such permission unless he determines that the proposed activity will not cause significant adverse environmental effects. The commissioner shall make his decision within 30 days of receipt of written request for such permission.

Rule-11 26.3.224 ADDITIONAL RESTRICTIONS - STIPULATIONS

(1) The department may place stipulations on leases, at the time of issuance when necessary to protect the land and its resources. Written Notice of all proposed stipulations shall be given prior to sale of the lease.

(2) The department may restrict surface activity on any lease at any time when adverse or unusual weather conditions require such restrictions to prevent accelerated erosion, fires or disruption of seasonal wildlife use. The department shall consult with the lessee prior to restricting surface activity and may allow limited activity or activity with mitigating measures.

(3) The department may restrict surface activity on any lease at any time that historical or archaeological resources of significance, as determined by the state historical preservation office, are discovered on the land under lease.

(4) If restrictions pursuant to (2) and (3) of this rule prevent the lessee from complying with drilling provisions or production requirements the lease shall be extended to allow a reasonable time to comply with such requirements. This provision shall be liberally construed to prevent forfeiture or cancellation of the lease because of restrictions.

Rule-III 26.3.225 COMPLIANCE WITH LEASE STIPULATIONS AND RESTRICTIONS The lessee shall comply with all restrictions and stipulations placed upon the lease by the board or the department. If a violation of a restriction, stipulation or other resource conservation requirement contained in these rules is discovered, the lessee will be notified and given an opportunity to correct the violation and repair any damage. If the damage is not repairable the lessee shall mitigate the damage to the greatest extent possible. If the violation is not corrected, repaired or mitigated within the time specified by the department, the lease shall be canceled as provided in rule 26.3.214.

3. Comments were received from 4 interested parties. A summary of the comments and the department's responses are provided below.

(1) COMMENT: Rule I(1) needs clarification as to what constitutes "surface activity".

RESPONSE: Comment accepted a rule revised to more clearly define what activities are prohibited. See (2) below.

(2) COMMENT: Rule I(1) is unduly restrictive in that it may prohibit traveling near water sources.

RESPONSE: Comment accepted and rule revised to only prohibit seismic activity which disturbs the land or moves the earth. This rule is the same as the rule which already applies to all seismic permittees.

(3) COMMENT: Rule I(2) is too restrictive.

RESPONSE: Comment accepted and rule revised. The rule now only applies to "seismic" drilling and blasting and is the same as the Board of Oil and Gas Conservation rule which applies to federal, private and state lands.

(4) COMMENT: Rules (1) and (2) are too restrictive and should not apply to buildings constructed after the lease is issued.

RESPONSE: See (3) above. The rule has been revised to comply with the Board of Oil and Gas Conservation rule.

(5) COMMENT: Rule I(3) needs clarification of "surface of any river or lake bed".

RESPONSE: Comment rejected. The phrase is self explanatory and can not be efficiently defined in any greater detail.

(6) COMMENT: Rule I(4) should require that the commissioner must act within 15 days of a request.

RESPONSE: The comment is accepted in principle and the rule revised to provide for a response within 30 days.

(7) COMMENT: Rule I(4) should provide for an administrative hearing and appeal to the board of land commissioners.

RESPONSE: It is much more efficient to handle these matters on an informal basis without the expense of a formal administrative hearing each time permission is requested. The commissioner serves the board of land commissioners and any person aggrieved by the commissioners decision has always been allowed to appear before the board.

(8) COMMENT: Rule II(1) should provide that notice of a proposed stipulation will appear in the sale notice.

RESPONSE: Comment accepted in part. It is contemplated that the proposed stipulation appear in the sale notice but for purposes of bidding it is sufficient that the proposed stipulation be given in writing to all bidders. The rule is revised to require written notice.

(9) COMMENT: Rule II(2) should require consultation with the lessee to work out what activities may be allowed.

RESPONSE: Comment accepted and rule revised to require consultation with lessee prior to restricting activity.

(10) COMMENT: Rule II(2) is unreasonable.

RESPONSE: Comment rejected.

(11) COMMENT: Rule II(3) is too restrictive and allows too much discretion on the part of the historic preservation officer. The term "significant" is too vague.

RESPONSE: Comment rejected. The rule provides for discretion by the commissioner who is directed by the board of land commissioners. The historic preservation officer merely helps the commissioner in determining whether a historic or archaeological resource is "significant". The term significant can not be defined in any meaningful way. The commissioner must use his sound discretion in balancing the competing interests. The commissioner is not required to restrict activity just because the historic preservation

officer believes the resource to be significant. Certain historic and archaeological resources are important and should be preserved. In most if not all instances these resources can be preserved without unduly burdening the lessee.

(12) COMMENT: Rule II(2) and (3) may not allow the lessee to complete timely development of the minerals.

RESPONSE: Comment accepted. Rule II(4) as written allows for an extension. The rule is revised to make it clear that the lease will be extended in order to meet drilling provisions as well as production requirements and to insure that a lease will not be lost because of the restrictions.

(13) COMMENT: Rule III should provide for judicial proceedings and compensation to the lessee and furthermore the word correct should not be used in relation to a situation which can not be corrected.

RESPONSE: Comment accepted in part and rejected in part. The cancellation of a lease is subject to appeal and a hearing is required if requested. The lessee always has the option of appealing any decision to the courts for review. The state can not compensate the lessee when a lease is canceled. This is part of the penalty for violating lease terms. If a new lessee is found it would be required to pay the old lessee for any improvements remaining such as casings. The requirement to correct violations only applies to violations which are correctable. This is apparent from the language of the rule.

(14) COMMENT: The comment was made that the same restrictions that apply to oil and gas lessees should apply to surface lessees.

RESPONSE: The exploration for and development of oil and gas necessitates activity which has the potential of causing damage to other resources on the land. The rules are proposed because of problems which have arisen. No problems have arisen concerning other lessees which can not be handled on a case by case basis. In the case of surface lessees, they would be hurting themselves as much as the state if they destroyed a water source or damaged a building. This is not necessarily true of a mineral lessee.


Gareth C. Moon, Commissioner
Department of State Lands

CERTIFIED TO THE SECRETARY OF STATE September 21, 1981.

Montana Administrative Register

18-9/30/81

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of rules pertaining	)	RULES 1.2.210 ADOPTION OF AN
to an adoption by reference.	)	AGENCY RULE BY INCORPORATION
	)	BY REFERENCE; 1.2.211 MODEL
	)	RULES: LOCATION AND INCORPORA-
	)	TION BY REFERENCE; 1.2.419
	)	FILING, COMPILING, PRINTER
	)	PICKUP SCHEDULE FOR MAR

TO: All Interested Persons:

1. On August 13, 1981, the office of the Secretary of State published notice of proposed amendment of rules pertaining to an adoption by reference, at page 811 of the 1981 Montana Administrative Register, issue number 15.

2. The office has amended rules 1.2.211 and 1.2.419 as proposed, with the following change in rule 1.2.210:

1.2.210 ADOPTION OF AN AGENCY RULE BY INCORPORATION BY REFERENCE

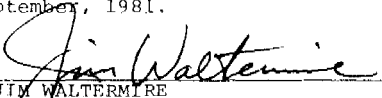
Paragraphs (1), (2), (3) adopted as proposed.

(4) Only a notice of incorporation by reference of later amendments of a federal regulation, as specified in 2-4-307(5), MCA, is published in the Montana Administrative Register. The attorney general's model rule for a substantive rule with no public hearing contemplated is used for the notice format. The format for the incorporation by reference is as shown in paragraph (2) above. The notice shall state an effective date of such incorporation. No further notice of adoption or replacement page is required. However, to help the user determine the date of the latest incorporation by reference, it is suggested that the agency furnish a replacement page to the Administrative Rules of Montana. An amendment notation in the history of a rule would lead the user back to the page where the notice is published in the Montana Administrative Register.

Paragraphs (4) and (5) redesignated and adopted as proposed.

3. No comments or testimony were received. This office notes that it may be difficult for a user to determine the most recent date of an incorporation by reference. As a service to the user, this office recommends that the agency furnish a replacement page to the Administrative Rules of Montana. This would eliminate the necessity of researching back through issues of the Montana Administrative Register and would also reduce the number of requests to the agency for this information.

Dated this 21st day of September, 1981.


JIM WALTERMIRE
Secretary of State

18-9/30/81

Montana Administrative Register

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF ADOPTION OF RULES
of rules concerning fees for)	44.5.101 Fees for Filing Docu-
filing documents and issuing)	ments and Issuing Certificates -
certificates.)	Business Corporations; 44.5.105
	Fees for Filing Documents and
	Issuing Certificates - Limited
	Partnerships; 44.5.106 Miscel-
	laneous Charges - Limited
	Partnerships

TO: All Interested Persons:

1. On August 13, 1981, the Office of the Secretary of State published notice of proposed adoption of rules concerning fees for filing documents and issuing certificates, at page 814, of the Montana Administrative Register, issue number 15.
2. The Office has adopted the rules as proposed.
3. No comments or testimony were received.


JIM WALTERMIRE
Secretary of State

Dated this 21st day of September 1981.

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

In the matter of the amendment of)	NOTICE OF THE AMEND-
Rule 46.2.209 pertaining to fair)	MENT OF RULE 46.2.209
hearing procedures)	PERTAINING TO FAIR
)	HEARING PROCEDURES

TO: All Interested Persons

1. On August 13, 1981, the Department of Social and Rehabilitation Services published notice of a proposed amendment to Rule 46.2.209 pertaining to fair hearing procedures at page 817 of the 1981 Montana Administrative Register, issue number 15.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received except for the following further comments by the Department of Social and Rehabilitation Services: the Department is under federal requirement to dispose of a request for a food stamp hearing within 60 days and public assistance hearings within 90 days of receiving the hearing request. Included in this time frame is the allowance for an appeal of a hearing officer's decision to the State Board of Social and Rehabilitation Appeals. Due to the enormous number of hearing requests, the telephone conference hearing system would help in providing the hearing officer additional time with which to dispose of hearing requests, as much time as is currently spent in travel. Not only does travel take time but is costly. Also, it is next to impossible to dispose of hearings in a timely manner trying to cover the State of Montana by car, and because of weather problems, it is often difficult to meet a timely schedule by aircraft.

In the matter of the amendment of)	NOTICE OF THE AMEND-
Rules 46.5.802 and 46.5.803 per-)	MENT OF RULES 46.5.802
taining to the licensing of com-)	AND 46.5.803 PERTAIN-
munity homes for the developmen-)	ING TO THE LICENSURE
tally disabled)	OF COMMUNITY HOMES FOR
)	THE DEVELOPMENTALLY
)	DISABLED

TO: All Interested Persons

1. On August 13, 1981, the Department of Social and Rehabilitation Services published notice of a proposed amendment to Rules 46.5.802 and 46.5.803 pertaining to the licensing of community homes for the developmentally disabled at page 826 of the 1981 Montana Administrative Register, issue number 15.

2. The agency has amended the rules as proposed.
3. No comments or testimony were received.

In the matter of the amendment of	)	NOTICE OF THE AMEND-
Rules 46.5.114, 46.5.115 and	)	MENT OF RULES 46.5.114
46.5.116 pertaining to eligibility	)	46.5.115 and 46.5.116
for child and family protective	)	PERTAINING TO ELIGI-
services, legal termination of	)	BILITY FOR CHILD AND
parental rights and central reg-	)	FAMILY PROTECTIVE SER-
istry operation	)	VICES, LEGAL TERMINA-
	)	TION OF PARENTAL
	)	RIGHTS AND CENTRAL
	)	REGISTRY OPERATION

TO: All Interested Persons

1. On August 13, 1981, the Department of Social and Rehabilitation Services published notice of the proposed amendment to Rules 46.5.114, 46.5.115 and 46.5.116 pertaining to eligibility for child and family protective services, legal termination of parental rights and central registry operation at page 820 of the 1981 Montana Administrative Register, issue number 15.


2. The agency has amended the rules as proposed.

3. Comments received concerning these amendments are as follows:

Comment: Senate Bill 267 allows parents to petition the court for relinquishment of their children on forms provided by the court. The Department of Social and Rehabilitation Services should not "assist" the client in filling out forms without counseling and then only when the Department will not oppose the relinquishment in court as there would be a conflict of interest.

Response: The term "assist" will be further defined in Departmental policies and procedures manual. SRS staff shares the concern that families must first be counseled before contemplating such serious action as a relinquishment of their child. Staff does provide such counseling services already, upon the request of the parent(s), other referrals, etc. This rule intends only to further clarify our services, i.e., that

after an informed decision has, in fact, been made by the parents with the counseling from the agency, the Department will further assist the parent in completing the necessary forms to assure that all other legal requirements for termination of parental rights have been followed.



Director, Department of Social
and Rehabilitation Services

Certified to the Secretary of State September 21, 1981

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

In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rules 46.9.302,	)	RULES 46.9.302, 46.9.304
46.9.304 and 46.9.305 per-	)	46.9.305, PERTAINING TO
taining to emergency grants-	)	EMERGENCY GRANTS-IN-AID TO
in-aid to counties	)	COUNTIES

TO: All Interested Persons

1. On August 13, 1981, the Department of Social and Rehabilitation Services published notice of the proposed amendment to Rules 46.9.302, 46.9.304 and 46.9.305 pertaining to emergency grants-in-aid to counties at page 838 of the Montana Administrative Register, issue number 15.

2. The agency has amended the rules as proposed.

3. Comments and testimony received concerning these amendments are as follows:

Comment: ARM 46.9.302, Subsection (2), should state that the criteria does not apply to counties which levy less than 13.5 mills for the county poor fund.

Response: This amendment is directed to only those counties which levy the statutory ceiling of 13.5 mills for the county poor fund and not other counties. The criteria will not be applied to other counties without further notice and rule-making.

Comment: Terminology of the new provision, which requires that all expenditures from the Poor Fund be reasonable, necessary and legal, lends itself to subjective judgement. We would anticipate some disagreement with interpretations of what might be reasonable or necessary expenditures with payment of interest on registered warrants as an example.

Response: The counties and state will, at times, disagree over interpretations. However, this Department has an obligation to ensure that, before the state general fund is obligated to reimburse expenditures exceeding the amount lawfully available to the county, expenditures were appropriately made. The example of payment of interest on registered warrants is an appropriate one. This will not meet the reasonable and necessary test if it is caused by poor planning but may be reasonable and necessary if no amount of planning could have alleviated the problem.

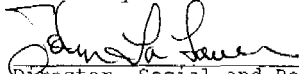
Comment: The provision that all staff of the county departments be paid in accordance with 53-2-304, MCA fails to recog-

nize the many significant changes of responsibility which have been delegated to county departments since the provision was enacted in 1937.

Response: 53-2-304(2), MCA specifically states how county public assistance staff shall be paid. Neither this Department nor the counties can ignore a lawfully enacted statute whenever it suits their currently perceived needs. This Department has no authority to promulgate rules outside of existing statute.

Comment: The rule requires that payment for costs of consultative and contracted services be based on policies in effect at the time for state agencies. We do not have access to such payment policies and contend that contracts negotiated by a county may be subject to different laws and regulations.

Response: The Montana Operations Manual (MOM) contains these policies and is available to counties and many currently have a copy. Any contract based on a statute that requires a county to specifically follow another contracting procedure will be considered as legally done, but still must meet the reasonable and necessary test. All expenditures of public funds must be reasonable and necessary to be lawfully made.


Director, Social and Rehabilitation Services

Certified to the Secretary of State September 21, 1981.

VOLUME NO. 39

OPINION NO. 32

CODE OF ETHICS - Duty of Secretary of State, advisory opinions;
CODE OF ETHICS - Eligibility to request advisory opinions from Secretary of State;
ELECTED OFFICIALS - Manner of exercising official discretion;
EMPLOYEES, PUBLIC - Code of Ethics;
SECRETARY OF STATE - Code of Ethics, duty to issue advisory opinions;
SECRETARY OF STATE - Exercise of official discretion;
ARTICLE XIII, Section 4, Montana Constitution;
SECTION 2-2-132 Montana Code Annotated;

- HELD:
1. The Secretary of State is required to issue advisory opinions, permit public access to voluntary disclosure statements, and adopt rules concerning the conduct of his affairs pursuant to the provisions of the Montana Code of Ethics.
 2. The Secretary of State is required to issue advisory opinions concerning the ethical conduct of either the requesting party or a third party.
 3. The method of conducting the Secretary's duties under the Code of Ethics is within the discretion of the Secretary of State.

10 September 1981

Honorable Jim Waltermire
Secretary of State
State Capitol
Helena, Montana 59620

Dear Mr. Waltermire:

You have requested my opinion concerning the duties of the Secretary of State with regard to the Montana Code of Ethics. The request consists of eight questions, including 36 sub-issues, regarding your authority under the provisions

of section 2-2-132, MCA. Your questions are answered by reference to the provisions of that statute. However, only two of your questions require statutory interpretation. The answers to the other questions are left entirely to the discretion of the Secretary of State.

The legislature, pursuant to the constitutional mandate of Article XIII, Section 4, Montana Constitution, has enacted a code of ethics for public officers and employees. The purpose of the code is to "prohibit conflict between public duty and private interest". §2-2-101, MCA. Section 2-2-132, MCA, states:

The Secretary of State may:

- (1) issue advisory opinions with such deletions as are necessary to protect the identity of the requesting party or the party about whom the opinion is written;
- (2) keep and permit reasonable public access to voluntary disclosure statements;
- (3) make rules for the conduct of his affairs under this part. (Emphasis supplied.)

The threshold question here revolves around the use of the term "may" in the statute. As a general rule the language of a statute is to be construed in the ordinary sense of the words used unless it appears otherwise from the context of the statute itself. In re Woodburns Estate, 128 Mont. 145, 273 P.2d 391 (1954). Also as a general rule the use of the term "may", as opposed to the term "shall", indicates a permissive, rather than a mandatory, grant of authority. Hansen v. City of Havre, 112 Mont. 207, 217, 114 P.2d 1053 (1942). However, where the public interest or individual rights are involved, the term "may" becomes imperative when bestowing power on a public officer. In Bascom v. Carpenter, 126 Mont. 129, 136, 246 P.2d 223 (1952), the Montana Supreme Court, quoting a decision from Oregon, stated:

...It is well settled that even where the word 'may' is used, and the rights of the public or of a third party are affected, the language is mandatory, and must be strictly obeyed.*** It is a general principle in statutory construction that, where the word "may" is used in conferring power upon an officer, court, or tribunal, and the public or a third person has an interest in an exercise of the power, then the exercise of the power becomes imperative. (Citations omitted.)

Often legislative intent determines whether "may" is a discretionary or a mandatory term. In cases where no right or benefit to the public is implied the word "may" is enabling and permissive. Whenever the rights of the public are involved the word is interpreted to mean "shall". Durland v. Prickett, 98 Mont. 399, 39 P.2d 652 (1935).

The use of the term "may" in section 2-2-132, MCA, falls under the rule cited in Durland and Bascom. Clearly the public has an interest in the exercise of the powers granted to the Secretary of State pursuant to the Montana Code of Ethics. Indeed, the purpose of the Code is to protect the public interest. Thus, in my opinion, the use of the term "may" in the statute is imperative. The Secretary of State must issue advisory opinions, permit public access to voluntary disclosure statements, and adopt rules concerning the conduct of his affairs under those provisions.

Your questions regarding the availability of opinions to third parties can also be answered by reference to section 2-2-132(1), MCA. The pertinent language allows opinions to be issued:

"with such deletions as are necessary to protect the identity of the requesting party or the party about whom the opinion is written."
(Emphasis supplied.)

The statute presumes that advisory opinions will be issued concerning conduct of either the requesting party or conduct of a third party. Any other interpretation would render meaningless the phrase "or the party about whom the opinion is written." It has long been settled that each component of a statute must be construed in such a way that each has some meaning, vitality and effect. Burritt v. City of Butte, 161 Mont. 530, 534, 508 P.2d 563 (1973). The Legislature does not engage in useless acts. Kish v. Montana State Prison, 161 Mont. 297, 505 P.2d 891 (1973). Thus, in my opinion, third parties are entitled to receive advisory opinions.

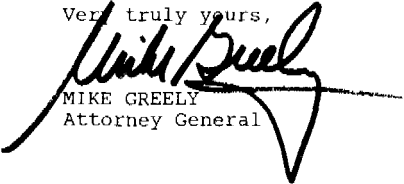
While the Secretary of State is required to perform the duties under the statute, no explicit direction is provided as to how those duties are to be performed. When powers are conferred upon a public officer, that officer has the implicit power necessary to the efficient exercise of those

powers expressly granted. Guillot v. State Highway Commission 102 Mont. 149, 56 P.2d 1072 (1936); MSU v. Ransier 176 Mont. 149, 152, 536 P.2d 187 (1975). The method of exercising an implicit power is within the discretion of the public official given the authority. As long as the provisions of the enabling legislation are not contradicted, the exercise of the authority is entirely within the discretion of the public official given the power. See, e.g., Wenzel v. Murray, ____ Mont. ____, 585 P.2d 633 (1978).

The courts are very reluctant to get involved in the procedure or method of exercising official discretion unless there has been a manifest abuse. See, e.g., Burgess v. Softich, 160 Mont. 70, 535 P.2d 178 (1975). Thus the general rule has evolved that writs or other judicial remedies are not available to compel a public official to exercise his discretion in a specified manner. Spear v. State Highway Patrol Retirement Board, 149 Mont. 7, 442 P.2d 348 (1967).

Absent specific statutory guidelines, elected officials should be given wide latitude in the methods they choose to exercise their authority. As the balance of your questions revolve around the exercise of your discretion as an elected official they do not provide an appropriate basis for an Attorney General's Opinion. This is not to say, however, that I necessarily agree with your prior analysis. These questions are subject to your interpretation within the guidelines of this opinion.

Very truly yours,



MIKE GREELY
Attorney General