MONTANA ADMINISTRATIVE REGISTER

1981 ISSUE NO. 2
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NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with existing or proposed rules. The address is Room 138, State Capitol, Helena, Montana, 59620.

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BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the amendment of Rules ARM 2.32.401, 2.32.404, 2.32.405, 2.32.406, 2.32.407, and 2.32.408 concerning the State Electrical Code.	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS OF RULES ARM 2.32.401, 2.32.404, 2.32.405, 2.32.406, 2.32.407, and 2.32.408 concerning the State Electrical Code

To: All Interested Persons:

1. On February 27, 1981 at 9:30 a.m., a public hearing will be held in the Social and Rehabilitation Services Building, Auditorium, 111 Sanders, Helena, Montana, to consider the amendment of rules ARM 2.32.401 NATIONAL ELECTRICAL CODE, ARM 2.32.404 ELECTRICAL PERMIT, ARM 2.32.405 ELECTRICAL INSPECTIONS, ARM 2.32.406 ELECTRICAL INSPECTION PERMIT, ARM 2.32.407 ELECTRICAL INSPECTION FEES, and ARM 2.32.408 TEMPORARY ELECTRICAL CONNECTIONS.

2. The proposed amendments replace present rules ARM 2.32.401, 2.32.404, 2.32.405, 2.32.406, 2.32.407, and 2.32.408 found in the Administrative Rules of Montana. The proposed amendments would adopt the most recent edition of the National Electrical Code, allow an owner to request an electrical permit, adopt new inspection fees, correct difficulties that have been experienced with temporary electrical connections, and make minor editorial changes.

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

2.32.401 NATIONAL ELECTRICAL CODE (1) ~~The standards adopted by the national fire protection association for electrical installations on May 19, 1977, appearing in Pamphlet NFPA 70 (1978), under the title of National Electrical Code 1978, are considered minimum safety standards, and are hereby incorporated by reference into the rules.~~ The department of administration, building codes division, hereby adopts and incorporates herein by reference the standards adopted by the national fire protection association for electrical installations on May 21, 1980, appearing in Pamphlet NFPA 70 (1981), under the title of National Electrical Code 1981. The National Electrical Code 1981 is a nationally recognized model code setting forth minimum standards and requirements for electrical installations. A copy of the National Electrical Code 1981 may be obtained from the department of administration, building codes division, Capitol Station, Helena, Montana 59620 at cost plus postage and handling. A copy may also be obtained by writing to the National Fire Protection Association, 470 Atlantic Avenue, Boston,

Massachusetts 02210.

The authority of the agency to make the proposed amendment is based on sections 50-60-203 and 50-60-603, MCA, and the rule implements sections 50-60-203 and 50-60-603, MCA.

2.32.404 ELECTRICAL PERMIT (1) Except as provided by 50-60-602, MCA, an electrical permit is required for any installation in any new construction or remodeling or repair.
(2) Prior to or upon commencement of any electrical installation, the installer or owner shall submit an official request for electrical ~~inspection~~ permit to the electrical safety bureau in Helena with fee(s) as provided in ARM 2.32.407. Request for electrical ~~inspection~~ permit forms ~~shall~~ will be made available by the department and may also be available at any power supplier or the electrical inspector.
(3) Upon receipt of the request for electrical ~~inspection~~ permit with the applicable fee(s), the department ~~shall~~ will validate the official electrical ~~inspection~~ permit covering the installation.
(4) Electrical permits on which the fees, as provided in ARM 2.32.407, are under $100 ~~shall be~~ are valid for a period of 1 year from the date of issuance.
(5) The electrical ~~inspection~~ permit is not transferable.

The authority of the agency to make the proposed amendment is based on sections 50-60-203 and 50-60-603, MCA, and the rule implements sections 50-60-203, 50-60-603, and 50-60-604, MCA.

2.32.405 ~~ELECTRICAL~~ COVER (ROUGH-IN) INSPECTIONS (1) Cover (rough-in) inspections are made by a state electrical inspector wherever possible. Insulation and wallboard shall not be applied before inspection unless 48 hours, excluding Saturdays, Sundays, and holidays, have expired after notice to inspect has been received.
(2) ~~Where~~ Whenever violations are found upon inspection, the inspector ~~shall~~ will notify the installer verbally or with a written compliance order as to the nature of the violations.

The authority of the agency to make the proposed amendment is based on sections 50-60-203 and 50-60-603, MCA, and the rule implements sections 50-60-203, 50-60-603, and 50-60-604, MCA.

2.32.406 ~~ELECTRICAL~~ FINAL INSPECTION ~~PERMIT~~ (1) Upon final inspection, the state inspector ~~shall~~ will date and sign the inspection permit, either approving or disapproving the installation. If the installation is disapproved, notice thereof, together with reasons for disapproval, ~~shall~~ will be given by the inspector to the installer. After removal of the cause of disapproval, the installer ~~shall~~ must make a request for reinspection of the inspector, and upon payment of a reinspection fee, as provided in ARM 2.32.407, and approval of the inspector, the inspector ~~shall~~ will issue an approved inspection permit, and so tag the installation.

The authority of the agency to make the proposed amendment is based on sections 50-60-203 and 50-60-603, MCA, and the rule implements sections 50-60-203, 50-60-603, and 50-60-604, MCA.

2.32.407 ELECTRICAL INSPECTION FEES (1) - (8). Delete existing subsections (1) through (8) in their entirety and replace with new subsections (1) through (3) that would read as follows:

(1) The following is the schedule of electrical inspection fees:

Type of Installation	Permit Fee
--temporary construction service	no separate charge
--single-family dwellings (includes garage wired at the same time as the house)	
up to 125 amp service	$ 50
126 to 200 amp service	75
201 to 300 amp service	100
301 or more amp service	125
--private property accessory buildings (garages, barns, sheds, etc.)	
up to 125 amp panel	25
126 to 200 amp panel	50
201 to 300 amp panel	75
301 or more amp panel	100
--multi-family dwellings (duplex and up) per dwelling unit	30
--interior rewire only or new addition to a home	35
--change of service	25
--mobile home installation (in a court)	20
--mobile home installation (outside a court)	30

--modular homes
no basement 30
with a basement or garage 50
--mobile home court (new, rewire, or addition)
per space 10
--recreational vehicle park (new, rewire, or addition)
per space 7
--irrigation pumps or machines
per unit 25
--all other installations (commercial, industrial, institutional, or for public use):

Cost of Electrical Installation	Fee
0 - $ 1,000	$30
$ 1,001 - $10,000	$30 plus 2% of balance of construction cost
$10,001 - 50,000	$210 plus 1% of balance of construction cost
$50,001 or more	$610 plus .5% of balance of construction cost

(2) If the application for permit and the proper fees, as determined under subsection (1) of this rule, are not sent to the electrical safety bureau prior to or upon commencement of the electrical work, the fees will be doubled and will have to be paid before the permit will be issued.
(3) The fee for a requested electrical inspection is $30, provided that such service is not in excess of 1 hour in duration, and then $15 for each 30 minutes or fractional part thereof in excess of 1 hour. Travel and per diem will also be charged at the rates established under Title 2, chapter 18, part 5, MCA.

The authority of the agency to make the proposed amendment is based on sections 50-60-104, 50-60-203, 50-60-603, and 50-60-604, MCA, and the rule implements sections 50-60-104, 50-60-203, 50-60-603, and 50-60-604, MCA.

2.32.408 TEMPORARY ELECTRICAL CONNECTIONS (1) Except as provided in ~~subsection~~ subsections (2) through (4) of this rule, power suppliers may not energize

electrical installations without an inspection and approval of the installation by an electrical inspector employed or approved by the division.

(2) Upon receipt of ~~a properly completed request for electrical inspection permit (i.e., a permit that contains all requested information, including but not limited to the name of the applicant and the address or other sufficient location of the premises where the electrical inspection is to be made)~~ the power supplier copy of the electrical permit, a power supplier may make a temporary electrical connection prior to the inspection and approval of the electrical installation by an electrical inspector employed or approved by the division~~, provided, however, that such temporary electrical connection may not exceed 14 days. If the 14-day time period elapses without an inspection and approval of the electrical installation, the power supplier shall, upon written notification by the division or ----- division employed or approved electrical inspector, immediately disconnect any temporary electrical connection made under this subsection~~.

(3) Upon receipt of a properly completed Power Supplier Limited Service Certificate (a four-part form supplied by the division), a power supplier may make a temporary electrical connection prior to receiving the power supplier copy of the electrical permit and prior to the inspection and approval of the electrical installation by an electrical inspector employed or approved by the division.

(4) As provided by 50-60-605, MCA, no temporary electrical connection made under subsections (2) or (3) of this rule may exceed 14 days. If the 14-day time period elapses without an inspection and approval of the electrical installation, the power supplier must, upon written notification by the division or the division employed or approved electrical inspector, immediately disconnect any temporary electrical connection made under subsections (2) or (3) of this rule.

The authority of the agency to make the proposed amendment is based on section 50-60-605, MCA, and the rule implements section 50-60-605, MCA.

4. The Division is proposing these amendments to its rules to adopt the most recent edition of the National Electrical Code, allow an owner to request an electrical permit, correct difficulties that have been experienced with temporary electrical connections, and make minor editorial changes.

5. Except for the proposed amendments to rule ARM

2.32.407, the proposed amendments would become effective as provided in section 2-4-306(4),MCA. The Division intends the proposed amendments to rule ARM 2.32.407, if adopted, to become effective on September 1, 1981.

6. 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 John Bobinski, Staff Attorney, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, no later than February 27, 1981.

7. John Bobinski, Staff Attorney, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

8. The authority of the agency to make the proposed amendments and the statutes being implemented by the rules is stated below each proposed amendment.

MORRIS L. BRUSETT, Director
Department of Administration

By: Morris L. Brusett
Morris L. Brusett

Certified to the Secretary of State Jan 16, 1981.

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the adoption of a rule that would adopt by reference the Recommended Requirements to Code Officials for Solar Heating, Cooling and Hot Water Systems.	) NOTICE OF PUBLIC HEARING) FOR ADOPTION OF A RULE) that would adopt by ref-) erence the Recommended) Requirements to Code) Officials for Solar Heat-) ing, Cooling and Hot Water) Systems

To: All Interested Persons:

1. On February 27, 1981 at 9:30 a.m., a public hearing will be held in the Social and Rehabilitation Services Building, Auditorium, 111 Sanders, Helena, Montana to consider the adoption of the Recommended Requirements to Code Officials for Solar Heating, Cooling and Hot Water Systems by reference.

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

3. The proposed rule provides as follows:

RULE I INCORPORATION BY REFERENCE OF RECOMMENDED REQUIREMENTS TO CODE OFFICIALS FOR SOLAR HEATING, COOLING, AND HOT WATER SYSTEMS (1) The department of administration, building codes division, hereby adopts and incorporates herein by reference the Recommended Requirements to Code Officials for Solar Heating, Cooling and Hot Water Systems published June 1980 by the United States department of energy, in cooperation with the council of American building officials. The Recommended Requirements to Code Officials for Solar Heating, Cooling and Hot Water Systems is a model code providing reasonable protection of the public health and safety, while at the same time encouraging consumers, builders, designers, manufacturers, installers, and others to utilize solar energy technologies and permitting experimentation and innovation. A copy of the Recommended Requirements to Code Officials for Solar Heating, Cooling and Hot Water Systems may be obtained from the department of administration, building codes division, Capitol Station, Helena, Montana 59620 at cost plus postage and handling. A copy may also be obtained by writing to the United States department of energy, assistant secretary for conservation and solar energy, office of solar applications for buildings, Washington, D.C. 20585.

4. The Division is proposing this adoption in an effort to satisfy section 50-60-201, MCA, which gives as one of the purposes of the state building code to permit to the fullest extent feasible the use of modern technical methods, devices,

and improvements which are consistent with the conservation of energy. Currently, there is no standard for installation of solar equipment and such standards are frequently requested. This document should help encourage the use of solar equipment.

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 John Bobinski, Staff Attorney, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, no later than February 27, 1981.

6. John Bobinski, Staff Attorney, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rule is based on sections 50-60-201, 50-60-202, and 50-60-203, MCA, and the rule implements section 50-60-103, MCA.

MORRIS L. BRUSETT, Director
Department of Administration

By: Morris L. Brusett
Morris L. Brusett

Certified to the Secretary of State January 16, 1981.

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the amendment of rule ARM 2.32.101 concerning the adoption by reference of the Uniform Building Code.	))))	NOTICE OF PUBLIC HEARING ON AMENDMENT OF RULE ARM 2.32.101 Incorporation by Reference of Uniform Building Code

To: All Interested Persons:

1. On February 27, 1981 at 9:30 a.m., a public hearing will be held in the Social and Rehabilitation Services Building, Auditorium, 111 Sanders, Helena, Montana, to consider the amendment of rule ARM 2.32.101 INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE.

2. The proposed amendment replaces present rule ARM 2.32.101 found in the Administrative Rules of Montana. The proposed amendment would adopt the Building Valuation Data Table, as updated from time-to-time and published in "Building Standards" magazine, for use by the Division in establishing value under section 304 of the Uniform Building Code.

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

2.32.101 INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE (1)(a) - (1)(f) Same as existing text (found on pages 2-2670 and 2-2671 of ARM).

(1)(g) Add a subsection (1)(g) that would read as follows:

"(1)(g) Subsection (a) of section 304 of the Uniform Building Code, 1979 Edition, found on page 30 of the Uniform Building Code, 1979 Edition, is amended to read as follows:

'Sec. 304.(a) Permit Fees. The fee for each permit shall be as set forth in Table No. 3-A.

The determination of value or valuation under any of the provisions of this code shall be made by the building official. The value to be used in computing the building permit and building plan review fees shall be the total value of all construction work for which the permit is issued as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire-extinguishing systems and any other permanent equipment. Whenever the building official is the state of Montana, acting through the department of administration, building codes division, the value or valuation of a building or structure under any of the provisions of this code will be determined using the cost per square foot method of valuation and the cost per square foot figures for the type and quality of construction listed in the most current "Building Valuation Data" table published by "International Conference of Building Officials Building Standards" magazine, the trade magazine published by the International

Conference of Building Officials, as modified by the regional modifiers set forth in said "Building Valuation Data" table. As provided by rule ARM 2.32.208, local governments certified to enforce the state building code may establish their own permit fees. Local governments may also establish their own method of building valuation.' "

(2) Same as existing text (found on page 2-2671 of ARM).

(3) The Uniform Building Code, 1979 Edition, adopted by reference in subsection (1) of this rule, is a nationally recognized model code setting forth minimum standards and requirements for building construction. A copy of the Uniform Building Code, 1979 Edition, may be obtained from the department of administration, building codes division, Capitol Station, Helena, Montana 59620 at cost plus postage and handling. A copy may also be obtained by writing the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.

(4) The "International Conference of Building Officials Building Standards" magazine mentioned in subsection (1)(g) of this rule is the trade magazine for building officials published by the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601. A copy of the most current "Building Valuation Data" table mentioned in subsection (1)(g) of this rule may be obtained free of charge from the department of administration, building codes division, Capitol Station, Helena, Montana 59620.

4. The Division is proposing this amendment to rule ARM 2.32.101 in order to specify the method by which the Division will determine the value or valuation of a building or structure under the Uniform Building Code.

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 John Bobinski, Staff Attorney, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, no later than February 27, 1981.

6. John Bobinski, Staff Attorney, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rule is based on sections 50-60-104 and 50-60-203, MCA, and the rule implements sections 50-60-104 and 50-60-203, MCA.

MORRIS L. BRUSETT, Director
Department of Administration

By: Morris L. Brusett
Morris L. Brusett

Certified to the Secretary of State January 16, 1981.

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the amendment of rule ARM 2.32.105 concerning the Adoption of the Uniform Mechanical Code by reference.	))))	NOTICE OF PUBLIC HEARING ON AMENDMENT OF RULE ARM 2.32.105 Incorporation by Reference of Uniform Mechanical Code

To: All Interested Persons:

1. On February 27, 1981 at 9:30 a.m., a public hearing will be held in the Social and Rehabilitation Services Building, Auditorium, 111 Sanders, Helena, Montana, to consider the amendment of rule ARM 2.32.105, INCORPORATION BY REFERENCE OF UNIFORM MECHANICAL CODE.

2. The proposed amendment replaces present rule ARM 2.32.105, found in the Administrative Rules of Montana. The proposed amendment would clarify the Division's responsibility pertaining to steam and hot-water boilers, as well as the coverage of the same under the State Building Code, in relation to the duties of the Workers' Compensation Division concerning steam and hot-water boilers under Title 50, chapter 74, MCA.

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

2.32.105 INCORPORATION BY REFERENCE OF UNIFORM MECHANICAL CODE (1)(a) - (1)(d) Same as existing text (found on pages 2-2672 through 2-2675 of ARM).

(1)(e) Chapter 21, Appendix B, pages 271-288 titled "Steam and Hot-water Boilers, Steam and Hot-water Piping (Hydronics)" shall be adopted as part of the Uniform Mechanical Code except as follows:

(i) In Section 2102 ~~eliminate the word "operation",~~ change the wording of the first paragraph to read: "The requirements of this chapter apply to the construction, installation, repair, and alteration of steam heating boilers operated at not over 15 pounds per square inch gauge pressure in private residences or apartments of six or less families or to hot water heating or supply boilers operated at not over 50 pounds per square inch gauge pressure and temperatures not over 250°F when in private residences or apartments of six or less families. All other systems are under the control of the bureau of safety and health, division of workers' compensation, department of labor and industry, state of montana.

(ii) Eliminate sections 2124, 2125, and 2126 entirely.

(2) Same as existing text (found on page 2-2675 of ARM).

(3) The Uniform Mechanical Code, 1979 Edition, adopted by reference in subsection (1) of this rule, is a nationally recognized model code setting forth minimum standards and requirements for certain mechanical installations. A copy of the Uniform Mechanical Code, 1979 Edition, may

be obtained from the department of administration, building codes division, Capitol Station, Helena, Montana 59620 at cost plus postage and handling. A copy may also be obtained by writing to the International Association of Plumbing and Mechanical Officials, 5032 Alhambra Avenue, Los Angeles, California 90032.

4. The Division is proposing the rule amendment to eliminate the current duplication of effort between its program and that of the Bureau of Safety and Health, Montana Division of Workers' Compensation, concerning the inspection of boiler installations.

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 John Bobinski, Staff Attorney, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, no later than February 27, 1981.

6. John Bobinski, Staff Attorney, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendment is based on section 50-60-203, MCA, and the rule implements sections 50-60-104 and 50-60-203, MCA.

MORRIS L. BRUSETT, Director
Department of Administration

By: Morris L. Brusett
Morris L. Brusett

Certified to the Secretary of State January 16, 1981.

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the adoption of a rule concerning data plates for factory-built single-family dwellings.	))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE Data plates for factory-built single-family dwellings

To: All Interested Persons:

1. On February 27, 1981 at 9:30 a.m., a public hearing will be held in the Social and Rehabilitation Services Building, Auditorium, 111 Sanders, Helena, Montana, to consider the adoption of a rule concerning data plates for factory-built single-family dwellings.

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

3. The proposed rule provides as follows:

RULE I REQUIREMENTS FOR DATA PLATE (1) All factory-built single-family dwelling units manufactured or delivered prior to sale or sold or offered for sale in this state must bear a data plate giving the model, serial number, date of completion, and design load maximums; i.e., wind, snow, floor live load, and seismic zone.
(2) The data plate must be permanently affixed either to the inside or the outside of the electrical distribution panel door.
(3)(a) The minimum loads acceptable for factory-built single-family dwelling units manufactured or delivered prior to sale or sold or offered for sale in this state are:
(i) wind load = 25 psf;
(ii) snow load = 30 psf;
(iii) floor live load = 40 psf; and
(iv) seismic zone = #3.
(b) For those areas of the state where snow loads are greater than 30 psf, the units must be designed for the greater snow loads.

4. The Division is proposing this rule at the suggestion of the U.S. Department of Housing and Urban Development so that Montana's inspection of factory-built single-family dwellings can be accepted in lieu of federal government inspections, thus, eliminating a duplication of effort between the two levels of government.

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 John Bobinski, Staff Attorney, Insurance and Legal Division,

Department of Administration, Capitol Station, Helena, Montana 59620, no later than February 27, 1981.

6. John Bobinski, Staff Attorney, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rule is based on section 50-60-401, MCA, and the rule implements section 50-60-402, MCA.

MORRIS L. BRUSETT, Director
Department of Administration

By: Morris L. Brusett
Morris L. Brusett

Certified to the Secretary of State January 16, 1981.

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the adoption of a rule concerning mobile homes and recreational vehicles used for commercial or business occupancy.	) NOTICE OF PUBLIC HEARING) FOR ADOPTION OF A RULE) Mobile homes and recre-) ational vehicles used for) commercial or business) occupancy

To: All Interested Persons:

1. On February 27, 1981 at 9:30 a.m., a public hearing will be held in the Social and Rehabilitation Services Building, Auditorium, 111 Sanders, Helena, Montana, to consider the adoption of a rule concerning mobile homes and recreational vehicles used for commercial or business occupancy.

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

3. The proposed rule provides as follows:

RULE I USE OF MOBILE HOMES AND RECREATIONAL VEHICLES FOR COMMERCIAL OR BUSINESS OCCUPANCY PROHIBITED -- EXCEPTION (1) Mobile homes and recreational vehicles are designed only to meet building code requirements applicable to mobile homes used as private residences and recreational vehicles used as temporary private residences.
(2) These units do not meet code requirements for commercial or business occupancy and are therefore prohibited for these types of uses.
(3) Units used in one location for not more than 14 days in conjunction with a circus, fair, or other similar use would not fall into this category.

4. The Division is proposing this rule as a result of many incidents over the past year where individuals have purchased used mobile homes with the intention of converting the unit to a commercial or business use only to find that there is no way to bring the unit into compliance with applicable standards. Hopefully this rule can avoid the financial loss currently experienced by these individuals.

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 John Bobinski, Staff Attorney, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, no later than February 27, 1981.

6. John Bobinski, Staff Attorney, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rule is based on sections 50-60-203 and 50-60-401, MCA, and the rule implements sections 50-60-203, 50-60-401, and 50-60-402, MCA.

MORRIS L. BRUSETT, Director
Department of Administration

By: Morris L. Brusett
Morris L. Brusett

Certified to the Secretary of State January 16, 1981.

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the adoption of a rule that would adopt by reference the Uniform Mitigation Plan.	))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE that would adopt by reference the Uniform Mitigation Plan

To: All Interested Persons:

1. On February 27, 1981 at 9:30 a.m., a public hearing will be held in the Social and Rehabilitation Services Building, Auditorium, 111 Sanders, Helena, Montana, to consider the adoption of the Uniform Mitigation Plan by reference.

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

3. The proposed rule provides as follows:

RULE I INCORPORATION BY REFERENCE OF UNIFORM MITIGATION PLAN (1) The department of administration, building codes division, hereby adopts and incorporates herein by reference the Uniform Disaster Mitigation Plan, Copyright 1979, as amended in subsection (2) of this rule, which sets forth standards and guidance to building officials in the development of plans which may require rapid implementation at some future time when a disaster may occur. A copy of this incorporated material may be obtained from the department of administration, building codes division, Capitol Station, Helena, Montana 59620 at cost plus postage and handling. A copy may also be obtained by writing to the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.
(2) The Uniform Disaster Mitigation Plan, Copyright 1979, adopted by reference in subsection (1) of this rule, is amended as follows:
(a) Chapter IV, Personnel Qualifications.
1. In order to insure the minimum competency of disaster mitigation inspectors, the following qualifications must be met: regularly employed inspector of the state, county, or municipality - all categories; ICBO certified inspectors - all categories; registered architects and engineers.
2. In order to provide for insurance and appropriate indemnification, any disaster inspector must be registered as a disaster service worker in accordance with the legal requirements of a local jurisdiction or state government.

4. The Division is proposing this adoption in an effort to assist the Disaster and Emergency Services Division, of the Montana Department of Military Affairs, and local governments with a much needed plan for response to disasters.

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 John Bobinski, Staff Attorney, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, no later than February 27, 1981.

6. John Bobinski, Staff Attorney, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rule is based on section 50-60-203, MCA, and the rule implements 50-60-203, MCA.

MORRIS L. BRUSETT, Director
Department of Administration

By: Morris L. Brusett
Morris L. Brusett

Certified to the Secretary of State January 16, 1981.

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the adoption of a rule and the amendment of rules ARM 2.32.211 and ARM 2.32.212 concerning enforcement of the State Building Code by county and municipal governments.	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF A RULE AND AMENDMENT OF RULES ARM 2.32.211 and 2.32.212 concerning enforcement of the State Building Code by county and municipal governments

To: All Interested Persons:

1. On February 27, 1981 at 9:30 a.m., a public hearing will be held in the Social and Rehabilitation Services Building, Auditorium, 111 Sanders, Helena, Montana, to consider the adoption of a rule which provides for state assumption of State Building Code enforcement whenever a county or municipality is decertified, and to consider the amendment of rules ARM 2.32.211 and ARM 2.32.212.

2. The proposed new rule does not replace or modify any rule currently found in the Administrative Rules of Montana. The proposed amendments would replace present rules ARM 2.32.211 and ARM 2.32.212 found in the Administrative Rules of Montana. The proposed amendment to rule ARM 2.32.211 would specify the procedures that the agency will follow in considering requests by municipalities to extend their State Building Code enforcing jurisdictional area under 50-60-101, MCA. The procedures are intended to encourage public involvement and participation in this area of the agency's decision making in compliance with provisions of Title 2, chapter 3, part 1, MCA. The proposed amendment to rule ARM 2.32.211 would also delete the requirement that the municipality obtain the county's consent to enforce in the proposed extended jurisdictional area before approval would be granted and would provide that a municipality would lose its extended jurisdictional area whenever it is decertified for purposes of enforcing the State Building Code. The proposed amendment to rule ARM 2.32.212 would make changes in that rule necessary to coordinate it with rule I proposed in this notice.

3. The proposed new rule and the proposed amendments to rules ARM 2.32.211 and ARM 2.32.212 would provide as follows:

RULE I ASSUMPTION OF CODE ENFORCEMENT BY THE STATE

(1) If a county or municipality is decertifed for purposes of enforcing the state building code, whether voluntarily at the request of the county or municipality or involuntarily as the result of revocation of certification under rule ARM 2.32.212, the state of Montana, through the department of administration, building codes division, will assume enforcement of the state building code in the

county's or municipality's code enforcing jurisdictional area; except that, whenever the municipality had an extended jurisdictional area approved under 50-60-101, MCA, and rule ARM 2.32.211, the state will assume code enforcing jurisdiction in the area that was once the municipality's extended jurisdictional area only as provided in rule ARM 2.32.211.

(2) If the state assumes state building code enforcing jurisdiction under this rule, such jurisdiction will remain with the state for a minimum period of 1 year before the county or municipality will be allowed to reapply for certification to enforce the state building code, or parts thereof.

(3) State assumption of state building code jurisdiction under this rule will be prospective only. If the state assumes state building code enforcing jurisdiction under this rule, the county or municipality will nonetheless retain state building code enforcing jurisdiction over all construction projects within their jurisdictional area commenced prior to the effective date of state assumption, including (in the case of a municipality) construction projects within any extended state building code enforcing jurisdictional area, any provision in rule ARM 2.32.211 to the contrary notwithstanding.

(4) If the state assumes state building code enforcing jurisdiction under this rule, the building codes division will publish a notice of state assumption in a newspaper having general circulation in the county or municipality. The notice will specify the effective date of state assumption, the reasons for state assumption, and the effect of state assumption (for example, the effect in cases where the affected municipality will lose its extended code enforcing jurisdictional area and the effect on existing construction projects), and it will also direct persons to apply to the building codes division for building permits.

The authority of the agency to make the proposed rule is based on section 50-60-302, MCA, and the rule implements section 50-60-302, MCA.

2.32.211 EXTENSION OF MUNICIPAL JURISDICTIONAL AREA

(1) Section 50-60-101, MCA, provides that municipalities may extend their inspection jurisdiction up to 4½ miles from their corporate limits upon written request and upon approval by the division. The written request must include ~~a-list-of-adopted-codes,-a-list-of-staff-and-their qualifications,~~ a statement as to how the additional work load will be handled~~,-the-written-consent-of-the-county~~

~~government as to the municipality's right to inspect in the county area, and a budget breakdown. If the county is already inspecting in the area which the municipality wishes to inspect, the request for the jurisdictional extension will be denied unless the county intends not to continue its inspections within the area to be covered by the city.~~ Once the city is granted authority to inspect within the 4½ mile jurisdictional area, the county may not inspect in that area unless the city relinquishes its right or as otherwise provided in subsection (4) of this rule.

(2) Upon receipt of the written request from the city to extend the jurisdictional area, the division will use the following procedure in considering the extension:

(a) The division will publish a notice in a newspaper of general circulation in the area to be affected.

(b) The notice will also be posted in the county courthouse and in the city hall.

(c) The notice will provide the opportunity for the public to submit written and verbal comments to the division regarding the extension.

(i) Thirty days will be allowed for submittal of comments.

(ii) Twenty days will be allowed for the affected public to request a hearing on the extension. If 25 or more persons request a hearing or if the county or municipality requests a hearing, one will be held in the municipality by the division.

(d) The final decision of the division regarding the extension will be published in the newspaper of general circulation.

(3) In order to keep any extended jurisdictional area approved under 50-60-101, MCA, and this rule, the municipality must maintain its certification for purposes of enforcing the state building code, or parts thereof, as required and provided by 50-60-302, MCA, and the rules contained in ARM Title 2, chapter 32, sub-chapter 2. Whenever a municipality is decertified for purposes of enforcing the state building code, whether voluntarily at the request of the municipality or involuntarily as the result of revocation of certification under rule ARM 2.32.212, approval of an extended jurisdictional area for the municipality given under 50-60-101, MCA, and this rule is automatically revoked and the municipality will lose such extended jurisdictional area.

(4) If a municipality loses its extended jurisdictional area under subsection (3) of this rule, the area that was once the extended jurisdictional area of the municipality will revert back to the jurisdiction of the county for purposes of enforcing the state building code if the county is certified under 50-60-302, MCA, and the rules

contained in ARM Title 2, chapter 32, sub-chapter 2. If the county is not certified, the state of Montana, through the department of administration, building codes division, will enforce the state building code in the area that was once the municipality's extended jurisdictional area (as well as in the incorporated limits of the municipality itself) as provided by 50-60-205, MCA. In either case, the state building code would again only apply to public places, as defined by 50-60-101, MCA, in the area that was once the municipality's extended jurisdictional area.

The authority of the agency to make the proposed amendment is based on section 50-60-302, MCA, and the rule implements sections 50-60-101 and 50-60-302, MCA.

2.32.212 REVOCATION OF LOCAL GOVERNMENT CERTIFICATION
(1) Local government inspection programs having any of the following deficiencies in their programs will have their certification revoked if the deficiencies are not corrected:
(a) lack of qualified and adequate staff;
(b) lack of inspections;
(c) lack of plan reviews;
(d) use of permit fees for other than code related activities; or
(e) use of codes other than those adopted by the division.
(2) The division will notify, in writing, the local government as to what deficiencies exist and establish, in cooperation with the local government, a time frame for the correction of the deficiencies. If the corrections are not completed within the set time frame, a hearing will be held under the Montana Administrative Procedure Act to decide if the certification should be revoked. If certification is revoked, the division will then handle code enforcement in the area, as provided by Rule I.

The authority of the agency to make the proposed amendment is based on section 50-60-302, MCA, and the rule implements section 50-60-302, MCA.

4. The Division is proposing the adoption of rule I in order to more fully clarify the Division's position regarding assumption of State Building Code enforcement by the State, to provide that the State will keep assumed jurisdiction for a minimum period of 1 year before the county or municipality will be allowed to reapply for certification, to clarify which governmental entity (i.e., the State or the county or municipality) will be responsible for State Building Code enforcement on construction projects commenced prior to State assumption of jurisdiction, and to provide for publication by the

Division of a notice of State assumption of jurisdiction in a newspaper having general circulation in the affected area. The Division is proposing the amendments to rule ARM 2.32.211 in order to specify the procedure that will be followed by the Division in considering requests from municipalities to extend their State Building Code enforcing jurisdictional area under section 50-60-101, MCA. The procedures are intended to comply with the provisions of Title 2, chapter 3, part 1, MCA, concerning public involvement in decisions having public impact. The Division is also proposing the amendments to rule ARM 2.32.211 in order to delete the requirement that a municipality get county consent for an extended jurisdictional area and to provide that municipalities that lose their building code certification will also lose their extended jurisdictional area. The Division is proposing the amendment to rule ARM 2.32.212 in order to make that rule conform to rule I and rule ARM 2.32.211.

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 John Bobinski, Staff Attorney, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, no later than February 27, 1981.

6. John Bobinski, Staff Attorney, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rule and amendments and the statutes being implemented by the rules is stated below the proposed rule and amendments.

MORRIS L. BRUSETT, Director
Department of Administration

By: Morris L. Brusett
Morris L. Brusett

Certified to the Secretary of State January 16, 1981.

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule ARM 2.32.303 concerning the minimum required plumbing fixtures.	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE ARM 2.32.303, Minimum Required Plumbing Fixtures

To: All Interested Persons:

1. On February 27, 1981 at 9:30 a.m., a public hearing will be held in the Social and Rehabilitation Services Building, Auditorium, 111 Sanders, Helena, Montana, to consider the amendment of rule ARM 2.32.303, MINIMUM REQUIRED PLUMBING FIXTURES.

2. The proposed amendment replaces present rule ARM 2.32.303 found in the Administrative Rules of Montana. The proposed amendment would update the minimum required fixtures table to coincide with the latest adopted version of the Uniform Building Code.

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

2.32.303 MINIMUM REQUIRED PLUMBING FIXTURES (1) The following table will be used to determine the minimum number of plumbing fixtures to be installed in new buildings:

SEE NEXT PAGE FOR TABLE

Occupancy	Water Closets		Urinals	Lavatories [2]	Drinking Fountains
	Male	Female	Male Fixtures/Persons	Fixtures/Persons	Fixtures/Floor or Building
Groups A-1, A-2, A-2.1, A-3 & A-4 and Shopping Centers and Assembly Buildings [3]	1 1-50 2 51-200 3 201-400 4 401-600 over 600: add 1 Fixture for each additional 500 males and 1 for each 300 females	1 1-50 2 51-100 3 101-200 4 201-400	1 51-200 [5] 2 201-400 3 401-600 over 600: add 1 for each additional 300 males	Use Section 605 of 1976 1979 Uniform Building Code	Use Section 605 of 1976 1979 Uniform Building Code
Groups E-1, E-2 & E-3 Schools Colleges & Universities Day Care	For elementary and secondary school plumbing fixtures use Section 805 of the 1976 1979 Uniform Building Code 1:100 1:60 1:60 20 1:20 May combine male and female unless fixture requirement exceeds 2		1:100 1:30 Over 20: may substitute for ½ number of toilets required	1:200 1:60	1 Floor or Building 1 Floor or Building plus 1:100 [6]
Groups I-1, I-2 & I-3 Jails, Prisons, Detention Units Hospitals and Nursing Homes Nurseries	One water closet and one lavatory for each cell. One additional water closet and lavatory for every eight in multiple occupancy cells. One shower for every fifteen. See Chapter 23, Montana Administrative Code Title 16, Chapter 32, Administrative Rules of Montana See Section 1205 of 1976 1979 Uniform Building Code				1 Floor or Building
Groups H-1, H-2, H-3, H-4, H-5 B-1, B-2, B-3, & B-4 Offices, stores, service stations, public buildings food service facilities [4]	Use Section 1005, 905 1005, and 1205 705 of the 1976 1979 Uniform Building Code for employees Toilet facilities for the public are to be provided as noted for Groups A and M and shopping centers and, in addition, handwash sinks are required in all food preparation areas; where alcoholic beverages are sold for on-site consumption, add to the fixture requirements 1 extra urinal for males from 1-100; 2 from 101-300; 3 from 301-500; 1 per 300 over 500 and 1 extra water closet for females from 51-150; 1 extra from 151-400 and 1 per 150 over 400. Handwashing sinks are required in all food preparation areas.				1 Floor or Building
Groups R-1 Hotels, Apartments, Motels, Convents and Monasteries	Use Section 1205 of 1976 1979 Uniform Building Code				
Group 1 R-3 Dwelling and Lodging Houses	Use Section 1205 of 1976 1979 Uniform Building Code				

1 Required plumbing fixtures may be provided as separated employee and public toilets or as public toilets with employee accessibility.

2 Keyed Toilets under employee control of the type available at service stations are permitted.

3 Hot and Cold Water required

4 Contact the Department of Health and Environmental Sciences for additional requirements for food service establishments.

5 Food service establishments require one urinal for occupancy loads of 1 to 50.

6 Unless alternate provisions of Department of Health and Environmental Sciences are used.

4. The Division is proposing this amendment to its rule to update the table to coincide with the latest adopted edition of the Uniform Building Code.

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 John Bobinski, Staff Attorney, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, no later than February 27, 1981.

6. John Bobinski, Staff Attorney, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendment is based on sections 50-60-203 and 50-60-504, MCA, and the rule implements sections 50-60-203 and 50-60-504, MCA.

MORRIS L. BRUSETT, Director
Department of Administration

By: Morris L Brusett
Morris L. Brusett

Certified to the Secretary of State January 16 1981.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the ADOPTION OF RULES establishing standards for the employment of personnel in Vocational Education and for the continuing development or improvement of their competencies and skills.	NOTICE OF PROPOSED ADOPTION OF RULES CONCERNING STANDARDS FOR THE EMPLOYMENT AND PROFESSIONAL DEVELOPMENT OF PERSONNEL IN VOCATIONAL EDUCATION NO PUBLIC HEARING CONTEMPLATED

1. Notice No. 10-2-40 on page 2983-2986 of MAR Issue No. 23 is vacated by the superintendent of public instruction due to an error in the proposed date for the adoption of the rules.

2. On February 28, 1981, the superintendent of public instruction proposes to adopt rules setting standards for the employment and professional development of personnel in vocational education.

3. The proposed rules provide as follows:

10.41.132 AFFIRMATIVE ACTION PLANS (1) Recruitment, selection, employment, and advancement of vocational education personnel shall be consistent with current approved institution and/or agency affirmative action plans.

(a) Each educational institution requesting funds for vocational programs shall operate administratively under an approved affirmative action plan.

10.41.133 OCCUPATIONAL & PROFESSIONAL STANDARDS FOR EMPLOYMENT. Vocational education instructional and administrative personnel shall satisfy minimum occupational and professional standards established and periodically reviewed and updated by the superintendent of public instruction and shall continually meet the state's standards established by the superintendent of public instruction if any part of their salary is to be paid from funds appropriated for vocational education.

(1) The state administrator/director of vocational education shall have the following minimum qualifications:

(a) A master's degree in an occupational field with extensive preparation as a teacher, supervisor, or administrator of vocational education.

(b) A minimum of three years full-time experiences as an administrator of vocational education programs. At least five years experience as a vocational education instructor, consultant, or journeyman vocational craftsman.

(2) Assistant administrator/director shall have the following minimum qualifications:

(a) A master's degree in an occupational field with extensive preparation as a teacher, supervisor, or administrator of vocational education.

(b) A minimum of three years full-time experiences as a vocational education supervisor or consultant or any combination of five years as a vocational education instructor, consultant, or journeyman vocational craftsman.

(3) State program consultants shall have the following minimum qualifications:

(a) Shall meet qualification for certification as a teacher in the area of specialization in vocational education and shall hold a master's degree or equivalent education and/or experience with a major in the vocational area of specialization or a closely related area.

(b) A minimum of three years experience as a vocational instructor in the area of specialty or a closely related area. A minimum of one year of vocational experience in the world of work in the area of specialty or a closely related area.

(4) Qualifications of vocational administrators, supervisors, instructors, counselors, or others in vocational positions must meet the qualification requirements established by the superintendent of public instruction prior to employment, if any part of their salaries is to be paid from funds appropriated for vocational education. Individuals applying for postsecondary center director positions must meet superintendent of public instruction's approved qualifications prior to local employment as a center director.

(5) Deans, directors, or supervisors of vocational education shall hold a minimum of a master's degree in an occupational field from an accredited college or university, shall have at least one year of successful experience in business or industry, and shall be knowledgeable in and have an understanding of the vocational education programs of the state. Deans, directors, or supervisors of vocational education shall also have at least three years of teaching or administrative experience in vocational education.

(6) Local vocational guidance counselors shall hold a graduate degree in an appropriate counseling program from an accredited college or university and shall have one year of wage earning experience (postsecondary--three years) outside the field of professional education. One year of this wage earning experience shall be recent and continuous. One year of appropriate teaching may be considered by the state director in lieu of one year of employment experience when specifically recommended by the local education institution. The candidate must have demonstrated the ability to work successfully in a counseling situation.

(7) Vocational education instructors must have a combination of work experience and education that directly contributes to the competencies required in the occupational area being taught. (See Certification Requirements.)

10.41.134 RESPONSIBILITY FOR DEVELOPMENT & MAINTENANCE OF INSTRUCTION COMPETENCIES. The development of instruction competencies and the maintenance and improvement of occupational skills shall be the shared responsibility of the individual, the local education institution, the teacher training institutions, and the state director of vocational education.

(1) To discharge his/her responsibilities, the state director may initiate, but is not limited to, the following activities.

(a) Plan programs, seminars, conferences and workshops to develop or improve instructional competencies of personnel.

(b) Plan programs or systems that will provide for periodically sending vocational education personnel back to business or industry to keep them abreast of current practices.

(c) Review and make recommendations to the superintendent of public instruction for plans on courses and workshops submitted for funding by the teacher training institutions for the development and improvement of instructional competencies.

10.41.135 RESPONSIBILITY OF THE STATE DIRECTOR FOR IN-SERVICE & PRESERVICE EDUCATION. The state director of vocational education shall promote programs of preservice and in-service education for instruction, supervisory, administrative, teacher training, and support personnel in vocational education.

(1) The state director shall encourage teacher training institutions to submit plans for preservice programs which shall prepare individuals to function as administrators, supervisors, teachers and counselors.

(2) The state director shall encourage and assist in planning inservice education programs submitted by teacher training institutions.

(3) The state director shall encourage local and state vocational staff to attend industrial schools, seminars or other activities in vocational education in order that staff may be better prepared for their professional assignment in vocational education.

4. The rules are proposed to replace rules repealed by the board of public education in response to amendments of sections 20-7-301, 20-7-302, 20-7-312, and 20-7-324, MCA enacted by the forty-sixth legislature. These rules establish guidelines for the employment of professional staff in vocational education by the superintendent of public instruction and local boards of trustees. Their intent is to ensure quality programming by the office of public instruction, school districts and postsecondary vocational-technical centers.

5. Interested parties may submit their data, views or arguments concerning the proposed rules in writing by February 26, 1981.

6. Any interested person desiring to submit his data, views or arguments at a public hearing must request the opportunity to do so in writing. If ten percent or twenty-five, whichever is less, of the persons directly affected or a governmental subdivision or agency; or an association having not less than 25 members who will be affected so request, a public hearing will be held after appropriate notice is given. Ten percent of the population directly affected has been estimated to be 150. All written responses should be addressed to Larry C. Key, Administrator; Department of Vocational & Occupational Services, Office of Public Instruction, State Capitol, Helena, Montana 59620 and received not later than February 26, 1981.

7. The authority for the superintendent of public instruction to make the rules is contained in section 20-7-301 MCA; the rules implement sections 20-7-301(5); 20-7-301(6); and 20-7-302.1(3) MCA.

ALVE THOMAS
DEPUTY SUPERINTENDENT OF PUBLIC INSTRUCTION

Certified to the Secretary of State January 8th, 1981.

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

In the matter of the amendment of ARM 16.16.102 and 16.16.108 relating to review of subdivision applications	)))	NOTICE OF PROPOSED AMENDMENT OF ARM 16.16.102 and ARM 16.16.108 (Subdivisions) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On March 4, 1981, the Department of Health and Environmental Sciences proposes to amend rules 16.16.102 and 16.16.108 relating to review of subdivision applications.

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

16.16.102 APPLICATION -- GENERAL (1) The department considers a complete application to include the appropriate application form, subdivision review fee as set forth in sub-chapter 2 8 of this chapter, and information required by this chapter. A copy of the plat suitable for filing need not be submitted before review commences. However, the suitable plat must be submitted before the department can take favorable final action on the submittal.

16.16.108 LOCAL REVIEW (1) The department shall enter into a written review agreement with local governments that have qualified personnel as determined by the department to review water supply, sewage and solid waste disposal facilities for subdivisions involving five or fewer parcels.

(a) When the department and local governments have entered into a review agreement, the developer shall submit the subdivision application to the designated personnel of the local government.

(b) Local governments shall have 50 days from the date of receipt of a subdivision application to forward to the department the complete application and the local government's recommended action on the application.

(c) The local government shall agree to review water supply, sewage and solid waste disposal facilities according to the provisions of this chapter.

(2) The local government shall notify the department of its recommendations for approval by typing a certificate of plat approval, signing it, and mailing it to the department along with the completed application. The department shall have ten (10) days to take final action upon receipt of the certificate of plat approval.

(3) The department shall reimburse local governments for services rendered in accordance with sub-chapter 2 8 of this chapter.

3. The proposed amendment is to correct the cross-references to the fee schedule sub-chapter which should be sub-chapter 8.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to Robert L. Solomon, presiding officer, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, no later than March 3, 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 Robert L. Solomon, presiding officer, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, no later than March 3, 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 subdivision or agency; from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25 persons based on the number of subdivision review applications received yearly by the department.

7. The authority of the department to make the proposed amendment is based on Section 76-4-104, MCA, and the rules implement Section 76-4-104, MCA.

JOHN J. BRYNAN, M.D., Director

Certified to the Secretary of State January 19, 1981

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

In the matter of the amendment of rules 16.44.402, hazardous waste determination, and 16.44.430, farmers	))))	NOTICE OF PROPOSED AMENDMENT OF RULES 16.44.402 (Hazardous Waste Determination) and 16.44.430 (Farmers) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On March 4, 1981, the Department of Health and Environmental Sciences proposes to amend rules 16.44.402, hazardous waste determination, and 16.44.430, farmers.

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

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

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

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

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

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

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

16.44.430 FARMERS A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards in this sub-chapter for those wastes provided he triple rinses each emptied pesticide container in accordance with ARM ~~16.44.333(3)~~ 16.44.307(5) and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.

3. The rule is proposed to be amended in order that the Montana rules on hazardous waste comport with recent amendments to the federal regulations on hazardous waste.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to Robert L. Solomon, presiding officer, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, no later than March 3, 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 Robert L. Solomon, presiding officer, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, no later than March 3, 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 subdivision or agency; from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25 persons based on the population statistics for the state of Montana.

7. The authority of the department to make the proposed amendment is based on Section 75-10-204, MCA, and the rule implements Sections 75-10-204 and 75-10-225, MCA.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State January 19, 1981

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

In the matter of the amendment of rule 16.44.202 which list the definitions utilized in the chapter on hazardous waste	))))	NOTICE OF PROPOSED AMENDMENT OF RULE 16.44.202 (Definitions) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On March 4, 1981, the Department of Health and Environmental Sciences proposes to amend rule 16.44.202 which lists the definitions used in Chapter 44 on hazardous waste.

2. The proposed amendment will change the existing definition for "generator" and will add new definitions for the terms "spill", "transport vehicle", and "vessel". The new definitions will be inserted and assigned appropriate numbers at the time replacement pages are prepared.

(27) "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in subchapter 3 of this chapter or whose act first causes a hazardous waste to become subject to regulation.

(new) "Spill" means the accidental spilling, leaking, pumping, pouring, emitting, or dumping of hazardous waste or materials which, when spilled, become hazardous wastes into or on any land or water.

(new) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle.

(new) "Vessel" includes every description of watercraft, used or capable of being used as a means of transportation on the water.

3. The rule is proposed to be amended in order that the Montana rules on hazardous waste comport with recent amendments to the federal regulations on hazardous waste.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to Robert L. Solomon, presiding officer, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, no later than March 3, 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 Robert L. Solomon, presiding officer, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, no later than March 3, 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 subdivision or agency; from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25 persons based on the population statistics for the state of Montana.

7. The authority of the department to make the proposed amendment is based on Section 75-10-204, MCA, and the rule implements Sections 75-10-201 through 75-10-212, 75-10-214 through 75-10-225, MCA.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State January 19, 1981

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

In the matter of the amendment of rule 16.44.304, exclusions) NOTICE OF PROPOSED AMENDMENT OF RULE 16.44.304 (Exclusions) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On March 4, 1981, the Department of Health and Environmental Sciences proposes to amend rule 16.44.304, exclusions.

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

16.44.304 EXCLUSIONS (1) The following are not subject to regulation under this chapter:

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

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

(ii) the raising of animals including animal manure.

(b) irrigation return flows.

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

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

(e) mining overburden returned to the mine site;

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

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

(h) A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or any manufacturing process unit or an associated non-waste-treatment-manufacturing unit, until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated from manufacturing, or for storage or transportation of product or raw materials.

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

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

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

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

(d) waste from the extraction, beneficiation and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore.

(e) cement kiln dust waste.

(f) waste which consists of discarded wood or wood products which fails the test for the characteristic of EP toxicity and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.

3. The rule is proposed to be amended in order that the Montana rules on hazardous waste comport with recent amendments to the federal regulations on hazardous waste.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to Robert L. Solomon, presiding officer, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, no later than **March 3,** 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 Robert L. Solomon, presiding officer, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, no later than **March 3,** 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 subdivision or agency; from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date.

Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25 persons based on the population statistics for the state of Montana.

7. The authority of the department to make the proposed amendment is based on Section 75-10-204, MCA, and the rule implements Sections 75-10-203 and 75-10-204.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State January 19, 1981

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

In the matter of the amendment of rule 16.44.305, special requirements for hazardous waste generated by small quantity generators	))))	NOTICE OF PROPOSED AMENDMENT OF RULE 16.44.305 (Special Requirements for Hazardous Waste Generated by Small Quantity Generators) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On March 4, 1981, the Department of Health and Environmental Sciences proposes to amend rule 16.44.202 which lists the definitions used in Chapter 44 on hazardous waste.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16.44.305 SPECIAL REQUIREMENTS FOR HAZARDOUS WASTE GENERATED BY SMALL QUANTITY GENERATORS (1) A generator is a small quantity generator in a calendar month if he generates less than 1000 kilograms of hazardous waste in that month.

(2) Except for those wastes identified in paragraphs (5) and (6) of this rule, a small quantity generator's hazardous wastes are not subject to regulation under this chapter, provided the generator complies with the requirements of subsection (7) of this rule.

(3) Hazardous waste that is beneficially used or re-used or legitimately recycled or reclaimed and that is excluded from regulation by ARM 16.44.306(1) is not included in the quantity determinations of this rule, and is not subject to any requirements of this rule. Hazardous waste that is subject to the special requirements of ARM 16.44.306(2) is included in the quantity determinations of this rule and is subject to the requirements of this rule.

(4) In determining the quantity of hazardous waste he generates, a generator need not include:

(a) His hazardous waste when it is removed from on-site storage; or

(b) Hazardous waste produced by on-site treatment of his hazardous waste.

(5) If a small quantity generator generates acutely hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acutely hazardous waste are subject to regulation under this chapter:

(a) A total of one kilogram of commercial chemical products and manufacturing chemical intermediates having the generic names listed in ARM 16.44.333(5), and off-specification commercial chemical products and manufacturing chemical intermediates which, if they met specifications, would have the generic names listed in ARM 16.44.333(5); or

(b) A total of 100 kilograms of any residue or contaminated soil, water or other debris resulting from the clean-up of a spill, into or on any land or water, of any commercial chemical products or manufacturing chemical intermediates having the generic names listed in ARM 16.44.333(5).

(6) A small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time more than a total of 1000 kilograms of his hazardous waste, or his acutely hazardous wastes in quantities greater than set forth in sub-sections (5)(a) or (5)(b) of this rule, all of those accumulated wastes for which the accumulation limit was exceeded are subject to regulation under this chapter. The time period of ARM 16.44.415 for accumulation of wastes on-site begins for a small quantity generator when the accumulated wastes exceed the applicable exclusion level.

(7) In order for hazardous waste generated by a small quantity generator to be excluded from full regulation under this rule, the generator must:

(a) Comply with ARM 16.44.402;

(b) If he stores his hazardous waste on-site, store it in compliance with the requirements of subsection (6) of this rule; and

(c) Either treat or dispose of his hazardous waste in an on-site facility, or ensure delivery to an off-site storage, treatment or disposal facility, either of which is:

(i) Licensed under sub-chapter 6 of this chapter;

(ii) Authorized by EPA to manage hazardous waste.

(iii) Authorized to manage hazardous waste by a state with a hazardous waste management program approved by EPA;

(iv) Licensed by the department to manage solid waste pursuant to sub-chapter 5, Chapter 14, Title 16, ARM; or

(v) A facility which:

(A) Beneficially uses or re-uses, or legitimately recycles or reclaims his waste; or

(B) Treats his waste prior to beneficial use or re-use, or legitimate recycling or reclamation.

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

(9) If a small quantity generator mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this rule, the mixture is subject to full regulation.

3. The rule is proposed to be amended in order that the Montana rules on hazardous waste comport with recent amendments to the federal regulations on hazardous waste.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to Robert L. Solomon, presiding officer, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, no later than March 3, 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 Robert L. Solomon, presiding officer, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, no later than March 3, 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 subdivision or agency; from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25 persons based on the population statistics for the state of Montana.

7. The authority of the department to make the proposed amendment is based on Section 75-10-204, MCA, and the rule implements Sections 75-10-203 and 75-10-204.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State January 19, 1981

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

In the matter of the adoption of a rule regarding residues of hazardous waste in empty containers	) NOTICE OF PROPOSED ADOPTION OF RULE (Residues of Hazardous Waste in Empty Containers) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On March 4, 1981, the Department of Health and Environmental Sciences proposes to adopt a rule governing residues of hazardous waste in empty containers.

2. The proposed rule provides as follows:

16.44.307 RESIDUES OF HAZARDOUS WASTE IN EMPTY CONTAINERS (1) Any hazardous waste remaining in either an empty container or an inner liner removed from an empty container, as defined in subsections (3), (4) and (5) of this rule, is not subject to regulation under this chapter.

(2) Any hazardous waste in either a container that is not empty or an inner liner removed from a container that is not empty, as defined in subsections (3), (4) and (5) of this rule, is subject to regulation under this chapter.

(3) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified in ARM 16.44.333(3) is empty if:

(a) all wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating, and

(b) no more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner.

(4) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

(5) A container or an inner liner removed from a container that has held a hazardous waste identified in ARM 16.44.333(3) is empty if:

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

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

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

3. The rule is proposed to be adopted in order that the Montana rules on hazardous waste comport with recent amendments to the federal regulations on hazardous waste.

4. Interested parties may submit their data, views, or arguments concerning the proposed rule in writing to Robert L. Solomon, presiding officer, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, no later than March 3, 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 Robert L. Solomon, presiding officer, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, no later than March 3, 1981.

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

7. The authority of the department to make the proposed rule is based on Section 75-10-204, MCA, and the rule implements Sections 75-10-203 and 75-10-204, MCA.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State January 19, 1981

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

In the matter of the amendment of rule 16.44.333, discarded commercial chemical products, off-specification species, containers, and spill residues thereof	NOTICE OF PROPOSED AMENDMENT OF RULE 16.44.333 (Discarded Commercial Chemical Products, Off-specification Species, Containers, and Spill Residues Thereof) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On March 4, 1981, the Department of Health and Environmental Sciences proposes to amend rule 16.44.333, discarded commercial chemical products, off-specification species, containers, and spill residues thereof.

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

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

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

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

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

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

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

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

(3) Any residue remaining in a container or an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in subsection (5) of this rule, unless the container is empty as defined in ARM 16.44.307(5).

(4) Same as existing rule.

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

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

(a) The department hereby adopts and incorporates by reference the lists of substances and hazardous waste numbers in 40 CFR 261.33(e) and (f) and any subsequent amendments thereto. 40 CFR 261.33(e) and (f) is a federal agency rule setting forth those commercial chemical products and manufacturing chemical intermediates which are, in (e), acute hazardous wastes and, in (f), toxic wastes. A copy of 40 CFR 261.33(e) and (f) may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana.

3. The rule is proposed to be amended in order that the Montana rules on hazardous waste comport with recent amendments to the federal regulations on hazardous waste.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to Robert L. Solomon, presiding officer, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, no later than March 3, 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 Robert L. Solomon, presiding officer, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, no later than March 3, 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 subdivision or agency; from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25 persons based on the population statistics for the state of Montana.

7. The authority of the department to make the proposed amendment is based on Section 75-10-204, MCA, and the rule implements Sections 75-10-203 and 75-10-204.

JOHN J. DRYNAN, Director

Certified to the Secretary of State January 19, 1981

BEFORE THE DEPARTMENT OF STATE
LANDS OF THE STATE OF MONTANA

In the matter of the petition to designate certain lands in Big Horn and Powder River Counties unsuitable for surface coal mining	NOTICE OF RECEIPT OF COMPLETE PETITION TO DESIGNATE LANDS

TO: All Interested Persons

1. On December 29, 1980 the Montana Department of State Lands received a petition to designate all or a portion of the following non-federal lands unsuitable for surface coal mining pursuant to 82-4-228, MCA, and ARM 26.4.1141 through 26.4.1148:

T 1.N., R 44.E., M.P.M., except sections 1 through 24;
T 1.S., R 44.E., M.P.M.;
T 1.S., R 45.E., M.P.M.;
T 2.S., R 44E., M.P.M., except sections 16 through 20, 28 through 33, and those portions of sections 8, 9, 10, 15, 21, 22, 27, 34, and 35 lying within the boundaries of the Northern Cheyenne Indian Reservation;
T 2.S., R 45.E., M.P.M. except sections 1 through 3, 8 through 17, 23, 24, 27, 33 through 35, and those portions of sections 4, 20 through 22, 25, 26, 28, 29, and 36 lying within the boundaries of the Custer National Forest;
T 3.S., R 44.E., M.P.M., except sections 4 through 8, 16 through 20, 30 and 31, and those portions of sections 2, 3, 9, 10, 15, 21, 22, 28, 29, 32, and 33 lying within the boundaries of the Northern Cheyenne Reservation;
T 3.S., R 45.E., M.P.M., except sections 2 and 10, and those portions of sections 4, 12, 14, and 24 lying within the boundaries of the Custer National Forest;
T 4.S., R 43.E., M.P.M., except sections 1 through 12, 14 through 22, 28 through 32, and those portions of sections 23, 24, 26, 27, and 33 through 35 lying within the boundaries of the Northern Cheyenne Reservation;
T 4.S., R 44.E., M.P.M., except sections 6, 10 through 14, 23 through 28, and 33 through 36, and those portions of sections 5, 7, 8, and 18 lying within the boundaries of the Northern Cheyenne Reservation, and sections 15, 21, and 22 lying within the boundaries of the Custer National Forest;
T 4.S., R 45.E., M.P.M., except sections 19, 30 through 32, and those portions of section 29 lying within the boundaries of the Custer National Forest;
T 5.S., R 42.E., M.P.M., except sections 1 through 16, and those portions of sections 17, 18, 20 through 26 lying within the boundaries of the Northern Cheyenne Reservation;
T 5.S., R 43.E., M.P.M., except sections 5, 6, 11 through 15, 21 through 28, 32 through 36, and those portions of

sections 4, 7, 8, 9, 17, 18, and 19 lying within the boundaries of the Northern Cheyenne Reservation;

T 5.S., R 44.E., M.P.M., only those portions of sections 4, 5, 8, 9, 10, 16, 21, 22, 27, 33, 34, and 35 of which the surface is privately owned;

T 5.S., R 45.E., M.P.M., except sections 5 through 8, 17 through 21, 28 through 33, and those portions of sections 14, 22, 23, 27, and 34 lying within the boundaries of the Custer National Forest;

T 6.S., R 42.E., M.P.M.;

T 6.S., R 43.E., M.P.M.; except sections 1 through 4, 9 through 14, 24, 27, and 34 through 36, and those portions of sections 15, 22, 23, 25, and 26 lying within the boundaries of the Custer National Forest.

Petitioners do not seek designation of lands within the boundaries of the Northern Cheyenne Indian Reservation or on lands where surface coal mining is already prohibited.

2. Petitioners are the Northern Plains Resource Council, Tongue River Agricultural Protection Association, Rosebud Protective Association, and Tri-County Ranchers Association.

3. On January 19, 1981, the department deemed the petition complete. The department must now evaluate the area and grant or deny the petition on or before December 29, 1981.

4. Grounds for the petition are (1) that reclamation of the Montana Strip and Underground Mine Reclamation Act, Part 2, Chapter 4, Title 82 MCA is not technically or economically feasible because shallow, sodic, and saline soils will not provide a support medium for revegetation; and (2) surface coal mining in the petition area could result in a substantial loss or reduction of long range productivity of renewable resource lands, including water supply and food products, due at least in part to degradation of water quality in the Tongue River. If the department finds that the allegations of the first ground are correct, it must grant the petition. If the department finds that the allegations of the second ground are correct it may grant the petition.

5. A petition is available for inspection and copying at the department's offices at 1625 Eleventh Avenue, Helena and at 1245 North 29th, Billings.

6. All persons are invited to submit information relevent to the petition to the department at the following address: Montana Department of State Lands, Attn: Sandi Johnson, Capitol Station, Helena, Montana 59620.

7. Any person may intervene in the proceeding by filing with the department allegations of facts, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address and telephone number. Intervention documents must be filed

with the department at least three days before the hearing on the petition. The hearing must be held within 10 months of receipt of the petition and will be announced by newspaper advertisement in the Billings Gazette, Forsyth Independent, and Broadus Powder River Examiner.

Gareth C. Moon, Commissioner
Department of State Lands

CERTIFIED TO THE SECRETARY OF STATE January 19, 1981.

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

In the matter of the amendment) NOTICE OF VACATION OF NOTICE
of rule ARM 40.32.414 (3) and) TO AMEND ARM 40.32.414
(4) concerning examinations) (3) and (4) EXAMINATIONS

TO: All Interested Persons:

1. On January 15, 1981, the Board of Nursing Home Administrators published a notice of amendment of ARM 40.30.414 subsections (3) and (4) at pages 27 and 28, 1981 Montana Administrative Register, issue number 1.

2. The board vacates the above referenced notice and no amendment to the rule will occur unless another notice is promulgated through the Administrative Register.

3. The board is vacating the notice, because the board inadvertently amended the rule which was proposed for amendment on November 28, 1980 at pages 2962 and 2963. This notice had been renoticed on December 11, 1980 at pages 2995 and 2996. The board has received comments regarding the second notice and at this time does not wish to amend the rule as proposed in either notice. The notice of amendment published at pages 27 and 28, 1981 Montana Administrative Register, issue number 1, also listed incorrect rule numbers. (40.30.414 rather than 40.32.414)

BOARD OF NURSING HOME
ADMINISTRATORS
MRS. H.E. GERKE, CHAIRMAN

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

Certified to the Secretary of State, January 19, 1981.

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the **amendment** of a rule for the use of Delivery Zone Permits.	))))	NOTICE OF AMENDMENT OF RULE 18.8.421, DELIVERY ZONE PERMIT.

TO: All Interested Persons

1. On December 11, 1980, the Department of Highways published notice of a proposed amendment of Rule 18.8.421 concerning Delivery Zone Permits at pages 2988-2989 of the 1980 Montana Administrative Register, issue number 23.
2. The agency has amended the rule as proposed.
3. No comments or testimony were received.

Gary J. Wicks
Director of Highways

BY: 
William A. Blake
Deputy Director of Highways

CERTIFIED TO THE SECRETARY OF STATE, January 19, 1981

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the **amendment** of a rule regarding overweight Single Trip Permits.	)	NOTICE OF AMENDMENT OF RULE 18.8.601(6), OVERWEIGHT SINGLE TRIP PERMITS.

TO: All Interested Persons

1. On December 11, 1980, the Department of Highways published notice of a proposed amendment of Rule 18.8.601 concerning overweight single trip permits at pages 2990-2992 of the 1980 Montana Administrative Register, issue number 23.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

Gary J. Wicks
Director of Highways

BY: William A. Blake
William A. Blake
Deputy Director of Highways

CERTIFIED TO THE SECRETARY OF STATE, January 19, 1981

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

In the matter of the amendment) NOTICE OF AMENDMENT OF ARM
of ARM 40.12.202 concerning) 40.12.202 CITIZEN PARTICIPATION
public participation.) RULES

TO: All Interested Persons.

1. On December 11, 1980 the Board of Cosmetologists published a notice of amendment of ARM 40.12.202 at pages 2993 and 2994, 1980 Montana Administrative Register, issue number 23.

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

3. No comments or testimony were received.

BOARD OF COSMETOLOGISTS
JUNE BAKER, PRESIDENT

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

Certified to the Secretary of State, January 19, 1981.

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT OF RULES 42.21.101, 42.21.106, 42.21.107, 42.21.123, 42.21.123, 42.21.131, and 42.21.132, relating to the valuation of various types of personal property.	NOTICE OF AMENDMENT OF RULES 42.21.101, 42.21.106, 42.21.107, 42.21.123, and 42.21.131 AND Withdrawal of Original Proposed Amendments to Rule 42.21.132, relating to various types of personal property.

TO: All Interested Persons:

1. On October 30, 1980, the Department of Revenue published notice of the proposed amendment of rules relating to the valuation of various types of personal property at pages 2854 through 2869 of the 1980 Montana Administrative Register, issue no. 20.

2. The Department has amended Rules 42.21.107 and 42.21.123 as proposed.

The Department has withdrawn the amendments for Rule 42.21.132 as proposed at pages 2862 through 2868 of the 1980 MAR, issue no. 20, and has renoticed amendments to Rule 42.21.132 at pages 3092 through 3098 of the 1980 MAR, issue no. 24.

The Department has amended rules 42.21.101, 42.21.106, and 42.21.131 with the following changes (deletions interlined and additions underlined and capitalized):

42.21.101 AIRCRAFT (1) The average market value of aircraft shall be the approximate retail value of such property as shown in the A.D.S.A. Aircraft Bluebook, "January Edition" (the first quarter) of the year of assessment, P. O. Box 621, Aurora, Colorado 80010. This Bluebook may be reviewed in the department or purchased from the publisher.

(2) The department ~~may~~ SHALL add or delete equipment or high hours according to the instructions set forth in the editor's note to the Bluebook.

~~(3) Electrical equipment is depreciated using a schedule established by the department. A copy of the schedule is available for inspection at the office of the county assessor or at the offices of the department in Helena.~~

~~(2)~~ ~~(4)~~(3) This rule ~~would be~~ is effective for tax years beginning after December 31, ~~1978~~ 1980.

42.21.106 LARGE TRUCKS AND COMMERCIAL TRAILERS (1) The average market value for large trucks, those rated over 1 ton, shall be the average retail values of such property as shown in the "Truck Bluebook Official Used Truck Valuation," January 1 edition of the year of assessment, National Market Report,

Inc., 900 South Wabash Ave., Chicago, Illinois 60600. This guide may be reviewed in the department or purchased from the publisher.

(2) If the above-named publication cannot be used to value these properties, then the average market value will be determined using the depreciation schedule in subsection (3).

(3) The following ~~10-year~~ depreciation schedule ~~will be~~ is used to determine the average market value of large trucks that cannot be valued under subsection (1) and of commercial trailers.

~~AGE~~	~~DEPRECIATION~~
~~1 year old~~	~~80%~~
~~2 years old~~	~~70%~~
~~3 years old~~	~~65%~~
~~4 years old~~	~~60%~~
~~5 years old~~	~~50%~~
~~6 years old~~	~~45%~~
~~7 years old~~	~~37%~~
~~8 years old~~	~~30%~~
~~9 years old~~	~~25%~~
~~10 years old and older~~	~~20%~~

Purchased New		Purchased Used	
Model Year Purchased New	Depreciation	Year Purchased Used	Depreciation
1981	~~95%~~80%	1981	~~95%~~ 89%
1980	75%	1980	~~89%~~ 79%
1979	67%	1979	~~79%~~ 70%
1978	59%	1978	~~70%~~ 63%
1977	53%	1977	~~63%~~ 56%
1976	47%	1976	~~56%~~ 50%
1975	42%	1975	~~50%~~ 44%
1974	37%	1974	~~44%~~ 39%
1973	33%	1973	~~39%~~ 35%
1972	30%	1972	~~35%~~ 31%
1971	26%	1971	~~31%~~ 28%
1970	23%	1970	~~28%~~ 25%
1969	21%	1969	~~25%~~ 22%
1968	19%	1968	~~22%~~ 20%
1967	16%	1967 ~~and~~	~~20%~~ 18%
1966 and before	15%	~~before~~1966 AND BEFORE	15%

(4) ~~The average market value of commercial trailers will be determined using the depreciation schedule in subsection (3)~~ The schedule in subsection (3) also applies to prorated large trucks

and commercial trailers. For all large trucks that cannot be valued under subsection (1) and commercial trailers, the owner or applicant must certify to the department or its agent the year acquired, the acquisition cost, and whether acquired new or used.

(5) This rule is effective for tax years beginning after December 31, ~~1978~~ 1980.

42.21.131 HEAVY EQUIPMENT (1)(a) The market value of heavy equipment is the average resale value of such property as shown in "Green Guides", Volumes I and II, "Green Guides Older Equipment Guide", "Green Guides Lift Trucks", or "Green Guides Off Highway Trucks and Trailers", using the current volumes of the year of assessment. This guide may be reviewed in the Department or purchased from the publisher: Equipment Guide Book Company; 3980 Fabian Way; P. O. Box 10113; Palo Alto, California 94303.

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

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

~~TABLE 1A~~

~~AGE~~	~~PERCENTAGE DEPRECIATION~~	~~TREND FACTOR~~	~~PERCENTAGE TRENDED DEPRECIATION~~
~~1 Year Old~~	~~92%~~	~~1.000~~	~~92%~~
~~2 Years Old~~	~~84%~~	~~1.053~~	~~88%~~
~~3 Years Old~~	~~76%~~	~~1.119~~	~~85%~~
~~4 Years Old~~	~~67%~~	~~1.248~~	~~84%~~
~~5 Years Old~~	~~58%~~	~~1.446~~	~~84%~~
~~6 Years Old~~	~~49%~~	~~1.497~~	~~73%~~
~~7 Years Old~~	~~39%~~	~~1.547~~	~~60%~~
~~8 Years Old~~	~~30%~~	~~1.639~~	~~49%~~
~~9 Years Old~~	~~24%~~	~~1.744~~	~~42%~~
~~10 Years Old and Older~~	~~20%~~	~~1.820~~	~~36%~~

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

~~(b)(i)~~ For the calendar year commencing January 1, ~~1980~~ 1981, the following schedule is used for heavy equipment:

~~TABLE IB~~
~~WHEEL LOADERS~~
~~LIFT TRUCKS~~
~~CRAWLER TRACTORS~~
~~LOG SKIDDERS~~
~~CONCRETE EQUIPMENT~~
~~BELT LOADERS~~
~~HYDRAULIC CRANES~~
~~CRAWLER CRANES AND SHOVELS~~
~~TRUCK MOUNTED CRANES AND SHOVELS~~
~~OFF HIGHWAY HAUL UNITS~~

~~YEAR OF PURCHASE~~	~~R.C.L.N.D. MARKET VALUE~~
~~1980~~	~~100%~~
~~1979~~	~~96%~~
~~1978~~	~~93%~~
~~1977~~	~~89%~~
~~1976~~	~~86%~~
~~1975~~	~~81%~~
~~1974~~	~~78%~~
~~1973~~	~~86%~~
~~1972~~	~~77%~~
~~1971~~	~~74%~~
~~1970~~	~~69%~~
~~1969~~	~~65%~~
~~1968~~	~~61%~~
~~1967~~	~~57%~~
~~1966~~	~~56%~~
~~1965~~	~~50%~~
~~1964~~	~~46%~~
~~1963~~	~~44%~~
~~1962~~	~~40%~~
~~1961~~	~~34%~~
~~1960 & Older~~	~~34%~~

~~TABLE IIB~~
~~CRUSHING EQUIPMENT~~
~~ROAD MAINTENANCE EQUIPMENT~~
~~MOTOR GRADERS~~
~~CRAWLER LOADERS~~
~~ASPHALT FINISHERS~~
~~ALL OTHER MISC. EQUIPMENT NOT INCLUDED IN TABLE IB OR IIIB~~

~~YEAR OF PURCHASE~~	~~R.C.L.N.D. MARKET VALUE~~
~~1980~~	~~100%~~
~~1979~~	~~78%~~
~~1978~~	~~75%~~
~~1977~~	~~72%~~
~~1976~~	~~66%~~
~~1975~~	~~65%~~
~~1974~~	~~59%~~
~~1973~~	~~66%~~
~~1972~~	~~60%~~
~~1971~~	~~52%~~
~~1970~~	~~52%~~
~~1969~~	~~51%~~
~~1968~~	~~51%~~
~~1967~~	~~49%~~
~~1966~~	~~48%~~
~~1965~~	~~45%~~
~~1964~~	~~44%~~
~~1963~~	~~44%~~
~~1962~~	~~40%~~
~~1961~~	~~34%~~
~~1960 & Older~~	~~32%~~

~~TABLE IIIB~~
~~AIR EQUIPMENT~~
~~HYDRAULIC EXCAVATORS~~
~~MOTOR SCRAPERS~~
~~WHEEL TRACTORS~~
~~DITCHERS~~
~~ROLLERS~~
~~OTHER COMPACTION EQUIPMENT~~

~~YEAR OF PURCHASE~~	~~R.C.L.N.D. MARKET VALUE~~
~~1980~~	~~100%~~
~~1979~~	~~74%~~
~~1978~~	~~72%~~
~~1977~~	~~68%~~
~~1976~~	~~64%~~
~~1975~~	~~59%~~
~~1974~~	~~57%~~
~~1973~~	~~63%~~
~~1972~~	~~56%~~
~~1971~~	~~52%~~
~~1970~~	~~46%~~
~~1969~~	~~36%~~
~~1968~~	~~33%~~
~~1967~~	~~30%~~
~~1966~~	~~28%~~
~~1965~~	~~24%~~
~~1964~~	~~22%~~
~~1963~~	~~22%~~
~~1962~~	~~17%~~
~~1961~~	~~17%~~
~~1960 & Older~~	~~14%~~

~~R.C.L.N.D. = REPLACEMENT COST LESS NORMAL DEPRECIATION~~

TABLE I

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

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

TABLE II

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

Year of Purchase	Percentage Depreciation	Trend Factor	Percentage Trended Depreciation
1981	----	-----	100%
1980	78%	1.000	78%
1979	68%	1.051	71%
1978	60%	1.161	70%
1977	51%	1.261	64%
1976	47%	1.356	64%

1975	40%	1.444	58%
1974	36%	1.545	56%
1973	31%	1.935	60%
1972	26%	2.037	53%
1971	25%	2.108	53%
1970	23%	2.187	50%
1969	22%	2.344	52%
1968	20%	2.458	49%
1967	19%	2.595	49%
1966	17%	2.684	46%
1965	16%	2.789	45%
1964	16%	2.862	46%
1963	14%	2.911	41%
1962	12%	2.984	36%
1961 and older	11%	2.991	33%

TABLE III

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

Year of Purchase	Percentage Depreciation	Trend Factor	Percentage Trended Depreciation
1981	----	-----	100%
1980	74%	1.000	74%
1979	65%	1.051	68%
1978	57%	1.161	66%
1977	50%	1.261	63%
1976	43%	1.356	58%
1975	39%	1.444	56%
1974	34%	1.545	53%
1973	29%	1.935	56%
1972	26%	2.037	53%
1971	22%	2.108	46%
1970	16%	2.187	35%
1969	14%	2.344	33%
1968	12%	2.458	29%
1967	11%	2.595	29%
1966	9%	2.684	24%
1965	8%	2.789	22%
1964	8%	2.862	23%
1963	6%	2.911	17%
1962	6%	2.984	18%
1961 and older	5%	2.991	15%

~~(11)~~(b) In addition to USING THE VALUES FROM THE GUIDEBOOKS OR the schedule in subsection ~~(2)(b)(1)~~ (2)(a), the department multiplies the ~~R.O.L.N.D. market value percentages~~ GUIDEBOOK VALUE OR THE PERCENTAGE TRENDED DEPRECIATION in Tables ~~IB, IIB, and IIIB~~ I, II, and III by a factor based on equipment use. The multiplier is determined from the following table:

~~ANNUAL HOURS OF USE (T)~~	~~MULTIPLIER~~
~~0 T 3,120~~	~~1~~
~~3,120 T 4,680~~	~~.8~~
~~4,680 T~~	~~.667~~

ANNUAL HOURS OF USE (T)	MULTIPLIER
$0 \leq T \leq 2,920$	1
$2,920 < T \leq 3,650$	.8
$3,650 < T$	.667

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

3. Numerous parties submitted material or appeared at the hearing and testified. As before in previous hearings concerning the valuation of personal property, the Department's use of trend factors and resale value was questioned. The Department has addressed these matters before and continues to maintain its position that the use of trend factors is consistent with the concept of market value and that a change from resale value to wholesale or as is (or some other measure) requires legislative action. A more detailed statement of the Department's position can be found in earlier published notices: pages 1397 through 1399 of the 1979 MAR, issue no. 21, and pages 1734 through 1739 of the 1980 MAR, issue no. 12.

At the hearing Mr. Mike Ferguson suggested that the verb "may" in subsection (2) of rule 42.21.101 (aircraft) be replaced by "shall". The Department agrees and has done so. The Department has also deleted subsection (3) as redundant with the "Editor's Note", which already contains the necessary schedules.

After consulation with affected parties, the Department has altered the depreciation table in Rule 42.21.106 (large trucks and commercial trailers) to better reflect market value. The principal change is substantially lower first year percentages, reflecting the sharp drop in value a vehicle undergoes in its

first year.

Mr. Lawrence Huss pointed out that low book for trailers and campers had been employed in the past and that no reason was given for the change to retail value. The Department notes that retail (or resale) value is used for other forms of personal property, and hence it is unfair to continue to use low book for trailers and campers; consistency dictates the use of retail value.

Several of those commenting felt that the Department's guides and tables did not reflect obsolete or unusable equipment. The Department calls attention to the availability of the County Tax Appeal Board for taxpayers who believe they have been unfairly assessed. Mr. Huss also inquired as to the existence of studies concerning the rules. The present staff of the Property Assessment Division is unaware of any studies in this area.

Several parties noted that the cut-off points for the heavy equipment use table were too high. The Department agrees and has revised the table (subsection (2)(b) of Rule 42.21.131). It was also pointed out by Mr. James Mockler and Mr. Bill Phillips that the usage table was only applicable to vehicles valued from the tables. This was not the intent of the Department. Rather, the usage table should apply to all heavy equipment, and the Department has made the necessary changes.

The hearing examiner, Mr. Ross Cannon, also repeated his views from earlier hearings that the Department should provide the taxpayer with a choice of valuation methods. The Department continues to disagree with this approach for reasons previously stated at pages 1734 through 1739 of the 1980 MAR, issue no. 12. Basically the Department has not been given the resources (either in funds or manpower) to carry out a program of individual valuation of personal property. Moreover the requirements of statewide uniformity would seem to point away from Mr. Cannon's suggestions.

The Administrative Code Committee also commented concerning possible use of the emergency rule-making proceeding to alter trend factors. This appeared in the explanation of the rules rather than as rule text. Because of the length of time involved in this rule-making proceeding, the Administrative Code Committee's objections have been rendered moot. However, the Department will retain the Committee's letter for any future notices.

Ellen Feaver

ELLEN FEAVER, Director
Department of Revenue

Certified to the Secretary of State 1/19/81

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the repeal of a rule regarding biennial review of rules by agencies.	)))))	NOTICE OF REPEAL OF RULE 1.2.403 BIENNIAL REVIEW OF RULES BY AGENCY

TO: All Interested Persons:

1. On December 11, 1980, the Secretary of State published notice of a proposed repeal of a rule concerning biennial review by agencies, at page 3006, of the 1980 Montana Administrative Register, issue number 23.
2. The agency has repealed the rule as proposed.
3. No comments or testimony were received.

Dated this 19th day of January 1981.

Jim Waltermire

JIM WALTERMIRE
Secretary of State

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of a rule setting forth the schedule applicable to the Montana Administrative Register	)))))	NOTICE OF ADOPTION OF A RULE - (RULE I) 1.2.419 FILING, COMPILING, PRINTER PICK-UP AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER.

TO: All Interested Persons:

1. On December 11, 1980, the Secretary of State published notice of a proposed adoption of a rule concerning the scheduled filing dates, compiling dates, printer pick-up dates and publication dates pertaining to the Montana Administrative Register, at page 3002, of the 1980 Montana Administrative Register, issue number 23.
2. The agency has adopted the rule as proposed.
3. No comments or testimony were received.

Dated this 19th day of January 1981.

JIM WALTERMIRE
Secretary of State

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of a rule setting forth the schedule applicable to the Administrative Rules of Montana	))))	NOTICE OF ADOPTION OF A RULE - (RULE I) 1.2.420 SCHEDULED SUBMISSION DATES FOR REPLACEMENT PAGES TO UPDATE THE ADMINISTRATIVE RULES OF MONTANA

TO: All Interested Persons:

1. On December 11, 1980, the Secretary of State published notice of a proposed adoption of a rule concerning the submission dates for replacement pages to update the Administrative Rules of Montana, at page 3004, of the 1980 Montana Administrative Register, issue number 23.
2. The agency has adopted the rule as proposed.
3. No comments or testimony were received.

Dated this 19th day of January 1981.

JIM WALTERMIRE
Secretary of State

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of rule 1.2.423 setting forth filing fees for publishing in the Montana Administrative Register.	NOTICE OF AMENDMENT OF RULE 1.2.423 AGENCY FILING FEES

TO: All Interested Persons:

1. On December 11, 1980, the Secretary of State published notice of a proposed amendment to a rule concerning agency filing fees, at page 3005, of the 1980 Montana Administrative Register, issue number 23.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

Dated this 19th day of January 1981.

JIM WALTERMIRE
Secretary of State

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE APPLICATION of the Confederated Salish and Kootenai Tribes of the Flathead Reservation for a Declaratory Ruling on the Applicability of the Montana Statutes Governing Inheritance Tax, to the Estate of Edwin Dupuis, a Deceased Member of the Confederated Salish and Kootenai Tribes of the Flathead Reservation.	DECLARATORY RULING

The Declaratory Ruling of the Department of Revenue, State of Montana, finds that the Montana statutes governing inheritance tax are applicable to the estate of Edwin Dupuis, a deceased member of the Confederated Salish and Kootenai Tribes of the Flathead Reservation.

FACTS

Edwin Dupuis, the deceased, was an enrolled member of the Confederated Salish and Kootenai Tribes and a lifelong resident of the Flathead Reservation. The sole beneficiaries of the Dupuis estate are the deceased's three children, all of whom are enrolled members of the Confederated Salish and Kootenai Tribes, and who have resided on the Flathead Reservation all of their lives. The personal representative of the Dupuis estate submitted the estate for probate to the District Court of the Fourth Judicial District of the State of Montana, in and for the County of Lake. District Judge Brownlee declared the estate closed except for the determination of the applicability and jurisdiction of the State to assess inheritance tax. The inheritance tax has not been paid, and the court instructed each beneficiary to deposit into an escrow account an amount equal to the tax he, or she, would owe if it is determined that Montana has authority to impose its inheritance taxes on the Dupuis estate. Judge Brownlee indicated that he would accept as controlling, a Revenue Ruling from the Department of Revenue on the applicability of state inheritance taxes to the Dupuis estate.

ISSUE

DOES THE STATE OF MONTANA HAVE JURISDICTION TO IMPOSE ITS INHERITANCE TAX UPON THE ESTATE OF EDWIN DUPUIS, A DECEASED AND ENROLLED MEMBER OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES AND A LIFELONG RESIDENT OF THE FLATHEAD RESERVATION?

ARGUMENT

The estate of Edwin Dupuis contained the following property:

A. A one-half interest in a partnership with Edmond Lester Dupuis, an enrolled member of the Tribes in the operation of a Registered Hereford livestock operation, including all cattle, machinery, equipment, and property all located within the Flathead Reservation.

B. A 1973 Ford F-100 pickup truck bearing Serial No. F11 YRS 24698 and evidenced by Montana Certificate of Title No. M582-157 (Book Value: $2,550.), maintained on the Reservation.

C. An undivided one-half interest in and to a 1976 Beech Bonanza V-35 aircraft, Serial No. D-8512, bearing registration mark N-5433V, standing in the name of Lyle L. Dupuis, an enrolled member of the Tribes and Edwin Dupuis, maintained on the Reservation.

D. $42,557.18 in cash.

State inheritance taxes may be imposed upon the property which makes up the Dupuis estate. Through a series of three cases, the U. S. Supreme Court has established and affirmed that a State has jurisdiction to impose its inheritance tax on all of the property in an Indian's estate, except for trust land, which the federal government has exempted from taxation.

In the first case, Oklahoma Tax Commission v. United States, 319 U.S. 598, the United States Supreme Court ruled that only:

> ". . . those lands which Congress has exempted from direct taxation by the State are also exempted from the State taxes." Oklahoma Tax Commission, at 611.

All of the remaining restricted cash, securities, miscellaneous properties, insurance, and land not specifically exempted by Congress from direct taxation, were subject to State inheritance tax.

It is erroneous to assume that exclusive authority over Indian lands and personal property, and all uses of, and activities thereon, exist only in the federal government in the absence of a specific delegation of such authority to the State.

On the contrary, the states have certain concurrent authority in the absence of specific preemption of that authority by Congress. In the Oklahoma Tax Commission case, the U. S. Supreme Court held that:

> ". . . if Congress intends to prevent the State of Oklahoma from levying a general non-discriminatory estate tax applying alike to all of its citizens, it should say so in plain words. . . Not a word of intention to expand tax exemptions was spoken by any Congressmen. . . This Court has repeatedly said that tax exemptions are not granted by implication." Oklahoma Tax Commission, at 606.

Federal courts have held that an Indian's estate is subject to federal estate tax. See, Landman v. Commissioner, 123 F.2d 787, cert. denied, 315 U.S. 810.

> "Congress cannot have intended to impose federal income and inheritance taxes on the Indians and at the same time exempt them by implication from similar State taxes." Oklahoma Tax Commission, at 608.

What the U. S. Supreme Court said above in relation to inheritance taxes, remains unchanged. Thus, the first case, Oklahoma Tax Commission, supports the position of the Department of Revenue that all property in the estate of Edwin Dupuis, is taxable, except for those lands specifically exempted from taxation by the federal government.

In the second case, West v. Oklahoma Tax Commission, 334 U.S. 717, the U. S. Supreme Court again permitted the imposition of state inheritance taxes on all of the property in the estate of an Indian; which included mineral interests, stocks and bonds, trust funds, surplus funds, and other personal property. The West court held that Oklahoma Tax Commission was controlling and that:

> ". . . until Congress has in some affirmative way indicated that these (inheritance tax) burdens require that the transfer be immune from the inheritance tax liability, the Oklahoma Tax Commission case permits that liability to be imposed." West, at 727.

The U. S. Supreme Court in the West case found that an

estate or inheritance tax situation, rests upon an entirely different base than that basis underlying a property tax. The court found that:

> "An inheritance or estate tax is not levied on the property of which an estate is composed. Rather it is imposed upon the shifting of economic benefits and the privilege of transmitting or receiving such benefits." West, at 727.

The court found that the decedent Indian has a vested interest, and that he had a right to receive the income from trust properties and to receive all the properties at the end of the trust period. Upon his death, the court found that these interests and rights passed to the deceased Indian's heirs. The court found that it was the transfer of these incidents, rather than the trust properties themselves, that is the subject of the inheritance tax. Thus, the estate and inheritance taxes were distinguished from other kinds of state taxation.

Thus the second case, West v. Oklahoma Tax Commission, supports the Ruling of the Department of Revenue that the properties of the Dupuis estate are subject to Montana inheritance tax.

In the third case, United States v. Mason, 412 U.S. 391, the U. S. Supreme Court held that in West v. Oklahoma Tax Commission, the U. S. Supreme Court:

> ". . . had squarely upheld the validity of Oklahoma's inheritance tax as applied to restricted Osage Indians." Mason, at 392.

The U. S. Supreme Court reiterated that the West decision had neither been overruled nor questioned. The Court found that West was fully consistent with later developments in case law, and that West had been followed without protest for 24 years. The court went on to reiterate the distinction the West court made that:

> ". . . an inheritance or estate tax is not levied on the property of which an estate is composed. Rather it is imposed on the shifting of economic benefits and the privilege of transmitting or receiving such benefits. . . Discerning no congressional intent to immunize Osage trust property from state taxation and no constitutional bar to the tax, the court upheld Oklahoma's claim." Mason, at 395.

The U. S. Supreme Court went on to further distinguish estate and inheritance taxes from other taxes. The court found that different taxes, levied by different levels of government, are not similar to inheritance taxes.

> "As the West decision itself made clear, decisions relating to other types of taxes are not readily transferable to the area of the estate and gift taxation where the tax is imposed on the transfer of property rather than on the property itself or the income it generates." Mason, at 395-396.

Thus, the third case, United States v. Mason, supports the Ruling of the Department of Revenue that the property in the estate of Edwin Dupuis, is subject to inheritance tax. In all three of the above United States Supreme Court cases, the only properties found to be exempt by the court were the lands specifically exempted from direct taxation by the federal government.

The remaining authorities cited by the petitioners do not relate to inheritance taxes, but are concerned with income, property, and personal property taxes. Thus, those authorities are not controlling.

CONCLUSION

From the above discussion of the United States Supreme Court Opinions on the issue of whether a State has jurisdiction to impose state inheritance taxes on Indian estates, it is clear that state inheritance taxes may be imposed on all properties except land specifically exempted from taxation by the federal government.

Therefore, the Department of Revenue finds that the State of Montana has jurisdiction to impose its inheritance tax upon the estate of Edwin Dupuis.

DATED this 25th day of July, 1979.

DEPARTMENT OF REVENUE
Mitchell Building
Helena, Montana 59601

Mary L. Craig

MARY L. CRAIG, CPA
Director

VOLUME NO. 39 OPINION NO. 1

STATE LANDS - Leases, subleases, exercise of the preference right;
LANDS - State lands, leases, subleases, exercise of the preference right;
LEASES - State lands, subleases, exercise of the preference right.

HELD:1. A lessee who subleases the entire tract for the entire lease period is not entitled to exercise the preference. Lessees who sublease only a portion of the tract for the entire term must be judged on a case by case basis to determine whether the goals of sustained yield are being met as required in Jerke.

2. Lessees who sublease all or part of the tract for only a part of the term will loose their preference right if, on a case by case basis, it is determined that the goals of sustained yield are not being met as required in Jerke.

3. The holdings in Skillman and Jerke must be applied to leases as they come up for renewal.

4. A lessee who violates his lease loses his right to renew or the preference right only if the Board determines that the violations are serious enough to warrant cancellation.

5. Lease reinstatement pursuant to 77-6-211, MCA, restores the preference right to a lessee who has violated the terms of his lease.

6. An assignee of a lessee who has violated the terms of his lease enjoys all rights of a new lessee who has not violated the terms of his lease.

9 January 1981

Gareth C. Moon, Commissioner
Department of State Lands
1625 Eleventh Avenue
Helena, Montana 59601

Dear Mr. Moon:

You have requested my opinion on the following questions:

1. Are lessees who have subleased all or part of state land for the entire lease term entitled to exercise the preference right?

2. Are lessees who subleased all or part of state land for only a portion of the lease term entitled to exercise the preference right? An associated question is whether those individuals who entered into sublease arrangements after the Jerke or Skillman decisions are entitled to exercise the preference right.

3. During the past ten years which is the term for most state leases, many competitive bids were submitted on tracts that were subleased. These lessees were allowed to exercise the preference right since it was assumed valid at the time. Do those lessees have valid leases at this time?

4. If a lessee violates the terms of his lease, even inadvertently, has he lost the right to renew the lease and the preference right?

5. Does lease reinstatement pursuant to 77-6-211, restore the preference right to a lessee who has violated the terms of his lease?

6. If a lessee who has violated the terms of his lease loses the preference right, is a subsequent assignee of the lease entitled to exercise those rights?

These questions arise from the considerable difficulty of applying two recent decisions from the Montana Supreme Court. On March 2, 1979, the Court decided Jerke v. State Department of Lands, ___Mont.___, 597 P.2d 49 (1979), involving state grazing land leased by a grazing district. The district allocated the land to one of its members but did not use the land itself. At the end of the district's lease a third party submitted a competititve bid on the tract, but the district exercised a preference right under 77-6-205, MCA to retain the lease. This, the Court held, was an unconstitutional application of the preference in that it set up the district, and not the state, as trustee of the land. Since the district itself did not actually use the land, the Court said the district's exercise of the preference right did not further the legislative policy of sustained yield. The Court did say the preference right furthered sustained yield in the case of a lessee who actually used the land since it furnished an incentive for the lessee to exercise good management and to make improvements. In Skillman v. Department of State Lands, ___Mont.___, ___P.2d ____ (1980), the Court applied Jerke to preclude the exercise of the preference right by an individual lessee who has subleased the land.

The preference right provides that when competitive bids are received on a tract of state land at the end of a lease term, the prior lessee has the automatic right to renew by meeting the high bid. Section 77-6-205, MCA. When a lessee exercises the preference right he may request a hearing if he can furnish reasons why the high bid is excessive or otherwise not in the state's best interest. After hearing, the Board of Land Commissioners may reduce the lease rate. (77-6-205(2), MCA.) Subleasing of state lands has long been recognized by statute (77-6-208, MCA), and it is the interplay of subleasing with the preference right that has led to the results in Jerke and Skillman.

Your questions will be discussed individually.

1. Are lessees who have subleased all or part of the state land for the entire lease term entitled to exercise the preference right?

It is assumed for the purposes of this question that the lessee has properly filed his sublease with the Department. It is clear from Jerke and Skillman that a state land lessee who leases the entire tract for the entire lease period is not entitled to exercise the preference right of 77-6-205. That was the situation in both of those cases.

The situation in which a lessee subleases only a portion of the tract is more difficult, and the Court has not addressed this specific question. Partial subleasing may occur for a number of reasons. Some portion of the land may be agricultural, while the lessee conducts only a grazing operation. In other cases a road, creek, or other natural barrier may make it impractical for the lessee to use part of the land for his operations, while at the same time a neighbor could use the lands to great advantage. Because circumstances vary greatly with the use of state land by lessees there may be numerous reasons which exist for legitimate subleases. The Court did not address mitigating factors such as these in either of the cases at least in the situation of a total sublease. However, the Jerke rule may not be violated in situations in which a minor portion of the land is subleased for good reasons or where the lessee retains sufficient actual control to assure sustained yield of the land. For example, if a lessee of 160 acres of land subleases ten acres located across a river or a country road from his ranch it would appear to be unduly harsh to deny his preference right for that reason alone. This is especially true when the problem could be cured initially by

splitting the isolated piece of the tract into another lease. The basic point of Jerke was to insure the furtherance of sustained yield by encouraging good management through insuring continuity in leasing. In our example, allowing the lessee the preference right would, under this logic, encourage him to use good management on the vast portion of the tract; it would encourage him to comply with his lease terms in order to retain the lease because he could offset a portion of his costs through subleasing; and it would put the ten acres to use while it might otherwise sit idle. Furthermore, the lessee could insert contractual provisions to require for example that the subleassee practice good management practices, that he obtain the lessee's permission to move stock on and off the land, or that he remove or rotate stock at the lessee's direction. The control that the lessee retains which would be sufficient to insure sustained yield will vary from case to case and in any event must be real and not illusory.

The practical problem with this approach is determining at what point the goals of Jerke are no longer being met. That is, if subleasing ten acres of 160 for good reason is acceptable, what about 20, or 40, or 60 or more? The factors to be considered are first, whether there is good reason for subleasing a portion of the tract and secondly whether the lessee retains sufficient immediate control over the tract to insure that sustained yield is being accomplished in a manner consistent with Jerke. Since there are no regulations to follow, this necessarily must be done on a case-by-case basis. If this question arises in any substantial number of instances, it will obviously be quite burdensome for the Department. The drafting of regulations in anticipation of this problem would be appropriate.

2. Are lessees who subleased all or part of the state land for only a portion of the lease term entitled to exercise the preference right?

This issue was not expressly addressed in either Jerke or Skillman. As was true in the first question, hardship situations can be imagined. For example, a lessee subleases the tract, or a portion of it, for one year of a ten-year lease and has a good faith intent to use the land himself for the renewal period if allowed to exercise the preference right. It would not appear to violate the goals of Jerke to allow this lessee to exercise the preference right. On the other hand, a lessee who has subleased the land for eight years out of ten and who has not taken action to protect sustained yield would seem for all practical purposes to be in a situation like that condemned in Jerke and Skillman.

As suggested in the second part of the answer to the first question, the factors to be considered are first, whether there is good reason for having subleased, and second whether the lessee retained immediate control over the tract to insure that he can exercise good management to attain sustained yield in a manner consistent with Jerke. Once again since there are no regulations to follow this must be done on a case-by-case basis and may prove very burdensome to the Department. Again regulations should be considered in anticipation of this problem.

3. During the past ten years, which is the term for most state leases, many competitive bids were submitted on tracts subleased by the lessee. These lessees were allowed to exercise the preference right since it was assumed valid at the time. Do these lessees have valid leases at this time?

This question is addressed in part, and by implication, in Skillman. In that case the lease expired, the competitive bid was submitted, and the preference right was exercised all prior to the announcement of the decision in Jerke. Nonetheless, without any mention of retroactivity (see, e.g., State v. Campbell, ___Mont.___, 36 St.Rptr. 1264 (1979)), the Court applied Jerke and invalidated the exercise of the preference right. At the same time the Court expressly recognized that the lessee was under the impression that he had a valid preference right when he exercised it and that "he should not be penalized for that good faith belief." While the lessee was obviously penalized by having his preference right terminated, the Court did recognize his legitimate expectations and seemed to be saying that he should not be penalized any further. Jerke was clearly applied retroactively and that issue was briefed and argued to the Court.

However, based upon the Court's recognition of pre Jerke expectations and practice, it is unlikely that they would require the immediate retroactive invalidation of all leases issued in this manner in the last ten years. On the other hand, it is equally clear, based upon what actually happened in Skillman, the Jerke holding must be applied to those leases as they come up for renewal.

4. If a lessee violates the terms of his lease, even inadvertently, has he lost the right to renew the lease and the preference right?

It is assumed that this question is asked in the context of a lessee who has not subleased. Even so, there are two distinct situations which seem to be involved. First, 77-6-205, provides that a lessee who has paid his rent and "has not violated the terms of his lease" is entitled to renew his lease for a comparable term. Second, 77-6-205 then provides that if a competitive bid is received, the lessee has a preference right to renew by meeting that bid.

The language concerning violation of the lease must be construed to apply to both a simple renewal and to a renewal by preference right. Otherwise a lessee who had violated his lease would be penalized when no one else wanted the land, but not if competitive bids were received. That result would make no sense at all.

In Skillman the Court raised the "serious question" of whether a lessee who violates his lease has either a right to renew or a preference right. (The lessee there had subleased without approval). The Court did not decide the issue, however, assuming arguendo that the violation was not serious enough to deprive the preference right.

If 77-6-205, MCA were the only statute on the subject it could easily be construed to require loss of both the right to renew and the preference right upon violation of lease terms. However, section 77-6-211 allows the Board to examine lease violations to determine whether they are "serious enough to warrant cancellation." If violations are not serious, the lessee's "rights and privileges" under the lease "shall be preserved." These rights and privileges clearly include both the right to renew and the preference right.

The clear impact of these statutes on the present question is that a lessee who violates his lease loses his right to renew or preference right only if the Board determines that the violations are sufficiently serious to warrant cancellation.

5. Does lease reinstatement pursuant to 77-6-211 restore the preference right to a lessee who has violated the terms of his lease?

As indicated above in response to the last question, the answer is "yes."

6. If a lessee who has violated the terms of his lease loses the preference right, is a subsequent assignee of the lease entitled to exercise those rights?

An assignee of all the lessee's rights to the lease (assuming the lease was properly assigned under 77-6-208) is entitled to enjoy the preference right. In effect he becomes a new lessee and, as long as he has not violated the lease or the law, retains all lessee rights. This includes the renewal and preference rights of 77-6-205, MCA. This conclusion furthers wise management of the land by giving an incentive to a lessee who will actually use the land to take over the lease from one who will not.

THEREFORE, IT IS MY OPINION:

1. A lessee who subleases the entire tract for the entire lease period is not entitled to exercise the preference. Lessees who sublease only a portion of the tract for the entire term must be judged on a case by case basis to determine whether the goals of sustained yield are being met as required in Jerke.

2. Lessees who sublease all or part of the tract for only a part of the term will loose their preference right if, on a case-by-case basis, it is determined that the goals of sustained yield are not being met as required in Jerke.

3. The holdings in Skillman and Jerke must be applied to leases as they come up for renewal.

4. A lessee who violates his lease loses his right to renew or the preference right only if the Board determines that the violations are serious enough to warrant cancellation.

5. Lease reinstatement pursuant to 77-6-211, MCA, restores the preference right to a lessee who has violated the terms of his lease.

6. An assignee of a lessee who has violated the terms of his lease enjoys all rights of a new lessee who has not violated the terms of his lease.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 39 OPINION NO. 2

LAND USE - Soil Conservation Districts: limitations on power to regulate under Streambed Preservation Act;
SOIL AND WATER CONSERVATION - Districts: scope of authority under Streambed Preservation Act;
WATER AND WATERWAYS - Streams: projects subject to regulation under Streambed Preservation Act;
MONTANA CODE ANNOTATED - Sections 75-7-102, 75-7-112, 76-15-701.

HELD: The Natural Streambed and Land Preservation Act of 1975 does not give a local conservation district the power to review the impact of a proposed pipeline on the land between stream crossings or to condition approval of the project on its effect on the intervening land.

19 January 1981

Robert L. Deschamps, III
Missoula County Attorney
Missoula County Courthouse
Missoula, Montana 59801

Dear Mr. Deschamps:

You have requested my opinion on the following question:

> Can a local soil conservation district consider the impact of a proposed pipeline on the land between stream crossings?

According to your inquiry, the Missoula County Soil Conservation District is currently reviewing proposed stream crossing projects for a pipeline through a portion of the county. The pipeline, of course, will cross not only the streams themselves, but also the land between the streams. The district supervisors have received numerous protests from landowners whose property lies directly in the contemplated pipeline route between the stream crossings, but is not actually adjacent to any perennial streams. The landowners argue that approval of the stream crossings necessarily amounts to approval of the route between the streams. Therefore, they contend, the supervisors must consider the effect of the pipeline on the intervening land when deciding whether to approve the stream crossings.

In 1975 the Montana legislature passed the Natural Streambed and Land Preservation Act as part of the state's policy to protect and preserve rivers, streams, and adjacent property in their natural or existing states. Under the Act, local conservation districts are given the authority to review and grant permits for proposed "projects" involving streams within their respective jurisdictions, with the purpose of keeping soil erosion and sedimentation to a minimum. §§ 75-7-102, 75-7-112, MCA. The "projects" covered by the Act are defined as physical alterations or modifications of perennial-flowing streams or rivers and their beds and immediate banks. § 75-7-103(5) & (6), MCA.

The scope of the Natural Streambed and Land Preservation Act is further defined in the minimum standards and guidelines established by the Board of Natural Resources and Conservation and incorporated in rules adopted by the Missoula County Soil Conservation District. The regulations contain a list of the factors that are to be considered by a conservation district in its review of a proposal. § 36.2.404, ARM. Projects are described in terms of structures and development within a "project area", which includes the area within the mean high water mark on both sides of a stream and the immediate banks of the stream. §§ 36.2.405, 36.2.404(2), ARM.

Under both the Natural Streambed and Land Preservation Act itself and the regulations implementing the Act, the scope of the projects subject to review and approval by a conservation district has been limited to those actually located at the site of a stream and the immediately adjacent property. Therefore, although the proposed pipeline through Missoula County will necessarily cross the land between stream crossings as well as the streams themselves, it is only those portions of the pipeline at the stream crossings that the district supervisors have the power to approve or disapprove pursuant to the Natural Streambed and Land Preservation Act.

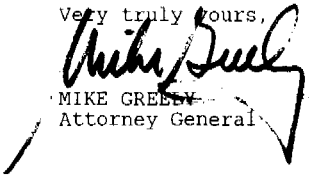
This interpretation is strengthened by the fact that the legislature has specifically given conservation district supervisors the authority to regulate the use of the land within the district in a different section of the codes. Section 76-15-701(1), MCA, provides that the district supervisors may "formulate regulations governing the use of lands within the district in the interest of conserving soil and water resources and controlling erosion." Thus, the dis-

tricts are authorized to address the same concerns about land use in their jurisdictions through regulations as they are about stream projects through the review system established by the Natural Streambed and Land Preservation Act.

THEREFORE IT IS MY OPINION:

The Natural Streambed and Land Preservation Act of 1975 does not give a local conservation district the power to review the impact of a proposed pipeline on the land between stream crossings or to condition approval of the project on its effect on the intervening land.

Very truly yours,



MIKE GREELY
Attorney General