RESERVE

MONTANA ADMINISTRATIVE REGISTER

1981 ISSUE NO. 22
PAGES 1533-1632

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 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 member of the public to appear before it or to sent 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.

22-11/25/81

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1981. This table includes those rules adopted during the period October 1, 1981 through December 31, 1981, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

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

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published.

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 22

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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 PROPOSED AMENDMENT OF RULE ARM 2.32.303, Minimum Required Plumbing Fixtures. No Public Hearing contemplated.

To: All Interested Persons:

1. On December 28, 1981, the Department of Administration proposes to amend rule ARM 2.32.303, concerning the minimum required plumbing fixtures.

2. 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

MINIMUM REQUIRED PLUMBING FIXTURES[1, 7]

Occupancy	Water Closets		Urinals	Lavatories[3]	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[2]	1 1-~~50~~ 150 1 2 151-200 2 3 201-400 3 4 401-600 4 Add 1 fixture for each additional 500 males and 1 for each 300 females	1-~~50~~ 100 ~~51-100~~ 101-150 ~~101-200~~ 151-400 ~~201-400~~ 401-600	1 51-200[5] 2 201-400 3 401-600 Over 600: add 1 for each additional 300 males	Use Section 605 of ~~1979~~ the Uniform Building Code	Use Section 605 of ~~1979~~ the 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 ~~1979~~ Uniform Building Code. 1:100 1:60 1:20 1:20 May combine male and female unless fixture requirement exceeds 2		1:100 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 Title 16, Chapter 32, Administrative Rules of Montana See Section 1205 of ~~1979~~ the Uniform Building Code.				1/Floor or Building
Groups M-1, M-2, M-3, M-4, M-5 B-1, B-2, B-3, & B-4 Office, stores, service stations, public buildings food service facilities[4]	Use Section 905 and 705 of the ~~1979~~ Uniform Building Code for employees. Toilet facilities for the public are to be provided as noted for Groups A and B and shopping centers and, in addition, 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 301-600; 1 per 300 over 600 and 1 extra water closet for females from 51-150; 2 extra from 151-400 and 1 per 150 over 400. Handwashing sinks are required in all food preparation areas.[4]				
Groups R-1 Hotels, Apartments, Motels, Convents and Monasteries	Use Section 1205 of 1979 the Uniform Building Code.				
Group 1 R-3 Dwelling and Lodging Houses	Use Section 1205 of ~~1979~~ the 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.
7 When calculating number of male and female occupants, the occupant load of the building shall be considered half male and half female, and the occupant load shall be calculated in accordance with Sec. 3301(d) of the Uniform Building Code.

3. The rule is proposed to be amended in order to correct certain errors made in the final filing of the rule after its last adoption which made the rule much too restrictive and which also created hardships for those persons constructing new buildings.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to W. James Kembel, Administrator, Building Codes Division, State of Montana, Capitol Station, Helena, Montana 59620, no later than December 28, 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 W. James Kembel, Administrator, Building Codes Division, State of Montana, Capitol Station, Helena, Montana 59620, no later than December 28, 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; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 75,000 persons based on the approximate 750,000 persons in Montana.

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 November 16, 1981.

STATE OF MONTANA
DEPARTMENT OF COMMERCE

IN THE MATTER of the proposed repeal of rules 8.8.101 board organization, 8.8.201 & 8.8.202 procedural rules, 8.8.401 - 8.8.407 general rules, 8.8.901 - 8.8.907 boxing rules, 8.8.1701 - 8.8.1704 wrestling rules, 8.8.2401 Australian tag team wrestling.	NOTICE OF PROPOSED REPEAL OF RULES 8.8.101 BOARD ORGANIZATION, 8.8.201 & 8.8.202 PROCEDURAL RULES, 8.8.401 - 8.8.407 GENERAL RULES, 8.8.901 - 8.8.907 BOXING RULES, 8.8.1701 - 8.8.1704 WRESTLING RULES, 8.8.2401 AUSTRALIAN TAG TEAM WRESTLING NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 26, 1981, the Department of Commerce proposes to repeal the above stated rules, which governed the board of athletics. The rules to be repealed are located at pages 8-243 through 8-275, Administrative Rules of Montana.

2. The rules are being repealed as the board of athletics was sunset by Chapter 322, 1981 Session Laws, effective July 1, 1981. The board was reviewed through the sunset process and the recommendation from the audit committee to the legislature was to abolish the board.

3. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Mary Lou Garrett, Division of Business and Professional Licensing, Department of Commerce, 1424 9th Avenue, Helena, Montana 59620 - 0407, no later than December 24, 1981.

4. If a person who is directly affected by the proposed repeal wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Mary Lou Garrett, Division of Business and Professional Licensing, Department of Commerce, 1424 9th Avenue, Helena, Montana 59620 - 0407, no later than December 24, 1981.

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

6. The authority to make the proposed repeal is based on section 23-3-102, MCA.

DEPARTMENT OF COMMERCE

BY: _____
GARY BUCHANAN, DIRECTOR

Certified to the Secretary of State, November 16, 1981.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF CHIROPRACTORS

IN THE MATTER of the proposed amendments of ARM 8.12.601 concerning applications, educational requirements, 8.12.602 concerning recordation of license, 8.12.606 concerning renewals, continuing education requirements, and 8.12.609 concerning reinstatement.	NOTICE OF PROPOSED AMENDMENTS OF ARM 8.12.601 APPLICATIONS, EDUCATIONAL REQUIREMENTS, 8.12.602 RECORDATION OF LICENSE, 8.12.606 RENEWALS - CONTINUING EDUCATION REQUIREMENTS, 8.12.609 REINSTATEMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 26, 1981, the Board of Chiropractors proposes to amend rules ARM 8.12.601 concerning applications and educational requirements; 8.12.602 concerning recordation of license; 8.12.606 concerning renewals and continuing education requirements; and 8.12.609 concerning reinstatement of license.

2. The amendment to ARM 8.12.601 provides as follows: (deleted matter interlined, new matter underlined)

"8.12.601 APPLICATIONS, EDUCATIONAL REQUIREMENTS

(1) The admission to examination for licensure shall be based upon proof that the applicant has completed 2 years of college in addition to graduation from an approved chiropractic college that has status with the Council on Chiropractic Education (CCE). Transcripts from all colleges and chiropractic college diploma shall accompany the application. In addition, a certified copy of the National Board Scores shall be supplied to the board prior to examination.

(2) Applications will be reviewed on an individual basis with approval at the discretion of the board.

(3) An ~~non-refundable~~ application fee of ~~$50~~ 75 shall be paid prior to the examination, $25 of which shall be non-refundable for board administrative costs.

(4) A $25 re-examination fee shall be paid for a subsequent examination and application."

3. The board is proposing the amendment to subsection (1) as these are required documents which formerly were requested after submission of the application. By requiring submission with the application, it will cut the processing time for the applications. The proposed amendment to subsection (3) and the addition of subsection (4) are to comply with the provisions of Chapter 345, SB 412, which requires the boards to set fees commensurate with costs incurred in administering the board program. The authority of the board to make the proposed change is based on section 37-12-201 (3), MCA and implements section 37-12-302, MCA.

4. The proposed amendment to 8.12.602 will provide as follows: (deleted matter interlined, new matter underlined)

"8.12.602 RECORDATION OF LICENSE (1) Any licensee shall be entitled to an endorsement under the signature of the secretary, and the seal of the board to the effect that the name of the person holding said license has been changed according to law since the issuance of said license to the name appearing endorsed~~,-and-shall re-register-said-license-as-endorsed-with-the-county clerk-or-clerks-where-the-original-is-recorded.~~"

5. The board is proposing the amendment as Chapter 66, 1981 Session laws, deleted the requirement that chiropractors must register their licenses in counties where they practice. The authority of the board to make the proposed change is based on section 37-12-201 (3), MCA and implements section 37-12-306, MCA.

6. The proposed amendment of 8.12.606 will read as follows: (deleted matter interlined, new matter underlined)

"8.12.606 RENEWALS - CONTINUING EDUCATION REQUIREMENTS (1) An annual renewal fee of ~~$25~~ 50 is due on or before September 1st of each year. The licensee must present evidence, satisfactory to the board, that they have in the year preceding the application for renewal, attended at least 10 hours of education~~,-from an-instructor-with-an-accredited-school.~~ Failure for a licensee to comply with this rule will constitute reason for denial of license renewal.

(2) In order to further protect the public health and to facilitate the administration of the act since amended, the board has formulated the following rules:

(a) The number of lectures employed for the educational courses shall not be less than sufficient to conform to the requirements of this act, and the subject matter of the lectures shall be germane to the practice of chiropractic.

(b) Classroom time shall be monitored by board member(s) and/or a delegate.

(c) It shall be necessary for those attending the M.C.A. meetings to register with the secretary of the association each day of attendance.

(d) Excuses for non-attendance shall be issued on the following conditions only:

(i) Post-graduate work, as defined by the board, in an accredited chiropractic college.

(ii) Sickness or such other circumstances which the board may determine not inconsistent with this act.

(3) It shall be the duty of each licensee to keep the department informed of any change in his mailing address."

7. The board is proposing the change as Chapter 155, 1981 Session Laws amended the continuing education requirement, therefore the rules must be changed to reflect the amendment. The

authority of the board to make the proposed change is based on section 37-12-201 (3), MCA and implements section 37-12-307, MCA.

8. The proposed amendment to 8.12.609 will read as follows: (deleted matter interlined, new matter underlined)

"8.12.609 REINSTATEMENT (1) The decision of the board as to reinstatement of licenses shall be made on a case by case individual basis. A person whose license is to be restored shall pay a fee of $100, plus annual fee if applicable, for the restoration."

9. The board is proposing the change to comply with the provisions of Chapter 345, 1981 Session Laws, which requires the board to set fees commensurate with costs incurred in administering the board program.

10. The authority of the board to make the proposed change is based on section 37-12-201 (3), MCA and implements section 37-12-323, MCA.

11. Interested parties may submit their data, views or arguments concerning the proposed amendments is writing to the Board of Chiropractors, 1424 9th Avenue, Helena, Montana 59620 - 0407, no later than December 24, 1981.

12. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Chiropractors, 1424 9th Avenue, Helena, Montana 59620 - 0407, no later than December 24, 1981.

13. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; from the Administrative Code Committee of the legislature; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent has been determined to be 22 based on the 225 licensed chiropractors.

14. The authority of the board to make the proposed amendments is based on section 37-12-201 (3), MCA. The implementing sections are listed after each proposed amendment.

BOARD OF CHIROPRACTORS
CARROL ALBERT, D.C., CHAIRMAN

BY: _____
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, November 16, 1981.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA
BUREAU OF WEIGHTS AND MEASURES

In the matter of the amendment) of Rule 8.77.103 concerning) exceptions to Handbook 44 for) retail motor fuel dispensers.)	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULE 8.77.103.

TO: All interested persons

1. On Tuesday, December 29, 1981 there will be a hearing at 10:00 a.m., or as soon thereafter as parties can be heard, in the conference room of the Commissioner of Financial Institutions, 1430 Ninth Avenue, Helena, Montana, to consider the amendment of Rule 8.77.103.

2. The proposed amendment would add to Rule 8.77.103 certain rules concerning half-pricing of motor fuels at retail dispensers. The proposed rule would provide for the use of half-pricing in certain cases and provide for the replacement of those dispensers in the future to be replaced by unit pricing equipment.

3. The rule to be amended would read as follows:

8.77.103 FOURTH EDITION HANDBOOK 44 - SPECIFICATION, TOLERANCE, AND USER REQUIREMENT FOR WEIGHING DEVICES

(1) The division of weights and measures with the advice and counsel of the national bureau of standards hereby adopts the specifications, tolerances and regulations for commercial weighing and measuring devices published in National Bureau of Standards Handbook 44 - Fourth Edition, 1971 and supplements thereto, or in any publication revising or superseding Handbook 44, as the specifications, tolerances, and regulations for commercial weighing and measuring devices for the state of Montana except as follows:

(2) Wheel-load weighers.

(a) Tolerances. Section T.3.7., Handbook 44, Basic Tolerance Values for Wheel-Load Weighers, does not apply in Montana. The basic maintenance tolerance for individual wheel-load weighers used in this state shall be the same as that prescribed in Handbook 44 for axle-load weighers.

(b) User Requirements. Section UR. 3.5.2., Handbook 44, Level Condition, does not apply in Montana. In this state, when either an axle-load or a gross-load determination is being made, utilizing wheel-load weighers, the vehicle being weighed shall be in a reasonably level position with all wheels on the same plane as the load receiving element of the weighing device used in making the determination.

(3) Retail motor fuel dispensers.

(a) In the case of retail motor fuel dispensers currently pricing motor fuels on a half-gallon method or some fraction of a gallon, such dispensers may be kept in service for retail sales if the total fuel sales of the retail station involved are less than 10,000 gallons per month or 120,000 gallons per year whichever is greater.

(b) In the case where the retail station involved

qualifies in subsection (a) above, when any dispenser is replaced due to wear or other reasons, all of the fuel dispensers at the retail outlet must be replaced with retail fuel dispensers that measure the fuel in unit amounts such as gallons, or in the case where metric measures are used, in liters. (AUTH: Sec. 30-12-202, MCA; IMP: Sec. 30-12-202, MCA.)

4. The amendment is being proposed to allow stations which are currently operating on a half-pricing system for retail fuels a grace period in which to change to a unit pricing system for retail motor fuel dispensers.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing or by sending written comments to Gary Delano, Chief, Weights and Measures Bureau, no later than December 28, 1981. Mr. Delano's address is 1424 Ninth Avenue, Helena, Montana 59620.

6. Robert J. Wood, 1424 Ninth Avenue, Helena, Montana, Counsel for the Department of Commerce has been appointed hearing examiner in this matter to preside over and conduct the hearing.

7. The authority and implementing sections for this proposed amendment are listed at the end of the proposed rule.

MONTANA DEPARTMENT OF COMMERCE

GARY BUCHANAN, Director

CERTIFIED to the Secretary of State this 16th day of November, 1981

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

In the matter of the repeal of rule 16.20.209 relating to laboratory analyses and rule 16.20.218 relating to control tests of groundwater supplies	)))))	NOTICE OF PUBLIC HEARING ON REPEAL OF RULES 16.20.209 and 16.20.218 (Public Water Supplies)

To: All Interested Persons

1. On January 29, 1982, at 9:00 a.m., a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the repeal of rules 16.20.209 relating to laboratory analyses and 16.20.218 relating to control tests of groundwater supplies.

2. The rules proposed to be repealed can be found on pages 16-901 and 16-905, respectively, of the Administrative Rules of Montana.

3. The rules are proposed to be repealed because they contain provisions repetitive of other provisions in rules in ARM Title 16, Chapter 20, i.e., 16.20.211, 16.20.212, and 16.20.216.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Sandra R. Muckelston, Cogswell Building, Capitol Station, Helena, MT, 59620, no later than January 4, 1982.

5. Sandra R. Muckelston, Helena, MT, has been designated to preside over and conduct the hearing.

6. The authority of the Board to repeal the rule is based on section 75-6-103, MCA, and the rule implements section 75-6-103, MCA.

JOHN F. McGREGOR, M.D., Chairman

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

Certified to the Secretary of State November 16, 1981

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

In the matter of the amendment of rules in sub-chapter 2, chapter 20, Title 16, Public Water Supplies	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULES IN SUB-CHAPTER 2, CHAPTER 20, TITLE 16, (Public Water Supplies)

TO: All Interested Persons

1. On January 29, 1982, at 9:00 a.m., a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of rules in sub-chapter 2, chapter 20, Title 16, Public Water Supplies.

2. The proposed amendments replace present rules 16.20.201, 16.20.202, 16.20.203, 16.20.204, 16.20.205, 16.20.206, 16.20.207, 16.20.210, 16.20.211, 16.20.212, 16.20.213, 16.20.214, 16.20.216, 16.20.217, 16.20.219, 16.20.220, 16.20.221, 16.20.225, 16.20.227, 16.28.228, and 16.20.242. The proposed amendments would generally revise these rules and establish requirements for total trihalomethanes in order to maintain primary enforcement responsibility of the federal safe drinking water program.

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

16.20.201 PURPOSE The purpose of this sub-chapter is to assure the safety of public water supplies with respect to bacteriological, chemical, and radiological quality and to ~~further~~ promote efficient ~~processing~~ operation of public water supply systems through control tests, laboratory ~~checks~~, analyses, operating records, and reports. ~~of public water supply systems.~~

AUTHORITY: Sec. 75-6-103 MCA
IMPLEMENTING: Sec. 75-6-103 MCA

4. The Board is proposing this amendment to clarify the purpose statement.

16.20.202 DEFINITIONS In this sub-chapter, the following terms ~~shall~~ have the meanings or interpretations indicated below and ~~shall~~ must be used in conjunction with and supplemental to those definitions contained in section 75-6-102, MCA.

(1) "Act" means Title 75, Chapter 6, Part 1, MCA.

(2) "Approved laboratory" means a laboratory ~~certified~~ licensed and approved by the department to analyze water samples to determine their compliance with maximum ~~allowable~~ contaminant levels.

(3) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(4) "Dose equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements (ICRU).

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

(6) "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

(7) "Gross beta particle activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

(8) "Man-made beta particle and photon emitters" means all radionuclides emitting beta particles and/or photons listed in Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure, NBS Handbook 69, except the daughter products of thorium-232, uranium-235, and uranium-238.

(9) "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water supply system. ~~the free flowing outlet of the ultimate user of a public water system, except in the case of turbidity where the maximum permissible level is measured at the point of entry to the distribution system. Contaminants added to the water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from this definition.~~

(10) "Person" means ~~an~~ any individual, corporation, ~~company,~~ association, partnership, ~~state,~~ municipality, other political subdivision of the state or federal agency.

(11) "Picocurie (pCi)" means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

~~(12) "Public water supply" or "public water system" means a system for the delivery to the public of piped water for human consumption, if such a system serves at least ten (10) families or regularly serves at least 25 persons daily at least 60 days out of the calendar year.~~

(12) "Public water supply system" means a system for the provision of water for human consumption from any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that serves 10 or more families or 25 or more persons daily or has at least 10 service connections at least 60 days out of the calendar year.

(a) "Community water system" means any public water supply system which serves at least ~~ten~~ 10 service connections used by year-round residents or regularly serves at least 25 year-round residents.

(b) "Non-community water system" means any public water supply system which is not a community water system.

(13) "Rem" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A "millirem (mrem)" is 1,1000 of a rem.

(14) "SDWA" means Safe Drinking Water Act, 42 U.S.C. Sec. 300f et seq.

(15) "Sanitary survey" means an onsite review of the water source, facilities, equipment, operation and maintenance of a public water supply system for the purpose of evaluating the adequacy for producing and distributing safe drinking water.

(16) "Satisfactory bacteriological sample" means less than one coliform found per 100 ml sample or less than one portion positive for coliform organisms when ~~five~~ 5 portions are examined.

(17) "Standard sample" means the aliquot of finished drinking water that is examined for the presence of coliform bacteria.

~~(18)--"State"-means-the-agency-of-the-state-government which-has-jurisdiction-over-public-water-systems.--During any-period-when-a-state-does-not-have-primary-enforcement responsibility-pursuant-to-42-U.S.C.-Sec.-300g-2-of-the-SDWA, the-term-"state"-means-the-Regional-Administrator,--U.S.-- Environmental-Protection-Agency.~~

~~(19)~~ (18) "Supplier of water" means any person who owns or operates a public water supply system.

(19) "Trihalomethane (THM)" means one of the family of organic compounds, named as derivatives of methane, wherein 3 of the 4 hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.

(20) "Total Trihalomethanes (TTHM)" means the sum of the concentration in milligrams per liter of the trihalomethane compounds (chloroform, dibromochloromethanene, bromodichloromethane and tribromomethane), rounded to 2 significant figures.

AUTHORITY: Sec. 75-6-103, MCA
IMPLEMENTING: Sec. 75-6-103, MCA

5. The Board is proposing this amendment to conform current definitions in the rule to their statutory definitions, to delete an unused definition, and to add two new definitions necessary to establish requirements for total trihalomethanes in order to maintain primary enforcement responsibility of the federal safe drinking water program.

16.20.203 MAXIMUM INORGANIC CHEMICAL CONTAMINANT LEVELS

(1) No community water system may exceed the following ~~The-following-shall-be-the-~~ maximum inorganic chemical contaminant levels:

Constituent		Level, milligrams per liter
~~(1)~~	(a) Arsenic	0.05
~~(2)~~	(b) Barium	1.
~~(3)~~	(c) Cadmium	0.010
~~(4)~~	(d) Chromium	0.05
~~(5)~~	(e) Lead	0.05
~~(6)~~	(f) Mercury	0.002
~~(7)~~	(g) Nitrate (as N)	10
~~(8)~~	(h) Selenium	0.01
~~(9)~~	(i) Silver	0.05
~~(10)~~	(j) Fluoride	2.4

(2) The MCL for nitrate (10 mg/l) in subsection (1)(g) of this rule may not be exceeded by a non-community water system except that levels not to exceed 20 mg/l may be allowed in a non-community water system if:

(a) the supplier reports to the department that such water will not be available to children 6 months of age and younger,

(b) there will be continuous posting that the nitrate level exceeds 10 mg/l and the potential health effects of exposure,

(c) the department will be notified annually of levels which exceed 10 mg/l, and

(d) no adverse health effects will result.

AUTHORITY: Sec. 75-6-103 MCA
IMPLEMENTING: Sec. 75-6-103 MCA

6. The Board is proposing this amendment to allow the relaxation of the maximum contaminant level for nitrate in a non-community water system if certain conditions are met in order to conform to current federal requirements (45 Federal Register 57342, August 27, 1980).

16.20.204 MAXIMUM ORGANIC CHEMICAL CONTAMINANT LEVELS

No community water system may exceed the following ~~The following shall be the~~ maximum organic chemical contaminant levels ~~in surface waters and those groundwaters where they may be present~~:

		Level, milligrams per liter
(1)	Chlorinated hydrocarbons which include:	
(a)	Endrin (1,2,3,4,10,10-hexachloro-6, 7-epoxy-1,4,4a,5,6,7,8,8a-oxtahydro-1, 4-endo, endo-5, 8-dimethano naphthalene)	0.0002
(b)	Lindane (1,2,3,4,5,6-hexachlorocyclo-hexane, gamma isomer)	0.004
(c)	Methoxychlor (1,1,1-Trichloro-2,2-bis [p-methoxphenyl] ethane)	0.1
(d)	Toxaphene ($C_{10}H_{10}Cl_8$-Technical chlorinated camphene, 67-69 percent chlorine)	0.005
(2)	Chlorophenoxys which include:	
(a)	2,4-D (2,4-Dichlorophenoxyacetic acid)	0.1
(b)	2,4,5-TP Silvex (2,4,5-Trichlorophenoxy-propionic acid)	0.01

(3) Total Trihalomethanes 0.10

AUTHORITY: Sec. 75-6-103 MCA
IMPLEMENTING: Sec. 75-6-103 MCA

7. The Board is proposing this amendment to establish a maximum contaminant level for total trihalomethanes in order to maintain primary enforcement responsibility of the federal safe drinking water program.

16.20.205 MAXIMUM TURBIDITY CONTAMINANT LEVELS ~~This standard shall apply only to systems~~ No public water supply system which uses surface water in whole or in part~~,~~ ~~The~~ may exceed the following maximum contaminant levels for turbidity ~~in drinking water,~~ measured at a representative entry point to the distribution system~~,~~ ~~are~~:

(1) One turbidity unit (TU), as determined by a monthly average, except that a level not exceeding ~~five~~ 5 turbidity units may be allowed if the supplier of water can demonstrate to the department that the higher turbidity does not do any of the following:

(a) interfere with disinfection;

(b) prevent maintenance of an effective disinfectant agent throughout the distribution system; or

(c) interfere with microbiological determinations.

(2) Five turbidity units based on an average for ~~two~~ 2 consecutive days.

(3) If results of turbidity analyses indicate the maximum contaminant level has been exceeded, a second sample ~~shall~~ must be taken within one hour. The repeat sample, and not the initial one, ~~shall~~ must be used in calculating the monthly average.

AUTHORITY: Sec. 75-6-103 MCA
IMPLEMENTING: Sec. 75-6-103 MCA

8. The Board is proposing this amendment for clarification and consistency of language used in this sub-chapter.

16.20.206 MAXIMUM RADIOLOGICAL CONTAMINANT LEVELS ~~The following shall be the~~ No community water system may exceed the following maximum radiological contaminant levels:

	Constituent	Level pCi per liter
(1)	Combined radium-226 and radium-228	5
(2)	Gross alpha particle activity (including radium-226 but excluding radon and uranium)	15
(3)	Tritium	20,000
(4)	Strontium-90	8
(5)	Gross beta radioactivity	50

(6) The average annual concentration of beta particle and photon radioactivity from man-made radionuclides in drinking water ~~shall~~ may not produce an annual dose equivalent

to the total body or any internal organ greater than 4 millirems/year.
AUTHORITY: Sec. 75-6-103 MCA
IMPLEMENTING: Sec. 75-6-103 MCA

9. The Board is proposing this amendment for clarification and consistency of language used in this sub-chapter.

16.20.207 MAXIMUM MICROBIOLOGICAL CONTAMINANT LEVELS No public water supply system may exceed the following ~~The~~ maximum microbiological contaminant levels ~~shall be as follows~~:

(1) When the membrane filter technique is used:

(a) 4 per 100 ml in more than one sample when less than 20 samples are examined per month; or

(b) 4 per 100 ml in more than 5% of the samples when 20 or more samples are examined per month;

(c) 1 per 100 ml as the arithmetic mean of all validated samples examined per month.

(2) When the 10 ml fermentation tube method is used, coliform bacteria ~~shall~~ may not be present in any of the following:

(a) More than 10% of the portions in any month;

(b) 3 or more portions in more than one sample when less than 20 samples are examined per month;

(c) 3 or more portions in more than 5% of the samples when 20 or more samples are examined per month.

(3) When coliform bacteria are found, daily samples from the same sampling point ~~shall~~ must be collected ~~and submitted promptly and sampling continued~~ until the results obtained from at least ~~two~~ 2 consecutive samples are shown to be satisfactory bacteriological samples.
AUTHORITY: Sec. 75-6-103 MCA
IMPLEMENTING: Sec. 75-6-103 MCA

10. The Board is proposing this amendment for clarification and consistency of language used in this sub-chapter.

16.20.210 BACTERIOLOGICAL QUALITY SAMPLES (1) The minimum number of samples to be collected from a public water supply system and submitted for examination ~~shall~~ must be in accordance with the following table:

Population served:	Minimum number of samples per month
25 to 1,000	1
1,001 to 2,500	2
2,501 to 3,300	3
3,301 to 4,100	4
4,101 to 4,900	5
4,901 to 5,800	6
5,801 to 6,700	7
6,701 to 7,600	8
7,601 to 8,500	9
8,501 to 9,400	10
9,401 to 10,300	11

10,301 to 11,100	12
11,101 to 12,000	13
12,001 to 12,900	14
12,901 to 13,700	15
13,701 to 14,600	16
14,601 to 15,500	17
15,501 to 16,300	18
16,301 to 17,200	19
17,201 to 18,100	20
18,101 to 18,900	21
18,901 to 19,800	22
19,801 to 20,700	23
20,701 to 21,500	24
21,501 to 22,300	25
22,301 to 23,200	26
23,201 to 24,000	27
24,001 to 24,900	28
24,901 to 25,000	29
25,001 to 28,000	30
28,001 to 33,000	35
33,001 to 37,000	40
37,001 to 41,000	45
41,001 to 46,000	50
46,001 to 50,000	55
50,001 to 54,000	60
54,001 to 59,000	65
59,001 to 64,000	70
64,001 to 70,000	75
70,001 to 76,000	80
76,001 to 83,000	85
83,001 to 90,000	90
90,001 to 96,000	95
96,001 to 111,000	100

(2) Based on a history of no coliform bacterial contamination ~~for at least one year prior to a request for less frequent sampling~~ and on a sanitary survey by the department ~~or its authorized representative~~ showing the water system to be supplied solely by a protected ground water source and free of sanitary defects, a community water system serving 25 to 500 persons or less, with written permission from the department, may reduce the sampling frequency ~~as follows:~~ required in subsection (1) of this rule except that in no case may the sampling frequency be reduced to less than one sample per quarter.

~~(a) 25 to 100 1 sample per quarter~~

~~(b) 101 to 500 2 samples per quarter~~

(3) The supplier of water for a non-community water system shall sample for coliform bacteria in each calendar quarter during which the system provides water to the public except that, on the basis of sanitary surveys or sampling, the department may either increase or decrease the required

sampling frequency as deemed appropriate. ~~Such sampling shall begin June 24, 1979. If the department, on the basis of a sanitary survey or sampling, determines that additional sampling is necessary, it shall require more frequent sampling. Such frequency may be confirmed or changed on the basis of subsequent surveys.~~

AUTHORITY: Sec. 75-6-103 MCA
IMPLEMENTING: Sec. 75-6-103 MCA

11. The Board is proposing this amendment to establish sampling frequencies for community and non-community water systems analogous to federal sampling frequencies (40 CFR 141.21).

16.20.211 CHEMICAL AND RADIOLOGICAL QUALITY SAMPLES

(1) Water as served to consumers, which may be a mixture from several sources, ~~shall~~ must be analyzed for inorganic chemicals every ~~three~~ 3 years for community ground water supplies and annually for community surface water supplies. The scope of the analysis for a community water system must include all constituents indicated in ARM 16.20.203 and in the following list:

(a) Alkalinity Total
(b) Calcium
(c) pH value
(d) Sodium

(2) A community water system utilizing ~~Surface~~ surface water ~~supplies shall~~ must be sampled every ~~three~~ 3 years for the organic ~~chemical content~~ chemicals listed in ARM 16.20.204(1) and (2). Surface water samples must be collected during that portion of the year when pesticides or herbicides are commonly in use in the area.

(3) A community water system which serves a population of 10,000 or more individuals and which adds a disinfectant to the water must be monitored for total trihalomethanes. This monitoring must begin by November 29, 1982.

(a) The analysis for total trihalomethanes must be performed at quarterly intervals on at least 4 samples for each treatment plant used by the system. At least 25% of the samples must be taken at locations reflecting the maximum residence time of the water in the distribution system. The remaining samples must be taken at representative locations taking into account the number of persons served, the different sources of water and the treatment methods employed. The results of all analyses must be arithmetically averaged to determine compliance with the maximum contaminant level with the exception of those results which are invalidated for technical reasons by the department.

(b) The monitoring frequency may be reduced by the department to a minimum of one sample per quarter taken at a point in the distribution system reflecting the maximum residence time of the water in the system. This reduction

in monitoring may be granted only if the data from at least one year of monitoring demonstrates that total trihalomethane concentrations will be consistently below the maximum contaminant level.

~~(3)~~ (4) Water as served to the consumer from community water systems ~~shall~~ must be analyzed initially by June 24, 1980, and every ~~four~~ 4 years thereafter for radiological content by analyzing ~~four~~ 4 consecutive quarterly samples or a composite of ~~four~~ 4 consecutive quarterly samples for gross alpha and radium-226 and radium-228.

(a) A gross alpha particle activity measurement may be substituted for the required radium-226 and radium-228 analyses provided that the measured gross alpha particle activity does not exceed 5 pCi/l.

(b) When the gross alpha particle activity exceeds 5 pCi/l, the same or an equivalent sample must be analyzed for radium-226. If the concentration of radium-226 exceeds 3 pCi/l, the same or an equivalent sample must be analyzed for radium-228.

(c) When the results of tests done in conformance with subsections (4)(a) and (b) of this rule have established that the concentration is less than half the maximum contaminant levels, analysis of a single annual sample may be substituted for the quarterly sampling procedure.

~~(4)~~ (5) Analysis for man-made beta and photon emitters ~~shall~~ must be required for community systems using surface water sources and serving more than 100,000 persons and such other water systems as required by the department.

~~(5)~~ (6) A test for nitrates ~~shall~~ must be made initially for all non-community water supplies by June 24, 1979, and ~~shall~~ must be repeated at least ~~annually for those water supplies indicating a nitrate content in the initial test~~ once every 5 years. More frequent testing ~~shall~~ may be required for those supplies where the nitrate content approaches or exceeds the maximum contaminant level.

~~(6)~~ (7) ~~Systems~~ A public water supply system which exclusively ~~purchase~~ purchases water from ~~other systems~~ another public water supply system ~~shall be~~ is considered ~~extensions~~ an extension of the original public water supply system and ~~shall not be~~ is not required to perform chemical or radiological analyses to determine compliance with maximum contaminant levels unless specifically required by the department due to known or potential problems.

~~(7)~~ (8) Every new source of supply, both surface and ground, added to a community water supply ~~shall~~ must be analyzed for chemical and radiological content. All new sources of water supply for non-community water ~~shall~~ must be analyzed for nitrates ~~and those chemicals listed in subsection (8)~~.

~~(8) The scope of the analysis for community water supplies shall include all parameters indicated in ARM 16.20.203, 16.20.204, 16.20.205 and 16.20.206 and in the following list. Surface water samples shall be collected during that portion of the year when pesticides are commonly in use in the area.~~

~~Calcium~~
~~Magnesium~~
~~Sodium~~
~~Potassium~~
~~Chloride~~
~~Iron~~
~~pH value~~
~~Manganese~~
~~Sulfate~~
~~Dissolved Solids~~
~~Total Hardness~~
~~Alkalinity Phenolphthalein (P)~~
~~Alkalinity Total~~

(9) Department personnel, where their programs allow, may assist in the collection, submission, and analysis of the samples.

AUTHORITY: Sec. 75-6-103 MCA
IMPLEMENTING: Sec. 75-6-103 MCA

12. The Board is proposing this amendment (1) to establish sampling and monitoring requirements for total trihalomethanes in order to maintain primary enforcement responsibility of the federal safe drinking water program; (2) to conform state radiological sampling procedures to federal procedures in order to reduce costs of radiological sampling; (3) to reduce annual testing for nitrates for non-community systems to once every 5 years since the department may require more frequent testing when necessary under current provisions of this rule; (4) to reduce the number of constituents required for sampling in order to reduce costs and still conform to federal requirements; and (5) for clarification and consistency of language used in this sub-chapter.

16.20.212 SAMPLING -- RESPONSIBILITY (1) The supplier of water is responsible for the proper collection and submission of samples for microbiological, inorganic, organic, and radiological analysis to ~~an approved~~ a licensed laboratory, or to the state laboratory at the times designated by the department. Department personnel, where their programs allow, may assist in the collection, submission and analysis of the samples.

(2) Where less than ~~four~~ 4 bacteriological samples are taken monthly, the sampling points shall be rotated so as to cover all of the system every ~~three~~ 3 months except where only a quarterly sample is required.

AUTHORITY: Sec. 75-6-103 MCA
IMPLEMENTING: Sec. 75-6-103 MCA

13. The Board is proposing this amendment for clarification and consistency of language used in this sub-chapter.

16.20.213 VERIFICATION SAMPLES (1) When the results of a chemical analysis indicate that the level of any constituent, except nitrate, exceeds the maximum contaminant level ~~at least three additional samples shall be collected within one month of notification to the department to determine if the water served to the public exceeds the maximum contaminant level.~~ , verification samples are required. At least 3 verification samples must be collected within one month of the time the supplier of water receives notification

that the first sample exceeded the maximum contaminant level. The arithmetic mean of the 4 samples determines if the maximum contaminant level is exceeded.

(2) When the maximum contaminant level for nitrate is exceeded, an additional sample will be collected within 24 hours of notification. The mean of the ~~two~~ 2 samples will determine if the maximum contaminant level is exceeded.

AUTHORITY: Sec. 75-6-103 MCA
IMPLEMENTING: Sec. 75-6-103 MCA

14. The Board is proposing this amendment for clarification and to establish the standard by which a determination will be made on whether or not the maximum contaminant level has been exceeded.

16.20.214 SPECIAL SAMPLES (1) Under special conditions, additional samples may be required from time to time by the department. Such samples may be to determine adequacy of disinfection following line installation, replacement, or repair. Samples may also be required for determination of adequacy of source, storage, treatment or distribution of water to the public. These special samples ~~shall~~ may not be used to determine compliance with bacteriological requirements.

AUTHORITY: Sec. 75-6-103 MCA
IMPLEMENTING: Sec. 75-6-103 MCA

15. The Board is proposing this amendment for clarification and consistency of language used in this sub-chapter.

16.20.216 CONTROL TESTS -- GENERAL (1) ~~These tests permit~~ A control test permits the operator of the system to judge variations in water quality, to identify objectionable water characteristics, and to detect the presence of foreign substances which may adversely affect the potability of the water. ~~These control tests shall~~ A control test must be performed, recorded and reported in accordance with procedures approved by the department.

~~(2) Tests for chlorine residual in the distribution system shall be made at selected points and changed regularly so as to cover the system completely at least each week.~~

~~(3) A minimum of two tests daily shall be made for systems employing full time chlorination, one at the point of application and one in the distribution system.~~

(2) A minimum of 2 chlorine residual tests must be made daily for a public water supply system employing full time chlorination, one at the point of application and one in the distribution system. The frequency of chlorine residual monitoring may be reduced by the department for non-community water systems on a case-by-case basis.

(3) A test for chlorine residual in the distribution system must be made at selected points and changed regularly so as to cover the system completely at least each week.
AUTHORITY: Sec. 75-6-103 MCA
IMPLEMENTING: Sec. 75-6-103 MCA

16. The Board is proposing this amendment for clarification and to allow the relaxation of monitoring frequency for non-community systems.

16.20.217 CONTROL TESTS -- SURFACE SUPPLIES (1) ~~Operators of water treatment plants~~ A supplier of water utilizing a water treatment plant for surface water ~~utilizing~~ where the plant employs in ~~their~~ its operation coagulation, settling, softening, or filtration, shall perform at least daily, unless otherwise specified, the following chemical control tests on the filtered water, list them on a report form approved by the department, and submit the completed form monthly to the department:

(a) Chlorine residual
(b) Alkalinity--Phenolphthalein (P)
(c) Alkalinity--Total
(d) pH value
(e) Hardness (where softening is utilized)
(f) Turbidity
(g) Stability to calcium carbonate (weekly)

(2) ~~Operators of water supplies~~ A supplier of water utilizing surface water and employing disinfection ~~with or without sedimentation~~ shall perform, at least daily, the following chemical control tests on the treated water, list them on a report form approved by the department and submit the completed form monthly to the department:

(a) Chlorine residual
(b) pH value
(c) Turbidity

(i) The monitoring frequency required in subsection (2) of this rule may be reduced by the department for a non-community water system on a case-by-case basis.
AUTHORITY: Sec. 75-6-103 MCA
IMPLEMENTING: Sec. 75-6-103 MCA

17. The Board is proposing this amendment for clarification and to allow the relaxation of monitoring frequency for non-community systems.

16.20.219 SPECIAL CONTROL TESTS ~~Special tests~~ A special test may be required for a public water ~~supplies~~ supply system exceeding the following amounts ~~specified as follows~~:

Constituent	Maximum Amount
(1) Iron	0.3 mg/l
(2) Manganese	0.05 mg/l
(3) Chloride	250 mg/l
(4) ~~Sulphate~~ Sulfate	250 mg/l
(5) Total Dissolved Solids	500 mg/l

AUTHORITY: Sec. 75-6-103 MCA
IMPLEMENTING: Sec. 75-6-103 MCA

18. The Board is proposing this amendment for clarification and consistency of language used in this sub-chapter.

16.20.220 CHLORINATION (1) Full-time chlorination is mandatory where the source of water is from lakes, reservoirs, or streams ~~or springs~~.

(2) Full-time chlorination of the water in a ground water supply system must be employed whenever the record of bacteriological tests of the system does not indicate a safe water under the criteria listed in ARM 16.20.207 and 16.20.210.

~~(3) Full-time chlorination is also mandatory for any new well in a system where the initial bacteriological tests of the well do not show a safe record with the department for three consecutive samples taken on different days after completion and testing of the well.~~

AUTHORITY: Sec. 75-6-103 MCA
IMPLEMENTING: Sec. 75-6-103 MCA

19. The Board is proposing this amendment to establish one chlorination requirement for all public water supply systems utilizing groundwater.

16.20.221 FLUORIDATION (1) Where fluoridation is practiced, laboratory analysis ~~shall~~ must be made at least ~~three times~~ once daily of the water ~~before and~~ after fluoridation to assure an average fluoride content of not over 1.5 ppm in the finished water, using a control range from ~~0.7~~ 0.9 ppm lower limit to 1.5 ppm upper limit.

(2) Proper records of the analyses ~~shall~~ must be kept on file and a copy forwarded to the department monthly. One sample of treated water ~~shall~~ must be submitted monthly to the department for analysis ~~for fluoride content~~.

AUTHORITY: Sec. 75-6-103 MCA
IMPLEMENTING: Sec. 75-6-103 MCA

20. The Board is proposing the amendment to (1) reduce frequency of testing and (2) to change the lower limit of the control range from 0.7 to 0.9 in order to achieve optimum dental benefits.

16.20.225 OPERATING RECORDS (1) Accurate and adequate records must be maintained at all water plants and for all water systems. Complete records ~~shall~~ must be made available to the department upon request ~~to the department~~.

(2) A daily record must be kept of the samples and control tests required in ARM 16.20.210, 16.20.216, 16.20.217, ~~16.20.218~~ and 16.20.219. ~~The bacteriological checks required in ARM 16.20.210 are to be listed on the dates sampled.~~ The records on report forms approved by the department ~~should~~ must be prepared in duplicate ~~by the person in charge of a water supply~~. The original ~~shall~~ must be forwarded to the department no later than the tenth day of the following month.

(3) ~~Operators of water treatment plants~~ A supplier of water utilizing a water treatment plant ~~utilizing~~ employing conventional coagulation, settling, softening, or filtration shall keep a daily record of the operations performed in the treatment process together with observations, costs and occurrences related to the operation of the plant, in addition to the control tests and laboratory ~~checks~~ analyses previously described.

(4) ~~Operators of ground water systems~~ A supplier of water utilizing ground water shall keep a daily record of all well operations and maintenance of the system, in addition to the control tests and laboratory ~~checks~~ analyses required for ground water supplies.

(5) ~~Operators of community systems~~ A supplier of water for a community water system which ~~purchase~~ purchases water shall keep a monthly record of the operation and maintenance of the system in addition to required laboratory ~~checks~~ analyses.

AUTHORITY: Sec. 75-6-103 MCA
IMPLEMENTING: Sec. 75-6-103 MCA

21. The Board is proposing this amendment for clarification, for consistency of language used throughout this subchapter, and to eliminate the bacteriological check requirement in subsection (2) which is now required on the laboratory report forms approved by the department.

16.20.227 COMMUNITY SUPPLIES -- REPORTING AND NOTIFICATION (1) ~~Any~~ A supplier of water for a community ~~public~~ water ~~supply~~ system which:

(a) violates maximum contaminant levels,
(b) fails to use prescribed treatment techniques,
(c) is granted a variance,
(d) fails to comply with a variance schedule, or
(e) fails to perform monitoring or use applicable testing procedures

is required to issue a notice to its users with the next water bill, or by written notice if the water bill is issued quarterly or not issued at all, and ~~repeated~~ to repeat the notice at no less than quarterly intervals until ~~corrected~~, notified by the department. ~~and~~ The supplier of water for a community water system shall notify the department within 48 hours of such non-compliance.

~~(2) In the case of a failure to comply with a maximum contaminant level after discovery, the supplier of water must~~

~~give other general public notice, in a manner approved by the department. This notice may consist of newspaper advertisement, press release, or other appropriate means in a manner and form approved by the department.~~

(2) When a maximum contaminant level for a community water system is exceeded, the department may require a supplier of water to give additional public notice by newspaper advertisement, press release, or other appropriate means approved by the department. This requirement may be waived by the department if it determines that the violation has been corrected promptly after discovery, the cause of the violation has been eliminated, and there is no longer a risk to public health.

(3) In the event of an imminent threat to public health, the department may require any measure necessary to protect public health.

AUTHORITY: Sec. 75-6-103 MCA
IMPLEMENTING: Sec. 75-6-103 MCA

22. The Board is proposing this amendment for clarification, for consistency of language used throughout this sub-chapter, to allow waiver of additional notice, and to add the emergency authority of the department for community systems that had already been adopted for non-community systems.

16.20.228 NON-COMMUNITY SUPPLIES -- REPORTING AND NOTIFICATION (1) ~~Any~~ A supplier of water for a non-community ~~public~~ water ~~supply~~ system which:

(a) violates maximum contaminant levels,
(b) fails to use prescribed treatment techniques,
(c) is granted a variance,
(d) fails to comply with a variance schedule, or
(e) fails to perform monitoring or use applicable testing procedures

is required to give conspicuous notice of same to the consumers served by the system in a form approved by the department.

(2) Any notice given in compliance with this rule ~~shall~~ must inform the consumers of the appropriate item and ~~shall~~ must not use unduly technical language or unduly small print ~~in a form approved by the department~~.

(3) In the event of an imminent threat to public health, the department may require any measure necessary to protect public health.

AUTHORITY: Sec. 75-6-103 MCA
IMPLEMENTING: Sec. 75-6-103 MCA

23. The Board is proposing this amendment for clarification and consistency of language used in this sub-chapter.

16.20.242 DESIGNATED CONTACT PERSON (1) The supplier of water for community systems shall designate, no later than 30 days after the effective date of this rule, a person ~~or persons~~ who shall be responsible for contact and communications with the department in matters relating to system alter-

ation and construction, monitoring and sampling, maintenance, operation, record keeping, and reporting.

(2) The supplier of water for non-community water systems shall designate and notify the department of his designee no later than 30 days after the designation.

(3) Any change in assigned responsibilities or designated persons ~~shall~~ must be promptly reported to the department.

AUTHORITY: Sec. 75-6-103 MCA
IMPLEMENTING: Sec. 75-6-103 MCA

24. The Board is proposing this amendment for clarification and consistency of language used in this sub-chapter.

25. 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 Sandra R. Muckelston, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than January 4, 1982.

26. Sandra R. Muckelston, Helena, MT, has been designated to preside over and conduct the hearing.

27. The statutory authority and implementing section are shown at the end of each rule.

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

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

Certified to the Secretary of State November 16, 1981

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

In the matter of the amendment of rule 16.2.101 which adopts and incorporates by reference the model rules of the Attorney General)	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 16.2.101 (Model Rules)

TO: All Interested Persons

1. On January 29, 1982, at 8:30 a.m., or as soon thereafter as the matter may be heard, a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of ARM 16.2.101, which adopts and incorporates by reference the model rules of the attorney general.

2. The proposed amendment replaces present rule 16.2.101 found in the Administrative Rules of Montana. The proposed amendment incorporates the changes made by the attorney general in recent amendments to the model rules (see 1981 MAR p. 1195-1238, issue no. 19) and adds the board of health and environmental sciences as a separate agency adopting the model rules.

3. The rule as proposed to be amended provides as follows (matter to be stricken is interlined, new material is underlined):

16.2.101 MODEL RULES (1) The Department of Health and Environmental Sciences and the Board of Health and Environmental Sciences ~~has herein adopted and incorporated~~ herein adopt and incorporate the Attorney General's model procedural rules ARM 1.3.101 ~~through 1.3.234~~, 1.3.102, and 1.3.201 through 1.3.233, including the appendix of sample forms which follows the model rules. ~~but has modified~~ ARM ~~1.3.207~~ 1.3.206 is modified ~~to incorporate requirements of statutes administered by the department. ARM 1.3.207 is modified~~ by the addition of the rules in sub-chapter 2 of this chapter, which incorporate requirements of statutes administered by the department and board.

(2) ARM 1.3.101 and 1.3.102 are procedural rules required by MCA chapter implementing Article II, Section 8 of the 1972 Constitution, right of participation. ARM 1.3.201 through 1.3.233 are organizational and procedural rules required by the Montana Administrative Procedure Act. Copies of the model rules may be obtained from the Legal Division, Department of Health and Environmental Sciences, Room C216, Cogswell Building, Helena, Montana, 59620.

4. The department and board propose this amendment to the rule in order to incorporate recent amendments to the model rules as adopted at 1981 MAR p. 1195-1238, issue no. 19, and to include the board as a separate agency adopting the model rules.

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 Sandra R. Muckelston, Cogswell Building, Capitol Station, Helena, MT, 59620, no later than January 4, 1982.

6. Sandra R. Muckelston, Cogswell Building, Capitol Station, Helena, MT, has been designated to preside over and conduct the hearing.

7. The authority of the agencies to make the proposed amendment is based on sections 2-4-201 and 2-4-202, MCA, and the rule implements section 2-4-201, MCA.

FOR THE BOARD:

JOHN F. McGREGOR, M.D., Chairman

By: JOHN J. DRYNAN, M.D.

FOR THE DEPARTMENT:

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State November 16, 1981

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the repeal of Rule 18.8.424, concerning Dealer's Demonstration Permits	))))	NOTICE OF PROPOSED REPEAL OF RULE 18.8.424, Dealer's Demonstration Permits.

NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons.

1. On December 28, 1981, the Department of Highways will repeal Rule 18.8.424, concerning Dealer's Demonstration Permits.

2. The rule to be repealed is on pages 18-287 and 18-288 of the Administrative Rules of Montana.

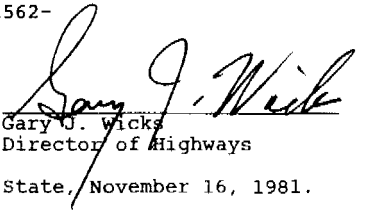
3. The Department is repealing this rule because Sections 61-4-114 through 61-4-118, MCA, providing for this permit, were repealed by Senate Bill 304 of the 47th Legislative Assembly of Montana.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Gary J. Wicks, Director of Highways, 2701 Prospect Avenue, Helena, Montana 59620, no later than December 24, 1981.

5. If a person who is directly affected by the proposed repeal of Rule 18.8.424 wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to Gary J. Wicks, Director of Highways, 2701 Prospect Avenue, Helena, Montana 59620, no later than December 24, 1981.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons directly affected; from the Administrative Code Committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 63 persons based on the number of 630 registered truck dealers in Montana.

7. The authority of the agency to repeal this rule is based on section 61-4-114, MCA and the rule implemented sections 61-4-114 through 61-4-118, MCA. These sections were repealed by the 47th Legislative Assembly. Therefore, this Notice of Proposed Repeal has been filed.



Gary J. Wicks
Director of Highways

Certified to the Secretary of State, November 16, 1981.

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

In the matter of the adoption of a rule to define suitable work for extended benefit purposes

NOTICE OF PROPOSED ADOPTION OF RULE I

(Unemployment Insurance)
NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On January 4, 1982, the department proposes to adopt rule 24.11.414 defining suitable work for extended benefit purposes.

2. The proposed rule provides as follows:

RULE I DEFINITION OF SUITABLE WORK FOR EXTENDED BENEFITS PURPOSES (1) An individual who fails to apply for available suitable work or fails to accept available suitable work or, when so directed by the department, to return to his customary occupation, if any, shall be denied benefits for the week in which the failure occurred. The individual shall also be denied extended benefits beginning with the first day of the week following the week in which the failure occurred until services in other than self-employment are performed and the individual has earnings equal to or greater than the extended weekly benefit amount in each of four weeks. The individual's extended benefit duration shall so be reduced by four weeks.

(2) For extended benefits purposes the term 'suitable work' means any work which is within the individual's capabilities. No work shall be determined suitable for an extended benefits claimant unless all of the following criteria are met.

(a) The gross average weekly remuneration payable for the work must exceed the individual's extended weekly benefit amount plus the amount, if any, of supplemental unemployment benefits (as defined in Section 501(c) (17)(D) of the Internal Revenue Code of 1954) payable for such week.

(b) The wages payable are higher than the minumum wage provided by Section 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemptions, or any state or local minimum wage.

(c) The position was offered to the individual in writing or was listed with the Montana State Job Service or with the Job Service of the state in which the claimant is filing in the case of an interstate claim.

(d) The failure to apply for or to accept suitable work could not result in a denial of benefits under the definition of suitable work for regular benefits claimants in Section 51-2304, MCA, to the extent that the criteria of suitability in that section are not inconsistent with the provisions in this rule.

(3) If the individual furnishes satisfactory evidence that his or her prospects for obtaining work in his or her customary occupation within four weeks are good, the determination of whether any work is suitable for that individual shall be made in accordance with the definition of suitable work for regular benefit claimants in Section 39-51-2304, MCA. A final determination that the work is not suitable under the regular benefit criteria shall dispose of that issue and it shall not again be determined under the provisions of this rule.

(4) Regardless of the provisions of this rule, no work shall be determined suitable if it does not meet the labor standards provisions required by Section 3304(a)(15), Internal Revenue Code of 1954, and contained in Section 39-51-2304(3), MCA.

(5) The Job Service shall refer any claimant entitled to extended benefits under the Montana Unemployment Compensation Law to any suitable work which meets the criteria prescribed in this rule.

3. This rule is proposed to meet the federal requirements of the Omnibus Reconciliation Act of 1980, P.L. 96-499.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Harold V. Kansier, Employment Security Building, Capitol Station, Helena, Montana 59624, no later than December 24, 1981.

5. If a person who is directly affected by the proposed action wishes to express his or her data, views and arguments orally or in writing at a public hearing, he or she must make a written request for a hearing and submit this request along with any written comments to Harold V. Kansier, Employment Security Building, Capitol Station, Helena, Montana 59624, no later than December 24, 1981.

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

7. The authority of the department to adopt the rule is based on Section 39-51-301, MCA, and the rule implements the requirements of the Omnibus Reconciliation Act of 1980, P.L. 96-499.

In the matter of the adoption of a rule stating the disqualification of extended benefits claimants for failing to actively seek work	))))	NOTICE OF PROPOSED ADOPTION OF RULE II (Unemployment Insurance) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On January 4, 1982, the department proposes to adopt rule 24.11.415 stating the disqualification of extended benefits claimants for failing to actively seek work.

2. The rule provides as follows:

RULE II DISQUALIFICATION OF EXTENDED BENEFITS CLAIMANTS FOR FAILURE TO ACTIVELY SEEK WORK (1) An extended benefits claimant shall be treated as actively engaged in seeking work during any week if the individual

(a) has engaged in a systematic and sustained effort to obtain work during such week and

(b) furnishes tangible evidence that he has engaged in such effort during such week.

(2) An extended benefits claimant who has failed to actively engage in seeking work shall be denied benefits for the week in which the failure occurred. Such claimant shall also be denied benefits beginning with the first day of the week following the week in which the failure occurred until services in other than self-employment are performed and the claimant has earnings equal to or greater than the extended weekly benefit amount in each of four weeks. The individual's extended benefit duration shall also be reduced by four weeks.

3. This rule is proposed to meet the federal requirements of the Omnibus Reconciliation Act of 1980, P.L. 96-499.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Harold V. Kansier, Employment Security Building, Capitol Station, Helena, Montana 59624, no later than December 24, 1981.

5. If a person who is directly affected by the proposed action wishes to express his or her data, views and arguments orally or in writing at a public hearing, he or she must make a written request for a hearing and submit this request along with any written comments to Harold V. Kansier, Employment Security Building, Capitol Station, Helena, Montana 59624, no later than December 24, 1981.

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

7. The authority of the department to adopt the rule is based on Section 39-51-301, MCA, and the rule implements the requirements of the Omnibus Reconciliation Act of 1980, P.L. 96-499.

In the matter of the adoption of a rule stating the eligibility for extended benefits in cases of gross misconduct	NOTICE OF PROPOSED ADOPTION OF RULE III (Unemployment Insurance) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On January 4, 1982, the department proposes to adopt rule 24.11.416 stating the eligibility for extended benefits in cases of gross misconduct.

2. The proposed rule provides as follows:

RULE III ELIGIBILITY FOR EXTENDED BENEFITS IN CASES OF GROSS MISCONDUCT Pursuant to Section 202(a)(4), Federal-State Extended Unemployment Compensation Act, a regular benefit claimant who is disqualified for gross misconduct under Section 39-51-2303(2) shall not be paid extended benefits, unless he has earned at least eight times the weekly benefit amount subsequent to the date of the disqualification.

3. This rule is proposed to meet the federal requirements of Section 202(a)(4) of the Federal-State Extended Unemployment Compensation Act.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Harold V. Kansier, Employment Security Building, Capitol Station, Helena, Montana 59624, no later than December 24, 1981.

5. If a person who is directly affected by the proposed action wishes to express his or her data, views and arguments orally or in writing at a public hearing, he or she must make a written request for a hearing and submit this request along with any written comments to Harold V. Kansier, Employment Security Building, Capitol Station, Helena, Montana 59624, no later than December 24, 1981.

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

7. The authority of the department to adopt the rule is based on Section 39-51-301, MCA, and the rule implements the requirements of Section 202(a)(4) of the Federal-State Extended Unemployment Compensation Act.

In the matter of the adoption of a rule concerning the pension deduction	)))	NOTICE OF PROPOSED ADOPTION OF RULE IV (Unemployment Insurance) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On January 4, 1982, the department proposes to adopt rule 24.11.417 concerning the pension deduction from a claimant's weekly unemployment benefit amount.

2. The proposed rule provides as follows:

RULE IV PENSION DEDUCTION (1) A claimant's weekly benefit amount shall be reduced by the amount the individual is receiving from a governmental or other pension, retirement pay, or other similar periodic payment which is based on the previous work of that individual and which is maintained by or contributed to in whole or in part by a base period employer.

(2) In the case of payments other than those received under the Social Security Act or the Railroad Retirement Act, the payments shall be deductible only if the service (or the remuneration for the service) for the employer in the base period effected the individual's eligibility for the payment or increased the amount of the payment. If service for the employer in the base period (or remuneration for such service) did not either effect eligibility for or increase the amount of the payment, the payment shall not be deductible.

(3) Payment under the Social Security Act and the Railroad Retirement Act shall be deductible regardless of whether service (or remuneration) for the base period employer effected eligibility for or increased the amount of the payment.

(4) The amount by which weekly benefit amount is to be reduced shall be determined by the ratio of the employer's contribution to the fund from which the payment is made so that the claimant will receive credit only for the proportion of his contributions to that fund.

3. This rule is proposed to conform with the federal requirements of the Omnibus Reconciliation Act of 1980, P.L. 96-499.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Harold V. Kansier, Employment Security Building, Capitol Station, Helena, Montana 59624, no later than December 24, 1981.

5. If a person who is directly affected by the proposed action wishes to express his or her data, views and arguments orally or in writing at a public hearing, he or she must make a written request for a hearing and submit this request along with any written comments to Harold V. Kansier, Employment Security Building, Capitol Station, Helena, Montana 59624, no later than December 24, 1981.

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

7. The authority of the department to adopt the rule is based on Section 39-51-301, MCA, and the rule implements the requirements of the Omnibus Reconciliation Act of 1980, P.L. 96-499.

In the matter of the amendment of rule 24.11.411, school as a reason for voluntary quit

NOTICE OF PROPOSED AMENDMENT OF RULE ARM 24.11.411 (Unemployment Insurance) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On January 4, 1982, the department proposes to amend rule 24.11.411 regarding school as a reason for voluntary quit.

2. The proposed amendment replaces present rule 24.11.411 found in the Administrative Rules of Montana. The proposed amendment is necessary to meet federal requirements.

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

24.11.411 SCHOOL AS A REASON FOR VOLUNTARY QUIT (1) A regular benefit claimant who voluntarily leaves work to attend school shall be disqualified until he earns at least six times the weekly benefit amount for services other than self-employment. ~~To requalify for benefits under Section 39-51-2302(3), MCA, the student must establish~~:

(2) Pursuant to Section 39-51-2302(3), MCA, such an individual can requalify for regular benefits without earning the required six times weekly benefit amount if it is established:

(a) ~~(1)~~ that the student voluntarily quit work to attend school, and

(b) ~~(2)~~ the school schedule would have interfered with the previous employment, and

(c) ~~(3)~~ the school must be an accredited educational institution by the State of Montana, at which the student has had regular attendance for at least three(3) consecutive months from the date of enrollment.

(3) An individual who requalifies for regular benefits without six times the weekly benefit amount must have earned that amount as a condition for the receipt of extended benefits.

4. The department is proposing these amendments to the rule in order to conform with the federal requirements in Section 202(a)(4) of the Federal-State Extended Unemployment Compensation Act.

5. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Harold V. Kansier, Employment Security Building, Capitol Station, Helena, Montana 59624, no later than December 24, 1981.

6. If a person who is directly affected by the proposed action wishes to express his or her data, views and arguments orally or in writing at a public hearing, he or she must make a written request for a hearing and submit this request along with any written comments to Harold V. Kansier, Employment Security Building, Capitol Station, Helena, Montana 59624, no later than December 24, 1981.

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

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

David L. Hunter

DAVID L. HUNTER, Commissioner

CERTIFIED TO THE SECRETARY OF STATE
November , 1981

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 32.3.214 requiring a Tuberculosis test on goats before they may be brought into the state.	)))))	NOTICE OF A PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 32.2.214 REQUIRING A TUBERCULOSIS TEST ON GOATS BEFORE THEY MAY BE BROUGHT INTO THE STATE.

To: ALL INTERESTED PERSONS

1. On January 19, 1982 at 10:30 a.m., a public hearing will be held in room 319 of the Agriculture/Livestock Building, 6th and Roberts Streets, Helena, Montana, to consider the amendment of Rule 32.3.214 concerning tuberculosis test requirements for goats before they may be brought into the state.

2. The proposed amendment replaces present rule 32.3.214 found in the Administrative Rules of Montana. The proposed amendment would require a tuberculosis test to be performed, with negative results, on all goats not more than 60 nor less than 30 days prior to entry into the state; and, be conducted by a federally accredited veterinarian.

3. The rule as proposed to be amended provides as follows with new matter underlined:

32.3.214 SPECIAL REQUIREMENTS FOR GOATS (1) Goats may enter the state of Montana provided they are transported in conformity with ARM 32.3.201 through 32.3.211.

(2) Dairy and breeding goats may enter the state of Montana provided they originate in a certified brucellosis-free herd, for which the certified herd number and date of last herd test are shown on the permit, or health certificate; or they have been tested for brucellosis with negative results within 30 days of the date of shipment and originate in herds which have been tested with negative results within the preceding 12 months.

(3) (a) All goats brought into the state, except those for slaughter only, must be tested for tuberculosis before they may be brought into the state.

(b) The test must: be of a type approved for use by the department; be performed not more than 60 nor less than 30 days prior to entry in the state; and, be conducted by a federally accredited veterinarian.

(c) All test results shall be recorded on or attached to all copies of the animals health certificate.

(4) The department is proposing to adopt this rule to

protect Montana's livestock industry; and, the public health of its citizens from the disease, Tuberculosis.

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 James W. Glosser, D.V.M., Administrator & State Veterinarian, Animal Health Division, no later than January 27, 1982.

6. Clyde Peterson, Room 312, Agriculture/Livestock Building, 6th and Roberts Streets, Helena, Montana, 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 81-2-102, 81-2-103 and 81-2-703 MCA. They implement the same.

ROBERT G. BARTHELMESS
Chairman, Board of Livestock

BY: _____
JAMES W. GLOSSER, D.V.M.
Administrator & State Veterinarian
Animal Health Division

Certified to the Secretary of State November 16, 1981.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the adoption of Rules I and II requiring a Tuberculosis test on wild species of cloven-hoofed ungulates before they may be brought into the state, and before a change of ownership.	NOTICE OF A PUBLIC HEARING ON ADOPTION OF NEW RULES I AND II REQUIRING A TUBERCULOSIS TEST ON WILD SPECIES OF CLOVEN-HOOFED UNGULATES BEFORE THEY MAY BE BROUGHT INTO THE STATE AND BEFORE ANY CHANGE OF OWNERSHIP.

To: ALL INTERESTED PERSONS

1. On January 19, 1982 at 10:30 a.m., a public hearing will be held in room 319 of the Agriculture/Livestock Building, 6th and Roberts Streets, Helena, Montana, to consider the adoption of permanent rules concerning Tuberculosis test requirements for wild species of cloven-hoofed ungulates.

2. The proposed rules will replace emergency rule enacted on November 2, 1981 and are identical to them.

3. The proposed rules provide as follows:

RULE I TUBERCULOSIS TEST, IMPORTATION OF WILD SPECIES OF CLOVEN-HOOFED UNGULATES.

(1) All wild species of cloven-hoofed ungulates brought into the state must be tested for tuberculosis and found to be negative.

(2) The test must: be of a type approved for use by the department; be performed not more than 60 nor less than 30 days prior to entry in the state; and, be conducted by a federally accredited veterinarian.

(3) All test results shall be recorded on or attached to all copies of the animals health certificate. AUTH: Secs. 81-2-102, 81-2-103, 2-4-303 MCA; IMP, 81-2-102, 81-2-103 MCA

Rule II TUBERCULOSIS TEST, CHANGE OF OWNERSHIP OF WILD SPECIES OF CLOVEN-HOOFED UNGULATES.

(1) (a) All privately-owned wild species of cloven-hoofed ungulates sold or moved must be tested for tuberculosis and found to be negative.

(b) When animals are to be moved only from one location in the state to another and there is no change of ownership, the state veterinarian may, if there is no significant danger to public health, waive the tuberculosis test requirement. AUTH: Secs. 81-2-102, 103, 2-4-303 MCA; IMP: 81-2-102, 81-2-103 MCA

4. The department is proposing to adopt these rules to protect Montana's livestock industry; its wild game, both public and privately-owned; and, the public health of its citizens from the disease, Tuberculosis, which has been diagnosed in privately-owned ungulates located in neighboring states.

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 James W. Glosser, D.V.M., Administrator & State Veterinarian, Animal Health Division, no later than January 27, 1982.

6. Clyde Peterson, Room 312, Agriculture/Livestock Building, 6th and Roberts Streets, Helena, Montana, has been designated to preside over and conduct the hearing.

7. These rules are authorized under sections 81-2-102, 81-2-103, and 2-4-303 MCA. They implement the same.

Robert G. Barthelmess

ROBERT G. BARTHELMESS
Chairman, Board of Livestock

BY: James W. Glosser

JAMES W. GLOSSER, D.V.M.
Administrator & State Veterinarian

Certified to the Secretary of State November 16, 1981.

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

In the matter of the Adoption of Rules Pertaining to the Water Development Loan and Grant Program	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES PERTAINING TO THE WATER DEVELOPMENT LOAN AND GRANT PROGRAM

TO: All Interested Persons

1. On December 16, 1981, at 7:30 p.m., in the auditorium, New Highway Building, 2701 Prospect Avenue, Helena, Montana, a public hearing will be held to consider the adoption of new rules pertaining to the water development loan and grant program adopted by the 1981 Montana Legislative Session, Chapter No. 505, Laws of 1981.

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

3. The proposed rules provide as follows:

RULE I POLICY AND PURPOSE OF RULES (1) As provided by section 85-1-601, MCA: "The legislature finds and declares that in order that the people of Montana may enjoy the full economic and recreational benefits of the state's water resources, the state must establish this long-term water development program providing financial and administrative assistance to private, local and state entities for water resource development projects and activities."

(2) The policy and purpose of these rules, under the rulemaking authority granted by section 85-1-612, MCA, is to describe how the criteria expressed in the law will be applied; to prescribe the form and content of applications; to provide policies and procedures for the preparation, evaluation and administration of those applications; to provide for the servicing of loans and grants including arrangements for obtaining security interests for loans; to provide for the establishment of reasonable fees and charges to be made; and to prescribe the terms and conditions for making grants and loans, the security instruments, and agreements necessary.

AUTH: 85-1-612, MCA IMP: 85-1-601 and 85-1-612, MCA

RULE II DEFINITIONS When used in these rules, unless a different meaning clearly appears from the context:

(1) "Family farm" means "one devoted primarily to agriculture under the ownership and operation of a resident Montana family." Section 85-1-610, MCA. This definition includes a family farm which is incorporated, is a partnership, or is in the form of any other business or ownership entity provided the family retains greater than 50% control.

(2) "Montana family" means those individuals related by blood or marriage to each other who are residing in Montana at the time of application and at the time the grant or loan is awarded.

(3) "Multipurpose project" means a water develoment project or activity which has more than one use and may include but is not limited to such uses as irrigation, flood control, fish and wildlife, erosion control, water-related recreational use, municipal or industrial uses, water quality enhancement, or power generation.

(4) "Primary benefits" mean those net values attributable to a project or activity which result in an increase in products or services or result in a reduction in costs, damages, or losses to primary beneficiaries, or both. Primary benefits can include, but are not limited to, such benefits as water for irrigation, recreation, flood control, water quality, erosion control, and provision of a rural water supply.

(5) "Secondary benefits" mean net values to persons other than primary beneficiaries as a result of economic activity induced by or stemming from a project. Examples of secondary benefits include but are not limited to employment from project or activity construction and increased spending in a locality from construction workers, or increased business to a local farm implement business as a result of increased irrigation.

(6) "Tangible benefits" mean those benefits that can be expressed in monetary terms and may include both primary and secondary benefits.

(7) "Technical feasibility" means a project or activity which can be designed, constructed, operated, or carried out to accomplish the purpose or purposes for which it was planned utilizing accepted engineering and other technical principles and concepts.

AUTH: 85-1-612, MCA IMP: 85-1-609 and 85-1-610,MCA

RULE III ELIGIBILITY FOR PROGRAM (1) Public entities may receive funding for "the purchase, lease, development, or construction of water development projects and activities for the conservation, management, use, development or protection of the water and related agricultural, land,

fish, wildlife, and water recreation resource in the state; for the purpose of feasibility and design studies for such projects; for development of plans for the rehabilitation, expansion, and modification of water development projects; for other water development projects and activities that will enhance the water resources of the state; and for similar purposes approved by the legislature." Section 85-1-605, MCA.

(2) Private entities may receive funding for "the construction and development of water development projects and activities". Section 85-1-606, MCA. These projects and activities may include but are not limited to: irrigation system development or repair, saline seep abatement, offstream and tributary storage, canal lining, providing access to water recreation areas, streambank stabilization, erosion control, or rural water supply development.

AUTH: 85-1-612, MCA IMP: 85-1-605 and 85-1-606, MCA

RULE IV PROCESSING AND ACTION ON PROPOSED PROJECTS OR ACTIVITIES (1) A statement of intent for a grant or loan shall be made on Form 680 and submitted to the Water Development Bureau, Water Resources Division, Department of Natural Resources and Conservation, 28 South Rodney, Helena, MT 59620. This statement of intent will be used to determine whether a proposed project passes preliminary screening and merits further review. The Department may waive the statement of intent if preliminary screening can be completed without this statement.

(2) Upon written notification by the Department that the proposal has passed preliminary screening and may be considered for funding under the Water Development Loan and Grant Program, the applicant may make formal application using Form 681 and return it to the Department at the above address. The application shall be accompanied by information requested on the form and the prescribed application fee.

(3) The Department will specify application periods as necessary.

(4) The Department shall return an insufficient or incomplete application for correction or completion. The Department shall provide the applicant with reasons for the application's return and a description of the information required in order to make the application complete.

(5) The applicant may request assistance from the Department in completing the application. The Department will provide such assistance, the level of which will be determined by availability of staff and funds.

(6) The Department will solicit and consider public views regarding proposed projects and activities.

(7) After Department review procedures are complete, proposed projects will be ranked according to the statutory criteria and recommendations for funding priority will be made as discussed in Rule XIII describing ranking of projects. The approvals for funding of projects or activities proposed by private individuals will be made by the Department and those to public entities will be proposed to the Legislature. The applicant will receive written notification of the action taken on his proposal by the Department or the Legislature.

AUTH: 85-1-612, MCA IMP: 85-1-605, 85-1-606, and 85-1-608 through 85-1-612, MCA

RULE V STATEMENT OF INTENT FOR LOANS AND GRANTS The statement of intent shall contain:

(1) name, address, and telephone number of applicant or applicant's authorized representative, or both;

(2) title or name of proposed project or activity;

(3) location of proposed project or activity;

(4) description of the proposed project or activity and the desired accomplishment;

(5) preliminary estimate of project or activity costs and benefits. The estimate should include primary and secondary purposes and the benefits resulting from each;

(6) approximate amount of loan or grant money, or both, to be requested; and,

(7) statement of applicant's willingness to prepare required engineering, environmental, economic and financial feasibility studies of the project or activity as part of a loan or grant application, or both, if initial review indicates a proposal merits further review. This will not be required of applications for feasibility studies.

AUTH: 85-1-612, MCA IMP: 85-1-608 and 85-1-612, MCA

RULE VI APPLICATION CONTENT FOR LOANS AND GRANTS All applications shall contain:

(1) name, address, and telephone number of applicant or applicant's authorized representative, or both;

(2) title or name of proposed project or activity;

(3) location of proposed project or activity;

(4) description of the proposed project and the desired accomplishments;

(5) amount of loan or grant money, or both, to be requested. A statement as to whether money from other sources is available and whether or not it has been sought.

If it has, the applicant shall discuss the process and its results; if not, the applicant shall give the reasons;

(6) a brief description of the history and background of the project or activity;

(7) a discussion of the need and urgency for the project or activity including discussion of why the project or activity is the best means to achieve the desired result, description of other alternatives and the applicant's consideration of those alternatives, and description of why the proposed alternative is the most efficient use of the natural resources;

(8) proof that the applicant holds or can acquire all necessary lands, other than public lands,and interests therein and water rights necessary for the construction, operation, and maintenance of the proposed water development project or activity;

(9) a statement that the applicant if successful, is able and willing to enter into a contract with the Department for repayment of loan funds or utilization of grant funds;

(10) a statement regarding the public benefits which would result from the proposed project or activity as these benefits are required by law. Public benefits include but are not limited to recreation, flood control, erosion reduction, access to recreation opportunities, and wildlife conservation; Section 85-1-102(7), MCA; and,

(11) the detail of the information required for feasibility evaluation - technical, economic, environmental and legal - will vary among proposed projects and activities. Before a formal application is submitted, the Department will advise the applicant of the informational detail in each of these areas. In general the types of information that will be requested are described in Rule VII through Rule XI.

AUTH: 85-1-612, MCA IMP: 85-1-609 and 85-1-610, MCA

RULE VII TECHNICAL FEASIBILITY OF PROJECTS AND ACTIVITIES. Technical data and information to be provided in the application describing the technical feasibility of the project or activity should include, but is not limited to, the following:

(1) a detailed and thorough discussion of the plan of development selected including techniques to be utilized in all aspects of the project or activity;

(2) a description of all field or research investigations or design criteria for projects made to substantiate the technical feasibility which may include but is not limited to soils, geologic, hydraulic, or hydrologic

investigations. For projects, criteria for final design should also include structural, embankments, and foundation criteria;

(3) maps, drawings, charts, tables, etc., used as a basis for the feasibility analysis;

(4) a description of the water and land rights associated with the project and pertinent water supply information, if appropriate; and,

(5) The Department may request any additional information deemed necessary to document technical feasibility;

AUTH: 85-1-612, MCA IMP: 85-1-609 and 85-1-610

RULE VIII ECONOMIC FEASIBILITY OF PROJECTS AND ACTIVITIES (1) All projects and activities which receive funding must be economically feasible. Project or activity benefits must exceed project or activity costs. When reviewing projects and activities for economic feasibility, an appropriate discount rate will be used.

(2) In most cases, applicants for loans or grants will be responsible for providing required data necessary to determine the economic feasibility of a project or activity.

(3) All benefit and cost data supplied by the applicant must be current. The applicant must document the cost data and may be required to document the benefit data.

(4) In order to complete economic analyses, the Department may determine values for such cost and benefits as commodities, water quality, wildlife, recreation, and other costs and benefits as required. If the applicant conducts these analyses, he must use methodologies approved by the Department.

(5) Only tangible benefits may be considered in calculating the economic feasibility of proposed projects and activities. These may include primary and secondary benefits.

(6) The period of analysis for economic feasibility studies shall be 50 years or the life of the project or activity, whichever is less.

AUTH: 85-1-612, MCA IMP: 85-1-609, MCA

RULE IX ENVIRONMENTAL FEASIBILITY OF PROJECTS AND ACTIVITIES (1) A project or activity is considered to be environmentally acceptable when the plan of development mitigates, in a manner satisfactory to the Department, adverse impact on the environment. To assist the Department in determining environmental acceptance, the applicant must demonstrate the probable environmental and ecological

consequences of the project by considering all areas of study identified on an environmental checklist supplied by the Department. The Department will assess these results to determine if a proposed project or activity is environmentally feasible. If further information is needed an environmental impact statement will be required.

AUTH: 85-1-612, MCA IMP: 85-1-609, MCA

RULE X FINANCIAL FEASIBILITY FOR LOANS (1) A project or activity for which a loan application has been made must be financially feasible. A project or activity is financially feasible if sufficient funds can be made available to complete the project or activity, and if sufficient revenues can be obtained to repay the loan and to operate, maintain, and replace, if appropriate, the project or activity. The Department may require access to the applicant's most recent financial statement, budget document and other documentation required by the Department to assess financial feasibility. Preparation of financial statements will be approved by a Certified Public Accountant or the Department.

AUTH: 85-1-612, MCA IMP: 85-1-609, MCA

RULE XI COMPLIANCE WITH STATUTES AND RULES The applicant shall certify that the project or activity will comply with applicable statutory and regulatory standards such as those protecting the quality of resources such as air, water, land, fish, wildlife and recreational opportunities.

AUTH: 85-1-612, MCA IMP: 85-1-610, MCA

RULE XII SOLICITATION OF VIEWS FROM OTHER INTERESTED PARTIES (1) The Department shall solicit views of interested and effected parties during its evaluations of proposed projects and activities.

(2) The Department will form an Advisory Committee to assist in the final review and prioritization of these projects.

AUTH: 85-1-612, MCA IMP: 85-1-611, MCA

RULE XIII RANKING OF FEASIBLE PROJECTS OR ACTIVITIES TO DETERMINE FUNDING PRIORITIES (1) The Department will utilize a point scoring system to rate all feasible projects in regard to how well they meet the statutory criteria for the program.

(2) The results of this scoring will determine the funding priority for private entities and the recommendations made to the Legislature for public entities.

AUTH: 85-1-612, MCA IMP: 85-1-606, MCA

RULE XIV REPORTING AND MONITORING PROCEDURES (1) The Department will require periodic progress and fiscal reports from the project sponsor. The Department will also make periodic field inspections to insure that plans and specifications are being followed, and that the works, if any, are being constructed in accordance with sound engineering and technical principles and practices. The Department will bring to the attention of the sponsor or the attention of the project engineer or director, or both, any unapproved variances from the approved plans and specifications. The sponsor, the project engineer, or the Department shall initiate necessary corrective action.

AUTH: 85-1-612, MCA IMP: 85-1-616, MCA

RULE XV SERVICING OF LOANS (1) The Department will service all loans made using Water Development Program funds.

(2) The Department will notify the applicant of loan approval with a commitment letter from the Department. The applicant and the Department will then enter into a loan agreement if the following conditions are met:

(a) funds are available;

(b) security has been offered by the applicant and accepted by the Department;

(c) a water right, or necessary interest in the use of water, if required, has been obtained;

(d) report for title insurance on the security has been obtained;

(e) both parties will sign the loan agreement; and,

(f) other conditions that the Department shall consider appropriate have been met.

(3) The Department will enter into a loan agreement with the project sponsor. This agreement shall contain at least:

(a) a detailed scope of work and budget which have been agreed upon by the applicant and the Department;

(b) a disbursement schedule for these loan funds which will be dependent on progress of the proposed project or activity, and an administrative procedure by which these funds will be disbursed;

(c) a loan repayment period which will be a maximum of 30 years or the useable life of the project, whichever is less;

(d) a loan repayment procedure and schedule; and,

(e) other information the Department shall consider appropriate.

(4) The Department may enter into agreements with financial institutions for servicing of loans if the Department determines that it is more efficient or economical to do so. This change to the use of financial institutions may be made at any time. This service may include credit and risk assessment, loan closure, establishing repayment periods and schedule, required accounting service, making proper repayments to the water development earmarked or clearance accounts and conducting foreclosure procedures. If the Department chooses to use financial institutions, applicants will pay for these services. The rate paid to financial institutions will be one agreed upon contractually between the Department and the institutions.

AUTH: 85-1-612, MCA IMP: 85-1-612, 85-1-615, and 85-1-616, MCA

RULE XVI INTEREST RATES FOR LOANS Interest rates on the loans will be set by the Board of Natural Resources and Conservation. In setting these rates the Board will consider:

(1) the cost of capital to the program, and

(2) effect of the interest rate on accomplishing the objectives of the program.

AUTH: 85-1-612, MCA IMP: 85-1-613, MCA

RULE XVII SECURITY FOR LOANS (1) The Department will obtain security which is at least equal to 125% of the value of the loan.

(2) Real property used for securing the loan must have been appraised by an appraiser acceptable to the Department, or a Department appraiser. The appraisal must be current. Appraisal results need not accompany the application but must be supplied to the Department when needed for application evaluation.

(3) A partial release of lien may be granted by the Department upon written request of the borrower if the remaining security is equal to 125% of the outstanding loan and interest debt due the Department.

(4) Foreclosures on delinquent loans will be made in accordance with applicable state law governing foreclosure

of mortgages and liens. The borrower shall be apprised of these procedures at the time of loan closure and shall be given adequate notice of the institution of foreclosure proceedings.

AUTH: 85-1-612, MCA IMP: 85-1-613 and 85-1-615, MCA

RULE XVIII USE OF FUNDS FOR GRANTS VERSUS LOANS (1) The Department will, in the absence of extenuating circumstances, allocate or recommend allocation of funds such that grant funds are used to finance:

(a) feasibility studies;

(b) worthy projects with no real repayment capacity; and

(c) up to 25% of the total cost of projects with repayment capacity.

(2) Loan funds will be used for projects with repayment capacity or for any of the three grant categories above as requested.

AUTH: 85-1-612, MCA IMP: 85-1-612 and 85-1-616, MCA

RULE XIX FEES (1) An applicant must pay a $150 fee upon making formal application to the program. The Department may elect to refund this fee , or any portion thereof, if initial review does not require substantial staff time and the project is found to be infeasible.

(2) A loan applicant must bear the cost of appraisal of offered security and filing or related costs necessary to perfect the security interest.

(3) If an environmental impact statement is required pursuant to the Montana Environmental Policy Act and the Department's rules (ARM 36.2.601 through 36.2.608), the applicant must bear the cost of the environmental impact statement. These rules set out a fee schedule which will be used for this program.

(4) As required by Section 85-1-616, MCA, the Department shall collect "reasonable fees or charges for the servicing of loans". The fee for servicing costs will be a one time charge of 5% of the value of the loan for servicing costs.

AUTH: 85-1-612, MCA IMP: 85-1-612 and 85-1-616, MCA

RULE XX FORMS The following forms are used in the administration of these rules:

(1) Statement of intent (Form 680); and
(2) Application (Form 681).

AUTH: 85-1-612, MCA IMP: 85-1-612, MCA

4. The Board of Natural Resources and Conservation is preparing these rules to implement the water development loan and grant program. The proposed rules describe how the criteria expressed in the law will be applied; prescribe the form and content of applications; provide policies and procedures for the preparation, evaluation and administration of applications; provide for the servicing of loans and grants including arrangements for obtaining security interests for loans; provide for the establishment of reasonable fees and charges to be made; and, prescribe the terms and conditions for making grants and loans, the security instruments, and agreements necessary.

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 Mark O'Keefe, Chief, Water Development Bureau, Department of Natural Resources and Conservation, 32 S. Ewing, Helena, Montna, 59620, no later than December 28, 1981.

6. Mark O'Keefe has been designated to preside over and conduct the hearing.

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

BY: Dennis Hemmer
Deputy Director
Department of Natural Resources and Conservation

Leo Berry, Jr.
Director
Department of Natural Resources and Conservation

Certified to the Secretary of State November 16, 1981.

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

IN THE MATTER of Proposed Adoption of New Rules Governing Water Service Provided by Privately-Owned Water Utilities and County Water Districts.	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF NEW RULES GOVERNING WATER SERVICE.

TO: All Interested Persons

1. On February 2, 1982, at 10:00 a.m., a public hearing will be held in the Montana Senate Chambers, State Capitol Building, Helena, Montana, to consider the adoption of rules governing water service.

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

3. The proposed rules provide as follows:

Rule I. GENERAL RULES FOR PRIVATELY-OWNED WATER UTILITIES AND COUNTY WATER DISTRICTS (1) The following general rules and regulations shall be effective for all water utilities subject to the regulatory jurisdiction of the Public Service Commission. For the purposes of these rules and regulations, where the term "utility" is used, it shall be construed to include both privately-owned water utilities and county water districts.

AUTH: 69-3-102, MCA; IMP. 69-3-102, MCA

RULE II. APPLICATION FOR WATER SERVICE (1) All customers wanting water service must make an application at the utility office on printed forms setting forth all purposes for which water will be used upon their premises.

(2) All applications for the introduction of water service to any premises must be signed by the property owner. Any change in the identity of the contracting consumer at the premises will require a new application for water service.

(3) Where the contracting consumer is a renter, a leasee, or is not the property owner, an application for water service shall be made in the consumer's own name, and the consumer shall be liable for payment for the water service. In such instances, the utility shall notify the property owner of the new service application by placing the contracting consumer's name and the date of his service application on the property owner's application.

(4) Upon the acceptance of the application for water service, the consumer shall have the right to take and receive a supply of water for the particular premises for the purposes specified in the application subject to compliance by the consumer with these rules.

(5) When an application for new water service has been granted, the utility at its own expense will tap the main and furnish corporation cock, and clamp when necessary, and any other material used or labor furnished in connection with the tapping of the main. All expense of laying and maintaining the

service pipes from the mains to the premises of the consumer must be borne by the consumer. The service pipe must be laid below street grade, on the premises of the consumer and at a standard depth designated by the utility to prevent freezing. A curb cock and curb box of approved pattern must be installed by the consumer at a point designated by the utility. Whenever a tap is made through which regular service is not immediately desired, the applicant consumer will bear the entire expense of tapping, subject to a refund whenever regular service is begun.

(6) No charge may be made for turning on the water to a new consumer during the regular working hours of the utility.

AUTH: 69-3-102, MCA; IMP. 69-3-102, MCA

RULE III. PROVISION OF WATER SERVICE (1) Service Pipes. Service pipes shall be so arranged that the supply of each separate building, house or premises, may be controlled by a separate curb cock, placed within or near the line of the street curb, under rules established by the utility or civil authorities. This curb cock and box must be easily accessible and must be kept in repair by the owner of the premises.

(2) Stop and Waste Cock. A stop and waste cock must be placed at some convenient point inside of the building located where it cannot freeze, and where water from the building can be readily shut off, and the water pipes drained to prevent freezing.

(3) Waste of Water. Waste of water is prohibited, and consumers must keep their fixtures and service pipes in good working order at their own expense, and keep all waterways closed when not in use. Leaky fixtures must be repaired at once without waiting for notice from the utility. If reasonable notice is given by the utility and the repair is not made, the water will be shut off by the utility without further notice.

(4) Limitations on Connections. No plumber or other person will be allowed to make connection with any conduit, pipe or other fixture or to connect pipes when they have been disconnected, or to turn water off or on, on any premises without permission from the utility.

(5) Mains. The system of mains must extend to the point where service is desired.

(6) Extension of Mains.

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

(b) The utility shall make provisions in its tariff for the extension of service mains through special rules to be approved by the Public Service Commission.

(7) Lawn Sprinkling. Permits for lawn sprinkling may be

secured at the office of the utility. When necessary, the utility may impose lawn sprinkling restrictions.

(8) Billing Errors.

(a) Where an overcollection error in billing has occurred, the utility must go back in time as far as is necessary to cover and/or to reconcile the erroneous billing for the consumer or as directed by the Public Service Commission.

(b) Where an undercollection error in billing has occurred, the utility shall only go back in time to the date of the service application of the current consumer or when applicable back in time to the date of the most recent meter test.

AUTH: 69-3-102, MCA; IMP. 69-3-102, MCA

RULE IV. CONSUMER DISCONTINUANCE OF SERVICE

(1) Permanent Discontinuance. A consumer who, for any reason, including the vacating of the premises, wishes to have the water service permanently discontinued, shall give the utility at least 24 hours' notice and shall specify the date that service be discontinued. Until the utility has received such notice, the consumer shall be held responsible for all service rendered to the premises.

(2) Temporary Discontinuance. If a consumer wants to temporarily discontinue the water service, as in instances of seasonal use, the consumer shall notify the utility of the request in writing. After the utility has received such notice, the utility will shut off the water at the curb and allowance will be made on the bill for the time the water service is not in use. No deduction in bills will be made for the time any service pipes may be frozen. The utility may assess the consumer a reconnection charge as provided in Rule V(2).

AUTH: 69-3-102, MCA; IMP. 69-3-102, MCA

RULE V. UTILITY DISCONTINUANCE OF SERVICE

(1) Notice of Discontinuance.

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

(b) A utility may not terminate service to any consumer unless written notice is sent by first class mail to the consumer that bills are ten or more days delinquent, or that the violation of the rules and regulations must cease. If no response to the first notice is received within ten days of mailing, the utility must send a second notice by first class or certified mail, or personally serve the customer at least ten days prior to the date of the proposed termination. If no response to the second notice is received within ten days, the utility shall leave notice in a place conspicuous to the consumer that service will be terminated on the next business day unless the delinquent charges have been paid or the violation of the rules and regulations have ceased.

(c) Where fraudulent use of water is detected, or where the utility's regulating or measuring equipment has been tampered with, or where a dangerous condition is found to exist on the consumer's premises, the water may be shut off without notice in advance.

(d) In no case shall the utility discontinue service on Friday, Saturday, Sunday, or a day prior to holiday. All disconnections shall be performed between the hours of 8:00 a.m. and 12:00 noon.

(2) Charge for Reconnection.

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

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

(c) If a consumer requests that water service be discontinued and then requests service be recontinued any time within eight months following the discontinuance, the utility may require the consumer first pay a reconnection charge as set forth in the utility's tariff.

(3) Emergency Service Disruption. Notice will be given, whenever possible, prior to shutting off water, but consumers are warned that owing to unavoidable accidents or emergencies their water supply may be shut off at any time. In the event of such accidents or emergencies, consumers are advised to take the necessary precautions to prevent damage to their fixtures and premises.

(4) Water use by Contractors, Builders or Owners. Contractors, builders or owners are required to take out a permit for the use of water for building and other purposes in construction work. Consumers are warned not to allow contractors to use their fixtures unless they produce a permit specifying the premises on which the water is to be used. Water will not be turned on at any new building until all water used during construction has been paid for.

(5) Temporary Service Failure. Any temporary failure on the part of the utility to supply service by reason of accident or otherwise shall not render the utility liable beyond a pro rata abatement of service charges during such interruption.

AUTH: 69-3-102, MCA; IMP. 69-3-102, MCA

RULE VI. GENERAL FLAT RATE AND METER RATE RULES (1) The following general flat rate and meter rate rules shall not be construed to mean that any utility must have both flat rates and meter rates. A utility may adopt, subject to the approval of the Public Service Commission, either a flat rate or a meter rate schedule, or both. In addition to the general flat rate and meter rate rules, a utility may adopt, subject to the approval of the Commission, other rules to be designated as

special rules, to fit local conditions. In case of any apparent conflict in rules, the general rules shall govern.

AUTH: 69-3-102, MCA; IMP. 69-3-102, MCA

RULE VII. FLAT RATES (1) Water Uses. The flat rate will cover the use of water for domestic uses, lawn sprinkling and any other purposes enumerated on the rate sheet covering flat rate services. If a consumer furnishes other people with water without permission from the utility or uses water for purposes other than those the consumer is paying for, it is a violation of the consumer's contract with the utility. Ten days after the consumer in violation has received written notice from the utility, the utility may have the water shut off and service discontinued. When the unauthorized service has been paid for, together with payment of the reconnecting charge as set forth in the utility's tariff, the utility will reestablish service.

(2) Additional Fixtures. If a consumer on a flat rate schedule wants to install additional fixtures or wants to apply the water to purposes not stated in the original application, written notice must be given the utility prior to such installation or change of use. If a consumer places new fixtures on his premises without notifying the utility, when such fixtures are discovered, a charge will be made for the extra fixtures at schedule rates for the length of time such fixtures have been installed.

AUTH: 69-3-102, MCA; IMP. 69-3-102, MCA

RULE VIII. METER RATES (1) Meter rates will apply to all water serivces not covered by the flat rate schedule. Any consumer wanting to receive water by meter measurement may have a meter placed by the utility under the following rules and regulations. Meters may be installed on any service when they become necessary to prevent waste of water.

AUTH: 69-3-102, MCA; IMP. 69-3-102, MCA

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

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

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

(4) The utility may install or replace any meter at such time as it may see fit and shall determine the size of any

meter installed.

AUTH: 69-3-102, MCA; IMP. 69-3-102, MCA

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

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

AUTH: 69-3-102, MCA; IMP. 69-3-102, MCA

RULE XI. METER READING (1) The utility shall normally read meters for all urban consumers at monthly or bimonthly intervals and for all rural consumers at regular intervals up to six months. The day of the month for reading any meter as determined by the utility shall as closely as practicable be the same for each reading. The utility at its option and subject to the approval of the Commission may read the meters at less frequent intervals if in the opinion of the utility such procedure tends to result in operating economies, but in no instance shall a meter be read less than once in six months.

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

AUTH: 69-3-102, MCA; IMP. 69-3-102, MCA

RULE XII. METER ACCURACY (1) Accuracy Dispute. In case of a dispute as to the accuracy of a meter, the consumer, may demand that the meter be removed, and tested as to accuracy, in his presence. If the meter is found to be registering correctly or in favor of the consumer, the cost of such testing and replacing of the meter shall be borne by the consumer. If the meter is found to be recording incorrectly and against the consumer, the cost of such testing and replacing of the meter shall be borne by the utility.

(2) If an overcollection or undercollection error in billing has occurred due to an inaccurate meter, the utility shall follow Rule III(8).

AUTH: 69-3-102, MCA; IMP. 69-3-102, MCA

RULE XIII. METER TESTS (1) Sample Tests. The utility shall select a sample of five percent of all of its meters in service each year for testing the accuracy of its registration.

(2) Fast Meters. If, upon test of any meter, the meter is found to have an average error of more than two percent fast, the utility shall refund to the customer the overcharge,

based upon the corrected meter reading for a period equal to one-half the time elapsed since the last previous test. If attributable to some cause, the date of which can be fixed, the overcharge shall be computed back to but not beyond such date.

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

RULE XIV. METER BILLING (1) Where an overcollection or undercollection error in billing has occurred, the utility shall follow Rule III(8).

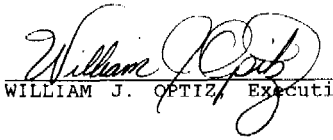
(2) Water consumers are not permitted to interfere in any way with the meter after it is set in place. In case the meter seal is broken or the working parts of the meter have been tampered with or the meter damaged, the utility may render a bill for the current month, based on an average of the last two months, together with the full cost of such damage as has been done to the meter, and may refuse to furnish water until account is paid in full.

AUTH: 69-3-102, MCA; IMP. 69-3-102, MCA

4. The Commission is proposing these rules in order to provide both privately-owned water utilities and county water districts and their consumers a clear indication of their rights, privileges and obligations under the regulatory jurisdiction of the Montana Public Service Cmmission.

5. Interested persons may submit their data, views or arguments concerning the appropriateness of these proposed rules at the hearing above notice or in writing to Opal Winebrenner, 1227 11th Avenue, Helena, Montana 59620, no later than January 18, 1982.

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



WILLIAM J. OPTIZ, Executive Director

CERTIFIED TO THE SECRETARY OF STATE November 16, 1981.

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE Amendment of Various Rules and Adoption of New Rules relating to the Montana individual income tax and found in Title 42, Chapter 15, of the Administrative Rules of Montana.	))))))	NOTICE OF PROPOSED AMENDMENT OF RULES AND ADOPTION OF NEW RULES relating to the Montana Individual Income Tax. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 28, 1981, the Department of Revenue proposes to Amend Rules 42.15.104, 42.15.111, 42.15.121, 42.15.201, 42.15.301, 42.15.302, 42.15.304, 42.15.305, 42.15.311, 42.15.312, 42.15.314, 42.15.402, 42.15.403, 42.15.404, 42.15.405, 42.15.411, 42.15.421, 42.15.431, 42.15.432, 42.15.503, 42.15.504, 42.15.511, and 42.15.512, and to Adopt New Rules relating to the Montana individual income tax.

2. The rules proposed for amendment are found in ARM, Title 42, Chapter 15, at pages 42-1505 through 42-1586. The new rules are not presently found in the ARM.

3. The new rules proposed for adoption provide:

Rule I. INTEREST INCOME EXCLUSION. (1) Pursuant to 15-30-111, MCA, interest income earned by a taxpayer who is age 65 or over is exempt from Montana income tax for the following amounts and filing requirements:

(a) if single, the exclusion cannot exceed $800;

(b) if married and a joint return is filed, the exclusion cannot exceed $1600;

(c) if married and only one spouse is age 65 or over and separate returns are filed, the exclusion cannot exceed $800 for the spouse who is age 65 or over;

(d) if married and both spouses are age 65 or over and separate returns are filed, the exclusion cannot exceed $800 for each spouse and each spouse must claim his or her own exclusion.

(2) The exclusion cannot exceed the amount reported as income. The exclusion under subsection (1)(b) applies even if only one spouse is age 65 or over.

Auth: 15-30-305; IMP: 15-30-111.

Rule II. TWO-EARNER MARRIED COUPLES-DEDUCTION. The adjustment to federal gross income permitted by IRC §§62(16) and 221, as those sections may be amended, for two-earner married couples is only permitted to such couples who file a Montana joint return and is effective for tax years beginning after December 31, 1981.

Auth: 15-30-305; IMP: 15-30-111.

The rules as proposed to be amended provide as follows:

42.15.104 PERMANENT PLACE OF ABODE (1) A person ~~may be domiciled outside Montana and still be~~ is a resident for purposes of this tax by reason of maintaining a "permanent place of abode" in Montana and not establishing a permanent home elsewhere.

(2) A "permanent place of abode" is a dwelling place permanently maintained in Montana, regardless of whether or not actually owned by the taxpayer, which he habitually uses as his home. A permanent place of abode need not be permanent in the sense that the party does not intend to abandon it at some future time.

Auth: 15-30-305, IMP, 15-30-101(12).

42.15.111 MONTANA MILITARY PERSONNEL (1) Residents of Montana who enter the Armed Forces of the United States do not lose their residence or domicile in Montana solely by reason of being absent from this state in compliance with military orders. Accordingly, such persons remain subject to this tax in the same manner and to the same extent as other persons who are residents of Montana.

(2) However, effective with taxable years ending after December 31, 1974, compensation for active duty service as a member of the regular Armed Forces is exempt from tax.

(3) Residents will be considered members of the Armed Forces on active duty when they are called to duty under Title 10, U.S.C.A. Montana National Guard members and others serving under another authority are subject to the tax.

Auth: 15-30-305, IMP, 15-30-101(12) and 15-30-116.

42.15.121 TAX STATUS OF INDIANS (1) The term "Indian" is construed to mean an enrolled member of an Indian tribe. An Indian's income is taxable to the same extent as that of non-Indians, subject only to the following exceptions:

(a) An Indian residing on ~~the~~ an Indian reservation ~~wherein he or she is enrolled~~ is not taxable with respect to income derived from sources within the exterior boundaries of ~~that particular~~ an Indian reservation. ~~For purposes of this paragraph, income shall be allocated and apportioned to source in accordance with the rules set forth in regulations [42-2.8(1)-S8310] and ARM 42.16.1117.~~ When income is earned both on and off reservations, it shall be allocated according to the source.

(b) An Indian, regardless of residence, is not taxable with respect to income derived directly from alloted or restricted lands held in trust by the United States for the Indian's benefit.

(2) An Indian residing outside the exterior boundaries of an Indian reservation has no special exemption other than income derived from ~~alloted~~ allotted or restricted lands, as set forth in subsection (1)(b) of this section.

Auth: 15-30-305 MCA; IMP, 15-30-101(12).

42.15.201 ACCOUNTING PERIODS (1) The taxpayer's taxable year is his taxable year for federal income tax purposes. If the taxpayer's taxable year is changed for federal income tax purposes, his Montana income tax taxable year is automatically so changed.

(2) An annual accounting period can be either a calendar year or a fiscal year if ~~the books~~ records are kept on such a basis.

Auth: 15-30-305 IMP, 15-30-101(14).

42.15.301 WHO MUST FILE RETURNS (1) Every single person and every married person not filing a joint return with his or her spouse must file a return if his or her gross income for the taxable year is more than ~~$720~~ $1000, adjusted as provided in subsection (3), plus the value of the exemptions he or she is entitled to for age 65 and for blindness. Married persons not electing to file separate returns must file a return if the combined gross income of the spouses for the taxable year exceeds ~~$1,445~~ $2,000, adjusted as provided in subsection (3), plus the value of the exemptions they are entitled to for age 65 or blindness.

(2) An estate or trust must file a return if its gross income for the year exceeds its exemption allowance. In the case of estates and trusts, the fiduciary is responsible for making the return.

(3) By November 1 of each year the department will multiply the minimum amount of gross income necessitating the filing of a return by the inflation figure for the taxable year.

Auth: 15-30-305 IMP, 15-30-142 and 15-30-143.

42.15.302 FILING DATE ON HOLIDAY OR WEEKEND (1) If the date for filing falls on a holiday or weekend, the due date for the return shall be by midnight of the next ~~working~~ week day following such holiday or weekend.

Auth: 15-30-305 IMP, 15-30-144.

42.15.304 PARTNERSHIP RETURN (1) Persons carrying on a business in Montana in partnership are liable for tax only in their individual capacity. However, the partnership is required to file ~~the following information returns~~ a Partnership Information Return of Income reporting each partner's distributive shares of profit or loss for the partnership's annual accounting period~~:~~ . Upon request of the department, the partnership shall furnish a copy of its United States Partnership Return of Income.

~~(a) a copy of its Federal Form 1065, "U.S. Partnership Return of Income"; and~~

~~(b) Montana card form "Partnership Information Return of Income".~~

(2) Partnership returns are due on or before the 15th day of the 4th month following the close of the partnership's annual

accounting period. The returns are to be filed with the Department of Revenue, Helena, Montana, ~~59601~~ 59620.

(3) Partners must include a copy of their federal partnership Schedule K-1 when filing their individual tax return.

Auth: 15-30-305, IMP, 15-30-133.

42.15.305 TRUST AND ESTATE RETURNS (1) If an estate or trust has gross income for its taxable year of ~~$650~~ $800, adjusted as provided in subsection (2), or more, the fiduciary of the estate or trust shall make and file a return. However, estates or trusts held exclusively for charitable, educational, or religious purposes are not subject to tax and a return is not required thereof.

(2) By November 1 of each year the department will multiply the minimum amount of gross income necessitating the filing of a return by the inflation figure for the taxable year.

~~(2)~~ (3) The return for an estate or a trust is to be made on Montana Form 2 and must include a statement showing each beneficiary's distributive share of income, regardless of whether or not distributed as of the close of the taxable year. The return may be made on Federal Form 1041; provided, Montana Form 2 is attached and completed as to name, address, taxable income, and tax liability. The return is due on or before the 15th day of the 4th month following the close of the taxable year and is to be filed with the Department of Revenue, Helena, Montana, ~~59601~~ 59620.

~~(3)~~ (4) The income of an estate or trust is its income reportable for federal income tax purposes with the modifying adjustments specified in 15-30-111, MCA.

Auth: 15-30-305, IMP, 15-30-135.

42.15.311 INFORMATION RETURN (1) Information returns are to be made on either Federal Form 1099 or Form 1-A, which may be secured by directing a request to the Department of Revenue, Helena, Montana, ~~59601~~ 59620. ~~However, copies of Federal Form 1099 may be used in lieu of the Form 1-A.~~ Upon approval from the department, computer generated tapes may be substituted for the forms.

(2) Information returns are due on or before the 15th day of April following the close of the calendar year with respect to which payments made are being reported. The returns are to be filed with the Department of Revenue, Helena, Montana ~~59601~~ 59620. The information returns are to be accompanied by Form 1, which summarizes the information reported by the information agent.

Auth: 15-30-305, IMP, 15-30-301.

42.15.312 REPRODUCTION OF RETURN FORMS Subject to the following conditions, the department will accept reproduction of the official return forms:

(1) Reproductions must be facsimiles of the official form.

(2) They must duplicate the color of paper and the color of

ink or be on white paper with black ink.

(3) They must be clearly legible.

(4) They must be ~~of at least as good~~ on paper the quality and weight of ~~paper as~~ the official form.

(5) They must be made on paper which may readily and permanently be written upon and stamped with ink.

(6) They must be of the same size as the official form.

Auth: 15-30-305, IMP, 15-30-144.

42.15.314 CHANGES IN FEDERAL RETURNS OR TAXES (1) If a taxpayer fails to file within ~~the time specified~~ 90 days, a required report of changes or corrections in his federal taxable income or an amended Montana return reflecting changes in federal taxable income as reported on an amended federal return, the period within which a deficiency in tax may be assessed is extended.

(2) In addition, the taxpayer will be liable for the penalties provided for under 15-30-321(3), MCA.

Auth: 15-30-305, IMP, 15-30-304.

42.15.402 PERSONAL EXEMPTION (1) The taxpayer is always entitled to a ~~$650~~ $800, adjusted as provided in subsection (3), exemption for himself.

(2) He is also entitled to a ~~$650~~ $800, adjusted as provided in subsection (3), exemption for his spouse if he is filing a separate return and if the spouse for the calendar year in which the taxable year of the taxpayer begins has no gross income and is not the dependent of another taxpayer. Thus, the taxpayer is not entitled to an exemption for his spouse on his separate return for the taxable year beginning in a calendar year during which the spouse has any gross income. However, in cases where husband and wife file a joint return, there are two taxpayers and, accordingly, two exemptions of ~~$650~~ 800, adjusted as provided in subsection (3), ~~(one exemption for each taxpayer)~~ are ~~always~~ allowed ~~on such a return~~.

(3) By November 1 of each year the department will multiply the exemption amount by the inflation figure for the taxable year.

~~(3)~~ (4) If ~~in any case~~ a joint return is made by the taxpayer and his spouse, no other person may claim an exemption for the spouse even though such other person would have been entitled to claim an exemption for the spouse as a dependent if the joint return had not been made.

Auth: 15-30-305, IMP, 15-30-112(2).

42.15.403 EXEMPTIONS FOR DEPENDENTS (1) The taxpayer is entitled to an exemption of ~~$650~~ $800, adjusted as provided in subsection (2), for each person who qualifies as his dependent and whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than ~~$650~~ $800 or who is a child of a taxpayer and meets one of the following conditions:

(a) has not attained the age of 19 at the close of the calendar year in which the taxable year of the taxpayer begins; or

(b) is a student.

(2) By November 1 of each year the department will multiply the exemption amount by the inflation figure for the taxable year.

~~(2)~~ (3) No exemption is allowed for any dependent who has made a joint return with his or her spouse for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

Auth: 15-30-305, IMP, 15-30-112(5).

42.15.404 ADDITIONAL EXEMPTION FOR SENIOR CITIZENS (1) The taxpayer is entitled to an additional ~~$650~~ $800, adjusted as provided in subsection (4), exemption for himself if he has attained the age of 65 before the close of his taxable year.

(2) The taxpayer is also entitled to an additional ~~$650~~ $800, adjusted as provided in subsection (4), exemption for his spouse if the spouse has attained the age of 65 before the close of the taxpayer's taxable year and if:

(a) a separate return is made by the taxpayer; and

(b) the taxpayer is otherwise entitled to claim the exemption for his spouse under ARM 42.15.402.

(3) If husband and wife make a joint return, the ~~$650~~ $800, adjusted as provided in subsection (4), exemption for age 65 will be allowed as to each spouse who has attained the age of 65 before the close of the taxable year for which the joint return is made.

(4) By November 1 of each year the department will multiply the exemption amount by the inflation figure for the taxable year.

~~(4)~~ (5) In no event will the additional exemption for age 65 be allowed with respect to a spouse who dies before attaining the age of 65. For the purposes of the age 65 exemption, an individual attains the age of 65 on the first moment of the day preceding his 65th birthday. Accordingly, a person whose birthday falls on January 1 will attain the age of 65 on December 31 of the calendar year immediately preceding.

Auth: 15-30-305, IMP, 15-30-112(3).

42.15.405 ADDITIONAL EXEMPTION FOR BLINDNESS (1) The taxpayer is entitled to an additional ~~$650~~ $800, adjusted as provided in subsection (4), exemption for himself if he is blind at the close of his taxable year.

(2) The taxpayer is also entitled to an additional ~~$650~~ $800, adjusted as provided in subsection (4), exemption for his spouse if the spouse is blind at the close of the taxpayer's taxable year and if:

(a) a separate return is made by the taxpayer; and

(b) the taxpayer is otherwise entitled to claim the exemption for his spouse under ARM 42.15.402.

(3) If a husband and wife make a joint return, the ~~$650~~ $800, adjusted as provided in subsection (4), exemption for blindness will be allowed as to each spouse who is blind at the close of the taxable year for which the joint return is made.

(4) By November 1 of each year the department will multiply the exemption amount by the inflation figure for the taxable year.

~~(4)~~ (5) The determination of whether the spouse is blind shall be made as of the close of the taxpayer's taxable year, ~~unless~~ or if the spouse dies during such taxable year~~. In this event, the determination of blindness shall be made~~ , as of the date of death.

~~(5)~~ (6) A blind person is one whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or one whose visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

Auth: 15-30-305, IMP, 15-30-112(4).

42.15.411 EXEMPTIONS FOR NONRESIDENTS (1) Persons who are not residents of Montana and persons who were residents of Montana for only a fractional part of the taxable year are allowed the same exemptions as allowed to taxpayers who were residents of this state for the entire taxable year. However, the exemption deduction allowable is that fractional part of the total exemption allowance which the taxpayer's Montana adjusted gross income bears to his federal adjusted gross income. For example, assume a taxpayer is entitled to three exemptions and has a Montana adjusted gross income of $5,000 and federal adjusted gross income of $10,000. The value of his exemptions is ~~$1,950~~ $2,400 (3 exemptions times ~~$650~~ $800, assuming an inflation figure of 1). His allowable deduction, however, is ~~$975~~ $1,200 ($5,000 ÷ $10,000 = 50%, 50% of ~~$1,950~~ $2,400 = ~~$975~~ $1,200).

(2) A nonresident estate or trust must prorate its ~~$650~~ exemption allowance of $800, adjusted as provided in subsection (3), as explained above for nonresident and fractional year resident individuals.

(3) By November 1 of each year the department will multiply the exemption amount by the inflation figure for the taxable year.

Auth: 15-30-305, IMP, 15-30-112.

42.15.421 STANDARD DEDUCTION (1) Individuals who were residents of Montana during the taxable year, including individuals who were residents of this state for a fractional part of the taxable year, may elect to claim the standard deduction. The optional standard deduction is not allowed to nonresidents.

(2) The allowable standard deduction is ~~10%~~ 20% of the taxpayer's Montana adjusted gross income for the taxable year but may not exceed ~~$500~~ $1,500, adjusted as provided in subsection

(3), except in the case of a joint return of husband and wife, in which case it may not exceed ~~$1,000~~ $3,000, adjusted as provided in subsection (3). The standard deduction is in lieu of all itemized deductions referred to in 15-30-121, MCA.

(3) By November 1 of each year the department will multiply the maximum amount by the inflation figure for the taxable year.

~~(3)~~ (4) In the event husband and wife file separate returns, if one spouse elects to claim itemized deductions, then the other spouse may not claim the standard deduction. The restriction upon the right of a married person to elect the standard deduction in his separate return is applicable unless the spouses are legally separated under a decree of divorce or separate maintenance in effect on the last day of the taxable year. In the event of death of one of the spouses, the restriction is applicable with respect to the taxable year ended with death and the taxable year of the surviving spouse in which the death occurs.

Auth: 15-30-305, IMP, 15-30-122.

42.15.431 ~~DEDUCTION~~ CREDIT FOR INVESTMENT FOR ENERGY CONSERVATION (1) A ~~deduction from adjusted gross income in determining personal income tax under Title 15, Chapter 30, MCA,~~ credit against tax liability is allowed for a portion of expenditures made in both residential and nonresidential buildings for the purpose of conserving energy.

(2) Single and multiple family dwellings shall be subject to the residential credit limitations. All other buildings shall be subject to the limitations for nonresidential buildings. A building used for both residential and nonresidential purposes shall be categorized according to its primary use. Primary use is based on either actual or imputed rents.

~~(2)~~ (3) In new construction no ~~deduction~~ credit is allowed for that portion of capital expense incurred in meeting established standards. In new residential and nonresidential buildings only the cost for that portion of a capital expenditure that is in excess of established standards is to be used in calculating the ~~deduction~~ credit. The standards utilized by the department of revenue in determining allowances will be taken from the currently recognized energy building code in Montana. If Montana does not have an applicable energy building code then national standards meeting the demands of this geographical area will be followed. The energy code or standard relied upon by the department is to be updated on an annual basis.

~~(3)~~ (4) In the improvement of existing residential and nonresidential buildings, a ~~deduction~~ credit will be given for capital investments that are recognized to substantially reduce the waste or dissipation of energy or reduce the amount of energy required for proper utilization of the building.

~~(4)~~ (5) ~~Deductions~~ A credit will not be allowed for capital investments that are directly used in a production or manufacturing process or rendering a service to customers.

~~(5)~~ (6) This ~~deduction~~ credit must be claimed on Form 2C, which may be obtained from the Montana Department of Revenue, Helena, Montana ~~59601~~ 59620. The completed form must be attached to the taxpayer's return for the year in which the ~~deduction~~ credit is claimed.
Auth: 15-32-105, IMP, 15-32-105.

42.15.432 DETERMINATION OF CAPITAL INVESTMENT FOR ENERGY CONSERVATION (1) The ~~department of revenue has determined that the~~ following capital investments are among those that can result in the conservation of energy:

(a) insulation in existing buildings of floors, walls, ceilings, and roofs;

(b) insulation in new buildings of floors, walls, ceilings, and roofs insofar as it produces an insulating factor in excess of established standards;

(c) insulation of pipes and ducts located in non-heated areas and of hot water heaters and tanks;

(d) special insulating siding with a certified insulating factor substantially in excess of that of normal siding;

(e) storm or triple glazed windows;

(f) storm doors;

(g) insulated exterior doors;

(h) caulking and weather stripping;

(i) devices which limit the flow of hot water from shower heads and lavatories;

(j) waste heat recovery devices;

(k) glass fireplace doors;

(l) exhaust fans used to reduce air conditioning requirements;

(m) replacement of incandescent light fixtures with light fixtures of a more efficient type;

(n) lighting controls with cut-off switches to permit selective use of lights;

(o) clock regulated thermostats.

(2) This is not to be considered an exhaustive list of qualifying capital investments. The department will consider other investments that substantially reduce the waste or dissipation of energy or reduce the amount of energy required for the heating, cooling, or lighting of buildings.
Auth: 15-32-105, IMP, 15-32-105.

42.15.503 CREDIT FOR PUBLIC CONTRACTOR'S GROSS RECEIPTS TAX (1) A resident or a nonresident individual is allowed a credit against his Montana income tax liability for "public contractor's gross receipts tax" paid pursuant to the provisions of 15-50-205 and 15-50-206(1), MCA. The credit is allowed with respect to the taxpayer's Montana income tax liability determined for the taxable year within which the net income from contracts subject to the gross receipts tax is reported. If the taxpayer reports his income from contracts on a percentage of completion basis, the credit must be allocated accordingly. The

amount of credit allowable is the net public contractor's gross receipts tax (after personal property tax credit) actually imposed and paid by the taxpayer but not in excess of his Montana income tax liability.

(2) In the event the public contractor's gross receipts tax is paid by a joint venture, partnership, or corporation electing ~~partnership type~~ tax treatment under 15-31-202, MCA, the members or shareholders thereof shall be entitled to the credit for the tax as their respective interests appear.

Auth: 15-50-103, IMP, 15-50-207.

42.15.504 INVESTMENT CREDIT (1) Effective for taxable years beginning after December 31, 1976, and before January 1, 1981, a credit is allowed against Montana income tax equal to 20% of the federal income tax investment credit allowed for the taxable year with respect to "Internal Revenue Code Section 38 property".

(2) Effective for taxable years beginning after December 31, 1980, and before January 1, 1983, a credit is allowed against Montana income tax equal to 30% of the federal income tax investment credit allowed for the taxable year with respect to "Internal Revenue Code Section 38 property".

~~(2)~~ (3) The credit may not reduce tax liability below zero. An unused balance of credit may be carried forward to succeeding taxable years or carried back to preceding taxable years in accordance with the rules established for federal income tax purposes. However, an unused credit may not be carried back to a taxable year beginning before January 1, 1977, nor carried forward to a taxable year beginning after December 31, 1982.

Auth: 15-30-305, IMP, 15-30-162.

42.15.511 CREDIT FOR NONFOSSIL ENERGY GENERATION SYSTEM (1) A credit against tax liability is allowed to an individual who is a Montana resident and who either:

(a) places in use a qualified nonfossil energy system in a dwelling which is his or her principal place of residence; or

(b) purchases or otherwise acquires beneficial ownership of a dwelling to be used as his or her principal place of residence, which dwelling is equipped with a qualifying nonfossil energy system with respect to which this tax credit has not previously been claimed.

(2) The credit may be claimed only with respect to an installation made in the taxpayer's principal residence (including a principal place of residence acquired with an existing system) on or after January 1, 1977, but before December 31, 1982. The credit is allowed only once with respect to a particular installation. Once a tax credit has been given for a particular installation, it cannot be claimed again by a subsequent taxpayer who purchases the residence. It must be claimed against the taxpayer's tax determined for the year in which the residence is purchased or the installation is placed in use. In cases in which the residence is purchased in a year subsequent to

installation the credit is to be applied to the latter year. If the credit exceeds the taxpayer's tax liability for such taxable year, the unused portion may be carried over and applied against his or her tax liability for succeeding taxable years. However, an unused credit may not be carried beyond the fourth taxable year succeeding the taxable year in which the installation was acquired.

(3) This credit must be claimed on Form 2-B, which may be obtained from the Montana Department of Revenue, Helena, Montana ~~59601~~ 59620. The completed form must be attached to the taxpayer's return for the year in which the credit is claimed. Auth: 15-32-203, IMP, 15-32-201 and 15-32-202.

42.15.512 DETERMINATION OF APPROPRIATE SYSTEMS (1) A non-fossil energy system means:

(a) a system for the utilization of solar heat, wind, solid wastes, or the decomposition of organic wastes;

(b) a system for capturing energy or converting energy sources into usable sources;

(c) a system for the production of electric power from wood wastes; or

(d) a system for the utilization of water power by means of an impoundment not over 20 acres in surface area.

(2) The only energy sources recognized as supplying non-fossil forms of energy within the scope of this regulation are solar heat, wind, solid wastes organic wastes, solid wood wastes, and water power from impoundments of not over 20 acres in surface area.

(3) Wood burning stoves and fireplaces do not qualify for the credit.

Auth: 15-32-203, IMP, 15-32-201 and 15-32-202.

4. The bulk of the changes above are the result of changes made by the 47th Legislature. A section by section analysis follows:

42.15.104: This rule is rewritten for clarity and no substantive change is intended.

42.15.111: In subsection (2), the word "regular" is inserted to reflect the language of the statute. The third subsection is added to reflect the opinion of the Attorney General found at 36 Ops.Att.Gen. No. 64, concerning the taxation of military personnel.

42.15.121: This section is rewritten to reflect various state and federal court decisions relating to the income taxation of Indians.

42.15.201: This rule is rewritten for clarity and no substantive change is intended.

42.15.301: Initiative No. 86 and Chapter 548, Laws of 1981, revised the various figures used for determining minimum filing amounts, various exemption amounts, and various deduction amounts. Additionally a method of indexing was established to

reflect inflationary trends. This rule has been amended to reflect these changes.

42.15.302: This rule is rewritten for clarity and no substantive change is intended.

42.15.304: This rule is rewritten to conform with statutory requirements to clarify the various partnership filing requirements. The Zip Code is also corrected.

42.15.305: See comments to Rule 42.15.301.

42.15.311: The section is rewritten for clarity and a Zip Code reference is corrected. The new sentence in subsection (1) is intended to reflect changing business practices and to permit business to use computer generated tapes in lieu of paper copies.

42.15.312: Subsection (4) is rewritten for clarity; no substantive change is intended.

42.15.314: The amendment replaces a general time reference with the specific 90-day time period provided for in 15-30-304, MCA.

42.15.402: See comments to Rule 42.15.301.

42.15.403: See comments to Rule 42.15.301.

42.15.404: See comments to Rule 42.15.301.

42.15.405: See comments to Rule 42.15.301. Also, subsection (5) is rewritten for clarity.

42.15.411: See comments to Rule 42.15.301.

42.15.421: See comments to Rule 42.15.301.

42.15.431: Chapter 480, Laws of 1981, changed the energy conservation deduction to a credit, and this rule is amended to reflect that change. Subsection (2) is added to clarify the treatment of property that is used for both residential and nonresidential purposes. A correction in Zip Code is also made.

42.15.432: This section is rewritten to delete some unnecessary language.

42.15.503: Some unnecessary language is deleted in subsection (2).

42.15.504: This section is rewritten to implement the changes made by Chapter 520, Laws of 1981, by the 47th Legislature. The amount of the credit was increased from 20% to 30%.

42.15.511: A Zip Code reference is corrected.

42.15.512: Subsection (3) is added to reflect a poll of the 1977 Legislature.

New Rules

Rule I: Chapter 546, Laws of 1981, provided for an exemption for certain interest income earned by senior citizens. The new rule merely outlines the scope and availability to this exclusion from income.

Rule II: The Federal Economic Recovery Tax Act of 1981 attempted to address the problem of the so-called marriage penalty by permitting a deduction from federal gross income for two-earner married couples in computing federal adjusted gross income for the couple. Because of the way that Montana adjusted

gross income is defined in terms of federal adjusted gross income, it will be necessary for qualifying couples who wish to take advantage of the federal relief to file a joint Montana return.

The changes made by the new rules and the amendments to rules 42.15.301, 42.15.305, 42.15.402, 42.15.403, 42.15.404, 42.15.405, 42.15.411, 42.15.421, 42.15.431, and 42.15.504 apply to tax years beginning after December 31, 1981.

5. Interested parties may submit their data, views, or arguments concerning the proposed new rules and amendments in writing no later than December 26, 1981, to:

Laurence Weinberg
Legal Bureau
Department of Revenue
Mitchell Building
Helena, Montana 59620

6. If a person who is directly affected by the proposed new rules or amendments wishes to express his data, views, or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to Laurence Weinberg, at the address given in Paragraph 5 above no later than December 26, 1981.

7. If the Department receives request for a public hearing on the proposed amendments and adoption from either 10% or 25, whichever is less, of the persons directly affected, from the Revenue Oversight Committee of the Legislature, from a governmental subdivision or agency or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten Percent of those persons directly affected has been determined to be 25 persons.

8. The authority of the Department to make these new rules and amendments is given by §§15-30-305, 15-32-105, and 15-32-203, MCA. These rules implement various sections as indicated beneath each rule.

Ellen Feaver

ELLEN FEAVER, Director
Department of Revenue

Certified to the Secretary of State November 16, 1981.

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE Amendment Rules 42.16.101, 42.16.102, 42.16.103, 42.16.104, 42.16.105, 42.16.111, 42.16.112, 42.16.113, 42.16.115, 42.16.116, 42.16.117, 42.16.119, 42.16.1114, 42.16.1115, 42.16.1116, and 42.16.1117, relating to the Montana Individual Income Tax)	NOTICE OF PROPOSED AMENDMENT OF RULES 42.16.101, 42.16.102, 42.16.103, 42.16.104, 42.16.105, 42.16.111, 42.16.112, 42.16.113, 42.16.115, 42.16.116, 42.16.117, 42.16.119, 42.16.1114, 42.16.1115, 42.16.1116, and 42.16.1117, relating to the Montana Individual Income Tax.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 28, 1981, the Department of Revenue proposes to Amend Rules 42.16.101, 42.16.102, 42.16.103, 42.16.104, 42.16.105, 42.16.111, 42.16.112, 42.16.113, 42.16.115, 42.16.116, 42.16.117, 42.16.119, 42.16.1114, 42.16.1115, 42.16.1116, and 42.16.1117, relating to the Montana individual income tax.

2. The rules proposed for amendment are found in ARM, Title 42, Chapter 16, at pages 42-1605 through 42-1656.

3. The rules as proposed for amendment provide as follows:

42.16.101 TIME AND PLACE OF PAYMENT (1) The due date for payment of the tax is the due date prescribed for the filing of returns or, ~~in other words,~~ the 15th day of the 4th month following the close of the taxable year. Every taxpayer must compute his tax liability and pay the balance of any tax due in full at the time of filing his return~~, regardless of extension granted or otherwise~~ , and this also applies when the taxpayer has an extension of time and files the return early. If the balance due is less than $1, payment is not required.

(2) Payments of tax are to be made to the Department of Revenue, Helena, Montana ~~59601~~ 59620. Checks and money orders should be made payable to the "State treasurer". Excess payments of $1 or more over the tax due will be refunded to the taxpayer.

Auth: 15-30-305, IMP, 15-30-142.

42.16.102 DEFICIENCY ASSESSMENTS (1) As soon as practical after a return is filed, the department must examine it and verify the amount of tax. If the department determines that the amount of tax liability is greater than the amount previously paid, it will mail to the taxpayer notice of the additional tax assessed plus accrued interest. The amount of the additional

tax and accrued interest must be paid within ~~30~~ 60 days from the date the notice is mailed to the taxpayer or the deficiency assessment becomes delinquent and penalty attaches; unless, before the expiration of the ~~30~~ 60-day period, the taxpayer files with the department a written request for reconsideration of the assessment.
Auth: 15-30-305, IMP, 15-30-142.

42.16.103 JEOPARDY ASSESSMENTS (1) ~~This section~~ Sections 15-30-204 and 15-30-312, MCA, shall be applicable to those situations where the department finds that a taxpayer designs quickly to depart from the state or the United States or to remove his property therefrom or to conceal himself or his property therein or to do any act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the tax due under Title 15, chapter 30, MCA.
Auth: 15-30-305, IMP, 15-30-204, and 15-30-312.

42.16.104 INTEREST ON UNPAID TAX (1)(a) In the case of taxable years which ended prior to December 31, 1962, interest accrues on the tax unpaid at the rate of 1% per month.

(b) In the case of taxable years which ended on or after December 31, 1962, but before December 31, 1968, interest accrues on the tax unpaid at the rate of 6% per annum.

(c) Effective with taxable years ending on and after December 31, 1968, if the tax or any part thereof is not paid by the 15th day of the 4th month following the close of the taxable year, whether by reason of extension granted or otherwise, interest accrues on the amount of tax unpaid at the rate of 9% per annum.

(2) In the case of ~~failure~~ failing, purposely or knowingly, to pay the tax or any part of the tax by its due date ~~with intent to evade such tax~~, interest accrues thereon at the rate of 1% per month from the 15th day of the 4th month following the close of the taxable period.

(3) Interest on any additional deficiency tax that may be assessed ~~or penalty thereon~~ shall be at the rate of 9% per annum or fraction thereof. Except as provided otherwise, interest shall accrue from when the tax was originally due to the date of payment, even if time for filing is extended.

(4) No interest accrues from the date the department is notified of a change in federal income, either by the taxpayer or the Internal Revenue Serice, until the date the department notifies the taxpayer of the increased tax.
Auth: 15-30-305, IMP, 15-1-206, 15-30-142, and 15-30-321.

42.16.105 PENALTIES (1) Effective with taxable years ending on and after December 31, 1974:

(a) the penalty for failure to file a return by its due date, without intent to evade the tax, is 5% of any balance of tax unpaid with respect to said return as of its due date, but in no event shall the penalty be less than $5. The due date of

a return is determined with regard to an extension granted for the filing thereof. If the taxpayer shows to the satisfaction of the department that the failure to file on time was due to reasonable cause and was not due to neglect on his or her part, the penalty may be abated. Failure to have funds available to pay the tax will not of itself be considered reasonable cause for late filing.

(b) the penalty for failure to pay the tax by its due date, without intent to evade the tax, is 10% of the tax unpaid but not less than $5. The due date of the tax is determined with regard to an extension of time granted for the filing of the return with respect to which the tax is due. If the taxpayer shows to the satisfaction of the department that the failure was due to reasonable cause and was not due to neglect on his or her part, the penalty may be abated. Failure to have funds available to pay the tax will not of itself be considered reasonable cause for late payment of the tax.

(2) The penalty for ~~either~~ purposely or knowingly failing to file a return or to pay the tax by the due date, ~~with intent to evade the tax~~, is 25% of the amount of tax unpaid, but not less than $25.

(3) If a deficiency in tax is not paid within ~~30~~ 60 days from the date of mailing notice thereof to the taxpayer or if a deficiency in tax is due to negligence on the part of the taxpayer, the penalty is 5% of the amount of the deficiency but not less than $2.

Auth: 15-30-305, IMP, 15-30-321.

42.16.111 REQUEST FOR RECONSIDERATION OF ASSESSMENT (1) Taxpayers may request reconsideration of income tax and withholding assessments made by the department. The request should be made within 30 days after the notice of adjustment is mailed to the taxpayer. A taxpayer may waive his right to an informal conference with the income tax division by filing a written waiver. Upon receipt of a waiver, the division shall issue a written conclusion to enable the taxpayer to proceed with the appeal process.

~~(1)~~(2) The written request for reconsideration must state the specific grounds upon which it is based~~, and the taxpayer must request a conference~~. A conference will then be scheduled with a representative of the income tax division of the department. Within a reasonable time after ~~receipt of the taxpayer's request~~ the conference, the income tax division representative will review all information ~~the assessment~~ and notify the taxpayer by mail of ~~its decision~~ his conclusions.

~~(2)~~ (3) If the taxpayer does not accept the ~~decision~~ conclusions, he may request ~~an oral~~ a formal hearing before the department. A request for a formal hearing ~~must be made in the manner and form prescribed by the department and it~~ should be made within 30 days from the date ~~of mailing of the division notice of decision~~ the notice of the conference conclusion is mailed to the taxpayer in order to prevent the assessment from

becoming delinquent. Refer to ARM 42.16.113 through 42.16.119 for information concerning application and procedures for formal hearings. Auth: 15-30-305, IMP, 15-30-147.

42.16.112 FORMAL HEARING ON REQUEST (1) If a request for formal hearing is filed, the department will review the assessment at a hearing held at a mutually agreeable time in the department's office at Helena, Montana. At the hearing, the taxpayer may support his contentions by evidence, oral argument, and written brief.

(2) Within a reasonable time after the hearing, the department will mail to the taxpayer a notice of its final decision and assessment of tax.

(3) The taxpayer and the department may waive the formal hearing by written stipulation. If the hearing is waived, the department shall issue a written decision on the matter and send a copy of that decision to the taxpayer. This decision constitutes a final decision by the department for purposes of appeal. Auth: 15-30-305, IMP, 15-30-147.

42.16.113 APPLICATION FOR ~~REVISION~~ FORMAL HEARING (1) Any taxpayer filing an application for ~~revision pursuant to 15-30-147, MCA~~ a formal hearing, shall file such application by mailing the original and one copy thereof to the ~~director~~ Legal Bureau of the Department of Revenue, Helena, Montana ~~59601~~ 59620.

(2) Upon receipt, ~~of~~ the application~~, the director~~ shall be ~~assign~~ assigned ~~the application~~ a docket number, ~~file~~ the original application shall be kept in a ~~permanent~~ file to be maintained by ~~him~~ the department, and ~~forward the~~ a copy of the application shall be forwarded to the income tax division. The ~~director~~ legal bureau shall set the application for hearing and notify the applicant of the time and place for such hearing and of the docket number assigned to his application and shall advise the income tax division concerning the time and place for the hearing.
Auth: 15-30-305, IMP, 15-30-147.

42.16.115 PROCESSING OF APPLICATION (1) Upon receipt of a copy of the application for ~~revision~~ a formal hearing, the income tax division shall prepare a concise statement of its position in regard to the case. A copy of the statement shall be attached to the ~~division's~~ department's file and a copy thereof shall be mailed to the taxpayer not later than 10 days before the hearing.

~~(2) The original of the statement and the entire file concerning the case shall be given to the administrator of income tax and shall be incorporated in the docket file, remaining there until the department has rendered its decision thereon or made other disposition of the application for revision.~~
Auth: 15-30-305, IMP, 15-30-147.

42.16.116 HEARING PROCEDURE (1) The hearing shall be presided over by the director of the department or by a hearings officer appointed by the director. The presiding officer shall administer oaths, rule upon offers of proof, receive relevant evidence, hold conferences for the settlement or simplification of the issues by consent of the parties, dispose of procedural requests, and generally regulate the course of the hearing and shall subpoena persons or records as authorized by law when in the opinion of the department such action is necessary.

(2) The applicant shall make the opening and closing presentation of argument and evidence, and the income tax division shall answer and be allowed rebuttal.

Auth: 15-30-305, IMP, 15-30-147.

42.16.117 TREATMENT OF EVIDENCE (1) The applicant may present evidence in any reasonable manner, including oral testimony, deposition, affidavit, or verified statement of fact, but must present evidence supporting each allegation of fact contained in his application for revision. The department may take official (judicial) notice of matters of which a court of law may take notice. Reasonable presumptions of law shall apply. Stenographic transcripts of the entire proceedings will be kept only when requested by the applicant or when in the opinion of the department it is necessary. Court rules of evidence shall apply, and probative evidence is required to sustain each allegation of fact.

(2) All evidence admitted shall become a permanent part of the record and shall be placed in the docket file ~~maintained by the director of the department of revenue~~.

Auth: 15-30-305, IMP, 15-30-147.

42.16.119 DEPARTMENT DECISION (1) Following submission of the application for revision to the department, it shall, within a reasonable time, render its decision in the form of findings of fact, conclusions of law, and order of determination~~, all of which must be entered in the minutes of the department~~. A true copy thereof shall be furnished to the applicant or his authorized counsel at the mailing address indicated in his application.

Auth: 15-30-305, IMP, 15-30-147.

42.16.1114 INCOME FROM TANGIBLE ~~PERSONAL~~ PROPERTY (1) A nonresident's income from tangible ~~personal~~ property is allocable to Montana to the extent the property is utilized in this state.

(2) Interest received on deferred payments of the selling price of property situated in Montana is allocable to the state of the nonresident's commercial domicile.

Auth: 15-30-305, IMP, 15-30-131.

42.16.1115 INCOME ATTRIBUTABLE TO MULTISTATE ACTIVITIES (1) If a nonresident's income is derived from a business,

trade, profession, or occupation carried on both within and without Montana, the income (or loss) reasonably attributable to that portion of the business, trade, profession, or occupation carried on in this state or to services rendered within this state is included in Montana adjusted gross income.

(2) The allocation and apportionment of such income or loss shall be made according to the provisions of ARM 42.16.1116 and 42.16.1117.

Auth: 15-30-305, IMP, 15-30-131.

42.16.1116 SEPARATE ACCOUNTING METHODS (1) If the business, trade, profession, or occupation carried on within Montana is separate and distinct from the part outside the state and capable of maintenance as an independent business, and if the taxpayer's accounting records are so kept that profit or loss from operations within the state may be determined without regard to operations outside the state, the income or loss attributable to Montana shall be determined upon the basis of separate accounting methods.

Auth: 15-30-305, IMP, 15-30-131.

42.16.1117 APPORTIONMENT OF MULTISTATE INCOME (1) If the business, trade, profession, or occupation carried on within Montana is an integral part of a unitary business carried on within and without the state ~~or if the accounting records are not so kept that profit or loss from operations within the state can be accurately determined independently of the operations outside the state~~, the income attributable to Montana must be determined by apportioning the total income from the business, trade, profession, or occupation by the percentage derived from averaging the factors of sales, payroll, and property or such other factors as may be deemed necessary to fairly apportion the income.

(2) Apportionment of income shall be made according to the provisions of Article IV of the Multistate Tax Compact, 15-1-601, MCA.

Auth: 15-30-305, IMP 15-30-131.

4. The amendments implement changes made by the 47th Legislature or rewrite various rules for clarity. A section by section analysis follows:

42.16.101: This rule is rewritten for clarity.

42.16.102: Chapter 477, Laws of 1981, changed the 30-day period for payment of an assessed tax deficiency to 60 days, and the rule is amended accordingly.

42.16.103: This rule is rewritten for clarity.

42.16.104: Subsection (2) is rewritten to use the language of section 15-30-321, MCA. Subsection (4) is added to implement

the provisions of Chapter 477, Laws of 1981.

42.16.105: Subsection (2) is rewritten to use the statutory language found in section 15-30-321, MCA.

42.16.111: This rule is extensively rewritten to clarify the procedures for informal conferences concerning an individual's tax liability. The informal conference precedes a formal hearing on the matter.

42.16.112: This rule is rewritten to clarify the procedures for formal hearings concerning an individual's tax liability.

42.16.113: See comments to Rule 42.16.112.

42.16.115: See comments to Rule 42.16.112.

42.16.116: See comments to Rule 42.16.112.

42.16.117: See comments to Rule 42.16.112.

42.16.119: See comments to Rule 42.16.112.

42.16.1114: Section 15-30-131, MCA, does not differentiate between types of tangible property. Accordingly, the rule amended to reflect this situation.

42.16.1115: The word "Montana" is added to the phrase "adjusted gross income" in subsection (1) for clarity.

42.16.1116: Subsection (1) is amended to further explain under what conditions the department will allow separate accounting methods.

42.16.1117: The language is deleted in subsection (1) to make clear that the apportionment of multistate income is not dependent upon the manner of keeping accounting records.

5. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing no later than December 26, 1981, to:

Laurence Weinberg
Legal Bureau
Department of Revenue
Mitchell Building
Helena, Montana 59620

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

written comments he has to Laurence Weinberg, at the address given in Paragraph 5 above no later than December 26, 1981.

7. If the Department receives request for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons directly affected, from the Revenue Oversight Committee of the Legislature, from a governmental subdivision or agency or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten Percent of those persons directly affected has been determined to be 25 persons.

8. The authority of the Department to make these amendments is given by §15-30-305, MCA. These rules implement various sections as indicated beneath each rule.

Ellen Feaver

ELLEN FEAVER, Director
Department of Revenue

Certified to the Secretary of State November 16, 1981.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF DENTISTRY

In the matter of the amendment of 8.16.405 concerning fees and adoption of a new rule regarding oral interviews	NOTICE OF AMENDMENT OF ARM 8.16.405 FEE SCHEDULE AND ADOPTION OF A NEW RULE 8.16.406 ORAL INTERVIEW

TO: All Interested Persons:

1. On October 15, 1981, the Board of Dentistry proposed the amendment of ARM 8.16.405 concerning fees and adoption of a new rule concerning an oral interview at pages 1144 and 1145, 1981 Montana Administrative Register, issue number 19.

2. The board has amended and adopted the rules exactly as proposed.

3. One comment was received from the Administrative Code Committee in that the implementing and authority sections were incorrectly typed. The sections should have read 37-4-301 rather than 37-3-301, MCA. No other comments or testimony were received.

DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF REALTY REGULATION

In the matter of the Amendments of ARM 8.58.404 concerning applications, 8.58.409 concerning branch office requirements, 8.58.414 concerning trust account requirements, 8.58.417 concerning franchising requirements and repeal of 8.58.415 concerning education requirements and 8.58.416 concerning loan of board's library materials.	NOTICE OF AMENDMENT OF ARM 8.58.404 APPLICATION, 8.58.409 BRANCH OFFICE REQUIREMENTS, 8.58.414 TRUST ACCOUNT REQUIREMENTS, 8.58.417 FRANCHISING REQUIREMENTS, and REPEAL OF ARM 8.58.415 EDUCATION REQUIREMENTS and 8.58.416 LOAN OF BOARD'S LIBRARY MATERIALS

TO: All Interested Persons:

1. On October 15, 1981, the Board of Realty Regulation proposed amendment and repeal of the above entitled rules at pages 1152 through 1158, 1981 Montana Administrative Register, issue number 19.

2. The board has amended and repealed the rules exactly as proposed.

3. One comment was received from the Administrative Code Committee in that the authority section for rule ARM 8.58.414 Trust Account Requirements should read 37-1-103, MCA rather than 37-51-203, MCA and rule ARM 8.58.417 Franchising Requirements should have as implementing section 76-4-1201, MCA rather

than 76-40-1201, MCA. No other comments or testimony were received.

DEPARTMENT OF COMMERCE

BY: _____
GARY BUCHANAN, DIRECTOR

Certified to the Secretary of State, November 16, 1981.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER of the Amendment of ARM 24.9.217, relating to Notice of Complaints to the Commission by the Division	)))))	NOTICE OF AMENDMENT OF ARM 24.9.217 relating to Notice of Complaints to the Commission by the Division

TO: All Interested Persons:

1. On August 13, 1981 the Commission published notice of the proposed amendment of Rule 24.9.217 at page 805 of the 1981 Montana Administrative Register, issue number 15. A hearing was held regarding the proposed amendment on September 28, 1981.

2. The Commission has amended the rule as follows: (new matter underlined, deleted matter interlined)

"24.9.217 COMPLAINT: NOTICE TO COMMISSION. (1) The Division Administrator shall each ~~month~~, quarter, in writing, notify the Commission of all complaints filed that ~~month~~ quarter and the disposition of those complaints already reported to the Commission in prior ~~months~~ quarters."

3. No comments were received.

HUMAN RIGHTS COMMISSION
JOHN FRANKINO, CHAIR

BY: _____
RAYMOND D. BROWN
ADMINISTRATOR
HUMAN RIGHTS DIVISION

Certified to the Secretary of State, November 16, 1981.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER of the Amendment of ARM 24.9.252, relating to Petitions for Declaratory Rulings before the Montana Human Rights Commission	))))	NOTICE OF AMENDMENT OF ARM 24.9.252, relating to Petitions for Declaratory Rulings before the Human Rights Commission

TO: All Interested Persons:

1. On August 13, 1981 the Commission published notice of a proposed amendment of Rule 24.9.252 at page 803 of the 1981 Montana Administrative Register, issue number 15. A hearing was held regarding the proposed rule on September 28, 1981.

2. The Commission has amended the rule as follows: "24.9.252 DECLARATORY RULINGS: FILING AND NOTIFICATION OF DISPOSITION OF PETITION. (1) Filing of petition. The petition shall be deemed filed when received by the Commission at its Staff office in Helena, Montana. Upon receipt of a petition, the Staff will promptly send a copy of petition to each Commission member.

(2) Notification of Disposition of Petition. After the petition has been filed, the Commission shall determine within twenty (20) days whether or not it intends to consider the petition and issue a ruling. If the Commission does intend to issue a ruling, the Commission shall mail to the petitioner:

(a) A copy of the petition together with a copy of the Commission's rules of practice and a notice of the hearing at which the petition shall be considered.

(b) In addition, the Commission shall mail to every person or organization identified in the petition as interested in requested declaratory ruling.

(c) A copy of the petition together with a copy of the Commission rules, and notice of hearing at which the petition will be considered informing them that they have been identified by the petitioner as having interest in the petition and informing them that they may, upon proper showing, petition to be allowed to intervene in the proceeding either generally or for the limited purpose of presenting their particular point of view concerning the petition to the Commission.

(d) In addition, the Commission shall publish notice of the hearing in the administrative register along with a copy of the petition.

(e) If the Commission does not intend to issue a ruling, the Commission shall within twenty (20) days

mail to the petitioner and to all persons or organizations identified in the petition as interested in the proposed ruling a copy of the order denying the petition for declaratory ruling, with grounds for denying the ruling clearly stated."

3. No comments were received.

HUMAN RIGHTS COMMISSION
JOHN FRANKINO, CHAIR

BY: Raymond D. Brown
RAYMOND D. BROWN
ADMINISTRATOR
HUMAN RIGHTS DIVISION

Certified to the Secretary of State, November 16, 1981.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER of the Amendment of ARM 24.9.255, dealing with the effect of publication of declaratory rulings of the Montana Human Rights Commission	)))))	NOTICE OF AMENDMENT of ARM 24.9.255, dealing the effect of publication of declaratory rulings of the Human Rights Commission

TO: All Interested Persons:

1. On August 13, 1981 the Commission published notice of the proposed amendment of rule 24.9.255 on page 806 of the 1981 Montana Administrative Register, issue number 15. A hearing regarding the proposed amendment was held on September 28, 1981.

2. The Commission has amended the rule as follows: (new matter underlined, deleted matter interlined)

"24.9.255 DECLARATORY RULING: EFFECT OF RULING. (1) A declaratory ruling issued in accordance with these rules is binding between the Commission and the petitioner on the state of facts alleged, or found to exist. Judicial review may be had in the same manner as decisions or orders in contested cases.

(2) The Commission shall publish its declaratory ruling in the Administrative Register."

3. No comments were received.

HUMAN RIGHTS COMMISSION
JOHN FRANKINO, CHAIR

BY: Raymond D. Brown
RAYMOND D. BROWN
ADMINISTRATOR
HUMAN RIGHTS DIVISION

Certified to the Secretary of State, November 16, 1981.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER of the adoption of ARM 24.9.261, concerning dismissal by the Human Rights Commission of complaints also pending in court.	))))	NOTICE OF ADOPTION of ARM 24.9.261, concerning dismissal by the Human Rights Commission of Complaints also pending in court.

TO: All interested persons:

1. On August 13, 1981 the Commission published notice of a proposed new rule 24.9.261 at page 809 of the 1981 Montana Administrative Register, issue number 15. A hearing was held regarding the proposed rule on September 28, 1981.

2. The Commission has adopted the rule as follows:

"24.9.261 DISMISSAL OF COMPLAINTS ALSO PENDING IN COURT. At any time after a complaint is filed, any party to the complaint, or the Division, may move the Commission to dismiss the complaint on the grounds that the issues therein are also before a court of competent jurisdiction, either state or federal. The Commission may dismiss the complaint without prejudice if it finds that the parties and issues before the Commission are also before a court of competent jurisdiction, and that the court's decision will be determinative of the issues before the Commission.

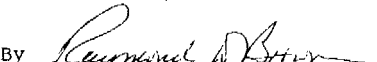
If the court later finds that it does not have jurisdiction over the above described parties or issues, then the Charging Party or Division may apply to reopen the complaint before the Commission"

3. The Legislative Council suggested that the Commission not cite MCA 48-3-303 as being implemented by this rule, so the Commission has not done so.

Both oral and written comment was received which was favorable to the proposed rule, but two different clarifications of the rule were urged. On the one hand was the suggestion that complaints should be dismissed only when the court action were being pursued under any section of Montana law over which the Commission has jurisdiction. On the other hand, some comment urged that the rule be applicable whenever the issues before the Commission were the same as the issues before the court, and would be determined by the court's decision.

The Commission has adopted this latter view, and to this end has substituted for the clause "and that the court's determination will be res judicata as to the complaint before the Commission," in the rule proposed the clause "and that the court's decision will be determinative of the issues before the Commsision" in the rule as adopted.

HUMAN RIGHTS COMMISSION
JOHN FRANKINO, CHAIR

By 
RAYMOND D. BROWN
ADMINISTRATOR
HUMAN RIGHTS DIVISION

Certified to the Secretary of State, November 16, 1981.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER of the Amendment of ARM 24.9.802, regarding Commission decision making authority	))))	NOTICE OF AMENDMENT OF ARM 24.9.802, regarding Human Rights Commission decision making authority

TO: All Interested Persons:

1. On August 13, 1981 the Commission published notice of the proposed amendment of rule 24.9.802 at page 807 of the 1981 Montana Administrative Register, issue number 15. A hearing was held regarding the proposed amendment on September 28, 1981.

2. The Commission has adopted the rule as follows: (new matter underlined, deleted matter interlined)

"24.9.802 COMMISSION MEETINGS: QUORUM: DECISION MAKING AUTHORITY (1) (a) The Commission shall meet upon call of the chairperson, or at the written request of at least 3 members, the time or place to be designated by whomever calls the meeting.

(b) a majority of the membership constitutes a quorum to do business. A contested case may be heard before a hearing officer, an individual Commissioner acting as hearing officer, or by at least 3 members of the Commission. The Commission may designate one or more non-members to substitute for a Commission member or members in the case of disqualification or other appropriate circumstances.

(c) The Commission shall appoint a member of the staff to act as secretary of the Commission, and general minutes of all Commission meetings whether in person or by telephone conference call shall be kept as public record.

(2) A single Commission member may issue an order in a contested case proceeding which is of a purely procedural nature. For example, a single Commissioner may sign an order regarding a briefing schedule, or an order extending the time in which a party may file exceptions when both parties stipulate that such may be done."

3. No comments were received.

HUMAN RIGHTS COMMISSION
JOHN FRANKINO, CHAIR

BY: Raymond D. Brown
RAYMOND D. BROWN
ADMINISTRATOR
HUMAN RIGHTS DIVISION

Certified to the Secretary of State, November 16, 1981.

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

In the Matter of the Adoption of a Rule establishing Model Procedural Rules for the Board of Natural Resources and Conservation	NOTICE OF THE ADOPTION OF A RULE (Model Procedural Rules) 36.2.201

TO: ALL INTERESTED PERSONS

1. On September 30, 1981, the Board of Natural Resources and Conservation published Notice of the proposed adoption of a rule concerning the establishment of model procedural rules at page 1094 of the 1981 Montana Administrative Register, issue number 18.

2. The Board has adopted the rule as proposed.

3. No comments or testimony were received.

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

Gordon G. Holte, Chairman

Certified to the Secretary of State November 6, 1981.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of rule pertaining to scheduled dates - Montana Administrative Register.	NOTICE OF AMENDMENT OF RULE 1.2.419 Filing, Compiling, Printer Pickup and Publication Schedule for the Montana Administrative Register.

TO: All Interested Persons:

1. On October 15, 1981, the Secretary of State published notice of a proposed amendment pertaining to scheduled dates for the Montana Administrative Register, at page 1177 of the 1981 Montana Administrative Register, issue number 19.

2. The Secretary of State has amended the rule as proposed.

3. No comments or testimony were received.

JIM WALTERMIRE
Secretary of State

Dated this 16th day of November 1981.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of rules pertaining to fees for the Administrative Rules of Montana, Montana Administrative Register and Agency Filing Fees	)	NOTICE OF AMENDMENT OF RULES 1.2.421 Subscription to the Code--Cost; 1.2.423 Agency Filing Fees

TO: All Interested Persons:

1. On October 15, 1981, the Secretary of State published notice of a proposed amendment of rules pertaining to fees for the Administrative Rules of Montana, updates to the Administrative Rules of Montana, Montana Administrative Register and agency filing fees, at page 1179 of the Montana Administrative Register, issue number 19.

2. The Secretary of State has adopted 1.2.423 Agency Filing Fees as proposed. The Secretary of State has adopted 1.2.421 Subscription to the Code--Cost, with the following changes:

1.2.421 SUBSCRIPTION TO THE CODE--COST

(1) Adopted as proposed

(2) Adopted as proposed

(3) ~~The 1982~~ Beginning January 1, 1982, the costs for the Administrative Rules of Montana and the Montana Administrative Register are as follows:

(a) Administrative Rules of Montana - $350.00

(b) Four issues of updates to the Administrative Rules of Montana - $100.00

(c) Montana Administrative Register - $170.00

3. Written comments were received from the Departments of Health and Environmental Sciences, Fish, Wildlife and Parks, Social and Rehabilitation Services and the Board of Public Education.

Comment: The Departments of Health, SRS, Fish. Wildlife and Parks and the Board of Public Education stated that there was no rationale or justification specifying the increase of the agency filing fee from $2.00 to $20.00 compared to other fees that were increased in Administrative Rules of Montana and Montana Administrative Register subscriptions.

Response: The proposed increases in the Administrative Rules of Montana, updates to the Administrative Rules of Montana, Montana Administrative Register and agency filing fees were mandated by the 47th Legislative Session and the actual fees were determined by the Administrative Code Committee and concurred with by this office. The rationale for all of the increases listed above can be obtained by requesting a copy of the September 24th minutes of the meeting of the Administrative Code Committee. A copy of the committee's formal action and the supporting documentation

regarding the fees to be charged are available on request in the Secretary of State's office.

Comment: The Department of Health asked that the actual date of the proposed fee increases be stated.
Response: The agency filing fee increase will take effect on January 1, 1982. Agencies will be billed in December 1981 for pages published in the Montana Administrative Register during the period 7/1/81 through 12/31/81 at the cost of $2.00 per page. Agencies will be billed in December 1982 for pages published in the Montana Administrative Register during the period 1/1/82 through 12/31/82 at a cost of $20.00 per page.

Comment: The Department of Fish, Wildlife and Parks questioned why the proposed agency filing fee billing was being changed from a fiscal year billing to a calendar year billing.
Response: The Secretary of State's office has proposed the change because the subscriptions billing for the Administrative Rules of Montana updates and the Montana Administrative Register are currently on a calendar year basis. It will become much more efficient for our office to send out our billing all at once rather than at different times.

Dated this 16th day of November, 1981

JIM WALTERMIRE
Secretary of State

VOLUME NO. 39 OPINION NO. 38

COUNTY COMMISSIONERS - Authority over district court employees;
COUNTY OFFICERS AND EMPLOYEES - District court employees;
COUNTY OFFICERS AND EMPLOYEES - Soil Conservation District employees;
COURT, DISTRICT - Employees, requirement to abide by county personnel policies;
COURT, DISTRICT - Separation of Powers with reference to county commissioners;
OPINION OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 20.
MONTANA CONSTITUTION- Article III, section 1.
MONTANA CODE ANNOTATED - Sections 3-1-113, 7-5-2101, 7-5-2102, 7-5-2107, 7-5-2108, 7-6-2111, 7-6-2112, 7-6-2202, 7-6-2351, 7-6-2511, Title 19, chapter 3, 39-51-102, 39-51-203, 39-51-204(2), 39-71-117, 76-15-501 to 529.

HELD: 1. An employee who is paid by the county and receives fringe benefits therefrom is a county employee.

2. An employee who receives a county payroll check must abide by the personnel policies.

3. District court employees and Soil Conservation District employees who receive county payroll checks and fringe benefits are county employees.

4. District court employees are required to work a forty (40) hour week.

5. The scope of district court authority in relation to that of the county commissioners is an inappropriate question for an Attorney General's opinion.

30 October 1981

J. Fred Bourdeau, Esq.
Cascade County Attorney
Cascade County Courthouse
Great Falls, Montana 59401

Dear Mr. Bourdeau:

You have requested my opinion regarding the following questions relating to county employees and district court personnel:

1. Is an employee who receives a county payroll check and whose fringe benefits (such as PERS, Health Insurance, Workers' Compensation and Unemployment Insurance) are paid by the county considered a county employee?

2. Must an employee who receives a county payroll check abide by the personnel policies established by the Board of County Commissioners, including submitting time sheets?

3. Are the employees of the district court and such departments as the Soil Conservation District, which is supported in part by county funds and governed by a board whose employees receive payroll checks and fringe benefits, considered county employees?

4. Does the Board of County Commissioners have the authority to insist that employees of the district court work a forty (40) hour week as all other county employees are required to work?

5. Does the district court have the authority to establish personnel policies that differ from the personnel policies that apply to all other county employees?

Your first question is whether an employee who receives a county payroll check and county fringe benefits is considered a county employee. The pertinent statutes which authorize fringe benefits, such as PERS, Health Insurance, Workers' Compensation and Unemployment Insurance, deem the recipients of these benefits employees of the county by the language used therein.

Section 7-5-2107, MCA, authorizes the county commissioners to "employ such persons as it deems necessary to assist the board in the performance of its duties." Section 2-18-702, MCA, provides that "[a]ll counties...shall...enter into group hospitalization, medical, health, including long-term disability, accident, and/or group life insurance contracts or plans for the benefit of their officers and employees and their dependents." (Emphasis added.) There is no statutory authority for a county to include someone not employed by it

(other than an officer or dependent) in its health insurance plan. The plain meaning of the words of the statute control its interpretation here, where the words are unambiguous, direct and certain. Rierson v. State of Montana, 37 St. Rptr. 627 (1980). Thus, employees covered by county health insurance plans are county employees.

Referring to Unemployment Insurance the declaration of State public policy states "[t]he achievement of social security requires protection against ... [involuntary unemployment]. This can be provided by encouraging employers to provide more stable employment and by systematic accumulation of funds during periods of unemployment...." § 39-51-102, MCA. An employer or "employing unit" under this act includes the State government or any of its political subdivisions. "Employment" means an individual's entire service for wages or under any contract of hire. Elected public officials are excluded from the definition of "employment." §§ 39-51-203, 39-51-204(2), MCA. Part II of the Act describes procedures for contribution to the fund by employers and their employees. It is clear from the language of this Act that employers participate in the Unemployment Insurance program for their own employees.

Continuing on to the Worker's Compensation Act, an employer under this Act includes a county. § 39-71-117, MCA. An employee is any person, except an independent contractor, "who is in the service of an employer, as defined by 39-71-117 under any appointment or contract of hire, expressed or implied, oral or written." § 39-71-118, MCA. Under the language of this Act, an employee for whom the county contributes to the Workers' Compensation Fund is clearly a county employee.

The Public Employees' Retirement System Act, Title 19, chap. 3, MCA, likewise defines a member of the system to be the employee of its contracting employer. Thus, in the event a county contracts with the PERS Board, personnel who become members of the system pursuant to that contract are county employees.

It is, therefore, clear that personnel who receive county payroll checks and benefits are considered county employees where such designation is relevant to the benefits described above.

Your second question is whether an employee who receives a county payroll check must abide by the personnel policies established by the Board of County Commissioners. Article XI, section 3, of the Montana Constitution directs the

Legislature to declare the duties and responsibilities of the county commissioners.

Section 7-5-2101, MCA, provides:

> General authority of county commissioners. (1) the board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to represent the county and have the care of the county property and the management of the business and concerns of the county in all cases where no other provision is made by law.
>
> (2) The board has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to perform all other acts and things required by law not enumerated in this title or which may be necessary to the full discharge of the duties of the chief executive authority of the county government.

Section 7-5-2102, MCA, states, "The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to make and enforce such rules for its government, the preservation of order, and the transaction of business as may be necessary." The Montana Supreme Court has long recognized that where powers are conferred on the Board of County Commissioners, but the mode in which the authority to be exercised is not indicated, the Board in its discretion, may select any appropriate mode or course of procedure. State ex rel. Thompson v. Gallatin County, 120 Mont. 263, 184 P.2d 998 (1947).

It is clear that the county commissioners have powers broad enough to establish rules and policies to facilitate and effectuate their statutory responsibilities.

The county treasurer is required by law to render an account of all monies received and disbursed, and disburses money only on orders of the Board of County Commissioners (except as otherwise provided by law). § 7-6-2111, MCA. The treasurer is required to make detailed monthly financial reports to the Board. § 7-6-2112, MCA. The county clerk is likewise responsible to the commissioners to account for county finances. § 7-6-2202, MCA. It is clear that the personnel policies established by the Board of County Commissioners, including the requirement that employees submit

time sheets are within the statutory and implied powers of the Board of County Commissioners as necessary for the administration of county business.

Your third question is whether district court employees and employees of departments, such as the Soil Conservation Department, which are supported in part by county funds, and whose employees are on the county payroll and receive county benefits, are considered county employees. The county in which the district court is established is charged with the cost of the court's maintenance. Out of the district court budget the county must pay most district court expenses, including salaries of court employees. §§ 7-6-2351, 7-6-2511, MCA. Thus, the district court finances are an integral part of the county budget and finance system. The district court employees are paid by the county, receive the same county benefits as do all other county employees and are, therefore, considered county employees.

A soil conservation district is a distinct governmental entity. See 37 Op. Att'y. Gen. No. 20 (1977), § 76-15-215, MCA. To obtain money for its operation, the district acquires money in part through tax levies by the counties in which it is situated. The depository of these tax funds is in the treasury of the principal county. These funds are accounted for and disbursed through the county treasurer, clerk and auditor, upon the order of the district supervisors. § 76-15-501 to 529, MCA. The statutes governing conservation districts do not expressly designate district personnel as county employees to be included on the county payroll. However, in the event that the county does include the district personnel on its payroll, giving them the same benefits as are given to other county employees, to that extent the conservation district personnel must be considered county employees.

Your fourth question is whether the Board of County Commissioners has authority to insist that district court employees work a forty-hour week. Section 7-5-2108, MCA, provides that "full-time salaried county employees shall work a minimum of 40 hours per week." The term "county employee" is not specifically defined by statute. However, applying the discussion in the previous questions, district court employees are paid by the county and are considered county employees for administrative and salary related purposes. They are therefore "salaried county employees" under section 7-5-2108, MCA.

Your last question is whether the district court has authority to establish personnel policies that differ from those that apply to all other county employees.

District courts in Montana are clothed with inherent and statutory powers to do all that is necessary to render their jurisdiction effective. These powers naturally include the power to hire necessary court personnel. § 3-1-113, MCA; State ex rel. Board of Commissioners of Flathead County v. Eleventh Judicial District Court, 36 St. Rptr. 1231 (1979). Article III, section 1, of the Montana Constitution divides the powers of government into three branches and directs that no branch can exercise power belonging to another. The salary of court personnel comes out of the county budget. §§ 7-6-2351, 7-6-2511, MCA. As previously discussed, the Board of County Commissioners controls the county budget and its administration. At the same time, inherent in the separation of powers is the control by the judicial branch over its own administrative affairs and its own employees. State ex rel. Schneider v. Cunningham, 39 Mont. 165, 101 P. 962 (1909). This obvious and inevitable overlap of powers has been recognized by the Montana Supreme Court in The Board of County Commissioners of Flathead County v. Eleventh Judicial District Court, 36 St. Rptr. at 1237, which stated, "The constantly changing demands upon the judicial system must be worked out in a spirit of independent identity and balance among legislative, executive, and judicial branches of government by reasonable interaction tempered with respect for the limitations of their power."

On this basis it appears that requiring district court employees to abide by county policies and regulations is not an undue interference upon the judicial branch. Such a requirement is, on the other hand, necessary to the county for the effective administration of county business. Although I make this observation about the balance of interests between the court and the county, in regard to district court employees abiding by county rules and policies, I must conclude that to expressly define the scope of judicial authority in relation to that of the county is inappropriate for an Attorney General's opinion. That question would be more appropriately disposed of either by an understanding between the individual judge and the county commissioners, or by a judgment in a court of proper jurisdiction.

THEREFORE, IT IS MY OPINION:

1. An employee who is paid by the county and receives fringe benefits therefrom is a county employee.

2. An employee who receives a county payroll check must abide by the personnel policies.

3. District court employees and Soil Conservation District employees who receive county payroll checks and fringe benefits are county employees.

4. District court employees are required to work a forty (40) hour week.

5. The scope of district court authority in relation to that of the county commissioners is an inappropriate question for an Attorney General's opinion.

Very truly yours,

MIKE GREELY
Attorney General