

STATE LAW LIBRARY
Justice Building
215 N. Sanders
Helena, Montana 59620

RESERVE

MONTANA ADMINISTRATIVE REGISTER

1981 ISSUE NO. 7
PAGES 335-375



NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

- | | |
|-------------------------------|--|
| Known Subject Matter | 1. Consult General Index, Montana Code Annotated to determine department or board associated with subject matter or statute number. |
| Department | 2. Refer to Chapter Table of Contents, Title 1 through 46, page i, Volume i, 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 registers for past 3-4 months for notice of proposed or adopted amendments of rules listed in table of contents of MAR. |

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 7

TABLE OF CONTENTS

NOTICE SECTION

	Page Number
<u>HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16</u>	
16-2-174 Notice of Public Hearing on Proposed Amendment of Rule 16.8.806 (Fluoride in Forage Definitions); 16.8.813 Flouride in Forage.	335-341
<u>LABOR AND INDUSTRY, Department of, Title 24</u>	
24-26-7 (Board of Personnel Appeals) Notice of Proposed Amendment of Rule 24.26.503 Informal Resolution of Appeals; Rule 24.26.508 Grievance Procedure. No Public Hearing Contemplated.	342-345
<u>LIVESTOCK, Department of, Title 32</u>	
32-2-85 Notice of Proposed Adoption of a Rule - Rule 1 Market Responsibility. No Public Hearing Contemplated.	346-347
<u>REVENUE, Department of, Title 42</u>	
42-2-173 Notice of Proposed Amendment of Rule 42.21.122 Livestock No Public Hearing Contemplated.	348-350
<u>SOCIAL AND REHABILITATION SERVICES, Department of, Title 46</u>	
46-2-283 Notice of the Proposed Amendment of Rules - 46.12.1202; 46.12.1204; 46.12.1205; 46.12.1206 Relating to Reimbursement for Skilled Nursing and Intermediate Care Services. No Public Hearing Contemplated.	351-354
46-2-284 Notice of the Proposed Amendment of Rule 46.12.303 Billing, Reimbursement, Claims Processing, and Payment. No Public Hearing Contemplated.	355-356
-i-	7-4/16/81

RULE SECTION

	Page Number
<u>HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16</u>	
REP 16.8.1420 Fluoride and Particulate Emissions-Aluminum Plants	357
<u>COMMUNITY AFFAIRS, Department of, Title 22</u>	
NEW (Coal Board) 22.14.307 Water and/or Sewer Systems Provided by Districts; 22.14.308 Funding of Water and/or Sewer Systems to be Provided by Districts	358
<u>LIVESTOCK, Department of, Title 32</u>	
AMD 32.15.208 Duties of State Authorized Market Veterinarians	359-361
<u>NATURAL RESOURCES AND CONSERVATION, Department of, Title 36</u>	
AMD 36.10.111 Fire Cache	362
<u>PROFESSIONAL AND OCCUPATIONAL LICENSING, Department of, Title 40</u>	
NEW (Speech Pathologists and Audiologists) 40.60.501 Supervisor-Responsibility	363-365
AMD for Aide; 40.60.502 Schedule of Supervision - Contents; 40.60.503 Termination of Supervisor-Aide Relationship; 40.60.504 Nonallowable Functions of Aides; 40.60.402 Definitions	
<u>REVENUE, Department of, Title 42</u>	
EMERG 42.21.122 Livestock	366-367
AMD	

INTERPRETATION SECTION

Opinions of the Attorney General	
9 Taxation - Tax Indexing - Initiative	368-369
10 Arson - Negligence - Words and Phrases	370-373
11 Schools - School Districts - Teachers American Indian Studies Act	374-375

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

In the matter of the amendment	)	NOTICE OF PUBLIC HEARING
of rule 16.8.806, definitions	)	ON PROPOSED AMENDMENT OF
for ambient air quality	)	RULE 16.8.806
regarding fluoride in forage	)	(Fluoride in Forage Definitions)

TO: All Interested Persons

1. On May 22, 1981 at 10:00 o'clock a.m., or as soon thereafter as the matter may be heard, a public hearing will be held in the auditorium of the Montana Highway Department Complex, 2701 Prospect Avenue, Helena, Montana, to consider the amendment of rule 16.8.806.

2. The proposed amendment replaces present rule 16.8.806 found in the Administrative Rules of Montana. The proposed amendment would add a definition for "grazing season average" and for "sample plot value," and amend the definition of "monthly average," all in regard to establishing an ambient air quality standard and sampling protocol for fluoride in forage.

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

16.8.806 DEFINITIONS In this sub-chapter, the following words and phrases shall have the following meanings:

(1) "Act" means the Montana Clean Air Act.

(2) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(3) "Ambient air quality standards" means a permissible level of an air contaminant in the ambient air as defined by the maximum frequency with which a specified level may be exceeded or by a maximum level of an air contaminant in or on body or plant tissues.

(4) "Annual average" means an arithmetic average of all valid recorded averages of any 12 consecutive calendar months provided that:

(a) at least forty-five 24-hour average recorded values are necessary and each of these values must be separated from the previous value by at least 6 days, or

(b) at least 6570 hourly average valid recorded values are necessary with a minimum of 400 of such values recorded in each of the 12 consecutive calendar months.

(5) "Approved equivalent method" means any method of measuring concentrations of air contaminants regulated in this sub-chapter which has been approved as an equivalent method by the U.S. Environmental Protection Agency pursuant to Title 40, Part 53, Code of Federal Regulations or which has been approved by the department. Methods approved by the department are kept on file and are available for inspection and copying.

(6) "Carbon monoxide" means the gas having the molecular composition of one carbon atom and one oxygen atom.

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

(8) "Eight hour average" means the arithmetic average of all valid recorded values during any consecutive eight hours but not less than six valid hourly averages.

(9) "Fluoride" means fluorine combined with one or more other substances.

(10) "Forage" means any plant part which is grazed or browsed.

(11) "Grams per square meter" (gm/m²) means a concentration numerically equal to the mass of an air contaminant (in grams) deposited on one square meter of surface.

(12) "Grazing season average" means, for each plot, an arithmetic average of all monthly averages for that sample plot for the months of April through September. The minimum number of sample plot values shall be five for each sample plot.

~~(12)~~ (13) "Hourly average" means an arithmetic average of all valid values recorded between the first minute and ~~sixtieth~~ 60th minute of the hour (e.g. 1:00 to 2:00), but not less than two-thirds of the data obtainable from the monitoring device during the hour, or an integral sample of more than 40 minutes.

~~(13)~~ (14) "Hydrogen fluoride" means the gas having the molecular composition of one fluorine atom and one hydrogen atom.

~~(14)~~ (15) "Hydrogen sulfide" means the gas having molecular composition of one sulfur atom and two hydrogen atoms.

~~(15)~~ (16) "Lead" means elemental lead or lead in combination with any other substance.

~~(16)~~ (17) "Micrograms per cubic meter" (ug/m³) means a concentration numerically equal to the mass of an air contaminant present (in micrograms) in a one cubic meter of air, corrected to standard conditions.

~~(17)~~ (18) "Micrograms per gram" (ug/g) means a concentration numerically equal to the mass of an air contaminant (in micrograms) in one gram of dry material.

~~(18)~~ (19) "Monthly average" means an the arithmetic average of all valid recorded values of fluoride in forage samples collected in accordance with the department's approved forage sampling protocol during any calendar month. The minimum number of such valid recorded values shall be four, provided that each of these four values must be separated from the previous value by at least six days. for a sample plot, taken for a calendar month April through September only, of all sample plot values of fluoride in or on forage samples collected. The minimum number of sample plot values must be two. These 2 sample plot values must be separated by at least a 12-day interval. Any number of sample plot values in excess of two for any month must be sampled at least X days

from each other, where X is the integer value described by the following equation:

$$X = (30/\text{Number of Sample Plot Values}) - 2$$

Regardless of the number of sample plot values used to calculate a monthly average, at least one sample plot value must lie within 12 days of the end of the month.

~~(19)~~ (20) "Ninety-day average" means an arithmetic average of all valid recorded values during any ~~ninety~~ 90 consecutive days. The minimum number of valid recorded values shall be ~~ten~~ 10 provided that each of these values must be separated from the previous value by at least ~~six~~ 6 days.

~~(20)~~ (21) "Nitrogen dioxide" means the gas having the molecular composition of one nitrogen atom and two oxygen atoms.

~~(21)~~ (22) "Ozone" means the gas having the molecular composition of three oxygen atoms.

~~(22)~~ (23) "Particle scattering coefficient" means the fractional change in the light intensity per meter of sight path due to particulate matter.

~~(23)~~ (24) "Particulate matter" means any material, except water in an uncombined form, that is or has been airborne and exists as a liquid or a solid at standard conditions.

~~(24)~~ (25) "Parts per billion" (ppb) means a concentration of an air contaminant numerically equal to the volume of a gaseous air contaminant present in ~~one~~ 1 billion volumes of air at the same conditions of temperature and pressure.

~~(25)~~ (26) "Parts per million" (ppm) means a concentration of an air contaminant numerically equal to the volume of a gaseous air contaminant present in ~~one~~ 1 million volumes of air at the same conditions of temperature and pressure.

(27) "Sample plot value" means the results of any chemical analysis performed on a composite of forage grass clippings.

~~(26)~~ (28) "Standard conditions" means a temperature of 25° Celsius and a pressure of 760 millimeters of mercury.

~~(27)~~ (29) "Sulfur dioxide" means the gas having the molecular composition of one sulfur atom and two oxygen atoms.

~~(28)~~ (30) "Thirty-day average" means an arithmetic average of all recorded values during any consecutive ~~thirty~~ 30 days, but not less than ~~twenty~~ 20 valid ~~twenty-four~~ 24 hour average recorded values or an integral sample of more than ~~twenty~~ 20 days.

~~(29)~~ (31) "Twenty-four hour average" means an arithmetic average of each valid recorded value during any consecutive ~~twenty-four~~ 24 hours, but not less than ~~eighteen~~ 18 valid hourly averages or an integral sample of more than ~~eighteen~~ 18 hours.

~~(30)~~ (32) "Valid recorded value" means data recorded, collected, transmitted and analyzed as required by ARM 16.8.811.

~~(21)~~ (33) "Year" means any 12 consecutive months.

4. The Board is proposing this amendment to the rule because the amended ambient air quality standard and sampling protocol for foliar fluoride, which the board is also proposing, requires additional and modified definitions to clarify the fluoride standard and the procedure for sampling fluoride in or on forage.

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 C. W. Leaphart, Jr., 1 North Last Chance Gulch, Helena, MT, 59601, no later than May 18, 1981.

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

7. The authority of the Board to make the proposed amendment is based on sections 75-2-111 and 75-2-202, MCA, and the rule implements section 75-2-202, MCA.

In the matter of the amendment	)	NOTICE OF PUBLIC HEARING
of rule 16.8.813, setting an	)	ON PROPOSED AMENDMENT OF
ambient air quality standard	)	RULE 16.8.813
and protocol for fluoride in	)	(Fluoride in Forage)
forage)	

TO: All Interested Persons

1. On May 22, 1981 at 10:00 o'clock a.m., or as soon thereafter as the matter may be heard, a public hearing will be held in the auditorium of the Montana Highway Department Complex, 2701 Prospect Avenue, Helena, Montana, to consider the amendment of rule 16.8.813.

2. The proposed amendment replaces present rule 16.8.813 found in the Administrative Rules of Montana. The proposed amendment would change the 20 micrograms per gram monthly average to a 50 microgram per gram monthly average and a 35 microgram average during a 6-month grazing season, and would establish a particular sampling protocol.

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

16.8.813 FLUORIDE IN FORAGE (1) No person ~~shall~~ may cause or contribute to concentrations of fluoride in or on forage which exceed the following standard standards:

~~(1)--Monthly-average--20-micrograms-per-gram--~~

~~(2)--Sampling-method-for-fluoride-in-or-on-forage--For determining-compliance-with-this-rule, concentrations-of--fluorides-in-or-on-forage-shall-be-determined-from-forage~~

~~collected according to a sampling protocol approved by the department and analyzed by the semiautomated method, as more fully described in "Methods of Air Sampling and Analysis, Second Edition" (1977), Method No. 122-2-02-68F, provided that the surfaces of the plant material are not to be washed, or by an approved equivalent method.~~

NOTE: The following is all new material and is not underlined for your convenience in reading:

(a) Monthly average, April through September only: 50 micrograms per gram.

(b) Grazing season average: 35 micrograms per gram.

(2) The following sampling protocol must be applied:

(a) A sample plot must be located on an area which has forage grass grazed by domestic livestock, or an area upon which forage is grown for use or commercial sale as a livestock feed. A sample plot must be located on a U.S. Geological Survey Map, or on an aerial photograph, for consistency of resampling. A written description of the plot location is acceptable, in the alternative, if the area can be verbally defined to the satisfaction of the department. Plot descriptions must be filed with the department's Air Quality Bureau on standard site identification forms provided by the department. The location of sample plots must be approved by the department.

(b) The sample plot must be a minimum of one acre in area. At locations where forage growth is sparse, the sample plot must be large enough to allow a sampling capability, which meets the provisions of sample number and size, as described in this protocol under subsection (3). Location of the plot must be chosen according to the predicted location of maximum fluoride impact. This location must be determined through modeling, historical monitoring data or other scientifically supportable procedures acceptable to the department. In the event that the predicted location of maximum concentration lies in an area unsuitable for sampling, another nearby plot suitable for sampling must be chosen. Locations where grasses are less than 3 cm in height or locations less than 100 meters from dirt roads or at locations less than 30 meters from paved roads must not be sampled.

(c) Sampling of each plot must be performed at least twice per month. The sampling schedule, if twice per month, must provide a minimum of 12 days between sampling periods. Should additional sampling be conducted, sampling intervals must be spaced in accordance with the definition of monthly average to represent the entire monthly forage fluoride uptake. Grazing season sampling must commence in April and continue through September.

(d) Samples must be collected through the sample period by alternately using S, U, W, S, U, W etc., shaped transects, which traverse the full sample plot. Samples must be collected at regularly spaced distances as one progresses along the transect. Regardless of the plot size, a minimum of 25 clippings per plot must be collected. Clippings collected at each plot must be placed into a single composite sample. Samples must not be washed or in any way treated to remove particulate material from the plant.

(e) Approximately equal-sized clippings of at least 10 grams each must be cut from the forage grasses in a given sample plot. The entire aerial portion above 3 cm of the base of the plant must be collected, unless the splashline is clearly above the 3 cm mark, in which case the vegetation must be cut slightly above the splashline. The clipping must include old and new leaves. Entire leaves must be collected and analyzed rather than only leaf tips or edges. An attempt must be made whenever possible to obtain plant tissue that is free of dew or other moisture. During April, however, only new growth must be sampled.

(f) Only forage grasses must be sampled.

(g) Plant tissue must be stored in the laboratory in labeled and ventilated kraft bags, or other acceptable containers, at temperatures of 2-8° C. The sample tissue must be air dried at a temperature of 80° C (\pm 5° C) for 24 to 48 hours prior to grinding. The tissue shall be milled to pass a 40-mesh sieve.

(h) The composite sample must be thoroughly mixed prior to any chemical analysis. Replicate aliquots are to be taken using a sample splitter or any other unbiased technique, and analyzed chemically for fluoride using the semi-automated method, as more fully described in Methods of Air Sampling and Analysis, Second Edition (1977), Method No. 122-2-02-68T, except that the surfaces of the plant material must not be washed, or by an approved equivalent method. The department hereby adopts and incorporates herein by reference Methods of Air Sampling and Analysis, Second Edition (1977), Method No. 122-2-02-68T. Methods of Air Sampling and Analysis, Second Edition is a nationally recognized authority setting forth the laboratory analytic procedure for chemical analysis of plant tissue. A copy of Methods of Air Sampling and Analysis, Second Edition (1977), Method No. 122-2-02-68T may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Complex, Helena, Montana, 59620.

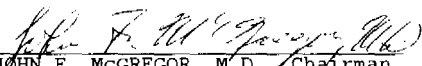
(i) A 5-gram replicate aliquot from each plot must be forwarded to the department for quality control purposes. Another aliquot of the collected plant material must be saved for a minimum of 3 years in labeled air-tight plastic containers in the event additional analyses are required.

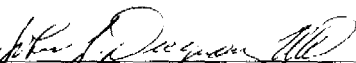
4. The Board is proposing this amendment to the rule because fluoride emitting industries either cannot economically meet the standard or, in some circumstances, are incapable of meeting the present rule, and domestic livestock will be protected by the standard proposed; the proposed rule also establishes a specific sampling protocol where none existed before.

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 C. W. Leaphart, Jr., 1 North Last Chance Gulch, Helena, MT, 59601, no later than May 18, 1981.

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

7. The authority of the Board to make the proposed amendment is based on sections 75-2-111 and 75-2-202, MCA, and the rule implements section 75-2-202, 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 April 6, 1981

BEFORE THE BOARD OF PERSONNEL APPEALS
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
amendment of Rule 24.26.503,	)	AMENDMENT OF RULE
ARM, encouraging the informal	)	24.26.503, ARM,
resolution of classification	)	RELATING TO INFORMAL
appeals; and Rule 24.26.508,	)	RESOLUTION OF CLASSIFICA-
ARM, providing for full	)	TION APPEALS; AND RULE
disclosure of issues in	)	24.26.508, ARM, RELATING
classification appeals.	)	TO THE GRIEVANCE PROCEDURE
	)	IN CLASSIFICATION APPEALS.
)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On June 12, 1981, the Board of Personnel Appeals proposes to amend rule 24.26.503, ARM, encouraging the informal resolution of classification appeals.

Also, on that same day, June 12, 1981, the Board of Personnel Appeals proposes to amend Rule 24.26.508, ARM providing for the delineation of issues in classification appeals.

2. The proposed amended rule 24.26.503, ARM, would provide as follows:

24.26.503 INFORMAL RESOLUTION OF APPEALS (1) The board encourages the personnel division and state employees to attempt to resolve appeals through an informal procedure as prescribed by the personnel division before initiating the formal appeals procedure. Every attempt should be made to resolve an appeal at the earliest possible stage of the appeals process, preferably between the employee and their immediate supervisor.

3. The proposed amended rule 24.26.508, ARM would provide as follows:

24.26.508 GRIEVANCE PROCEDURE (1) Step One. Any employee, group of employees, or appropriately designated representatives, may utilize the formal appeals procedure. The individual employee must obtain a State Employee Classification and Wage Appeal Form BPA-C(1) and follow the accompanying instructions. In the case of a group appeal, a group of employees must comply with the rules governing group appeals (24.26.404). Forms may be obtained from the Board of Personnel Appeals, Capitol Station, Helena, Montana, or from the personnel offices of all departments within the executive branch.

(a) The appropriate form when completed shall be submitted to the immediate supervisor.

(b) To complete the form, the employee must clearly

identify the issue or issues motivating the appeal. A list of appealable issues will be provided with the appeal form. The employee must explain in detail the issue and their reasons for appealing. If an issue or reason for the appeal is not adequately identified, the appeal may be returned to the employee at any step in the appeal procedure.

(c) Appealable issues are the following:

(i) The Class Specification doesn't adequately describe my position duties.

(ii) A different class specification is a better description of my position duties.

(iii) The class title is inappropriate for my position.

(iv) The minimum qualifications are not equivalent to those required to do my job.

(v) Other positions assigned to the same class have less difficult work than my position.

(vi) My position duties are more similar to positions assigned to a different class.

(vii) Other positions assigned to the same class perform duties significantly different than my position duties.

(viii) The Position Description for my position class does not adequately describe the duties and responsibilities assigned.

(ix) There are significant responsibilities assigned to my position which are not included in the Position Description.

(x) There are significant duties described in the Position Description which are not performed by this position.

(xi) There is not a current Position Description available for my position.

(xii) The Pay Plan Rules have been incorrectly applied to my position (specific rules(s) should be cited).

(xiii) (other) must specifically relate to position classification.

(b) (d) The immediate supervisor shall have ~~three~~ ten working days to examine the appeal, attempt to resolve the complaint, record his or her findings, record steps taken (if any) to resolve appeal, and return the form to the employee.

(e) If the immediate supervisor feels the employee appeal has merit, the immediate supervisor may, initiate a request for reclassification through the agency Personnel Office; or request an administrative review of the classification of the employee's position, or redescribe the position duties to more adequately reflect actual work performed or initiate and complete other steps to address the identified issue. The employee should continue the appeal even if administrative action is underway.

(f) If the employee does not accept the findings of the immediate supervisor, the employee shall have ~~two~~ five working days to forward the evaluation and findings of the immediate supervisor to step two.

(2) Step Two

(a) If the employee chooses to continue the appeal, the

employee shall submit the form with all appropriate sections completed to the department head for review.

(b) The department head shall have five working days to review the appeal, record his or her findings ~~in the appropriate section of the form~~, record steps taken to resolve the appeal, and return it to the employee.

(c) If the employee does not accept the findings of the department head, the employee shall have ~~three~~ - five working days to forward the evaluation and findings of the department head to step three.

(3) Step Three

(a) If the employee chooses to continue the appeal, the employee shall submit the form, all appropriate sections completed, to the Personnel Division for review.

(b) The Personnel Division shall have 30 working days to review the matter, record its findings in the appropriate section of the form, and to issue its recommended adjustment and return it to the employee or the proper representative.

(c) The Personnel Division's review and findings shall be limited to the issue(s) identified in Step One of the appeal. Any additional issues identified at Step Three will be addressed through informal, administrative procedures as determined by the Personnel Division.

(d) The Personnel Division will prepare detailed written findings in response to the issue(s) identified at step one.

~~(e)~~ (e) If the employee accepts the Personnel Division's findings and recommendation, the formal appeals procedure is concluded upon the implementation of the Personnel Division's findings and recommendations.

~~(d)~~ (f) The employee shall have ~~5~~ - 10 working days to forward the appeal to the board for resolution.

(4) Step Four

(a) If the employee rejects the Personnel Division's findings and recommendation, the employee shall submit the form BPA-C(1), with all appropriate sections completed, to the board.

(b) The employee must identify and record where they feel the Personnel Division's findings are in error.

(c) The board shall have 10 working days to accept or reject the appeal for hearing at Step Four.

(i) The board shall examine the issue(s) and exceptions identified by the employee. If the issue(s) and exceptions are adequately described, the board will accept the appeal at Step Four.

(ii) If the board finds the issue identified at step one to be inadequately described, the board shall return the appeal to the employee. In such case, the employee may redescribe the issue and refile the appeal at step one within 10 working days.

(iii) If the Board feels that the Personnel Division's written findings or the employee's exceptions to the written findings are not adequately described, the Board shall return the appeal to the appropriate party. In such case, the party will expand its findings or exceptions and refile them with

the Board within 10 working days.

~~(b)~~ (d) If in the board's discretion it decides to conduct a preliminary investigation in the appeal, it shall have 20 days to do so. The board may carry out any investigations deemed necessary for resolution of the appeal or complaint. The employee or group of employees and Personnel Division shall have ten days to accept or reject the preliminary decision. If the employee or group of employees and the Personnel Division accept the preliminary decision, it shall be final and binding. The board shall then implement the preliminary decision by instructing the Personnel Division to remedy the situation.

~~(e)~~ (e) If the employee, group of employees, or the Personnel Division reject the preliminary decision or the board in its discretion decides not to conduct a preliminary investigation, the board or an agent appointed by the board shall conduct a hearing in accordance with title 2, chapter 4, MCA.

(f) Any investigation and/or hearing conducted by the board shall be restricted to the issue identified at Step One.

(g) If the preponderance of evidence taken at the hearing shows the employee is aggrieved, the board shall issue an order requiring action to resolve the employee's grievance.

(h) Upon the conclusion of the hearings process, the Board shall issue its proposed findings of fact, conclusions of law, and recommended order within 90 working days.

(i) The prescribed time limits at any step of the appeals process may be modified or waived upon mutual agreement of all parties.

4. The Board proposes these rules in an attempt to expedite its hearing and to provide participants in classification grievances with full disclosure of information prior to any hearing conducted by this Board. This Board is concerned about its backlog of hearings and would expect that this rule may expedite hearings, reduce the length of decisions by narrowing the issues to be decided, and hopefully eliminate less meritorious cases.

5. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Jim E. Gardner, Jr., Attorney, Board of Personnel Appeals, 35 South Last Chance Gulch, Helena, MT 59601, no later than May 22, 1981.

6. The authority of the Board of Personnel Appeals to make the proposed rules is based on section 2-4-201, MCA and implements 2-18-1011, MCA.

By: 

John Kelly Addy, Chairman
Board of Personnel Appeals

Certified to the Secretary of State 4-6-81

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

In the matter of the adoption of	)	NOTICE OF PROPOSED
a rule Rule I (concerning	)	ADOPTION OF A RULE
livestock market responsibility)	
for compliance with animal health	)	(LIVESTOCK MARKET
rules.	)	RESPONSIBILITIES)

NO PUBLIC HEARING
CONTEMPLATED.

TO: All Interested Persons

1. On or after May 16, 1981 the Board of Livestock proposes to adopt a rule clarifying the responsibility of a livestock market concerning health regulations and rules of the Department of Livestock.

2. The rule provides as follows:

Rule I Market Responsibility. Each market is responsible for ensuring that all livestock sales are held in compliance with the disease control regulations of the Montana department of livestock, animal health division.

3. The rule is proposed to be adopted to clarify any ambiguity or confusion arising out of a recent amendment to Rule 32.15.208, which changes the method of payment and responsibility of a veterinarian performing livestock market veterinary inspections.

4. Interested parties may submit their data, views, or arguments concerning the proposed rule in writing to James W. Glosser, D.V.M., Administrator & State Veterinarian, Department of Livestock, Capitol Station, Helena, MT 59620 no later than May 14, 1981.


5. If a person is directly affected by the proposed rule wishes to express his data, views, and arguments orally or in writing at a public hearing he must make written request for a hearing and submit this request along with any written comments he has to James W. Glosser, D.V.M., Administrator & State Veterinarian, Animal Health Division, Department of Livestock, Helena, MT 59620, no later than May 14, 1981.

6. The department believes that the number of directly affected persons exceeds 250 as this rule has potential impact on every livestock producer in the state. In the event that the department receives requests for public hearing from 25 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 directly affected members, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority of the agency to make the proposed rule is found in section 81-2-102 MCA. The same section is implemented.


ROBERT G. BARTHELMESS
Chairman, Board of Livestock

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

Certified to the Secretary of State April 6, 1981.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE) NOTICE OF PROPOSED AMENDMENT
PROPOSED AMENDMENT of) OF RULE 42.21.122, relating to
Rule 42.21.122, relating to) the valuation of livestock.
the valuation of livestock.)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 18, 1981, the Department of Revenue proposes to amend Rule 42.21.122, relating to the valuation of livestock.

2. The proposed amendment replaces present rule 42.21.122 found in the Administrative Rules of Montana. The proposed amendment would provide the rule for valuation of cattle for the current tax year.

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

42.21.122 LIVESTOCK (1)(a) The average market value for cattle shall be determined by multiplying the weighted average price per cwt. for ~~beef cattle~~, cows marketed in Montana during the preceding 12-month period December through November as determined by the Montana crop and livestock reporting service, times established factors for each of the ~~seven~~ six categories of cattle. The established factors are:

Bulls - 9 months thru 20 months and older	45 18
Bulls - 21 months and older	17.5
Cattle - 9 months thru 20 months	5 6.5
Cattle - 21 months thru 32 months	6.25 8
Cows - 33 months and older	7.5 9
Steers - 33 months and older	40 12
Dairy Cows - 21 months and older	40 12

(b) The average market value for blooded or registered cattle shall be 30% more than the average market value for stock cattle. The average market value for registered or purebred cattle shall apply only to those animals used to reproduce registered or purebred animals.

(2) The average market value for sheep shall be determined by multiplying the average price per cwt. for slaughter lambs, marketed in Montana during the preceding 12-month period December through November, times established factors for each of the four categories of sheep. The established factors are:

Registered Bucks - 9 months and older	2.6
Stock Bucks - 9 months and older	2
Sheep - 9 months thru 70 months	.7
Sheep - 71 months and older	.2

(3)(a) The average market value for swine shall be deter-

mined pursuant to 15-24-931, MCA.

(b) The most recent 5-year average U.S.D.A. Omaha quotation prices are: Grades 1 to 3 at 200 to 240 pounds \$40.68; sows 270 to 330 pounds \$34.51.

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

4. On November 14, 1980, the Department of Revenue published notice of a public hearing on proposed amendments to Rule 42.21.122, at pages 2897 and 2898 of the 1980 MAR, issue no. 21. The rule-making proceeding was pursuant to a petition of the Montana Stockgrowers' Association. The petition requested amendments to use the cow average price in lieu of the beef cattle average price, to use one class of bulls, and to change the factors used to convert to market value. At the hearing, proponents and opponents presented conflicting data as to the market value of cattle. Because of the varying data the Department made the decision not to adopt the proposed amendments (see pages 169 and 170 of the 1981 MAR, issue no. 4). Following this decision various affected taxpayer associations filed suit challenging the Department's decision. Subsequently the Department and the taxpayer associations met to see if a mutually agreed upon market value for cattle could be arrived at. After meeting, the parties agreed to the proposal found in this notice. Simultaneously with this notice, the Department is publishing notice of immediate adoption of the amendments to Rule 42.21.122 on an emergency basis.

5. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing no later than May 16, 1981, to:

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

6. If a person who is directly affected by the proposed amendment wishes to express his data, views, or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to Laurence Weinberg at the address given in paragraph 5 above.

7. If the Department receives requests for a public hearing on the proposed amendment 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 from an association having not less than 25 members who are 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 estimated to be at least 25 based upon the number of persons owning cattle.

8. The authority of the Department to make the proposed amendment is based upon Section 15-1-201, MCA. The proposed amendment implements Section 15-6-137, MCA.



ELLEN FEAVER, Director
Department of Revenue

Certified to the Secretary of State 4/5/81

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

In the matter of the amend-	)	NOTICE OF THE PROPOSED
ment of Rules 46.12.1202,	)	AMENDMENT OF RULES
46.12.1204, 46.12.1205, and	)	46.12.1202, 46.12.1204,
46.12.1206 pertaining to the	)	46.12.1205, AND 46.12.1206
reimbursement for skilled	)	FOR SKILLED NURSING AND
nursing and intermediate care	)	INTERMEDIATE CARE SERVICES.
services.	)	NO PUBLIC HEARING CONTEM-
	)	PLATED

TO: All Interested Persons

1. On May 18, 1981, the Department of Social and Rehabilitation Services proposes to amend Rules 46.12.1202, 46.12.1204, 46.12.1205, and 46.12.1206 pertaining to the reimbursement for skilled nursing and intermediate care services.

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

46.12.1202(2)(f) "Routine nursing care services" means skilled or intermediate nursing care as defined in rules for nursing home care in ARM ~~46-12-555~~ and ~~46-12-556~~ 46.12.1103 and 46.12.1104.

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

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

(i) remains the same.

(b) remains the same.

(i) remains the same.

(ii) The performance incentive factor to be included in the retrospectively determined rate of a provider which has not operated economically (see ARM ~~46.12.1202(2)(1)~~) is determined by the relationship of its allowable operating cost per day in the rate year to the allowable operating cost per day of all participating Montana facilities from the applicable prior fiscal year plus a trend factor (see ARM 46.12.1204(3)(d)) and by the relationship of its allowable operating cost per day of the rate year to its allowable operating cost per day of the applicable prior fiscal year plus a trend factor. The maximum performance incentive factor for this provider will be determined under the method indicated in ARM

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

(iii) remains the same.

(c) The maximum reimbursable operating cost per day is the operating cost which is the 90th percentile operating cost of all Montana facilities participating in the program in the applicable prior fiscal year plus the applicable trend factor (see ARM 46.12.1204(3)(d)). For rates effective January 1, 1981, the 90th percentile cost shall be derived from all audited cost reports submitted for fiscal years ending in 1979. Subsequent 90th percentile costs shall be derived from cost reports with ending dates no more than two years prior to the beginning of the rate year.

(d) remains the same.

(i) remains the same.

(ii) remains the same.

(e) Cost per day is the allowable cost for a facility as determined by ARM 46.12.~~1205~~1204(5) divided by related total patient days.

(i) remains the same.

(ii) remains the same.

(iii) remains the same.

(iv) remains the same.

(f) remains the same.

(4) remains the same.

(a) remains the same.

(i) remains the same.

(ii) remains the same.

(iii) remains the same.

(b) The interim rate will be issued according to ARM 46.12.1204(2) except that there will be one interim rate issued for skilled and intermediate care patients served by the provider and another interim rate issued for ICF/MR patients. The basis for these interim rates will be allowable costs from the applicable prior fiscal year as determined in ARM 46.12.1204(3)~~(d)~~(e).

Subsections (5) through (7)(e) remains the same.

(f) The rate determined according to ARM 46.12.1204 (7)(e) will be made effective for the budget period used to conduct the review. Three months prior to the end of the budget period used to conduct the review, the provider may apply for a new review according to ARM 46.12.1204(7)(a) to become effective the following fiscal year, or continue with the rate established under ARM 46.12.1204(7)(e) until the rates established under ARM 46.12.1204~~(1)~~(2) may be found to be adequate.

(g) If the interim prospective rate determined in ARM 46.12.1204~~(6)~~(7)(c) is found to produce an overpayment or underpayment with respect to the rate determined through review for the period the interim rate was in effect, then the overpayment or underpayment will be administered according to ARM 46.12.1205(8)(b) through (g). As thorough examinations of and limits on staffing patterns will be accomplished prior to full facility evaluation, no recovery of directly patient care related staffing salary amounts shall be undertaken following the review process. In addition, recovery of nondirectly patient care related staffing salary sums shall be effected only upon completion of administrative and judicial review of such contested amounts.

46.12.1205(6)(b) On-site audits of provider detailed records shall be made to assure validity of reports, costs and statistical information in conformity with federal laws and regulations. The department hereby adopts and incorporates herein by reference (42 CFR 447.292 and 42 CFR 447.293), which are federal regulations setting forth criteria for audits of providers' cost reports. A copy of the above-cited regulations may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59601. Audits will meet generally accepted auditing standards. Audits of providers' cost reports, financial records and other pertinent data will be adequate to verify that the provider has included only those expense items that are specified as allowable costs under ARM 46.12.1204~~(4)~~(5) in compiling the costs of services, that the provider has accurately determined allowable costs in compliance with federal requirements cited under 42 CFR 447.274(b) (1), which has been incorporated by reference into this rule (see ARM 46.12.1205 (6)(a)), that the provider has accurately attributed allowable costs to costs of services according to federal requirements cited under 42 CFR 447.274(b)(2), and that the provider's allowable costs are reasonable. Section 42 CFR 447.274(b)(2) has been incorporated by reference into this rule (see ARM 46.12.1205(6)(a)). On-site audits of the financial and statistical records will be conducted at a minimum of one-third of the facilities each year until all providers are audited by December 31, 1980. After that time, on-site audits will be conducted yearly in at least 15 percent of the facilities. Ten percent of these facilities will be selected using factors established by the department. The remaining five percent will be chosen at random.

(c) remains the same.

(d) Upon conclusion of each on site audit the department audit staff will submit an audit report to the medical assistance bureau. The report will meet generally accepted auditing standards and will state the auditor's opinion as to whether, in all material respects, the cost report submitted by the provider has included only those expense items that are specified as allowable costs under ARM 46.12.1204~~(4)~~(5) in compiling the costs of services, and have been accurately

determined allowable costs in compliance with federal requirements cited under 42 CFR 447.274(b)(1), which has been incorporated by reference into this rule (see ARM 46.12.1205(6)(a)). The department will keep audit reports on file for at least 3 years after receipt.

46.12.1206 (3) ~~(2)~~ Appeal. In the event the provider or department disagrees with the hearings officer's decision, a notice of appeals may be submitted to the hearings office for forwarding to the board of social and rehabilitation appeals within ten days of the hearings officer's decision. The notice of appeals shall set forth the specific grounds for appeal.

3. The rules proposed are being amended for the purpose only of correcting inaccurate ARM subsections cited in the rules.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana, 59604, no later than May 17, 1981.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59604, no later than May 17, 1981.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; from the Administrative Code Committee of the legislature; from a governmental 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 nine providers based on 94 facilities or 30 persons based on 3,000 Medicaid recipients residing in skilled or intermediate care facilities.

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


Director, Social and Rehabilitation Services

Certified to the Secretary of State April 2, 1981.

7-4/16/81

MAR NOTICE NO. 46-2-283

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

In the matter of the amendment of	)	NOTICE OF THE PROPOSED
Rule 46.12.303 pertaining to	)	AMENDMENT OF RULE
provider requirements; billing,	)	46.12.303 PERTAINING
reimbursement, claims processing,	)	TO PROVIDER REQUIRE-
and payment.	)	MENTS. NO PUBLIC
	)	HEARING CONTEMPLATED.

TO: All Interested Persons

1. On May 18, 1981, the Department of Social and Rehabilitation Services proposes to amend Rule 46.12.303 pertaining to provider requirements; billing, reimbursement, claims processing, and payment.

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

46.12.303 BILLING, REIMBURSEMENT, CLAIMS PROCESSING, AND PAYMENT (1) Providers shall submit claims within 180 days of the date the service was performed, within 180 days after the applicants eligibility is determined, or within 180 days after a written notice from a third party resource, whichever occurs last. For providers of hospital services, the service shall be deemed to have been performed upon the recipient's discharge from one continuous confinement. A written inquiry to the department or to the local county welfare department regarding eligibility within the 180 day limit shall constitute evidence of an effort to bill medicaid for these services.

(a) All claims to the Montana medicaid program by individual practitioners and sole proprietorships, whether or not incorporated as a public service corporation, are to be submitted on personally signed state approved billing forms, or they shall not be considered valid and proper claims.

(b) All claims submitted to the Montana medicaid program by other legal business entities are to be submitted on state approved billing forms with the personal signature of a person who has actual written authority to bind and represent the provider for this purpose. The provider must furnish a verified original signature of this person on a form that has been furnished by the department for this purpose. Claims not submitted in this manner shall not be considered valid and proper.

Subsections (2) through (7) remain the same.

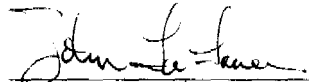
3. The agency proposes to amend this rule in order to more fully explain and clarify the basic requirement found in the present rule for providers to sign their claim forms. This amendment was proposed after receiving several inquiries from medical providers about the present rule. This is not a substantive change.

4. Interested parties may submit their data, views, or argument concerning the proposed amendment in writing to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana, 59604, no later than May 17, 1981.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604, no later than May 17, 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 400 providers based on a total of 4,000 providers.

7. The authority of the agency to make the proposed amendment is based on Sections 53-6-113, 53-6-115 and, 53-2-201, MCA, and the rule implements Sections 53-6-111, 53-6-115, and 53-2-201, MCA.



Director, Social and Rehabilitation Services

Certified to the Secretary of State April 6, 1981.

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


In the matter of the repeal	)	NOTICE OF
of rule 16.8.1420, setting	)	REPEAL OF RULE
standards for fluoride and	)	16.8.1420
particulate emissions from	)	(Fluoride and Particulate
existing primary aluminum	)	Emissions-Aluminum Plants)
reduction plants)	

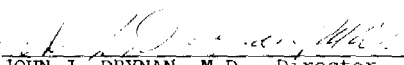
To: All Interested Persons

1. On March 21, 1981, the 47th Legislature repealed rule 16.8.1420 setting fluoride and particulate emissions standards applicable to existing primary aluminum reduction plants.

2. The rule repealed is on page 16-250 of the Administrative Rules of Montana.

3. This rule was repealed by House Joint Resolution No. 22 of the 47th Legislature. The joint resolution was passed pursuant to authority provided in Section 2-4-412, MCA. The legislature's rationale for the repeal is set forth in the text of the joint resolution.


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 April 6, 1981

BEFORE THE COAL BOARD
OF THE STATE OF MONTANA

IN THE MATTER of the adoption)
of rules regarding the eligi-)
bility of water and sewer)
projects proposed by county)
water and sewer districts)
and improvement districts.)

NOTICE OF THE ADOPTION OF
RULES RELATING TO WATER
AND SEWER PROJECTS

TO: All Interested Persons:

1. On December 26, 1980, the Coal Board published notice of a proposed adoption of rules regarding water and sewer projects to be provided by districts at pages 3062 and 3063 of the 1980 Montana Administrative Register, issue no. 24.

2. The Board has adopted the rules as proposed. The following numbers are assigned: RULE I--22.14.307; RULE II--22.14.308.

3. No comments or testimony were received.

BY: 
Hershel M. Robbins, Chairman

Certified to the Secretary of State, March 17, 1981.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF AMENDMENT
of Rule 32.15.208 (concerning	)	OF RULE 32.15.208
the duties of and compensation	)	DUTIES OF STATE
for State Market Veterinarians)	)	APPOINTED MARKET
	)	VETERINARIANS

TO: All Interested Persons

1. On November 28, 1980, the Board of Livestock ("Board") published notice of the proposed amendment to rule 32.15.208, concerning the duties of and compensation for State Market Veterinarians, at pages 2960-2961 of the 1980 Administrative Register, issue No. 22, and a hearing was held on December 19, 1980.

2. The Board has amended the rule as proposed, except for the following changes:

32.15.208 DUTIES OF STATE AUTHORIZED MARKET VETERINARIANS A veterinarian, provided at the expense of the livestock market, but authorized by the Montana department of livestock, animal health division, must inspect all livestock coming into livestock markets, make and keep records of the proper disposition of any animal showing evidence of disease or any animal condemned by the Montana department of livestock or the United States department of agriculture and determine the brucellosis status of all female cattle and bulls. ~~He is responsible for providing that all livestock sold and moved from the market have complied with the disease control regulations of the Montana department of livestock, animal health division. He is also responsible for the enforcement of the rules contained in this sub-chapter.~~ (History: Secs. 81-2-102, 81-8-231 MCA; IMP, Secs. 81-2-102, 81-8-231 MCA; Eff. 12/31/72; EMERG AMD, Eff. 8/15/75; AMD, Eff. 11/4/75.)

3. Approximately 50 people appeared at the hearing, of which six were members of the Board and five were department employees. Eleven people testified. Adverse testimony received both in person at the hearing and in written form is included in the following comments:

Comment: Adoption of this amendment would raise the cost of livestock sold through markets as opposed to the cost of livestock sold in the country and would thereby be discriminatory.

Response: Approximately half of all livestock sold in Montana are sold in the country. Health requirements imposed on markets are not imposed in the country because, unlike a market situation, there is no comingling of livestock and therefore no possibility of disease transmission.

Comment: Adoption of this amendment would cost the smaller markets more than it would cost larger markets.

Response: Health inspection of livestock sold through markets is necessary. Under present procedures, the state is subsidizing all markets, no matter how large they are, at taxpayer expense. Under the new amendment, the producer who chooses the market bears the cost of that market's services.

Comment: The amendment is inflationary because it adds to the cost of cattle sold through a market.

Response: Under present procedure, all producers pay for a service that many do not receive. Rather than increase the budget of the Department to pay for those services, the Department is reducing its budget and the person who receives the service will now pay for it directly.

Comment: Under the amendment there is a possible conflict of interest problem between the veterinarian and the market.

Response: Under the amendment, as under present rules, the responsibility for maintaining health requirements belong to the market. The veterinarian, as a professional, provides the market a means of meeting those requirements.

Comment: The amendment is contradictory and ambiguous because it imposes expense on the market but retains in the state the authority over veterinarians.

Response: The only authority the state retains over possible market veterinarians is the requirement of approving the market's choice of a veterinarian. At present, all licensed, deputized and federally accredited veterinarians in Montana are approved for market inspection.

Comment: Can the Department of Livestock authorize a users fee at the markets rather than having the market bear the expense?

Response: According to the attorney for the Administrative Code Committee, without specific legislative permission, the Department cannot authorize such a fee.

Comment: This amendment is contrary to a long-standing legislative position of having the state bear the expense of market veterinary health inspection.

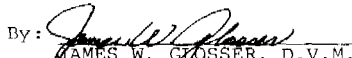
Response: The legislature is silent on this point and has left it to board of livestock policy determination. The Board has chosen to make a policy change.

Comment: When the state relinquishes control of market health inspections, it will not be as knowledgeable of animal health problems at markets.

Response: The Department will institute a program of periodic checks by its veterinary personnel and will continue to require detailed reports from all markets.

4. The authority of the agency to make the amendment is based on section 81-2-102, 81-8-231, MCA, and the rule implements section(s) 81-2-102, 81-8-231, MCA.


ROBERT G. BARTHELMESS
Chairman, Board of Livestock

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

Certified to the Secretary of State April 6, 1981.

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

In the matter of the amendment) NOTICE OF AMENDMENT OF RULE
of rule 36.10.111 regarding) 36.10.111, FIRE CACHE
the requirements of tools.)

To: All Interested Persons:

1. On February 13, 1981 the Board of Natural Resources and Conservation published a notice of a proposed amendment to rule 36.10.111 concerning the required fire tools at forest product harvesting operations.

2. The board received a comment from the Montana Power Company supporting the proposed rule change.

3. The board has amended the rule as proposed. The board has amended the rule so as to correspond with fire tool requirements at federal forest product harvesting operations.

By: 

Gordon Holte, Chairman

Certified to the Secretary of State Apr. 26, 1981.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF SPEECH PATHOLOGISTS AND AUDIOLOGISTS

In the matter of the amendment)	NOTICE OF AMENDMENT OF ARM
of ARM 40.60.402 subsection)	40.60.402 subsection (1) and
(1) concerning definitions and)	ADOPTION OF NEW RULES 40.60.
adoption of new rules concern-	501 SUPERVISOR-RESPONSIBILITY
ing speech pathology and)	FOR AIDE, 40.60.502 SCHEDULE OF
audiology aides.)	SUPERVISION - CONTENTS, 40.60.
	503 TERMINATION OF SUPERVISOR-
	AIDE RELATIONSHIP, and 40.60.
	504 NONALLOWABLE FUNCTIONS
	OF AIDES

TO: All Interested Persons:

1. On October 30, 1980, the Board of Speech Pathologists and Audiologists published a notice of public hearing in the above entitled matter at pages 2851 through 2853, 1980 Montana Administrative Register, issue number 20.

On December 3, 1980, a hearing was held in regard to the proposed amendment of ARM 40.60.402 subsection (1) concerning definitions and the adoption of new rules concerning speech pathology and audiology aides. Six individuals appeared to present oral testimony and thirteen written comments were received. The testimony given was basically in favor of the amendment and new rules with the exception of the "20% direct supervision time" (proposed rule II) and the "non-allowable functions of aides" (proposed rule IV). In view of the testimony, both oral and written, the proposed rules are being adopted with the following changes: (ARM 40.60.402(1) is amended exactly as proposed) (new matter underlined, deleted matter interlined)

"40.60.501 SUPERVISOR-RESPONSIBILITY FOR AIDE

(remains as proposed)

40.60.502 SCHEDULE OF SUPERVISION - CONTENTS (1) For
monitoring purposes, the supervisor must develop and
register with the board, on forms supplied by the board,
an acceptable schedule of supervision. The schedule of
supervision must be periodic, comprehensive and
sufficiently documented so as to provide disinterested
third parties adequate justification for assuming that
the well being of the client is paramount.

(2) The schedule of supervision must contain the
name of the aide, a job description for that the
aide as well as the schedule to be followed by the
supervisor. All contacts, phone calls, and transfer of
data must be logged, and the aide's name if available.

(3) It is recognized that the time commitments of
a supervisor to an aide may vary. However, the schedule
of supervision must include direct supervision for
approximately 20% of the clinical contact time-employ-
ment time of the aide for the initial year of the aide's
employment. For the following years, the direct super-
vision time shall be developed by the supervisor on an

individual basis. Most-of-the-contacts-by-the-supervisor In all cases a portion of the contacts must be in person, but other avenues of contact may be made.

(4) In addition, if there is a significant change in the direction of therapy, such as long or short range therapy goal modification or disagreement between the supervisor and aide, the modification or problem must become a matter of record so as to provide disinterested third parties adequate information for making a judgment regarding the merits of the situation.

(5) The schedule of supervision must be signed by the proposed supervisor and by a responsible representative of the employing agency. The schedule must be reviewed and approved by the board before the delivery of services by the aide.

40.60.503 TERMINATION OF SUPERVISOR-AIDE RELATIONSHIP

(1) In the event of need to terminate the relationship between an aide and supervisor before the agreed upon time, there must be clear, written documentation detailing the efforts made to achieve agreement. The termination of the aide-supervisor relationship must be in writing. The supervisor must should provide a copy of this document to the board at least 10 working days before the actual date of termination.

40.60.504 NONALLOWABLE FUNCTIONS OF AIDES (1) The supervisor is obligated to ensure that the aide assist only in the provision of those services which are within the abilities of the aide as determined by the training and experience of that aide. The supervisor is directly responsible for all decisions affecting the client in all phases of diagnosis, treatment and disposition. It is recognized that administrative responsibilities for the aide(s) may be with other than the professional supervisor and those responsibilities are not included in this regulation.

(2) It does not seem feasible to develop guidelines that attempt to specify job tasks peculiar to any specific employment setting. However, it does seem possible to speak to those functions that an aide typically shall not perform regardless of employment setting. The aide, without prior written approval by the supervisor, shall not:

- (a) interpret data or clinical experiences into diagnostic statements of clinical management policies;
- (b) transmit clinical information to anyone other than the professional directly supervising him/her;
- (c) determine the selection of cases; or
- (d) refer clients."

2. No other comments or testimony were received.

3. The board is amending and adopting the rules for the reasons as stated in the original notice and making the above changes based on the testimony presented.

BOARD OF SPEECH PATHOLOGISTS
AND AUDIOLOGISTS
SHIRLEY DEVOE, CHAIRMAN

BY: 

ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, April 6, 1981.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

EMERGENCY RULE TO AMEND

TO: All Interested Persons:

1. On April 15, 1981, the Department of Revenue will adopt the amendments given in paragraph 2 below on an emergency basis. Failure to adopt these amendments imperils the public safety and welfare because such failure would imperil the ability of the county to collect taxes on livestock and hence thereafter the fiscal integrity of the county as well as revenue for operation of the Department of Livestock. The Department also proposes to adopt the amendments as permanent for the current tax year under the procedures for amendment of rules under the Montana Administrative Procedure Act.

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

42.21.122 LIVESTOCK (1)(a) The average market value for cattle shall be determined by multiplying the weighted average price per cwt. for ~~beef cattle~~, cows marketed in Montana during the preceding 12-month period December through November as determined by the Montana crop and livestock reporting service, times established factors for each of the ~~seven~~ six categories of cattle. The established factors are:

Bulls - 9 months thru 20 months and older	15 18
Bulls - 21 months and older	17.5
Cattle - 9 months thru 20 months	5 6.5
Cattle - 21 months thru 32 months	<u>6.25</u> 8
Cows - 33 months and older	<u>7.5</u> 9
Steers - 33 months and older	<u>10</u> 12
Dairy Cows - 21 months and older	<u>10</u> 12

(b) The average market value for blooded or registered cattle shall be 30% more than the average market value for stock cattle. The average market value for registered or purebred cattle shall apply only to those animals used to reproduce registered or purebred animals.

(2) The average market value for sheep shall be determined by multiplying the average price per cwt. for slaughter lambs, marketed in Montana during the preceding 12-month period December through November, times established factors for each of the four categories of sheep. The established factors are:

Registered Bucks - 9 months and older	2.6
Stock Bucks - 9 months and older	2
Sheep - 9 months thru 70 months	.7
Sheep - 71 months and older	.2


(3)(a) The average market value for swine shall be determined pursuant to 15-24-931, MCA.

(b) The most recent 5-year average U.S.D.A. Omaha quotation prices are: Grades 1 to 3 at 200 to 240 pounds \$40.68; sows 270 to 330 pounds \$34.51.

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

3. On November 14, 1980, the Department of Revenue published notice of a public hearing on proposed amendments to Rule 42.21.122, relating to the valuation of livestock, at pages 2897 and 2898 of the 1980 MAR, issue no. 21. At the hearing proponents and opponents presented conflicting data as to the valuation of cattle. Because of the variations in data, the Department made the decision not to adopt the amendments, but rather to leave the rule as it was. This decision appeared at pages 169 and 170 of the 1981 MAR, issue no. 4. Subsequent to the Department's decision, affected taxpayer associations commenced a legal action concerning the Department's decision. The Department then met with the taxpayer groups to try and arrive at a mutually agreed valuation for cattle. This was accomplished and is the proposal found in this notice. Because of the late date in relation to the tax year and because of the effect on tax collections due to any delay, the amendment to Rule 42.21.122 is being adopted via the emergency provisions of the Montana Administrative Procedure Act. The Department will also adopt the amendments under the normal procedures. (See announcement elsewhere in this volume.)

4. Authority to adopt the proposed amendments is given by Section 15-1-201, MCA. The proposed amendments implement Section 15-6-137, MCA.


ELLEN FEAVER, Director
Department of Revenue

Certified to the Secretary of State 4/2/81

VOLUME NO. 39

OPINION NO. 9

TAXATION - State income taxes personal exemption;
TAX INDEXING - Initiative 86;
TAXATION AND REVENUE - Personal exemption under Initiative 86;
INITIATIVE & REFERENDUM - Tax Indexing - Personal exemption - Initiative 86.

HELD: Initiative 86 provides that the personal exemption for state income tax purposes is \$1,250.00.

18 March 1981

Honorable Jean A. Turnage
President of the Senate
Capitol Building
Helena, Montana 59601

Dear Senator Turnage:

You have requested an opinion regarding the computation of the personal exemption for state income tax purposes as amended by Initiative No. 86.

Initiative No. 86, commonly known as the tax indexing initiative, was passed by the voters at the general election of November 1980. In addition to tax indexing the initiative establishes a new permanent base for personal exemptions.

Section 6 of the initiative provides:

Section 6. Adjusted base year structure to appear on tax forms. Individual income tax forms distributed by the department for each taxable year must contain instructions and tables based on the adjusted base year structure for the taxable year. (Emphasis supplied.)

For exemptions, section 1 defines base year structure as the exemptions in effect on January 1, 1980.

These sections require the Department of Revenue to permanently apply the exemption in effect on January 1, 1980.

Under the provisions of section 15-30-112, MCA, personal exemptions are set at \$800.00 per year. However, the exemption in effect on January 1, 1980, is a different temporary figure. The temporary figure was established under a legislative formula to provide for tax relief, only in this biennium, if there was a sufficient surplus in the state general fund. (Section 8, chapter 698, Laws of Montana 1979). In 1980 there was a sufficient surplus and therefore the exemption was temporarily raised to \$1,250.00.

THEREFORE IT IS MY OPINION THAT:

Initiative 86 provides that the personal exemption for state income tax purposes is \$1,250.00.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 39

OPINION NO. 10

ARSON - Firefighters placed in danger of death or bodily injury;

NEGLIGENCE - Definition of negligent arson;

WORDS AND PHRASES - Person;

MONTANA CODE ANNOTATED - Sections 45-2-101(44), 45-6-102(1), 45-6-103(1).

HELD: A person who negligently places a firefighter responding to a fire in danger of death or bodily injury by purposely or knowingly starting the fire or causing an explosion commits the offense of negligent arson under section 45-6-102(1)(a), MCA.

23 March 1981

Mr. Robert Kelly
State Fire Marshal
Department of Justice
1409 Helena Avenue
Helena, Montana 59601

Dear Mr. Kelly:

You have asked for my opinion on the following question:

Does section 45-6-102(1)(a), MCA include fire-fighters who respond to and fight a set fire as persons who would be placed in danger of death or bodily injury?

Section 45-6-102(1), MCA, defines negligent arson as follows:

A person commits the offense of negligent arson if he purposely or knowingly starts a fire or causes an explosion, whether on his own property or property of another, and thereby negligently:

- (a) places another person in danger of death or bodily injury; or
- (b) places property of another in danger of damage or destruction.

Your question is whether a person commits negligent arson if he purposely or knowingly starts a fire or causes an explosion and thereby negligently places a firefighter engaged in fighting the fire in danger of death or bodily injury. My opinion is that he does.

"Person," as used in section 45-6-102(1), "includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of any government or subdivision thereof." § 45-2-101(44), MCA. Clearly, a firefighter is a "person" within the meaning of section 45-6-102(1), MCA. When the language of the statute is clear and unambiguous, as it is here, no further interpretation can be made. Shannon v. Keller, ___ Mont. ___, 612 P.2d 1293, 1294 (1980).

I believe that the confusion concerning the interpretation of this statute has arisen because of two legal lines of reasoning which, as I shall explain, are inapplicable in this context. First, many states have adopted the following tort rule, commonly known as the "fireman's rule": A person whose negligence causes a fire or explosion that injures a responding firefighter is not liable to the firefighter for damages incurred. See, e.g., Grable v. Varela, 115 Ariz. 222, 564 P.2d 911, 912 (1977); Walters v. Sloan, 20 Cal.3d 199, 142 Cal. Rptr. 152, 153, 571 P.2d 609, 610 (1977); Spencer v. B.P. John Furniture Corp., 255 Or. 359, 467 P.2d 429, 430 (1970).

My research has revealed no case that addresses the application of the fireman's rule in Montana. Even if the Montana Supreme Court had adopted the rule, though, it would not affect my interpretation of the criminal arson statutes. The major public policy underlying the fireman's rule in modern times is that the public rather than the individual wrongdoer should bear the responsibility for compensating injured firefighters, both in pay that reflects the hazard and in

worker's compensation benefits for the consequences of the inherent risks of the job. See, e.g., Walters v. Sloan, supra, 142 Cal. Rptr. at 155-56; 571 P.2d at 612-13; Giorgi v. Pacific Gas & Electric Co., 266 Cal. App.2d 355, 72 Cal. Rptr. 119, 122 (1968); Krauth v. Geller, 31 N.J. 270, 157 A.2d 129, 131 (1960). This policy, with its focus on the best method of compensation for the injured, is irrelevant in the context of the criminal law, which focuses on individual culpability. The fireman's rule does not abrogate the clear intent of Montana's criminal law to punish those who negligently place any other person in danger by starting fires.

The second line of reasoning that may have caused confusion in the interpretation of Montana's law is evidenced in the case of State v. Bonfanti, 254 La. 877, 227 So.2d 916 (1969). There the Louisiana Supreme Court held that the term "human life" as used in Louisiana's arson statute did not encompass the lives of firefighters called to the scene. 227 So.2d at 918. Examination of Louisiana's laws reveals, however, that they differ significantly from Montana's, and that the rationale of Bonfanti does not apply here. In Louisiana, simple arson was defined as the intentional burning of "any property of another, without the consent of the owner" while aggravated arson was the intentional burning of "any structure, watercraft or movable, whereby it is foreseeable that human life might be endangered." 227 So.2d at 917-18. The Louisiana court examined the history of arson laws in that state, and concluded that the reference to endangerment of human life was meant only to draw the distinction between the burning of unoccupied property and property on which human beings are customarily found, not to include anticipation of injury to firefighters or others who might come to the scene after the fire had started. 227 So.2d at 918.

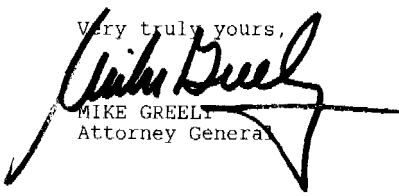
In Montana, this distinction is made by use of the term "occupied structure" in the arson statute but not the negligent arson statute, compare § 45-6-103(1), MCA, with § 45-6-102(1), MCA. Furthermore, reference is made in both statutes to the endangerment of another person. The Louisiana court's interpretation does not apply to Montana's arson laws.

THEREFORE, IT IS MY OPINION:

A person who negligently places a firefighter

responding to a fire in danger of death or bodily injury by purposely or knowingly starting the fire or causing an explosion commits the offense of negligent arson under section 45-6-102(1)(a), MCA.

Very truly yours,



MIKE GREELY
Attorney General

7-4/16/81

Montana Administrative Register

VOLUME NO. 39

OPINION NO. 11

SCHOOLS - Teachers, American Indian Studies Act, Board of Public Education, applicability of the Act;
SCHOOL DISTRICTS - American Indian Studies Act, applicability to teachers;
TEACHERS - American Indian Studies Act, applicability of requirements;
MONTANA CODE ANNOTATED - Sections 20-4-211 through 20-4-214.

HELD: That 20-4-213, MCA, provides that the Board of Public Education does not have the authority to require that all certified teachers complete six inservice credits in Indian studies.

2 April 1981

Marjorie W. King, Chairman
Board of Public Education
33 South Last Chance Gulch
Helena, Montana 59601

Dear Ms. King:

You have requested my opinion on the following question:

Does the Board of Public Education have the authority to require that all certified teachers complete six inservice credits in Indian studies pursuant to 20-4-213, MCA?

The applicable statutes (20-4-211 through 214, MCA) have changed significantly since I issued 37 OP. ATT'Y GEN. NO. 75 in October 1977. Prior to the 1979 amendments, section 20-4-213, MCA, absolutely required that teachers in schools on or near Indian reservations complete a course in American Indian studies.

In 1979, the Legislature amended 20-4-213, MCA, to provide:

(1) Any board of trustees for an elementary or secondary public school district on or for

a public school located in the vicinity of an Indian reservation where the enrollment of Indian children qualified the school for federal funds for Indian education programs may require that all of its certified personnel satisfy the requirements for instruction in American Indian studies as defined in 20-4-211. This requirement must be a local district requirement with enforcement and administration solely the responsibility of the local board of trustees.

(2) Members of boards of trustees and all noncertified personnel in public school districts on or in the vicinity of Indian reservations are encouraged to satisfy the requirements for instruction in American Indian studies as defined in 20-4-211.

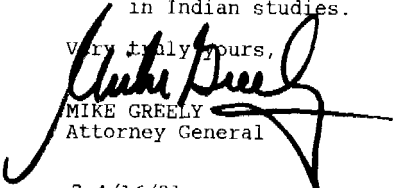
The difference between the present statute and the former one is clear. The Indian studies requirement is no longer mandatory, but rather is discretionary with the local school board. Most significantly, the legislature provided that any Indian studies requirement "must be a local district requirement with enforcement and administration solely the responsibility of the local board of trustees."

Therefore, section 20-4-213, MCA, on its face, excludes the possibility of an Indian studies requirement mandated by the Board. I can find nothing in the Board's statutory powers to alter this conclusion. Section 20-2-121, MCA, requires the Board to establish a system for teacher certification pursuant to 20-4-102 and 20-4-111, MCA. The latter section is inapplicable here, and the former provides that any teacher certification policies must be "in accordance with" the provisions of Title 20 of the Code. One of those provisions is 20-4-213, MCA.

THEREFORE, IT IS MY OPINION:

That 20-4-213, MCA, provides that the Board of Public Education does not have the authority to require that all certified teachers complete six inservice credits in Indian studies.

Very truly yours,


MIKE GREELY
Attorney General

7-4/16/81

Montana Administrative Register