RESERVE

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 8

The Montana Administrative Register (MAR), a twice-monthly publication, has three sections. The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted. The rule section indicates that the proposed rule action is adopted and lists any changes made since the proposed stage. The interpretation section contains the attorney general's opinions and state declaratory rulings. Notices and tables are inserted at the back of each register.

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NOTICE SECTION

BEFORE THE STATE BOARD OF HAIL INSURANCE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of 4.4.303 Insured Crops	))))))	NOTICE OF PROPOSED AMENDMENT OF 4.4.303 INSURED CROPS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On May 30, 1982 the State Board of Hail Insurance proposes to amend ARM 4.4.303, Insured Crops.

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

4.4.303 Insured Crops (1) ~~The following crops may be insured at any time to August 15, inclusive:~~ All crops authorized under Sec. 80-2-205 MCA, including the following, may be insured at any time to August 15.

wheat	corn	peas	rape
oats	rye	beans	sugar
flax	speltz	mustard	beets
barley	alfalfa	safflower	potatoes

3. The proposed amendment follows the suggestion of the Legislative Audit Committee in its Sunset Review pointing out the statutory intent under 80-2-205, MCA to cover all crops and not just those listed in the existing rule. Certain crops remain listed in the rule to serve as an example, rather than to imply they are the only ones eligible.

4. The amendment was once previously proposed at p. 323, Issue No. 4 MAR, 1982 under signature of the director of the Department of Agriculture. Upon advice from the Administrative Code Committee that the amendment should properly be under authority of the Hail Board, this notice conforms therewith and the previous notice deemed withdrawn.

5. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to State Board of Hail Insurance, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620, no later than May 27, 1982.

6. 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 State Board of Hail Insurance, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620, no later than May 30, 1982.

7. If the agency receives requests for a public hearing on the proposed amendment from 25 or more 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.

8. The authority of the agency to make the proposed amendment is based on sections 80-2-201, MCA, and the rule implements section 80-2-205, MCA.

Jim Stephens, Chairman
State Board of Hail Insurance

Certified to the Secretary of State 4/19/82.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF HORSE RACING

IN THE MATTER of the proposed adoption of new rules concerning trifecta wagering) NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF NEW RULES CONCERNING TRIFECTA WAGERING

TO: All Interested Persons:

1. On Wednesday, May 19, 1982 at 10:00 a.m. a public hearing will be held in the downstairs conference room of the Department of Commerce, 1430 9th Avenue, Helena, Montana, to consider the adoption of new rules concerning trifecta wagering.

2. The rules as proposed will read as follows:

"I. TRIFECTA (1) In addition to the betting transactions permitted by ARM 40.22.1606, a licensee may offer a trifecta as provided by this sub-chapter.

(2) Trifecta means a betting transaction in which the purchaser of a ticket undertakes to select in the exact order of finish the first three horses to finish a race on which the feature is operated.

(3) The trifecta is not a parlay and has no connection with or relation to the win, place and show pools shown on the totalisator board. All tickets on the trifecta will be calculated in an entirely separate pool."
(Authority: Section 23-4-104, MCA; Implement: Sec. 23-4-104, MCA)

"II. REQUIREMENTS OF LICENSEE (1) Licensees providing trifecta wagering shall, in addition to other requirements, comply with the requirements of this rule.

(2) No entries or field horses in a race comprising the trifecta are allowed.

(3) No licensee shall offer trifecta wagering on any race when there are less than eight horses scheduled to start.

(4) Urine samples shall be taken from all horses which started in a race on which there was trifecta wagering and all urine samples shall be tested by the official racing chemist with the costs therefore borne by the licensee.

(5) Trifecta wagering shall be allowed only at tracks that can demonstrate to the board that their facilities can properly handle and implement trifecta wagering."
(Authority: Sec. 23-4-104, MCA; Implement: Sec. 23-4-104, MCA.)

"III. POOL CALCULATIONS (1) The pay out price for a trifecta pool shall be calculated in the following manner:

(a) the legal percentage shall be deducted from the total amount bet in the pool to determine the net pool.

(b) the net pool shall be divided by the value of tickets bet on the winning combination.

(c) the quotient obtained pursuant to paragraph (b) shall be multiplied by the purchase price of each ticket on the

winning combination.

(2) In the event that no ticket is sold on the horses finishing first, second, and third in the exact order, then go to tickets that have been sold, coupled in a combination finishing nearest the official order of finish.

(3) The following sequence based on the official order of finish shall be used to determine the combination referred to in subsection (4):

(a) first, second, and fourth
(b) first, third, and fourth
(c) second, third and fourth
(d) first, second and fifth
(e) first, third and fifth
(f) first, fourth and fifth; and
(g) sequentially thereafter.

(4) Where only two horses finish in a race on which a trifecta feature is operated, the pool shall be calculated in the following manner:

(a) The net pool shall be divided by the value of tickets sold in the pool on horses selected to finish first and second in the exact order of the official result coupled with any other horse that started in the race.

(5) Where only one horse finishes in a race on which a trifecta feature is operated, the pool shall be calculated in the following manner:

(a) The net pool shall be divided by the value of tickets sold in the pool selecting that horse to finish first, coupled with any two other horses started in the race.

(6) Where there is a dead heat in any position of the official result, the pay out price for the trifecta pool shall be calculated in the following manner:

(a) the legal percentage shall be deducted from the total amount bet in the pool to determine the net pool;
(b) the total value of all bets placed on all winning combinations shall be deducted from the net pool to determine a calculating pool;
(c) the calculating pool shall be divided into as many equal portions as there are winning combinations;
(d) the value of tickets of each respective winning combination shall be divided into its respective portion of the calculating pool;
(e) $1.00 shall be added to the quotients obtained pursuant to paragraph (d); and
(f) each sum obtained pursuant to paragraph (e) shall be multipled by the purchase price of each ticket.

(7) If a horse or horses in the trifecta feature are scratched or excused by the stewards after wagering has commenced or should any horse or horses be prevented from racing because of the failure of stall doors of the starting

gate to open, tickets on that horse or those horses shall be deducted from the trifecta pool and the money refunded to the purchasers of tickets on the horse so excused or prevented from racing.

(8) The state parimutuel supervisor and the mutuel manager shall examine the pattern of wagering made on a trifecta wagered race prior to post time and shall confer with respect thereto. If the state parimutuel supervisor concludes that the wagering pattern is of such an irregular nature as to warrant reasonable concern that illegal or corrupt practices may be intended with respect to the race in question, he shall notify the presiding stewards of his findings and the stewards shall declare the race off and all trifecta wagers shall be promptly refunded.

(9) Where the outcome of a race is such that the distribution of the pool is not covered by this section, the track parimutuel manager shall decide how the pool shall be distributed. " (Authority: Sec. 23-4-104, MCA; Implement Sec. 23-4-104, MCA)

3. The rules are being proposed at the request of licensees who want to provide this feature as they feel it will increase the parimutuel handle at their tracks.

4. Interested parties may submit their data, views or arguments concerning the proposed rules, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Horse Racing, 1424 9th Avenue, Helena, Montana 59620-0407, no later than May 27, 1982.

5. The board or its designee will preside over and conduct the hearing.

6. The authority of the board to make the proposed adoption is based on section 23-4-104, MCA and implements the same.

BOARD OF HORSE RACING
HAROLD HOPWOOD, CHAIRMAN

BY: _____
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 19, 1982.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF NURSING

IN THE MATTER of the proposed amendments of ARM 8.32.401 concerning general requirements for licensure; 8.32.402 concerning licensure by examination; 8.32.404 concerning re-exams; 8.32.408 concerning temporary permits; 8.32.412 concerning inactive status; proposed adoption of a new rule concerning definitions; proposed adoption of sub-chapter 3 concerning specialty areas of nursing, proposed adoption of sub-chapter 5 concerning disciplinary actions; proposed transfer and amendment of rule ARM 8.32.414 to sub-chapter 8, approval of schools and proposed adoption of new rules under the same sub-chapter.	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF ARM 8.32.402 GENERAL REQUIREMENTS FOR LICENSURE; 8.32.402 LICENSURE BY EXAMINATION; 8.32.404 RE-EXAMINATION - PRACTICAL NURSE; 8.32.408 TEMPORARY PERMIT; 8.32.412 INACTIVE STATUS; PROPOSED ADOPTION OF A NEW RULE CONCERNING DEFINITIONS; PROPOSED ADOPTION OF SUB-CHAPTER 3, SPECIALTY AREAS OF NURSING; PROPOSED ADOPTION OF SUB-CHAPTER 5, DISCIPLINARY ACTIONS; PROPOSED TRANSFER AND AMENDMENT OF 8.32.414 APPROVAL OF SCHOOLS TO SUB-CHAPTER 8 and PROPOSED ADOPTION OF NEW RULES UNDER SUB-CHAPTER 8, APPROVAL OF SCHOOLS

TO: All Interested Persons:

1. On May 27, 1982, at 10:00 a.m., the Board of Nursing will hold a public hearing in the downstairs conference room, Department of Commerce, 1430 9th Avenue, Helena, Montana to consider the above entitled amendments and adoptions.

2. The rules are being proposed for amendment or adoption to provide an appropiate means of regulating the nursing education, licensure and practice as intended by Title 37, Chapter 32, MCA. Amendments have been made to further delete obsolete statements, extend and clarify other statements and to adopt new rules pertinent to the 1981 amendments to the statutes regulating nursing. Amendment is also being made to delete the use of the State Board Test Pool Examination and allow for use of the new licensure examination, the National Council Licensing Examination for Registered and Practical Nurses.

3. The proposed amendment of ARM 8.32.401 will read as follows: (new matter underlined, deleted matter interlined)

"8.32.401 GENERAL REQUIREMENTS FOR LICENSURE (1) The requirements for licensure of registered and practical nurses in Montana include the provision that the applicant has written a State Board Test Pool Examination/National Council Licensing Examination in a state of the United States or a province of Canada." (Authority: Sec. 37-8-202, MCA; Implement: Sec. 37-8-406,416, MCA.)

4. The proposed amendment of ARM 8.32.402 will read as follows: (new matter underlined, deleted matter interlined)

"8.32.402 LICENSURE BY EXAMINATION (1) The board shall administer the National Council Licensing Examinations

for registered nurse licensure and practical nurse licensure at such time and place announced by the board. Each examination differs from previously administered examinations. The board shall give due publicity in advance of each examination.

~~(1)~~ (2) The executive secretary is authorized to ~~sign~~ negotiate the ~~contracts~~ contract with the ~~National League for Nursing~~ National Council of State Boards of Nursing, Inc. for licensing examination ~~services provided by the NLN for professional and practical nurse candidates.~~

~~(2)~~ (3) A letter "F" on a transcript in a required course is not considered "successful completion" as required by law for admission to the licensing examination and such candidate with an "F" on a transcript in a required course will not be allowed to sit for the licensing examination for either registered nurses or practical nurses.

~~(3) The NLN Evaluation and Guidance Service is requested to continue Montana annual reports on a July 1 to July 1 basis.~~

~~(4) The NLN annual reports of:~~

~~(a) mean, and if possible, standard deviation for each test in each school of nursing; and~~

~~(b) mean, and if possible, standard deviation for each test in each jurisdiction, coded to protect individual identity, shall be accepted.~~

~~(5) The administering of licensing examinations shall be in Helena at such times and places as the board designates.~~

(4) All candidates desiring to write the licensing examination for registered nursing or practical nursing shall make application for licensure to the board on a form provided by the board and shall make application for examination to the National Council Licensing Examinations on a form provided by the National Council of State Boards of Nursing.

~~(6)~~ (5) The application for licensure, fee and all credentials must be submitted to the executive secretary no later than 30 days prior to the examination date.

~~(7)~~ (6) The fee for licensure by examination is $35.00 payable at the time the application is submitted. Five dollars of this fee is retained by the board if the application is withdrawn prior to the examination.

(7) The application for the examination and the appropriate fee shall be submitted to and received by the National Council Licensing Examination for Nursing no less than 7 weeks prior to the examination date.

(8) A standard score of ~~350 or above each subject is~~ 1600 shall be required as a minimum passing score for licensure as a registered professional nurse.

(9) ~~The written examination for practical nurses is~~

~~developed in two parts and tests the knowledge and judgement necessary for practical nursing.~~ A standard score of 350 shall be required as a minimum passing score for licensure as a practical nurse.

(10) Candidates shall be notified regarding the examination scores by mail only.

(11) Candidates who pass shall receive the results of the examination and a license to practice as a registered/practical nurse.

(12) Candidates who fail shall receive the results of the examination and a letter of notification regarding their eligibility to rewrite.

(13) Each school of nursing in Montana shall receive a summary statistical report of the test results of candidates from that school.

(14) Scores of the examination shall not be released to anyone unless release is otherwise authorized by the candidate in writing.

(15) The candidate's examination score will be maintained in his/her application file in the division of professional licensing, department of commerce." (Authority: Sec. 37-8-202, MCA; Implement: Sec. 37-8-406, 416. MCA.)

5. The proposed amendment of ARM 8.32.404 amends only sub-section (1) and will read as follows: (new matter underlined, deleted matter interlined)

"8.32.404 RE-EXAMINATION - PRACTICAL NURSE (1) Candidates may ~~retake~~ take the licensing examination three times in a three year period, commencing from the first eligible exam.

(2)..." (Authority: Sec. 37-8-202, MCA; Implement: Sec. 37-8-406, 416, MCA.)

6. The proposed amendment of ARM 8.32.408 will read as follows: (new matter underlined, deleted matter interlined)

"8.32.408 TEMPORARY WORK PERMIT (1) Graduates of ~~schools of professional nursing may accept employment in Montana as professional nurses~~ approved professional nursing education programs or practical nursing education programs pending the ~~result~~ results of the first licensing examination scheduled by the board following such graduation, ~~provided that~~ and for which they are eligible may accept employment in Montana as a professional or practical nurse and be granted a temporary work permit provided that:

(a) such graduate ~~submits application~~ has been accepted for the licensing examination ~~on the required form together with the statutory fee of $35.00;~~ and meets the criteria:

(i) Application, fee and credentials have been submitted and approved by the Executive Secretary of the Montana board of nursing by the appropriate date.

(b) Such ~~application is approved for the licensing~~

~~examination as shown by the official permit issued by the board.~~ graduate will function under the supervision of a physician, dentist, osteopath, podiatrist or registered nurse licensed in the state of Montana.

(c) Such temporary permit will not be renewable.

(2) A recent professional or practical nursing graduate candidate who has applied to write the licensing examination of another state, may accept employment as a professional ~~nurse~~ or practical nurse in Montana ~~only under the following conditions:~~ and be granted a temporary work permit provided that:

(a) such candidate has submitted an application and fee for Montana licensure by endorsement; and

(b) such candidate possesses a recent graduate permit ~~which will be~~ issued ~~following~~ as verification that the candidate has been scheduled for the appropriate licensing examination. ~~and~~

(c) Tthe license will ~~not~~ be issued to the candidate ~~until~~ at the time that the Montana board of nursing is ~~has been~~ notified that the candidate has passed the State Board Test Pool Examination/National Council Licensing Examination ~~examination~~ and a license has been issued.

(3) A registered professional nurse or licensed practical nurse who is currently licensed in another jurisdication may be employed in Montana as a professional or practical nurse and be granted a temporary work permit provided that:

(a) such professional or practical nurse has applied for Montana licensure by endorsement and meets the Montana state board of nursing's criteria for licensure:

(i) application for endorsement, fee and credentials have been submitted and approved by the Executive Secretary;

(ii) an affidavit signed by the intended employer has been submitted.

(b) Foreign educated applicants for licensure by examination or endorsement are not eligible for a temporary work permit unless such applicant has been licensed by examination in another jurisdiction." (Authority: Sec. 37-8-202, MCA; Implement: Sec. 37-8-430, MCA.)

7. The proposed amendment of ARM 8.32.412 deletes subsection (2) of the rule and will read as follows: (new matter underlined, deleted matter interlined)

"8.32.412 INACTIVE STATUS (1) Licensees who have not paid the renewal fee for the current year are automatically placed on inactive status on January 1 of each year and licenses are lapsed.

~~(2) A licensed practical nurse who practices nursing in Montana for compensation while her license is lapsed will be considered an illegal practitioner and shall be subject to the penalties for violation of the nursing practice act.~~" (Authority: Sec. 37-8-202, MCA; Implement:

Sec. 37-8-431, MCA.)

8. The proposed amendment of ARM 8.32.1002 amends subsection (1) of the rule only and will read as follows: (new matter underlined, deleted matter interlined)

"8.32.1002 DEFINITIONS (1) Board: the Montana state board of nursing~~, practical nursing administration~~.

(2) ... " (Authority: Sec. 37-8-202, MCA; Implement: Sec. 37-8-202, MCA.)

9. The proposed adoption of a new rule concerning definitions will read as follows:

I. "DEFINITIONS As used in Chapter 8, the following definitions apply:

(1) 'Nursing procedures' means those nursing actions selected and performed in the delivery of safe and effective patient/client care.

(2) 'Standardized procedures' means routinely executed nursing actions for which there is an established level of knowledge and skill.

(3) 'Predictable outcome' means an expected response to a standardized procedure.

(4) 'Supervision' means the overseeing and the authorization to perform in any given situation based on the level and complexity of the needs of the patient/client and includes:

(a) initial direction, procedural guidance and periodic inspection and evaluation; and

(b) acceptance of responsibility for such supervision by a specific identified individual in the employment situation." (Authority: Sec. 37-8-202, MCA; Implement: Sec. 37-8-102. MCA.)

10. The proposed adoption of sub-chapter 3 will add rules regarding the specialty areas of nursing and will read as follows:

I. " NURSE PRACTITIONER PRACTICE (1) Nurse practitioner practice is the management of primary health care of individuals, families and communities including the ability to:

(a) assess the health status of individuals and families through health history taking, physical examination, and defining of health and development problems;

(b) institute and provide continuity of health care to clients (patients), work with the client to insure understanding of and compliance with the therapeutic regime within established protocols, and recognize when to refer the client to a physician or other health care provided.

(c) provide instruction and counseling to individuals, families, groups in the areas of health promotion and maintenance, including involving such person in planning for their health care, and

(d) work in collaboration with other health care providers and agencies to provide, and where appropriate,

coordinate services to individuals and families." (Authority: Sec. 37-8-202, MCA; Implement: Sec. 37-8-202 (5), MCA.)

II. "NURSE-MIDWIFERY PRACTICE Nurse mid-wifery practice is the management of care of essentially normal newborns and women, antipartially, intrapartially, post partially and/or gynecologically occurring within a health care system which provides for medical consultation, collobora-tive management, or referral and is in accord with the Functions, Standards and Qualifications for Nurse Midwifery Practice as defined by American College of Nurse-Midwives." (Authority: Sec. 37-8-202, MCA; Implement: Sec. 37-8-202 (5), MCA.)

III. "NURSE ANESTHETIST PRACTICE Nurse anesthetist prac-tice is the performance of or the assistance in any act involving the determination, preparation, administration or monitoring of any drug used to render an individual insensible to pain for surgical and other therapeutic procedures." (Authority: Sec. 37-8-202, MCA; Implement: Sec. 37-8-202 (5), MCA.)

IV. "SPECIALTY NURSING TITLE (1) Any person holding approval by the board as a specialist in this state shall have the right to use the title of Nurse Practitioner, Nurse Midwife, or Nurse Anesthetists provided that the registered nurse:

(a) Holds a current license to practice professional nursing in the state of Montana.

(b) Application, fees, and credentials have been supported and approved by the board of nursing.

(c) Holds an endorsement on the nursing license which recognizes the specialty.

(2) Use of the title Nurse Practitioner, Nurse Midwife or Nurse Anesthetist by a person not approved by the board is prohibited." (Authority: Sec. 37-8-202, MCA; Implement: Sec. 37-8-202 (5), MCA.)

V. "EDUCATIONAL REQUIREMENTS AND OTHER QUALIFICATIONS APPLICABLE TO SPECIALTY AREAS OF NURSING (1) Applicants for recognition in a specialty area of nursing shall possess the following educational and certification quali-fications:

(a) Master's degree from an accredited nursing education program which prepares the nurse for a specialty role or

(b) Certification from a post-basic professional nursing education program with the minimum length of one academic year with at least four months of didactic instruction, the remainder under a preceptor followed by one year of practice in the specialty area or

(c) After June 20, 1985, a minimum of a Baccalaureate Degree with an upper division major in nursing and one year of practice in the specialty area." (Authority:

Sec. 37-8-202, MCA; Implement: Sec. 37-8-202 (5), MCA.)

VI. "APPLICATION FOR RECOGNITION (1) Upon application a person licensed under the provisions of section 37-8-406 or 37-8-407 and meeting the requirements set forth under the educational requirements and other qualifications applicable to specialty areas of nursing shall have his/her registered nurse renewal certificate also designate his/her area of specialty.

(2) The application fee for specialty area recognition shall be $25.00 and a fee of $5.00 for each annual renewal thereafter." (Authority: Sec. 37-8-202, MCA; Implement: Sec. 37-8-202 (5), MCA.)

11. The proposed adoption of sub-chapter 5, disciplinary actions will read as follows:

I. "GROUNDS FOR DENIAL OF A LICENSE (1) Failure to meet requirements: Failure to meet any requirements or standard established by law or by rules adopted by the board; and/or

(2) Failure to pass examination: Failure to pass the licensing examination; and/or

(3) False representation: False representation of facts and information on an application for licensure; and/or

(4) Having person appear for examination: Having another person appear in his/her place for the licensing examination; and/or

(5) Course of conduct: A course of conduct which would be grounds for discipline under section 37-8-441, MCA." (Authority: Sec. 37-8-202, MCA; Implement: Sec. 37-8-441, MCA.)

II. "LICENSE PROBATION (1) A licensee may be put on probation for:

(a) conviction of a misdemeanor; and/or

(b) physical or mental unfitness not yet to the degree of being legally decreed incompetent but serious enough to warrant monitoring, and/or

(c) violations of the professional code of conduct which did not cause serious harm to the patient/client or others but which are not acceptable practice; and/or

(d) assuming duties and responsibilities within the practice of nursing without adequate training or when competency has not been maintained. (Authority: Sec. 37-8-202, MCA; Implement: Sec. 37-1-136. MCA.)

III. "REPRIMAND OR CENSURE OF A LICENSEE (1) The board may elect to reprimand or censure a licensee for:

(a) lesser infractions of the unprofessional conduct code; and/or

(b) committing an act which fails to conform to the acceptable standards of the nursing professional which, if allowed to continue or increases in severity, could be detrimental to the patient/client or others." (Authority: Sec. 37-8-202, MCA; Implement: Sec. 37-1-136,

MCA.)

IV. "DISCIPLINARY PROCEDURES IN ANOTHER STATE (1) When the board has knowledge that a person licensed in Montana or applying for a license has had a license to practice revoked, suspended or restricted in another state, the board shall:

(a) obtain a copy of the findings of fact and conclusions from the board that took the disciplinary action;

(b) determine if the findings of fact warrant suspension or revocation of Montana license;

(c) determine if the findings of fact warrant a restricted license with specified limitations." (Authority: Sec. 37-8-202, MCA; Implement: Sec. 37-1-136, MCA.)

V. "NOTIFICATION OF DENIAL OR DISCIPLINARY ACTION

(1) Written notice: The board shall give any applicant or licensee whose application for licensure is denied, or against whom disciplinary action is proposed, written notice containing a statement:

(a) the reason(s) for the proposed denial or disciplinary action; and

(b) directing the applicant's attention to his/her rights to a hearing under the provisions of the Montana Administrative Procedures Act." (Authority: Sec. 37-8-202, MCA; Implement: Sec. 37-1-136, MCA.)

VI. "REQUEST FOR HEARING The applicant or licensee is entitled to a hearing before the board which is requested by depositing in the mail within 30 days after receipt of notice, a certified letter addressed to the board and containing such request." (Authority: Sec. 37-8-202, MCA; Implement: Sec. 37-8-442, MCA and Sec. 37-1-136, MCA.)

VII. "CONSIDERATION OF REAPPLICATION FOR A LICENSE AFTER PREVIOUS DENIAL (1) Reapplication: Reapplication for a license previously denied must include evidence of rehabilitation, or elimination or cure of the conditions for denial.

(2) Evaluation of reapplication: Evaluation of reapplication for a license denied under section 37-8-441, MCA will be based upon, but not limited to:

(a) the severity of the act or omission which resulted in the denial of license; and/or

(b) the conduct of the applicant subsequent to the denial of license; and/or

(c) the lapse of time since denial of license; and/or

(d) compliance with any condition the board may have stipulated as a pre-requisite for reapplication and/or

(e) the degree of rehabilitation attained by the applicant as evidenced by statements sent directly to the board from qualified people who have professional knowledge of the applicant; and/or

(f) personal interview by the board, at their

discretion." (Authority: Sec. 37-8-202, MCA; Implement: Sec. 37-1-136, MCA.)

VIII. "EMERGENCY ACTION (1) If the board finds that public health, safety and welfare requires emergency action and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. Such proceedings shall be promptly instituted and determined." (Authority: Sec. 37-8-202, MCA; Implement: Sec. 2-4-631, MCA.)

12. The proposed transfer and amendment of Rule 8.32.414 will place the rule under sub-chapter 8 and cause it to be re-numbered at 8.32.802. Sub-Chapter 8 will be entitled Approval of Schools and will also contain additional rules listed below, in addition to the amendment of 8.32.414.

"8.32.~~414~~ 802 SURVEY AND APPROVAL OF SCHOOLS (1) The board will review an application, materials and survey reports for approved or continued approval of professional or practical nursing ~~schools~~ programs only at times when the board is in formal session. Materials and survey reports shall be in the board office 30 days prior to the board meeting.

~~(2)--Practical-nursing-schools-shall-submit-evidence-that-they-are-complying-with-the-standards-by-March-1-each-year-for-board-review.--The-review-shall-also-include-a--report-of-the-survey-visit-at-the-April-board-meeting.~~

(2) To insure continuing compliance with the law and the board of nursing's minimum standards all approved professional nursing education programs will be surveyed and re-evaluated for continued approval at least every four years and all approved practical nursing education programs will be surveyed and re-evaluated for continued approval at least every three years.

(3) Prior to a survey visit a school will submit a self-evaluation narrative report to the board which provides evidence of compliance with the appropriate nursing education standards. The school will forward 10 copies of this report to the board office by January 1 of the year in which a program survey is scheduled.

(4) The survey visit will be made by representatives of the board on dates mutually agreeable to the board and the school.

(a) Announcement of a survey visit will be sent to schools three months in advance of the visit.

(b) Schools will be asked to participate in scheduling survey visit activities.

(c) A draft of the survey visit report will be made available to the school for review and corrections in statistical data.

(5) The school's self-evaluation report of compliance

with the board's standards and the report of the survey visit will be submitted to the board one month prior to the board meeting date on which the review is scheduled.

(6) Following the board's review and decision written notification regarding approval of the program and the board's recommendations will be sent to the administrator of the institution with a copy to the dean, director or coordinator of the program.

(7) A certificate of approval will be issued to all schools that continue to meet the minimum nursing program standards. The dates of approval will be on the certificate.

(8) The procedure for conditional approval will be effected if the board determines the school does not meet all of the requirements of the law and nursing program standards.

(9) A program may be visited at any time within the three or four year period as deemed necessary by the board or at the request of the school.

(10) Each program will submit an annual report to the board reflecting current status of the educational program. These reports will provide evaluation of the program during the interim between survey reviews. (Authority: Sec. 37-8-202, MCA; Implement: Sec. 37-8-301, MCA.)

I. (new rules) "APPLICATION FOR INITIAL APPROVAL An educational institution wishing to establish a program in nursing and to secure initial approval shall:

(1) Submit to the board of nursing, at least one calendar year in advance of expected opening date, a statement of intent to establish a program in nursing. Report of a feasibility study is required at this time.

(2) The feasibility study will include at least the following information:

(a) Nursing manpower studies documenting the need for the program as it relates to plans for total state resources and nursing education needs within the state.

(b) Purpose and classification of program.

(c) Availability of qualified faculty.

(d) Budgeted faculty positions.

(e) Availability of adequate clinical facilities for the program.

(f) Availability of adequate academic facilities for the program.

(g) Evidence of financial resources adequate for the planning, implementation and continuation of the program.

(h) Anticipated student population.

(i) Tentative time table for planning and initiating the program.

(3) When the data submitted in the feasibility study is reviewed the board may request additional information

or may conduct a survey to evaluate the information submitted as the board may deem necessary.

(4) Approval of these materials by the board permits the institution to continue planning.

(5) Initial approval may be applied for when the feasibility study has been approved and the following conditions have been met:

(a) a qualified nurse administrator has been appointed and there are sufficient qualified faculty to initiate the program; and

(b) a tentative written proposed program plan developed in accordance with the current Standards for Montana Schools of Professional or Practical Nursing has been submitted.

(6) Following board review of the proposed program, the board may grant initial approval. The program may then admit students who shall be eligible upon completion of the program to take the licensing examination.

(7) Progress reports shall be made to the board as requested.

(8) Following graduation of the first class, a self-evaluation report of compliance with the current Standards for Montana Schools of Professional or Practical Nursing shall be submitted and a survey visit shall be made for consideration of full approval of the program." (Authority: Sec. 37-8-202, MCA; Implement: Sec. 37-8-301, and 302, MCA.)

II. "SCHOOL REPORTS TO THE BOARD In addition to the self-evaluation report of compliance with the law and educational standards submitted prior to a school survey, schools of professional nursing and practical nursing will submit the following reports to the board of nursing:

(1) Faculty qualification report:

(a) A faculty qualification report will be submitted for each newly employed faculty member on a form provided by the board.

(b) The faculty qualification record will be submitted when the faculty appointment becomes effective.

(2) Quarterly/semester report:

(a) Quarterly/semester reports will be submitted at the end of each quarter/semester of the school year on forms provided by the board.

(3) Annual report:

(a) An annual report for the period beginning September 1 and ending August 31 of the next year shall be submitted by October 1 of each year. Ten copies will be submitted to the board office.

(b) The annual report will provide current data for interim evaluation of the school and will include:

(i) Progress toward achievement of the schools stated

objectives for the past year.

(ii) Qualifications and major responsibilities of the dean or director and of each faculty member. To include an update of faculty members professional development.

(iii) Policies used for selection, promotion and graduation of students.

(iv) Practices followed in safeguarding the health and well being of students.

(v) Current enrollment by class and student-teacher ratios.

(vi) Number of admissions to school per year for past five years.

(vii) Number of graduations from school per year for past five years.

(viii) Performance of students on state board examinations for past five years.

(ix) Curriculum plan.

(x) Brief course description.

(xi) Descriptions of resources and facilities, clinical areas, and contractual arrangements which reflect upon the academic program.

(xii) A copy of the school's audited fiscal report, including a statement of income and expenditures.

(xiii) A current school catalog.

(xiv) Goals for forthcoming year.

(4) Special reports:

(a) Changes which significantly affect the administration, curriculum, students, faculty, clinical and educational facilities will be submitted in a special written report to the board prior to initiation. Ten copies will be sent to the board office.

(b) Such other reports as may be requested by the board for information will be provided by the schools." (Authority: Sec. 37-8-202, MCA; Implement: Sec. 37-8-301, 302, MCA.)

13. An explanation for the amendments and adoptions is shown in paragraph 2. of this notice.

14. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoptions, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Nursing, 1424 9th Avenue, Helena, Montana 59620-0407, no later than June 7, 1982.

15. The board or its designee will preside over and conduct the hearing.

16. The authority of the board to make the proposed changes is based on and implements those sections as indicated after each proposed change.

JANIE CROMWELL, PRESIDENT
BOARD OF NURSING

BY: _____
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF REALTY REGULATION

IN THE MATTER of the Proposed Amendments of ARM 8.58.409 concerning branch office requirements, and ARM 8.58.414, subsections (1), (4) and (6) concerning trust account requirements.	NOTICE OF PROPOSED AMENDMENTS OF ARM 8.58.409 BRANCH OFFICE REQUIREMENTS AND ARM 8.58.414 SUBSECTIONS (1),(4), and (6) TRUST ACCOUNT REQUIREMENTS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 29, 1982, the Board of Realty Regulation proposes to amend rules ARM 8.58.409 concerning branch office requirements and ARM 8.58.414, subsections (1), (4) and (6) concerning trust account requirements.

2. The proposed amendment of ARM 8.58.409 will read as follows: (deleted matter interlined, new matter underlined)

"8.58.409 BRANCH OFFICE REQUIREMENTS (1) A licensed resident or non-resident broker may qualify for a branch office license.

(2) A licensed real estate salesman shall not qualify for a branch office license.

(3) ~~A real estate license will not be granted to a salesman living in a different town from that of the employing broker, unless a branch office is maintained in that town, displaying a branch office license and the broker's real estate sign, provided, however, that such~~ A branch office must be in the charge of a duly qualified and licensed resident broker in the branch office, and ~~that~~ any ~~salesman~~ salesperson employed in such branch office shall perform only the acts contemplated to be done by a ~~salesman~~ salesperson under a ~~salesman's~~ salesperson's license; and that the preparation of instruments in connection with a real estate sale and the act of closing such sales, are functions of a broker and must be performed by or under the supervision of a person or persons duly licensed as a broker.

(4) The license of the ~~The real estate license of all salesmen employed by a broker at a~~ branch office shall be prominently displayed at the location of the branch office.

(5) ~~The license of the~~ The real estate licenses of all salespersons employed by a broker at a branch office shall be prominently displayed at the location of the branch office.

(6) The broker's real estate sign shall be prominently displayed at the location of the branch office."

3. The board is proposing the amendment to clarify existing regulations relating to the requirements for a branch office of a real estate broker and to delete the requirement that a salesperson reside in the town in which he works. The authority

of the board to make the proposed amendment is based on section 37-51-203, MCA and implements section 37-51-308, MCA.

4. The proposed amendment of ARM 8.58.414 will amend subsections (1), (4) and (6) and will read as follows: (deleted matter interlined, new matter underlined)

"8.58.414 TRUST ACCOUNT REQUIREMENTS (1) Each broker shall maintain a separate bank account which shall be designated a trust account wherein all down-payments, earnest money deposits, or other trust funds received by the broker or his salesmen on behalf of his principal or any other persons shall be deposited. Such trust accounts may be maintained in interest-bearing accounts with the interest payable to the broker.

(2)....

(4) Each broker shall only deposit trust funds received on real estate transactions in his trust account and shall not commingle his personal funds or other funds in said trust account with the exception that a broker may deposit and keep a sum not to exceed $500 in said account from his personal funds, including the interest earned on the trust account if the trust account is maintained in an interest bearing account, which sum shall be specifically identified and deposited to cover bank service charges relating to said trust account.

(5) A broker may maintain more than one trust account.

(6) Each broker shall deposit all real estate money received by him or his salesman in the broker's trust account within three business days of receipt of said money by said broker or said salesman unless otherwise provided in the purchase contract, ~~lease~~ agreement, or rental agreement~~)~~.

(7)...

..."

5. The board is proposing the amendment to provide for trust funds to be placed into interest bearing accounts with the interest payable to the broker, which at the present time, is not allowed. The authority of the board to make the proposed amendment is based on section 37-1-131, MCA and implements section 37-51-203, MCA.

6. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Realty Regulation, 1424 9th Avenue, Helena, Montana 59620-0407 no later than May 27, 1982.

7. 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 Board of Realty Regulation, 1424 9th Avenue, Helena, Montana 59620-0407 no later than May 27, 1982.

8. 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; from a governmental agency or subdivision; 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 is determined to be 50 based on the 5,000 licensees.

9. The authority and implementing sections are listed after each proposed change.

BOARD OF REALTY REGULATION
DEXTER L. DELANEY, CHAIRMAN

BY: _____
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 19, 1982.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the Amendment of Rules 24.9.206, 24.9.212, 24.9.225, 24.9.227, 24.9.229, 24.9.230, 24.9.231, and 24.9.242, relating to the processing of no cause complaints by the Commission	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULES (No Cause Hearing)

TO: All Interested Persons:

1. On May 19, 1982, at 1:00 p.m., a public hearing will be held at Room 164, Federal Building, Helena, Montana to consider the amendment of the following Rules: 24.9.206, 24.9.212, 24.9.225, 24.9.227, 24.9.229, 24.9.230, 24.9.231, and 24.9.242.

2. The proposed amendments replace portions of present rules 24.9.206, 24.9.212, 24.9.225, 24.9.227, 24.9.229, 24.9.230, 24.9.231 and 24.9.242 found in the Administrative Rules of Montana. The proposed amendments would change the manner in which the Commission processes complaints in which the Human Rights Division has made a finding of no cause.

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

24.9.206 DIVISION COMPLAINTS; CLASS ACTIONS BY INDIVIDUALS OR GROUPS (1) The Commission Staff, when it has reason to believe that any person or organization is or has been engaged in a discriminatory practice in violation of the act, may file a complaint with the Commission alleging that the Respondent is or has been engaged in a practice which violates the act. Such a complaint must be filed within one hundred eighty (180) days of the most recent occurrence of the actions or practices complained of. A Division complaint need not identify any person aggrieved by the practice or action but must allege sufficient facts to indicate the basis for its charge. A complaint filed by the Division Staff may seek relief authorized by law for any and all persons adversely affected by the practice or actions complained of. Division complaints shall be filed by the Division Administrator.

(2) (a) In addition to complaints filed by the Division, a complaint may be filed by or on behalf of an aggrieved person alleging that the Respondent is engaging or has engaged in a practice or action which discriminates against a class of persons in violation of the act. In the case of a complaint filed by an individual or group of individuals alleging discrimination against a class of persons, the complaint may seek the discontinuance of the alleged pattern and practice. If, in addition, the complaint seeks to determine the rights of the affected class to any

pecuniary relief, and upon ~~finding of reasonable cause~~ certification for hearing the complaint shall be designated by the division as a class action. Notice of intent to maintain a class action shall be immediately sent to each Commission member. The Commission, as soon as practicable after receiving notice of the division's designation of the complaint as a class action, shall by order approve or disapprove the certification of the class. Rule 23 of the Montana Rules of Civil Procedure, Title 25, Chapter 20, MCA, shall apply in regard to the criteria relevant to the decision to approve the certification of a class. Such certification may be conditional and may be altered or amended at any time before a final determination by the Commission after hearing.

(b) Rule 23 of the Montana Rules of Civil Procedure, Title 25, Chapter 20, MCA, shall also govern notice to members of the class, withdrawal of a member from the class, use of one's own attorney by a member of the class, the effect of the Commission's findings on the class, maintenance of a class action in regard to particular issues or sub-classes, supplementary orders controlling conduct of the action, and dismissal or compromise of the complaint.

The authority of the Commission to make the proposed amendment is based on section 49-2-204, MCA, and the rule as amended implements section 49-2-504, 49-2-505, and 49-2-507, MCA.

24.9.212 CONFIDENTIALITY. (1) Neither a charge nor information obtained in the investigation of a charge, nor any records required by the Commission to be filed with the Commission shall be made matters of public information by the Commission prior to the certifying of a case for public hearing (including ~~hearing on a no cause finding~~ a default hearing or a hearing alleging violation of a conciliation agreement). This provision does not apply to such earlier disclosures to the charging party, the respondent, witnesses, counsel, and representatives of interested federal, state and local agencies as may be appropriate or necessary to the carrying out of the Commission's functions under the act, nor to the publication of data or abstracts derived from such information in a form which does not reveal the identity of the charging party, respondent, or person supplying the information. The Commission may enter into agreements with any federal, state, or local governmental agency for the deferral of complaints or sharing of information regarding complaints which agreements may require more stringent standards of confidentiality with regard to such complaints or such information.

The authority of the Commission to make the proposed amendment is based on section 49-2-204, MCA, and the rule as amended implements section 49-2-504, 49-2-505, and 49-2-507, MCA.

24.9.225 PROCEDURE ON FINDING OF NO CAUSE (1) If a finding of no cause is made by the division in regard to any complaint, notice of the division finding shall be served on all parties. The notice shall include a statement of the reasons for the finding and a statement informing the parties of the charging party's or aggrieved person's right to seek a reconsideration of the finding. A reasonable time, of at least 10 days shall be given to the charging party or aggrieved person from the date of service of the notice to request an appeal of the no cause determination. The request shall be in writing.

(2) Upon receipt of a request for reconsideration, the division administrator shall schedule an informal conference between the administrator and the person requesting the reconsideration. The conference shall not be in the form of a hearing and no record of the conference shall be kept. The purpose of the conference is to afford an opportunity for the charging party or the aggrieved person to explain to the administrator any reasons which that person believes support a finding of reasonable cause, and which should have been considered or accorded more weight by the investigator.

(3) If as a result of the informal conference, the administrator determines that the finding of no cause should be rescinded, he shall rescind the finding and so notify all parties. If the finding is rescinded, the case shall be returned to the person or persons on the division staff responsible for its investigation or a new person appointed and the investigation shall continue or new finding entered consistent with the recommendations of the division administrator.

(4) If following the informal conference the administrator affirms the no cause finding, notice of his decision shall be sent to all parties together with a copy of the original determination and a statement explaining the right of the charging party or aggrieved person to ~~appeal the determination. The notice shall specify the time in which the charging party or aggrieved person must exercise his or her right of appeal, which in no case shall be less than 10 days from the date that notice of the administrator's determination is sent to the parties. A request for appeal of the division administrator's determination of no cause shall be in writing and shall include a statement of the reasons why the charging party or aggrieved person believes that the finding is erroneous and any evidence which that person believes that the division has overlooked or misconstrued,~~ request that his or her case be set for hearing. The notice shall specify the time in which the charging party or aggrieved person must request that the case be certified for hearing, which in no case shall be less than thirty (30) days from the date that notice of the administrator's determination is sent to the parties.

(5) ~~(5) A hearing on a finding of no cause shall be before the Commission or a hearing examiner. The issue at hearing shall be whether the finding of the division is arbitrary, capricious and contrary to law, and shall not constitute a hearing on the substantive merits of the complaint. The respondent may be present and participate in the hearing. However, the presence of the respondent is not required and no default against the respondent will enter for failure to appear. A hearing on appeal of a no cause finding shall be conducted in conformance with the rules of the Commission for hearing on contested cases generally, as described in ARM 24.9.229. Any finding on a hearing appealing a no cause determination made by a hearing examiner shall be subject to review and confirmation by the Commission in the same manner as is provided in ARM 24.9.299 of these rules for contested cases generally.~~ If a case in which the Division has found no cause is certified for hearing, it shall be heard by the Commission in the same manner in which it hears other contested cases.

(6) If no conference is requested or, subsequent to a conference, no ~~appeal requested~~ written request for hearing is made in the time stated in the notice, the no cause finding shall be submitted to the Commission at its next meeting. The Commission shall consider all the evidence produced by the division's investigation and either affirm the finding with a dismissal order, order the finding changed to a reasonable cause finding, or order the case resubmitted for further investigation. Notice of the Commission determination shall be sent to all parties.

(7) Affirmance by the Commission of a finding of no cause completes the administrative process with regard to the complaint or with regard to those allegations of the complaint in regard to which no cause is found.

The authority of the Commission to make the proposed amendment is based on section 49-2-204, MCA, and the rule as amended implements section 49-2-504, 49-2-505, and 49-2-507, MCA.

24.9.227 DISCOVERY. (1) When the division administrator has certified a case for hearing before the Commission as set forth in ARM 24.9.229, or whenever the Commission issues notice of a public hearing on a petition for declaratory judgment ~~or on a no cause finding,~~ every party shall enjoy the same rights of discovery as are provided for in Rules 26 through 37 of the Montana Rules of Civil Procedure. The provision of the Montana Rules of Civil Procedure governing discovery shall be applicable to discovery under this rule except to the extent that the Rules of Civil Procedure by their nature would be inapplicable and except as provided otherwise in these rules. All requests for discovery shall be served on the division as well as on the party from whom discovery is sought.

(2) In any discovery procedure conducted pursuant to this rule, the Commission shall enjoy the position and power specified for the district court in the Rules of Civil Procedure. The Commission, or hearing examiner appointed by the Commission, may issue any order and exercise any power which the disctrict court could exercise in regard to discovery under the Rules of Civil Procedure.

(3) Depositions, interrogatories, and other products of discovery obtained by any party pursuant to this rule, and any deposition, interrogatory, or other product of discovery and investigation obtained by the Commission staff in conducting any investigation of a complaint may be used at a hearing for any purpose for which such deposition, interrogatory, or other product of discovery may be used in a civil trial pursuant to the Montana Rules of Civil Procedure.

(4) In any case where under the Montana Rules of Civil Procedure or any other applicable Montana law, a party to an action or the attorney for a party would enjoy any privilege or protection from a discovery order, the Commission staff or any member therof shall enjoy a comparable privilege or protection. In addition, the Commission staff shall enjoy any privilege or protection to which they are entitled by law.

(5) The discovery procedures authorized by this rule may be initiated at any time up to 30 days after a party receives notice that a case has been certified to the Commission for hearing. The Commission or hearing examiner in its discretion may extend the period for discovery.

(6) In implementing this rule, the Commission or hearing examiner shall take particular care to assure that procedural requirements do not impair the substantive rights of persons appearing before the Commission or hearing examiner without representation of counsel.

The authority of the Commission to make the proposed amendment is based on section 49-2-204, MCA, and the rule as amended implements section 49-2-504, 49-2-505, and 49-2-507, MCA.

24.9.229 CONTESTED CASES, PREAMBLE AND SUMMARY. (1) The Administrative Procedure Act sets up particular procedures in case of agency actions specifically directed to a party. Section 2-4-102(7), MCA, defines "party" as:

> "...any person or agency named or submitted as a party, or properly seeking and entitled as of right to be admitted as a party; but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes."

These procedures are referred to as contested cases. Section 2-4-102(4), MCA, defines a "contested case" as:

> "...any proceeding before an agency in which a determination of legal rights, duties, or privileges of a

party is required by law to be made after an opportunity for a hearing. The term includes, but is not restricted to, rate making, price fixing, and licensing."

Contested cases provide an opportunity for a person to obtain a hearing before an agency to contest the agency's intended action against him or action which directly affects him.

The essential requirements of contested case procedures are: sufficient notice of opportunity to be heard, fair hearing, and the right to judicial review on a process. Because an appeal to district court is, unless other statutes apply, on the weight of the evidence, it is necessary that agencies prepare a complete record of the proceedings before them in contested cases. Section 2-4-164, MCA, delineated all items that must be included in the record. ARM 24.9.229 through 24.9.236 set forth the procedure for the initiation of, conduct of, and ruling on contested cases.

In the case of a complaint filed with the Human Rights Commission, a contested case exists whenever the ~~division has made a determination that reasonable cause exists to believe that the Respondent has engaged in a discriminatory practice in violation of the act and upon failure of conciliation efforts,~~ the case has been certified to the Commission for hearing. In addition, the provisions of these rules applicable to the conduct of hearings on contested cases, particularly ARM 24.9.240 through 24.9.248, shall apply to ~~hearings on findings of no cause and to~~ default hearings held pursuant to ARM 24.9.223 and 24.9.225.

The authority of the Commission to make the proposed amendment is based on section 49-2-204, MCA, and the rule as amended implements section 49-2-504, 49-2-505, and 49-2-507, MCA.

24.9.230 CERTIFICATION OF A CASE TO COMMISSION FOR HEARING. (1) Whenever the division administrator has determined that reasonable cause exists to believe that a respondent has engaged in a discriminatory practice in violation of the act and that conciliation efforts have been unsuccessful, the administrator shall notify the Commission that the case should be set for hearing, providing that the charging party is willing to proceed to a hearing before the Commission at that time. ~~Notice to the Commission shall include certification by the administrator that a finding of reasonable cause has been made and that division efforts to conciliate the case have been unsuccessful.~~ In addition if the division administrator has determined that no reasonable cause exists to believe that a respondent has engaged in a discriminatory practice in violation of the act, but the charging party nevertheless wishes to proceed to a hearing before the Commission, the case shall also be certified

for hearing.

The authority of the Commission to make the proposed amendment is based on section 49-2-204, MCA, and the rule as amended implements section 49-2-504, 49-2-505, and 49-2-507, MCA.

24.9.231 NOTICE OF CERTIFICATION FOR HEARING. (1) Under the APA, a contested case exists whenever a proceeding before the agency determines ~~the~~ legal rights, duties, or privileges and the law requires an opportunity for hearing. In a contested case, all parties are afforded an opportunity for hearing after reasonable notice.

(2) Notice that a case has been certified to the Commission for hearing shall include:

(a) A statement indicating that the case has been certified to the Commission for hearing;

(b) A statement indicating that the Commission or hearing examiner will set a time and place for hearing and notify the parties;

(c) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(d) A reference to the particular sections of the statutes and rules involved;

(e) A copy of the complaint as it may have been amended;

(f) A copy of the Commission's procedural rules.

(3) The notice shall include a provision advising the parties of their right to be represented by counsel at hearing.

(4) Notice that a complaint has been certified to the Commission for hearing and the copy of the complaint shall be served on all parties in the manner provided in Rule 4(D) of the Montana Rules of Civil Procedure, Title 25, Chapter 20, MCA.

(5) The following is a sample form of notice that a case has been certified to the Commission for hearing.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

THOMAS MATTHEWS,	)	Case No. RE1-555
	)	
Charging Party,	)	NOTICE OF CERTIFICATION TO
	)	HUMAN RIGHTS COMMISSION FOR
v.	)	HEARING OF CHARGE OF UNLAWFUL
	)	DISCRIMINATION
GEORGE P. ROGERS,	)	
	)	
Respondent.	)	
TO: Thomas Matthews	)	
George P. Rogers	)	

This will notify you that in regard to the complaint filed with the Human Rights Commission by Thomas Matthews against George Rogers, Commission Case #RE1-555, ~~a finding of reasonable cause has been made and conciliation~~ efforts undertaken by the division have been unsuccessful in resolving the dispute. Therefore, the above-captioned case has been certified to the Human Rights Commission for public hearing.

The Human Rights Commission will either hear the case itself or will appoint a hearing examiner to conduct the hearing.

You will be contacted by the Commission or its appointed hearing examiner concerning the date, time and place of hearing, and concerning any pre-hearing procedures which will be required.

The hearing conducted by the Commission or hearing examiner is held under the authority of section 49-2-505, MCA. The complaint filed by the charging party alleges violation of section 49-2-303, MCA.

The complaint alleges that the respondent refused to hire the charging party because of his race. A copy of the complaint accompanies this notice.

The respondent is required by the rules of the Commission to file a verified answer to the complaint of the charging party within 20 days of the date of service of this notice, unless, upon request, the Commission/hearing examiner shall extend the time for answer.

The time for discovery provided for by the rules of the Commission shall expire within 30 days of the receipt of this notice ~~or 90 days of the receipt of the reasonable cause finding, whichever period shall be longer,~~ unless upon request, the Commission/hearing examiner shall extend the period for discovery.

At the hearing conducted by the Commission or hearing examiner you have a right to be represented by counsel. Failure to appear at the hearing by the charging party may result in dismissal of the complaint. Failure to appear at hearing by respondent may result in the entry of judgment on a default basis.

Dated June 1, 1977. s/Helena Campion
Division Administrator

The authority of the Commission to make the proposed amendment is based on section 49-2-204, MCA, and the rule as amended implements section 49-2-504, 49-2-505, and 49-2-507, MCA.

24.9.242 CONTESTED CASES; MOTIONS (1) All motions, petitions, and objections to interrogatories filed after a ~~finding of reasonable cause~~ case is certified for hearing or after entry of default (hereinafter collectively referred to as "motions") shall be filed with the Commission at its Helena office and shall be determined by the Commission based upon the motion papers hereinafter referred to. Oral arguments will not be permitted except upon leave of the Commission or hearing examiner, upon written request and proper showing by movant prior to the submission and the time of hearing, and length of such argument shall be fixed by the Commission or the hearing examiner. This rule shall apply to all motions, including but not limited to, motions to dismiss, motions for a more definite statement, objections to the report of hearing examiners, petitions to revoke or modify subpoenas, objections to interrogatories and other discovery procedures.

(2) Every motion, memorandum and supporting document filed with the Commission by any party or by the Division shall be served on all parties, or their attorneys, and upon the Division attorney. Proof of such service shall be attached to such motions and documents.

(3) The movant shall file with his motion or within five (5) days after his motion is filed a memorandum stating the reasons in support of the motion and citing the authorities upon which the movant relies. If the motion requires consideration of facts not appearing in the record, the movant shall also serve and file copies of all affidavits, depositions and other documentary evidence he desires to present in support of the motion.

(4) Each party or his attorney or the Division opposing the motion may file an answering memorandum by the 10th calendar day after the motion or the supporting memorandum was served and filed. The movant may file a reply memorandum by the 10th calendar day after the answering memorandum was served and filed. Upon the filing of all memoranda, the motion shall be deemed submitted to the Commission; provided, however, that where the circumstances warrant and upon equitable terms and conditions, the Commission may rule upon the motion prior to the expiration of the time periods provided in this rule, or grant a longer period for filing responsive memoranda. Rule 6(e) of the Montana Rules of Civil Procedure, Title 25, Chapter 20, MCA, shall apply in cases where a motion or responsive memorandum is served by mail.

(5) A party who makes a motion under this rule may join with it any other motions herein provided for and then available to him. If any party makes a motion under this rule but omits therefrom any defense or objection then available to him which these rules permit to be raised by motion, he shall not thereafter make a motion based on the defense or objection; however, a defense of failure to state a claim upon which relief can be granted, a defense of failure to join an indispensable party, and an objection of failure to state a legal defense to a claim may be made in any pleading or order under these rules or at hearing.

(6) In addition, whenever it shall appear by suggestion of the parties or otherwise that the Commissin lacks jurisdiction of the subject matter, the Commission shall dismiss the complaint.

The authority of the Commission to make the proposed amendment is based on section 49-2-204, MCA, and the rule as amended implements section 49-2-504, 49-2-505, and 49-2-507, MCA.

4. The Commission is considering these amendments in order to more efficiently process complaints in which the Human Rights Division makes a no cause finding and to simplify its procedures regarding such complaints.

5. Interested persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to John Frankino, 23 South Last Chance Gulch, Helena, Montana 59620 no later than June 15, 1982.

6. John Frankino, 23 Last Chance Gulch, Helena Montana 59620, has been designated to preside over and conduct the hearing.

HUMAN RIGHTS COMMISSION

John Frankino

John Frankino
Chairman

Certified to the Secretary of State, April 19, 1982.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 24.9.801, relating to the definition of the terms "mental handicap" and "physical handicap"	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 24.9.801 defining "Mental Handicap" and "Physical Handicap"

TO: All Interested Persons:

1. On May 19,1982, at 1:00 p.m., a public hearing will be held in Room 164 at the Federal Building, Helena, Montana to consider the amendment of Rule 24.9.801.

2. The proposed amendment adds new language to present rule 24.9.801 found in the Administrative Rules of Montana. The proposed amendment would clarify the meanings of the terms "mental handicap" and "physical handicap" as those terms relate to complaints of discrimination filed with the Commission.

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

24.9.801 DEFINITIONS. (1) The terms "age", "educational institution", "employee", "employer", "employment agency", "financial institution," ~~"mental handicap"~~ and "public accommodation", as used in these regulations, shall have the meanings stated in section 49-2-101, MCA, with the additional clarification that "national origin" means the country or countries in which an individual, his parents, grandparents, and ancestors were born.

(2) The terms "staff", "division", "division administrator", "Commission", "Commissioner", and "act" shall have the meanings stated in Sub-Chapter 2, "Procedural Rules."

(3) The terms "mental handicap" and "physical handicap" shall have the meanings stated in section 49-2-101, MCA, with the following clarifications:

(a) A "handicapped individual" is any person who has a physical or mental impairment which substantially limits one or more of his major life activities and either has a record of such an impairment or is regarded as having such an impairment.

(b) A factor in determining whether an impairment substantially limits a major life activity is the duration of the impairment. A short term illness or injury such as a cold or sprained ankle, is not by itself a "handicap" within the meaning of section 49-2-101, MCA.

3. The Commission is considering the amendment of the above rule in order to clarify situations in which a complaint of handicap discrimination may be brought.

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 John Frankino, 23 South Last Chance Gulch, Helena, Montana 59620 no later than June 15, 1982.

5. John Frankino, 23 Last Chance Gulch, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

6. The authority of the Commission to make the proposed amendment is based on section 49-2-204, MCA and the rule as amended implements section 49-2-101, MCA.

HUMAN RIGHTS COMMISSION

John Frankino, Chairman

Certified to the Secretary of State, April 19, 1982.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the application of the Montana Ironworkers Joint Apprentice-ship and Journeyman Training Program for a declaratory ruling exempting certain training programs from the provisions of section 49-2-303 (1)(b), MCA, regarding age discrimination in apprentice-ship and training programs.	NOTICE OF PUBLIC HEARING

TO: All Interested Persons:

1. On March 31, 1982, the Montana Ironworkers Joint Apprenticeship and Training Program filed with the Commission the attached Petition for Declaratory Ruling.

2. At its meeting on April 14, 1982, the Commission determined that it intended to consider the petition and issue a ruling.

3. The Commission will hold a public hearing on May 7, 1982, at 9:00 a.m., in Room 164, Federal Building, Helena, Montana to consider the petition for declaratory ruling.

4. John Frankino, 23 South Last Chance Gulch, Helena,

Montana, will preside over and conduct the hearing. The hearing will be conducted according to the rules of the Commission set forth in A.R.M. sections 24.9.240 through 24.9.248. Any party has the right to be represented by counsel at the hearing.

5. Any person may, upon proper showing, petition to intervene in this proceeding, either generally or for the limited purpose of presenting his or her particular point of view concerning the petition.

Dated: April 14, 1982.

HUMAN RIGHTS COMMISSION

By John Frankino
John Frankino, Chairman

Certified to the Secretary of State, April 19, 1982.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the application of the Montana Ironworkers' Joint Apprenticeship and Journeyman Training Program for a declaratory ruling exempting certain training programs from the provisions of section 49-2-303(1)(b), MCA, regarding age discrimination in apprenticeship and training programs.	AMENDED PETITION FOR DECLARATORY RULING

1. Petitioner's name and address is: Montana Iron Workers Joint Apprenticeship and Training Program, 106 East Commercial Avenue, P.O. Box 818, Anaconda, Montana 59711.

2. Petitioner administers an apprenticeship and journeyman training program throughout the jurisdiction of the Iron Worker Local Unions #81, #708, and #815, located in the State of Montana. Petitioner currently administers two (2) parallel training programs. One is the regular apprenticeship program for those individuals between the ages of eighteen (18) and thirty (30) established by the apprenticeship standards adopted by the twenty-ninth Convention of the International Association of Bridge, Structural and Ornamental Iron Workers. The other is the National Iron Workers and Employers Training Program for individuals thirty-one (31) and older established by the International

Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, the Crane and Rigging Division of the Specialized Carriers Conference, the National Association of Miscellaneous, Ornamental and Architectual Products Contractors, the National Erectors Association, and the United States Department of Labor. Petitioner is concerned that due to a change in funding of these programs that administering these programs in accordance with approved standards, it may be in violation of the provisions of Section 49-2-303(1)(b), MCA.

3. The statute as to which Petitioner requests a declaratory ruling is section 49-2-303(1)(b), MCA, which makes it an unlawful discriminatory practice for "a labor organization, or joint labor-management committee controlling apprenticeship, to exclude or expel any person from its membership or from an apprenticeship or training program or to discriminate in any way against a member of or a applicant to the labor organization or an employer or employee. . . because of his age. . .when the reasonable demands of the program do not require an age. . .distinction."

4. Petitioner contends that it is administering two comparable training programs that are both recognized and registered by the Bureau of Apprenticeship and Training. Petitioner contends that by operating two programs, it makes training available to persons of all ages. If the upper age limit in the Standards of Apprenticeship program were removed, this would prohibit Petitioner from having and operating the Ironworkers and Employers Training Program. Inasmuch as this program has proven to be an excellent vehicle for minority and female entry into the Ironworker trade and has provided greater flexibility for compliance with Federal contracts, loss of the program could prove to be a hardship on older, minority and female applicants.

5. On October 25, 1977, Petitioner applied for and received a declaratory ruling from this Commission that the two apprenticeship and training programs as they were operated at that time did not violate Section 49-2-303(1)(b), MCA (formerly Section 64-306(1)(b), R.C.M. 1947), insofar as that section prohibits discrimination based on age, even though the two programs involved separate age groupings. That ruling specifically stated, however, that it applied only to the two programs as they were constituted and administered at that time. Since that time, the funding sources of the two programs have changed so that they are no longer constituted and administered in the same manner as they were at the time of the initial ruling. Therefore, Petitioner seeks a declaratory ruling with respect to these programs as they are presently constituted and administered.

6. The question presented for declaratory ruling by the Commission is whether the two parallel apprenticeship and training programs administered by Petitioner can be

exempted from the provisions of Section 49-2-303(1)(b), MCA, insofar as the statute prohibits discrimination based on age. This Petition is brought pursuant to Section 49-2-401, MCA.

7. Petitioner requests that the Commission rule that the Montana Ironworkers Joint Apprenticeship and Training Program be granted a exemption from application of Section 49-2-303(1)(b), MCA, insofar as the statute prohibits discrimination on the basis of age because of the fact that the Petitioner operates parallel programs which make training available to persons of all ages.

8. Persons known by the Petitioner to be interested in the requested declaratory ruling are:

Robert Scott, Director
U.S. Department of Labor
Bureau of Apprenticeship and Training
Room 394, Federal Office Building

301 Park Avenue
Drawer 10055
Helena, Montana 59626

Dan Miles, Chief
Apprenticeship Bureau
Labor Standards Division
Montana Department of Labor and Industry
Capitol Station
Helena, Montana 59620

Dated: April 19, 1982

MONTANA IRONWORKERS APPRENTICESHIP
AND TRAINING PROGRAM

BY: Gene Vuckovich
GENE VUCKOVICH, DIRECTOR

Certified to the Secretary of State, April 19, 1982.

HRARM:C

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

In the Matter of the Amendment of a Rule Adopting the Attorney General's Model Rules	))))	NOTICE OF PROPOSED AMENDMENT OF ARM 26.2.101 - Model Procedural Rules NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons

1. On June 21, 1982, the board of land commissioners and department of state lands propose to amend ARM 26.2.101-Model Procedural Rules.

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

26.2.101 MODEL PROCEDURAL RULES The department ~~of state lands has adopted and incorporated the attorney general's Model Procedural Rules 1 through 38 by reference to such rules as stated in ARM Title 1, Chapter 3, Sub-Chapters 1 and 2~~ hereby adopts and incorporates by reference ARM 1.3.101 through ARM 1.3.234 which set forth the attorney general's model procedural rules. A copy of the model rules may be obtained from Department of State Lands, Capitol Station, Helena, Montana 59620.

3. The rule modification is proposed to amend the department's present procedural rules to adopt the Attorney General's amendments to the Model Procedural Rules, which were adopted at page 1195 of the Montana Administrative Register, 1981, Issue No. 19, effective October 15, 1981. The Model Procedural Rules provide rules of practice, setting forth the nature and requirements for formal and informal administrative procedures.

4. Interested persons may submit their data, views or comments concerning the proposed amendments in writing to John F. North, Chief Legal Counsel, Department of State Lands, Capitol Station, Helena, Montana 59620 no later than June 1, 1982.

5. The authority to make the proposed amendment is provided by Section 2-4-201 MCA. The amendment implements Section 2-4-201.

Gareth C. Moon, Commissioner
Department of State Lands

CERTIFIED TO THE SECRETARY OF STATE April 8, 1982.

MAR Notice No. 26-2-40 8-4/29/82

BEFORE THE BOARD OF OIL
AND GAS CONSERVATION
OF THE STATE OF MONTANA

In the matter of Amendment and Repeal of Rules Pertaining to the Oil and Gas Division Regulatory Program	NOTICE OF PROPOSED AMENDMENT OF ARM 36.22.302, 36.22.304, 36.22.306, 36.22.307, 36.22.501, 36.22.503, 36.22.601 through 36.22.604, 36.22.702, 36.22.1001 through 36.22.1004, 36.22.1012, 36.22.1013, 36.22.1101, 36.22.1205, 36.22.1213, 36.22.1218, 36.22.1242, 36.22.1244, 36.22.1307, 36.22.1308, 36.22.1602, 36.22.1609 and 36.22.1610; and THE REPEAL OF ARM 36.22.308, 36.22.401 THROUGH 36.22.403, 36.22.701 and 36.22.1220. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 18, 1982, the Board of Oil and Gas Conservation proposes to amend ARM 36.22.302, 36.22.304, 36.22.306, 36.22.307, 36.22.501, 36.22.503, 36.22.601 through 36.22.604, 36.22.702, 36.22.1001 through 36.22.1004, 36.22.1012, 36.22.1013, 36.22.1101, 36.22.1205, 36.22.1213, 36.22.1218, 36.22.1220, 36.22.1242, 36.22.1244, 36.22.1307, 36.22.1308, 36.22.1601, 36.22.1602, 36.22.1609, 36.22.1610 and 36.22.1611, and to repeal ARM 36.22.308, 36.22.401 through 36.22.403, and 36.22.701, all pertaining to the Oil and Gas regulatory program.

2, The proposed amendments are being made to clarify the rules and provide consistent statutory and code language and are not of substantive nature with the following exceptions: ARM 36.22.604 is proposed to be amended by requiring permittee to give notice of commencement of drilling and ARM 36.22.1308(4) is proposed to be amended by setting forth procedures to be followed when ownership of a well changes. These amendments are being proposed to spell out the procedure requirements that have been implied but not specifically stated in the past. ARM 36.22.604 is also proposed to be amended to issue drilling permits for a

period of six months with no extention period rather than for 90 days with provision for a 90-day extension upon request. This amendment is proposed to reduce the paperwork requirements for both the Board and the permittees. ARM 36.22.702 is proposed to be amended by deleting the well spacing limitation requiring 1650' between wells deeper than 11,000' because statewide spacing for wells deeper than 11,000' requires 660' setbacks from the spacing unit boundaries and the 1650' limitation has been deemed inappropriate and more restrictive than necessary. The rules proposed to be repealed are no longer necessary in the operation of the Division or repeat statutory language unnecessarily.

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

36.22.302 DEFINITIONS Unless the context otherwise requires, the words defined shall have the following meaning when found in these rules:

(1) "Acidizing" ***** means introduction of acid into a formation containing oil or gas to increase the producing ability of a well by dissolving a part of the reservoir rock or to clean the face of a formation.

(2) "Artifical lift" ***** means any method by which oil or water is removed from a well bore by use of energy transmitted from the surface through the same well bore.

(3) "Barrel" ***** means a quantity equal to 42 United States gallons at a temperature of 60 degrees Fahrenheit and at atmospheric pressure.

(4) "Blow-out" ***** means an uncontrolled escape of drilling fluid, water, oil, or gas from a well.

(5) "Blow-out preventer" ***** means an effective casing-head control equipped with special gates or rams which can be closed around the drill pipe or which completely closes the top of the casing.

(6) "Board" ***** means the ***** of ***** and ***** board of oil and gas conservation provided for in 2-15-3303, MCA.

(7) "Bottom hole pressure" ***** means the pressure in pounds per square inch determined at the face of the producing horizon by means of a pressure recording instrument adopted and recognized by the oil and gas industry. In the case of pumping or dually completed wells, a sonic device may be used. In the case of gas wells or wells having no liquid in the well bore, it ***** means the pressure as calculated by adding the pressure at the surface of the ground to the calculated weight of the column of gas from the surface to the bottom of the hole.

(8) "Casing pressure" ***** means the pressure existing at the wellhead in the annulus between the casing and tubing.

(9) "Casinghead gas" ***** means any gas, vapor, or both gas and vapor indigenous to an oil stratum and produced from the stratum with oil,

(10) "Combination well" ***** means a well productive of both

oil and gas in commercial quantities from the same common source of supply.

(11) "Completion date":

(a) of an oil well ~~means~~ the date when the first oil is produced through wellhead equipment into lease tanks from the ultimate producing interval after casing has been run;

(b) of a gas well ~~means~~ the date when the well is capable of producing gas through wellhead equipment from the ultimate producing interval after casing has been run; and

(c) of a dry hole ~~means~~ the date the top of the surface casing is sealed with a cement plug, steel cap or plate, or other approved method.

(12) "Completion report" means Board Report Form No. 4 which is to be submitted to the Board in triplicate for all wells drilled as specified in ARM 36.22.1013 and ARM 36.22.1011.

(13) "Common source of supply" is synonymous with pool.

(14) "Condensate" means the liquid produced by the condensation of a vapor or gas either after it leaves the reservoir or while still in the reservoir. Condensate is often called distillate, drips, white oil, etc.

(15) "Controlled gas field" means any common source of supply of natural gas discovered after July 1, 1951, or any field discovered prior to July 1, 1951, provided any pool therein has been discovered after July 1, 1951, unless otherwise designated by the Board.

(16) "Controlled oil field" means any common source of supply of crude oil discovered after July 1, 1951, or any field discovered prior to July 1, 1951, provided any pool therein has been discovered after July 1, 1951, unless otherwise designated by the Board.

(17) "Controlled production" means the production of oil, gas, or both oil and gas from a controlled oil or gas field, unless otherwise designated by the Board.

(18) "Crude oil" means petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the wellhead in liquid form by ordinary production methods and which are not the result of condensation of gas before or after it leaves the reservoir.

(19) "Cubic foot of gas" means the volume of gas contained in one cubic foot of space at a standard pressure base and a standard temperature base. The standard pressure base is 14.73 pounds per square inch absolute and the standard temperature base ~~means~~ is 60 degrees Fahrenheit.

(20) "Day" means a period of twenty-four consecutive hours.

(21) "Dry gas" means natural gas obtained from pools that produce gas only or natural gas obtained ~~from~~ that does not contain the heavier fractions ~~from~~ that may easily condense under normal atmospheric conditions and that is not casinghead gas.

(22) "Fracturing" means the introduction of fluid that may or may not carry in suspension a propping agent under pressure into a formation containing oil or gas for the purpose of creating cracks in said formation to serve as channels for fluids to move to or from the well bore.

(23) "Gas" means all natural gases and all other fluid hydrocarbons as produced at the wellhead and not defined as oil in subsection (6) of 82-11-102, MCA.

(24) "Gas allowable" means the amount of natural gas authorized to be produced by order of the Board in connection with the prevention of waste.

(25) "Gas-oil ratio" means the ratio of gas in standard cubic feet to oil in barrels produced concurrently during any stated period.

(26) "Gas injection" means the introduction of gas or air into a common source of supply in order to replenish, replace, or increase the energy of the reservoir.

(27) "Gas well" means:

(a) A well that produces natural gas only;

(b) any well capable of producing in commercial quantities and also producing oil from the same common source of supply but not in commercial quantities; or

(c) any well classed as a gas well by the Board for any reason.

(28) "Illegal gas" means gas that has been produced from any well or wells in violation of any law or of any rule or order of the Board.

(29) "Illegal oil" means oil that has been produced from any well or wells in violation of any law or of any rule or order of the Board.

(30) "MER" means maximum efficient rate and is the rate of production of oil, gas, and water from a well, wells, or pool which the Board finds will result in the maximum ultimate recovery of oil and gas from the pool, under prudent and proper operations.

(31) "Oil" means crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form by ordinary production methods and which are not the result of condensation of gas before or after it leaves the reservoir. (Section 82-11-101 (6), MCA.)

(32) "Oil allowable" means the amount of oil authorized to be produced by order of the Board in connection with the prevention of waste.

(33) "Oil well" means any well capable of producing oil in commercial quantities and that is not a gas well.

(34) "Operator" means any person who, duly authorized, is in charge of development and/or producing operations.

(35) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he produces therefrom either for himself or others or

for himself and others and the term includes all persons holding such authority by or through him. (Section 82-11-101(7), MCA.)

(36) "Permeability" is means that property of a porous media that designates its ability to transmit fluids.

(37) "Person" means and includes any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind and includes any department or agency of or instrumentality of the State or any governmental subdivision thereof. The term does not include a department of the United States or any agency thereof. (Section 82-11-101(8), MCA.)

(38) "Porosity" is means the ratio of rock pore volume to rock bulk volume expressed as a percentage.

(39) "Potential" means the actual or properly computed daily ability of a well to produce oil or gas or both. It is determined by the use of tests.

(40) "Pressure maintenance" means the introduction of fluid or fluids into an oil or gas reservoir to retard the decline of or increase the pressure of the reservoir.

(41) "Proved productive area" means that area which has been shown by development and/or geological information to be such that additional wells drilled thereon are reasonably certain to be commercially productive of oil or gas or both.

(42) "Purchaser" means any person who directly or indirectly purchases, transports, takes, or otherwise removes production to his account from a well, wells, or pool.

(43) "Reservoir pressure" is means bottom hole pressure under static conditions.

(44) "Spacing unit" means the area that can be efficiently drained by one well.

(45) "Stratigraphic well or core hole" means a well drilled for stratigraphic information only.

(46) "Stripper well" means a well which is not capable of producing an average of 25 barrels of oil per day for a calendar month.

(47) "Tubing pressure" means the pressure existing in the tubing at the wellhead.

(48) "Water injection or water flooding" is means the injection of water into a pool through one or several wells to achieve displacement of the oil from the pool.

(49) "Waste" means and includes:

(a) physical waste, as the term is generally understood in the oil and gas industry;

(b) the inefficient, excessive, or improper use of, or the unnecessary dissipation of reservoir energy;

(c) the location, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas and;

(d) the inefficient storing of oil or gas. [The production of oil or gas from any pool or by any well to the full extent that such well or pool can be produced in accordance with methods designed to result in maximum ultimate recovery, as shall be determined by the Board, shall is not be deemed to be waste within the meaning of this definition.] (Section 82-11-101(11), MCA.)

(50) "Well logs" shall means electrical, radiation, sonic, or other routine logs run by mechanical means in a well and all other logs, surveys, analyses, and reports run or made.

(51) "Well, wildcat or exploratory" shall means any well drilled for oil or gas outside of a delineated field or a well drilled to a stratum other than one then productive within a delineated field. It shall does not mean not including a stratigraphic well or core hole.

AUTH: Sec. 82-11-111 IMP: Sec. 82-11-111

36.22.304 INSPECTION OF RECORDS, PROPERTIES, AND WELLS (1) The Petroleum Engineer and his authorized agents shall have access to all factual well records.

(2) The Petroleum Engineer and his authorized agents shall have the right at all reasonable times to go upon and inspect any oil and gas properties and wells for the purpose of making any investigation or tests to ascertain whether the provisions of Title 82, Chapter 11, Parts 1 and 2, these rules, or any special rules or orders are being compiled with and shall report any violation thereof to the Board.

(3) All owners, drilling contractors, drillers, service companies, or and other persons engaged in drilling or servicing wells, shall permit the Petroleum Engineer or authorized agents at his or their risk in the absence of negligence on the part of the owner to come upon any lease, property, or well operated or controlled by them to inspect the records and operation of such wells and to have access at all times to all records of wells. Information shall not be considered confidential.

AUTH: Sec. 82-11-111 IMP: Sec. 82-11-111

36.22.306 ORGANIZATION REPORTS (1) On or before January 31, Every person acting as principal or as his agent for another who is independently engaged in oil and gas operations in the State shall file under oath with the Board on Form No. 1 a statement giving the following information:

(a) the name under which such business is being operated or conducted;

(b) the name and post office address of such person and the business or businesses in which he is engaged;

(c) the plan or organization and, in case of a corporation, the law under which it is chartered; and

(d) the post office addresses of any persons acting as trustees together with the names of the manager, agent, or executive thereof, and the names and post office addresses of any officers thereof.

~~(2) Every person who commences engaging in any such operations shall file the statement required by subsection (1) prior to commencement of operations.~~

(3)(2) Immediately after any change occurs as to facts stated in the report filed as required by subsection (1), a supplementary report under oath shall be filed with the Board with respect to such change.

AUTH: Sec. 82-11-111 IMP: Sec. 82-11-122 and 82-11-123

36.22.307 ADOPTION OF FORMS The forms hereinafter listed are hereby adopted and made a part of these rules for all purposes, and the same shall be used as herein directed in giving notice and in making reports and requests to the Board. Copies of printed forms will be supplied by the Board on request.

(1)	Form No. 1	Organization Report
(2)	Form No. 2	Sundry Notice and Report of Wells
(3)	Form No. 3	Bond
(4)	Form No. 4	Completion Report
(5)	Form No. 4A	Continuation Sheet Form 4
(6)	Form No. 5	Report of Subsurface Injections
(7)	Form No. 6	Report of Production
(8)	Form No. 6A	Continuation Sheet Form 6
(9)	Form No. 7	Transportation Agency's Monthly Report of Receipts and Disposition of Crude Oil
(10)	Form No. 8	Refiner's Monthly Report of Receipts and Disposition of Crude Oil
(11)	Form No. 9	Monthly Gas Report
(12)	Form No. 9A	Continuation Sheet Form 9
~~(12)~~(13)	Form No. 10	Gasoline or other Extraction Plant
~~(13)~~(14)	Form No. 10A	Continuation Sheet Form 10
~~(14)~~(15)	Form No. 11	Reservoir Survey Report and Gas-Oil Ratio
~~(15)~~(16)	Form No. 12	Producers Payment of Oil and Gas Production Tax
~~(16)~~(17)	Form No. 13	Producers Certificate of Compliance and from Lease
~~(17)~~(18)	Form No. 14	Certificate of Deposit Cash Bond
(19)	Form No. 15A	N.G.P.A. Application for New Natural Gas Determination
(20)	Form No. 15B	N.G.P.A. Application for New Onshore Production Well Determination
(21)	Form No. 15C	N.G.P.A. Application for Stripper Well Natural Gas Determination

(22)	Form No. 16	Objection to N.G.P.A. Application
(23)	Form No. 17	Notice of Classification Determination
(24)	Form No. 18	Domestic Well Bond and Lien

AUTH: Sec. 82-11-111 IMP: Sec. 2-4-201

36.22.501 SHOT LOCATION LIMITATIONS Without written permission of the surface owner no seismic shot hole shall be drilled closer than 1320 feet (1/4 mile) to any building, structure, water well, or spring; nor closer than 660 feet (1/8 mile) to any reservoir dam. ~~within one mile of the surface area~~

AUTH: Sec. 82-1-104 IMP: Sec. 82-1-104

36.22.503 NOTIFICATION (1) The County Clerk and Recorder of the county in which a permit for geophysical activity is issued shall immediately forward notice of the issuance of such permit to the Board of Oil and Gas Conservation at its office in Billings, Montana.

(2) The Board shall notify the County Clerk and Recorder of the County if the person, firm, or corporation which has obtained a permit is not in compliance with any applicable requirement for engaging in geophysical activity within the State.

(3) If the Board of Oil and Gas Conservation determines that a person, firm, or corporation has violated any provisions of this act, the Board shall take necessary action to assure compliance.

(4) Before commencing geophysical activity, the person, firm, or corporation shall notify the surface user as to the approximate time schedule of the planned activity and upon request the following information shall also be furnished;

(a) the name and permanent address of the geophysical exploration firm along with the name and address of the firm's designated agent for the State if different from that of the firm's;

(b) evidence of a valid permit to engage in geophysical exploration;

(c) name and address of the company insuring the geophysical firm;

(d) the number of the bond required in Section 82-1-104, MCA, to be filed with the Secretary of State;

(e) a description of the surface areas where the planned geophysical activity will take place;

(f) anticipated need, if any, to obtain water from the surface user during planned geophysical activity.

AUTH: Sec. 82-11-111 IMP: Sec. 82-1-103 and Sec. 82-1-105 through 82-1-107

36.22.601 NOTICE OF INTENTION AND PERMIT TO DRILL (1) No person shall commence the drilling of ~~a well for oil or gas~~ an oil or gas well or stratigraphic test well or core hole without first giving to the Board written notice of intention to drill on Form No. 2 and obtaining a drilling permit from the Board. Prior to the commencement of recompletion operations on any oil or gas well, notice shall likewise be delivered to the Board of such intention, and approval shall be obtained.

(2) ~~No person shall commence the drilling of a stratigraphic test well without first filing with the Board Form No. 2 showing location, elevation, and proposed work and obtaining a no fee drilling permit from the Board.~~

When a permit is sought for a 320 acre drilling or spacing unit, the notice shall include a description of the lands to be included.

AUTH: Sec. 82-11-111 IMP: Sec. 82-11-122

36.22.602 SURVEY PLAT WITH NOTICE OF INTENTION TO DRILL Notice of intention to drill shall be accompanied by a survey plat certified by a registered surveyor. ~~The survey plat must show:~~

~~(1) the location of the proposed well with reference to the nearest producing/idle oil or gas well producing from the same reservoir as the proposed well and located on the same lease or unit;~~

~~(2) the nearest lines of an established public survey; and~~

~~(3) the lands to be included in the enclosed spacing area when the well is to be drilled on a 320 acre spacing pattern.~~

AUTH: Sec. 82-11-111 IMP: Sec. 82-11-122

36.22.603 PERMIT FEES (1) Notice of intention to drill an oil ~~and~~/or gas well or stratigraphic test well or core hole shall also be accompanied by payment of a fee, as follows:

(a) for each well whose estimated depth is 3500 feet or less, $25.00;

(b) from 3501 feet to 7000 feet, $75.00;

(c) 7001 feet and deeper, $150.00. (2) Permits for deepening wells shall require the payment of fees for the estimated new total depth; where fees have been paid for the previous depth, credit shall be given therefor.

AUTH: Sec. 82-11-111 IMP: Sec. 82-11-134

36.22.604 PERMIT ISSUANCE - EXPIRATION - EXTENSION (1) If the notice complies in all respects with the applicable rules of the Board, a permit shall be issued promptly by the Petroleum Engineer or his authorized agent.

(2) If the notice does not comply in all respects with such rules, said notice shall be disallowed, and the Petroleum

Engineer or his authorized agent shall promptly notify the person of the reason or reasons for such disallowance.

(3) If drilling is not commenced, no such permit to drill shall be valid after the expiration of a period of six months from the date of the issuance thereof by the Board or its authorized agents unless application for an extension of time within which to drill is made before the six-month extension shall be granted and any permittee who fails to commence drilling within the six month period of the permit or the extension, if granted, must file a new Notice of Intention to Drill and pay the fee therefor.

(4) A permittee must advise the Board, either verbally or in writing, of the date of spudding a permitted well within 72 hours of commencing drilling.

AUTH: Sec. 82-11-111 IMP: Sec. 82-11-122

36.22.701 SPACING OF WELLS In proven oil and gas fields, the spacing of wells as well as the establishment of spacing units will be governed by special field rules for the particular field to be adopted after notice and hearing. In the absence of special field rules, the following rules shall govern:

(1) Unless a special exception is granted after notice and hearing, no stratigraphic test or core hole or wildcat or exploratory well with a projected depth of 6,000 feet or less shall be located closer than 330 feet to any legal subdivision line, except that a 75 foot tolerance to move closer to the quarter-quarter section lines will be allowed in extremely rough terrain where it is impractical to move in any other direction, but only after inspection of the location by a representative of the Board and subsequent approval by the Petroleum Engineer or his authorized agent.

(2) A legal subdivision is hereby defined by the Board as being a regular governmental quarter-quarter section or governmental lot corresponding thereto, consisting of 40 acres more or less.

(3) No stratigraphic test or core hole or wildcat or exploratory well with a projected depth between 6,000 feet and 11,000 feet shall be located closer than 660 feet to any governmental quarter section line, except that a 150 foot tolerance to move closer to the quarter section lines will be allowed in extremely rough terrain where it is impractical to move in any other direction, but only after inspection of the location by a representative of the Board and subsequent approval by the Petroleum Engineer or his authorized agent.

(4) Before any stratigraphic test or core hole or wildcat or exploratory well with a projected depth greater than 11,000 feet may be commenced, two contiguous governmental quarter sections (which may lie in either one or two governmental sections) shall be designated as the 320 acre drilling unit for such well. Such designation shall be made by the operator or operators of the two

governmental quarter sections described in the designation, and the designation shall be subject to administrative approval by the Board.

(5) A stratigraphic test or core hole or wildcat or exploratory well with a projected depth greater than 11,000 feet shall be located no closer than 660 feet to any governmental quarter section line which is an exterior boundary of a 320-acre drilling unit ~~and no closer than 1980 feet to any well producing from a Mississippian reservoir within 11,000 feet~~ and only one well shall be permitted to produce from the same reservoir within the same 320-acre drilling unit.

(6) A 320-acre drilling unit is defined by the Board as two contiguous regular governmental quarter sections or a number of lots that approximate two contiguous quarter sections and consisting of 320 acres more or less.

(7) Unless a special exception is granted after notice and hearing, no oil well with a projected depth of 6,000 feet or less shall be located closer than 330 feet to any legal subdivision line, and only one well shall be permitted to produce from the same reservoir within the same legal subdivision.

(8) No oil well with a projected depth between 6,000 feet and 11,000 feet shall be located closer than 660 feet to any governmental quarter section line, and only one well shall be permitted to produce from the same reservoir within the same governmental quarter section.

(9) Before the drilling of any oil well with a projected depth greater than 11,000 feet may be commenced, two contiguous governmental quarter sections (which may lie in either one or two governmental sections) shall be designated as the 320-acre drilling unit for such well. Such designation shall be made by the operator or operators of the two governmental quarter sections described in the designation, and the designation shall be subject to administrative approval by the Board.

(10) An oil well with a projected depth greater than 11,000 feet shall be located no closer than 660 feet to any governmental section or quarter section line which is an exterior boundary of the 320-acre drilling unit ~~and no closer than 1980 feet to any well producing from a Mississippian reservoir within 11,000 feet~~ and only one well shall be permitted to produce from the same reservoir within the same 320-acre drilling unit.

(11) Unless a special exception is granted after notice of hearing, no gas well shall be located closer than 990 feet to any governmental section line, and only one well shall be permitted to produce from the same reservoir within the same governmental section.

AUTH: Sec. 82-11-111 IMP: Sec. 882-11-124 and Sec. 82-11-201

36.22.1001 ROTARY DRILLING PROCEDURE Unless altered, modified, or changed for particular common sources of supply upon notice and hearing before the Board, the following rules on "drilling procedure" shall apply to wells drilled with rotary tools:

(1) Suitable and safe surface casing shall be used in all wells. In all wells drilled in areas where pressure and formations are unknown, sufficient surface casing shall be run to reach a depth below all potable fresh water located at levels reasonably accessible for agricultural and domestic use. Surface casing shall be set in or through an impervious formation and shall be cemented by the pump and plug or displacement method with sufficient cement to circulate to the top of the well. If ~~it~~ it becomes necessary to run a production string, such string shall be cemented by the pump and plug method or any other recognized method and shall be properly tested by the pressure method before cement plugs are drilled.

(2) All cemented casing strings shall stand under pressure until the cement has reached a compressive strength of 300 pounds per square inch; provided, however, that no tests shall be commenced until the cement has been in place for at least 8 hours. The ~~requirement~~ requirement "under pressure" as used herein will be complied with if one float valve is used or if pressure is otherwise held.

(3) In all proven areas, the use of blow-out prevention equipment shall be in accordance with established practice in the area.

(4) In unproven areas, all drilling wells shall be equipped with a mastergate or its equivalent and an adequate blowout preventor, together with choke and kill line or lines of the proper size and working pressures. The entire control equipment shall be in good working condition at all times.

(5) Only freshwater based drilling fluid may be used when drilling through freshwater aquifers anywhere within the state of Montana.

AUTH: Sec. 82-11-111 IMP: Sec. 82-11-123 and Sec. 82-11-124

36.22.1002 CABLE DRILLING PROCEDURE (1) Before commencing to drill a well, proper and adequate slush pits shall be constructed for the reception of mud of sufficient quality and quantity so that such mud may be available if ~~it~~ it the hole is plugged.

(2) ~~If~~ If cable tools are used, sufficient casing shall be set to protect all potable fresh water located at levels reasonably accessible for agricultural and domestic use, and such casing shall be tested by bailing to insure a shutoff before drilling below the casing point proceeds.

(3) Natural gas which may be encountered in a substantial quantity in any section of a cable tool drilled hole above the ultimate objective shall be shutoff with reasonable diligence

either by mudding or by casing or other approved method and confined to its original source. Any gas escaping from the well during drilling operations shall be conducted to a safe distance from the well site. This shall not prohibit the use of natural gas produced from the bradenhead for lease operations.

(4) A casing program adopted for cable tool drilled wells must be so planned as to protect any potential oil or gas bearing horizons penetrated during drilling from infiltration of injurious waters from other horizons and to prevent the migration of oil or gas from one horizon to another.

(5) Only freshwater based drilling fluid may be used when drilling through freshwater aquifers anywhere within the date of Montana.

AUTH: Sec. 82-11-111 IMP: Sec. 82-11-123 and Sec. 82-11-124

36.22.1003 VERTICAL DRILLING REQUIRED - DEVIATION (1) All wells shall be so drilled that the horizontal distance between the bottom of the hole and the location at the top of the hole shall be at all times at a practical minimum unless authorization for controlled directional drilling has been obtained.

(2) Before beginning controlled directional drilling, except for the purpose of straightening the hole, sidetracking junk, or correcting mechanical difficulties, where the intent is to direct the bottom of the hole away from the vertical, notice of the intention to do so shall be filed with the Board on Form No. 2 and administrative approval obtained. Such notice shall state clearly the depth, exact surface location of the well bore, proposed direction of deviation, and proposed horizontal distance between the bottom of the hole and the surface location. If approval is obtained, the owner shall file with the Board within 30 days after the completion of the work an accurate and complete copy of the survey made. Administrative approval for controlled directional drilling is not available where the proposed bottomhole location is not in compliance with applicable field or statewide well locations rules.

AUTH: Sec. 82-11-111 IMP: Sec. 82-11-123 and Sec. 82-11-124

36.22.1004 DUAL COMPLETION OF WELLS No well may after January 1, 1983, be dually completed or dually recompleted without first notifying the Board on Form No. 2 and each offset operator in writing at least 10 days prior to the commencement of such completion or recompletion operation, and without approval of the Petroleum Engineer or his authorized agent obtained after such 10 days. If within such 10 days any offset operator files with the Board a written protest to the proposal, the matter shall be immediately set down for hearing after notice, and the well shall not be completed or recompleted until permitted by order of the Board after such hearing.

AUTH: Sec. 82-11-111 IMP: Sec. 82-11-123.and Sec. 82-11-124

36.22.1012 SAMPLES OF CORES AND CUTTINGS - ~~IMPOUNDMENT~~ (1) Any owner or operator drilling or deepening a well for oil or gas or stratigraphic information shall deliver prepaid to the Board at the office stipulated on the approved Permit to Drill a complete and representative sample of the ~~CORES, CHIPS,~~ corechips, and cuttings within a period of 6 months after the completion or abandonment of such well. The Board may at its discretion relieve any owner or operator from the obligation to so deliver samples of ~~CORES, CHIPS,~~ corechips or cuttings.

~~(2) CORESCHIPS, AND CUTTINGS FROM A STRATIGRAPHIC WELL OF CORE HOLE WILL BE IMPOUNDED BY THE BOARD AND NOT MADE AVAILABLE TO THE PUBLIC FOR A PERIOD OF 3 YEARS FROM THE DATE OF ABANDONMENT OF THE WELL, UNLESS PRIOR CONSENT IS OBTAINED FROM THE OWNER OF OPERATOR.~~

AUTH: Sec. 82-11-111 IMP: Sec. 82-11-125

36.22.1013 FILING OF COMPLETION REPORTS, WELL LOGS, ANALYSES, REPORTS, AND SURVEYS (1) Within 30 days after the completion, reworking, or abandonment of any well drilled to known productive horizons within a delineated field, the operator or owner shall transmit to the Board 3 copies of Form 4, ~~OF~~ 4 copies of Form 2 ~~AS APPROPRIATE~~ and 2 original copies of all well logs, drill stem test survey reports, sample and core description logs, analyses, and reports, water analyses, and all other logs, surveys, and reports run or made.

(2) In the case of a wildcat, exploratory, or stratigraphic well, or core hole, the owner or operator shall transmit to the Board within 6 months after completion or abandonment 3 copies of Form 4, ~~OF~~ 4 copies of Form 2 ~~AS APPROPRIATE~~ and 2 original copies of all logs, surveys, reports, and analyses run or made as described in subsection (1). ~~IN THE CASE OF A STRATIGRAPHIC WELL, ALL INFORMATION WILL BE IMPOUNDED BY THE BOARD AND WILL NOT BE MADE AVAILABLE TO THE PUBLIC FOR A PERIOD OF 3 YEARS FROM THE DATE OF ABANDONMENT, UNLESS PRIOR CONSENT IS OBTAINED FROM THE OWNER.~~

AUTH: Sec. 82-11-111 IMP: Sec. 82-11-123

36.22.1101 FIRE HAZARD PREVENTION Any rubbish or debris that might constitute a fire hazard shall be removed to a distance of at least 150 feet from the well site, tanks, and reservoirs. All waste oil shall be burned or disposed of in a manner to avert creating a fire hazard. The owner shall take all available precautions to prevent any oil or gas well from blowing open and shall take immediate steps and exercise due diligence to bring under control any "wild" or burning oil or gas well.

AUTH: Sec. 82-11-111 IMP: Sec. 82-11-123 and Sec. 82-11-124

36.22.1205 VACUUM PUMPS PROHIBITED The use of vacuum pumps for the purpose of putting a vacuum on any gas or oil-bearing stratum is prohibited after ~~JANUARY 1, 1958~~; however, the Board may upon application and for good cause shown permit the use of vacuum pumps.

AUTH: Sec. 82-11-111 IMP: Sec. 82-11-124

36.22.1213 RESERVOIR OR POOL SURVEYS (1) As directed by the Board, surveys shall be made of the reservoirs or pools in this State containing oil and gas. These surveys ~~will~~ shall be thorough and complete and shall be made by the operator or his agent under the supervision of agents of the Board. The condition of the reservoirs or pools containing oil and gas, and the practices and methods employed by the operators shall be investigated.

(2) The source of crude oil and natural gas, the pressure of the reservoir as an average, the areas of regional or differential pressure, stabilized gas-oil ratios and water-oil ratios, and the producing characteristics of the field as a whole and of the individual wells within the field shall be specifically included.

(3) Provided, however, the Board will accept from field engineering committees (petroleum engineering, geological, and statistical groups) or ~~men~~ persons engaged in the petroleum industry in such an advisory capacity a periodic record of the physical behavior of the oil and gas reservoirs of Montana. These factual data shall be gathered and arranged in such fashion as to permit rapid evaluation by the Board of the oil and gas recovery efficiency of the individual reservoir or pools. ~~By the~~ ~~Board~~

AUTH: Sec. 82-11-111 IMP: Sec. 82-11-123and Sec. 82-11-124

36.22.1218 GAS TO BE METERED All gas when produced and sold shall be metered and reported to the Board at 14.73 PSIA at 60° Fahrenheit, unless otherwise permitted by the Board.

AUTH: Sec. 82-11-111 IMP: Sec. 82-11-123

36.22.1220 ASSOCIATED GAS FLARING LIMITATION - APPLICATION TO EXCEED - BOARD REVIEW AND ACTION (1) If the average daily gas production exceeds 100 MCFG and the operator intends to flare or otherwise waste the associated gas, the well may not produce more than an average of 100 MCFG per day each calendar month after the 60 day test required by Rule 36.22.1215 until such time as further relief may be granted by the Board pursuant to subsections (2) and (3).

(2) If the operator wishes to flare more than an average of 100 MCFG per day each calendar month, the operator must submit with the production test results a statement justifying the need

to flare or otherwise waste more than that amount. The statement should include such information as a gas analysis, estimated gas reserves, proximity of the well to a market, estimated gas price at the nearest market, estimated cost of marketing the gas, reinjection potential or other conservation-oriented disposition alternatives, amount of gas used in lease operations, and any other information pertinent to a determination of whether marketing or not marketing or otherwise conserving the associated gas is economically feasible.

(3) The Petroleum Engineer will review the justification statement with the Board at its next regularly scheduled meeting. The Board may elect to:

(a) docket a hearing for the operator to show further cause why it should be allowed to flare or otherwise waste more than an average of 100 MCFG per day each calendar month;

(b) restrict production until the gas is marketed or otherwise beneficially utilized; in which case the operator may docket a hearing on his own behalf to seek further relief; or

(c) take any other action the Board deems appropriate in the circumstances.

~~(4) All wells flaring gas in excess of 100 MCFG or more per day each calendar month shall file the justification statement required by this rule on Form No. 13 in accordance with instructions thereon.~~

AUTH: Sec. 82-11-111 IMP: Sec. 82-11-123 and Sec. 82-11-124

36.22.1242 REPORTS BY PRODUCERS (1) Each producer or owner of an oil or gas well shall file or cause to be filed with the Board on or before the 20th day of each month succeeding the month in which the producing or taking occurs a report on Form No. 6 containing all information required by said form.

(2) Each producer of oil and each producer of gas shall not later than the last day of each of the calendar months of ~~January, April, July and October~~ February, May, August and November of each and every calendar year file with the Board a report on Form No. 12 containing all information required by said form.

AUTH: Sec. 82-11-111 IMP: Sec. 82-11-123

36.22.1244 PRODUCER'S CERTIFICATE OF COMPLIANCE ~~Certification~~ A certificate of compliance for the transportation of oil and gas from ~~connection~~ oil and/or gas fields are a lease is required by the Board to be filed on Form No. 13 in accordance with instructions thereon. ~~All such purchasers of oil and gas from such fields shall file form No. 13 in accordance with instructions thereon.~~

AUTH: Sec. 82-11-111 IMP: Sec. 82-11-123

36.22.1307 RESTORATION OF SURFACE The owner of any well drilled in search of oil and gas or the driller of a stratigraphic test or core hole or seismographic shot hole shall, as soon as weather or ground conditions permit, upon the final abandonment and completion of the plugging of any well or after a seismographic shot hole has been utilized, restore the surface of the location to its previous grade and productive capability and take necessary measures to prevent adverse hydrological effects from such well or hole, unless the surface owner agrees in writing, with the approval of the Board or its representative, to a different plan of restoration. (History: Sec. 82-11-111, MCA; IMP, Sec. 82-11-123, MCA; Eff. 12/31/72; AMD, Eff. 12/5/74.)

36.22.1308 PLUGGING AND RESTORATION BOND (1) The Board, except as hereinafter provided, shall require from ~~the owner~~ any owner who proposes to drill or acquire any oil, gas, or service well on privately owned or state owned lands within this state a good and sufficient bond on either Form No. 3 or Form No. 14 in the sum of $5,000.00 where one well is to be drilled to any depth or acquired payable to the State of Montana conditioned for the performance of the duty to properly plug each dry or abandoned well and to restore the surface of the location to its original contours insofar as such restoration is practicable, unless the owner of the surface requests otherwise and executes a release to that effect ~~in accordance with the rules of the Board~~.

(2) It is further provided that where the owner is to drill or acquire more than one well the Board shall require from such owner a good and sufficient bond on either Form No. 3 or Form No. 14, in the sum of $10,000.00 payable to the State of Montana and conditioned as provided for above. Upon acceptance and approval by the Board, such bond shall be considered as being in compliance with the foregoing provisions. The Board shall require an increase by appropriate rider of any bond from $5,000.00 to $10,000.00 or from $10,000.00 to $20,000.00 when in the opinion of the Board the factual situation warrants such an increase in order for any owner to be in compliance with this rule.

(3) Said bond shall remain in force and effect until the plugging and restoration of the surface has been approved by the Board or a new bond is filed by a successor in interest or the bond is released by the Board. Upon release by the Board, said bond may be terminated and cancelled.

(4) Transfer of property does not in itself release the bond. A report of change of ownership shall be filed on Form No. 2 by the new owner of any drilling or completed well. Said report shall include the name and address of both the new and previous owners, the effective date of the change of ownership and all information pertinent to the name and location of the well. Such notice shall contain the endorsement of the transferee accepting liability under his bond for plugging and restoration of the well. When the Board has approved the

transfer, the transferor is released from the responsibility of plugging the well.

(4)(5) Where the owners of the surface of land upon which one or more non-commercial wells have been drilled acquires the well for domestic purposes, the bond provided by the person who drilled the well will be released if said surface owner furnishes a property bond in the amount of $10,000 for a single well or $20,000 for more than one well on Form No. 18.

AUTH: Sec. 82-11-111 IMP: Sec. 82-11-123

36.22.1601 WHO MAY APPLY FOR DETERMINATION Any person owning an interest in the production of gas from a well desiring a determination that natural gas from that well qualifies for a maximum lawful price as prescribed by the Natural Gas Policy Act of 1978 (NGPA) or desiring a change in an existing determination or desiring any other determination or finding authorized by the NGPA, may apply to the Board.

AUTH: Sec. 82-11-115 IMP: Sec. 82-11-115

36.22.1602 APPLICATION REQUIREMENTS AND CONTENTS (1) Duplicate original copies of all applications shall be filed in the Helena and Billings offices of the Board and one original copy shall be filed in the Helena office of the Board. Applications shall be made on the forms prescribed by the Federal Energy Regulatory Commission (FERC) and Board Form No. 15.

(2) All applications shall be executed so as to comply with the following:

(a) If the person filing an application under this rule is an individual, the filing shall be signed by such individual or, in the case of a minor or other legally disabled person, his duly qualified legal representative;

(b) If the person making such filing is a corporation, partnership, or trust, the filing shall be signed by a responsible official of the corporation, partnership, or the trustee of the trust;

(c) In the case of any other legal entity, the operator of the well may sign the application; and

(d) An operator under a joint operating agreement may sign an application for a well covered by the operating agreement if notice of the application is given by the operator to all other parties to the joint operating agreement and that fact is certified in the application.

(3) The applicant shall furnish, with the application original, photocopies or certified copies of all documents, technical data, and records relied upon to support its application. Copies of the Board's official files and orders must be certified.

(4) The application shall contain information necessary to support the category or determination sought by the owner,

including, but not limited to:

(a) the name and address of the operator of the well;

(b) the name and address of all non-operating owners;

(c) well identification, location by legal subdivision, township, and range, A.P.I. identification number, field and/or reservoir designation, if any;

(d) designation of the category or categories applied for and the specific NGPA sections relied upon;

(e) the supporting documents designated in ARM 36.22.1603 and in applicable FERC regulations as minimum requirements for each category or determination applied for;

(f) identification and addresses of all purchaser or purchasers of natural gas and, where State, Federal, or Indian mineral interests are involved, that information;

(g) a certificate of service indicating that copies of the application (less required supporting documents) have been served upon all working interest owners in the well or wells involved in the application and upon the Department of State Lands (if state owned mineral interests are involved) and upon all purchasers of gas from such well or wells; and

(h) names and addresses of all working interest owners and gas purchasers.

AUTH: Sec. 82-11-115 IMP: Sec. 82-11-115

36.22.1609 BOARD ACTION ON APPLICATIONS (1) If the application is unopposed and the preliminary determination by the examiner is positive, such determination when rendered shall become a final action of the Board, and the examiner for the Board shall give written notice to the Federal Energy Regulatory Commission within 15 days of the determination. Such notice shall consist of the following:

(a) a list of all participants in the proceeding as well as any persons who submitted or who sought an opportunity to submit written comments (whether or not such persons participated in the proceeding);

(b) a statement indicating whether the matter was opposed before the Board;

(c) a copy of the application together with a copy or description of other materials in the record upon which the determination by the Board was made; and

(d) an affirmative finding that the information contained in the notice to the Commission pursuant to this section includes all of the information required to be filed by the applicant under these regulations and 18 CFR Part 274 (Subpart B) of the Federal regulations and, in any case in which other materials in the record constitute portions of such information, a copy of those portions of the record.

(2) If the application was opposed or if the preliminary determination is a negative determination, the examiner shall withhold any notification to the Federal Energy Regulatory

Commission until at least 20 days after the date of the preliminary determination, during which time the aggrieved party may solicit requests from two or more Board members that the determination be reviewed by the Board. Should two or more Board members request a review, the preliminary determination shall not become final until the Board shall have reviewed the matter at a regularly docketed de novo hearing and shall have issued its order. In accordance with Section 503(c)(4) of the NGPA, the Board's final order shall not be subject to appeal or judicial review. Notice to the Federal Energy Regulatory Commission, as provided in ~~paragraph~~ ~~(b)~~ Paragraph (1) of this Rule, shall be given within 15 days of the order by the Board becoming final.

AUTH: Sec. 82-11-115 IMP: Sec. 82-11-115

36.22.1610 SPECIAL FINDINGS AND DETERMINATIONS - NEW ONSHORE PRODUCTION WELLS UNDER SECTION 103 (1) Applications pursuant to 18 CFR Section 271.305(b) for a finding that a well is necessary to effectively and efficiently drain a portion of the reservoir covered by the spacing unit which cannot be effectively and efficiently drained by an existing well within the spacing unit may either be treated as an application for such special finding by the examiner or ~~shall~~ be treated as a spacing exception application under Section 82-11-201, MCA, and ~~shall~~ be separately docketed and noticed for hearing before the Board as a spacing exception application and, in addition, shall be included in the list of applications posted pursuant to Rule ~~III~~ ~~above~~ 36.22.1609, for the month in which the hearing on the application shall be held. The list of applications shall be appropriately noted to the effect that the matter will be heard by the Board at its next regular hearing.

(2)(a) Applications pursuant to 18 CFR Section 271.305(c) for a determination that gas produced from a well drilled after February 19, 1977, and before January 1, 1979, qualifies for the Section 103 price because the Board had explicitly or implicitly found prior to commencement of the drilling that the new well was necessary to effectively and efficiently drain a portion of the reservoir covered by the spacing unit, which portion of the spacing unit could not be effectively and efficiently drained by any existing well within the spacing unit, shall be accompanied by certified copies of all exhibits submitted to the Board or to the Petroleum Engineer in connection with the hearing or the eligiblity proceeding which preceded commencement of drilling or issuance of the drilling permit.

(b) Upon review of the application plus the previously submitted exhibits and the prior order or finding by the Board or Petroleum Engineer, the examiner shall make a finding on whether the Board or Petroleum Engineer had theretofor made an explicit finding that the drilling of the new well was necessary to effectively and efficiently drain a portion of the reservoir covered by the spacing unit which could not be effectively and

efficiently drained by any existing well within the proration unit.

(c) An affirmative finding by the examiner shall constitute the geologic evidence to be demonstrated in compliance with 18 CFR Section 274.204(f) or any successor regulation.

(d) If the examiner's finding is negative, the determination on the original application shall be postponed until the following month, during which time the applicant may submit to the examiner a certified transcript of the oral testimony, if any, taken at the previous hearing. Notice by ordinary mail of the negative finding shall be given the applicant within 3 days of the issuance of the finding. If the transcript is not timely filed, the determination shall be negative. If the transcript is timely filed, the matter shall be reconsidered by the examiner at the ensuing month's regular NGPA determination date so as to ascertain whether the Board or the Petroleum Engineer had made or could have made an explicit affirmative finding on the matter based on the evidence before it prior to commencement of drilling or issuance of the drilling permit.

AUTH: Sec. 82-11-115 IMP: Sec. 82-11-115

36.22.1611 SPECIAL FINDINGS AND DETERMINATIONS - STRIPPER WELL PRODUCTION (1) Maximum Efficient Rate of Flow Determinations. The examiner is authorized to establish maximum efficient rates of flow from any gas well utilizing any criteria prescribed by FERC, or, of FERC has not prescribed critieria, the following:

(a) the well's open flow potential;

(b) the well's flow potential into the nearest pipeline with pressures lower than the well, if any;

(c) pressure analysis (bottomhole if advisable or wellhead);

(d) log and core analysis for ~~[illegible]~~ formation thickness, permeability, etc.;

(e) reservoir fracturing whether natural or administered;

(f) reservoir model and analysis;

(g) other data which the examiner requires or considers pertinent.

(2) Seasonally Affected Wells. The examiner is authorized to make findings in accordance with 18 CFR Section 271.804(e)(2) that seasonal fluctuations of production from a well theretofore classified as a stripper well have not and cannot reasonably be expected to increase production levels above an average of 60 mcf per production day for any 12-month period. Such findings shall be based upon the reported history of production from such well plus analysis of any established maximum efficient rate of flow and any evidence of pressure differential which might cause temporarily increased production levels.

(3) Enhanced Recovery Techniques. The examiner is authorized to determine that an increase in production from a well theretofore classified as a stripper well is the result of

the application of recognized enhanced recovery techniques. In the absence of ~~controlling~~ controlling, federal regulations, or FERC interpretations, the examiner shall ascertain whether the particular enhancement technique involved in the determination is a recognized technique.

(4) General. The examiner shall treat any petition or application for determination that production in excess of an average of 60 mcf per production day for any 90-day production period was due to enhanced recovery techniques or to seasonal fluctuations as if it were an application for an initial determination under ARM 36.22.1601.

AUTH: Sec. 82-11-115 IMP: Sec. 82-11-115

4. The Board proposes to amend the rules as a result of a comprehensive study and review to update, edit and make whatever revisions and modifications appeared necessary and desirable. The Board of Oil and Gas Conservation is initiating these rule making proceedings to provide clarity and consistent statutory and code language in its rules and to update and more clearly define procedures required by the rules.

5. Interested persons may submit their data, views, or arguments concerning the proposed amendments to Dee Rickman, P.O. Box 217, 25 South Ewing, Helena, MT 59624 no later than May 27, 1982.

6. If a person who is directly affected by the proposed amendment wishes to enter his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to Dee Rickman, P.O. Box 217, 25 South Ewing, Helena, MT 59624, no later than May 27, 1982.

7. If the Board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons directly affected by the proposed amendment; from the Administrative Code committee of the legislature, from a governmental subdivison or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be at least greater than 25 persons based on the Board's determination that there are more than 250 persons who either operate under the rules administered by the Board or are affected by such operations.

8. The authority and implementing sections are listed at the end of each rule proposed to be amended.

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

BY: Dee Rickman
Dee Rickman
Assistant Administrator
Oil and Gas Conservation Division

Certified to the Secretary of State April 19, 1982.

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

In the matter of the amendment of Rules 46.5.1102 and 46.5.1105 pertaining to the domestic violence advisory committee and grant applications	)))))	NOTICE OF PUBLIC HEARING OF THE PROPOSED AMENDMENT OF RULES 46.5.1102 AND 46.5.1105 PERTAINING TO THE DOMESTIC VIOLENCE ADVISORY COMMITTEE AND GRANT APPLICATIONS

TO: All Interested Persons

1. On May 20, 1982 at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rules 46.5.1102 and 46.5.1105 pertaining to the domestic violence advisory committee and grant applications.

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

46.5.1102 DEPARTMENT ADMINISTRATIVE POLICIES AND RESPONSIBILITIES (1) The goal of the department is to develop a coordinated, comprehensive, statewide network of local domestic violence programs. In keeping with this goal, grants will be allocated for:

(a) expansion or maintenance of existing programs;

(b) new programs; and

(c) innovative programs with the potential for replication.

(2) The department reserves the right to fund all or part of a program or to reject a grant application.

~~(3) The director of the department shall appoint a domestic violence advisory committee consisting of five members, one member from each of the department's five administrative regions. Each member shall have experience in an area related to the problems of domestic violence.~~

~~(a) The advisory committee will review the grant applications and make recommendations for grant awards.~~

(b3) The department will make the final decisions on grant awards.

(4) Grants will be awarded annually for a maximum of twelve months. Applications for renewal will be evaluated in the same manner as new applications.

(5) Applications for grant awards are to be received by the community services division of the department by ~~May 15~~ June 1. Decisions for grant awards will be made on or before June 15 with awards to be made on July 1.

(6) The department shall award grants to locally controlled units such as a non-profit board or administrative body that shall be responsible and accountable to the depart-

ment under an agreement based on the grant application.

(7) The department shall require quarterly progress and final reports.

(8) The department shall require expense records and reports. Funds granted shall be used only for the purposes outlined and described in the application and approved by the department. Programs awarded grants are subject to audit by the office of the legislative auditor and the department.

(9) The community services division of the department will monitor programs awarded grants.

(10) Applications submitted to the department become government documents subject to public scrutiny. Names of individuals or information about facilities that require confidentiality protection will not be disclosed.

The authority of the agency to amend the rule is based on Section 40-2-402, MCA and the rule implements Section 40-2-401, MCA.

46.5.1105 GRANT APPLICATION, GENERAL REQUIREMENTS

(1) ~~Six~~ Three copies of the grant application should be sent to the Domestic Violence Grant Program, Community Services Division, Montana Department of Social and Rehabilitation Services, Box 4210, Helena, Montana 59604.

(2) Although not required, it is suggested that:

(a) the application should be typed, printed or otherwise legibly reproduced on 8½ x 11" paper; and

(b) all pages be consecutively numbered.

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

(4) The department will review the application to determine compliance with these rules. If the department determines that the application does not comply, the department will reject the application, notifying the applicant in writing and listing the application deficiencies within two weeks of receiving the application. The application may be corrected and resubmitted but must be received by the final submittal deadline.

(5) After an application is filed, the applicant should submit supplemental material upon request or as soon as possible after it becomes available.

(6) There is no form adopted by the department for use in making an application.

The authority of the agency to amend the rule is based on Section 40-2-402, MCA and the rule implements Section 40-2-401, MCA.

3. The department has determined that the Domestic Violence Advisory Committee is no longer necessary since personnel within the department have now developed the expertise in the field of domestic violence to pass on grant applications. Further, the department receives evaluations of need from personnel around the state to aid in the decision-making. All other changes in the rule are adjustments in deadlines and numbers of copies of grant proposals resulting from not having the advisory committee.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than May 28, 1982.

5. The Office of Legal Affairs, Department of Social and Rehabilitation Services has been designated to preside over and conduct the hearing.

Director, Social and Rehabilitation Services

Certified to the Secretary of State April 19, 1982.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of rules relating to education and training	)	NOTICE OF THE ADOPTION OF RULES 2.21.1101 THROUGH 1106 AND 2.21.1111 RELATING TO EDUCATION AND TRAINING

TO: All Interested Persons.

1. On March 11, 1982, the Department of Administration published notice of a proposed adoption of rules concerning education and training at page 435 of the 1982 Montana Administrative Register, issue number 5.

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

2.21.1102 POLICY AND OBJECTIVE (1) Same as proposed rule.

(2) It is the objective of this policy to provide ~~managers with~~ criteria with which to assess requests for education and training leave and agency payment of expenses based on an analysis of costs and benefits to the agency.

3. The agency received the following comment:

COMMENT: (Dorothy Johnson, Office of the Superintendent of Public Instruction): Delete words "managers with" from the policy and objective rule because the criteria to be used should be available to all employees.
RESPONSE: The agency agrees and the rule has been modified.

In the matter of the adoption of rules relating to the adoption of personnel policy	)	NOTICE OF THE ADOPTION OF RULES 2.21.1201 THROUGH 1205 AND 2.21.1211 RELATING TO ADOPTION OF PERSONNEL POLICY

TO: All Interested Persons.

1. On March 11, 1982, the Department of Administration published notice of a proposed adoption of rules concerning adoption of personnel policy at page 429 of the 1982 Montana Administrative Register, issue number 5.

2. The department has adopted the rules as proposed.

3. No comments or testimony were received.

In the matter of the repeal of rules relating to new employee orientation	))))	NOTICE OF THE REPEAL OF RULES 2.21.4701 THROUGH 4705 FOR NEW EMPLOYEE ORIENTATION

TO: All Interested Persons.

1. On March 11, 1982, the Department of Administration published notice of a proposed repeal of rules concerning new employee orientation at page 439 of the 1982 Montana Administrative Register, issue number 5.

2. The department has repealed the rules as proposed.

3. No comments or testimony were received.

In the matter of the repeal of rules relating to exit interviews	))))	NOTICE OF THE REPEAL OF RULES 2.21.5101 THROUGH 5104 FOR EXIT INTERVIEWS

TO: All Interested Persons.

1. On March 11, 1982, the Department of Administration published notice of a proposed repeal of rules 2.21.5101 through 5104 relating to exit interviews at page 433 of the 1982 Montana Administrative Register, issue number 5.

2. The department has repealed the rules as proposed.

3. No comments or testimony were received.

By: Morris L. Brusett
Morris L. Brusett, Director
Department of Administration

Certified to the Secretary of State April 19, 1982.

BEFORE THE DEPARTMENT OF AGRICULTURE

OF THE STATE OF MONTANA

IN THE MATTER of the adoption of emergency rules on the sale and use of chlorpyrifos - Lorsban 4E	)))	NOTICE OF ADOPTION OF EMERGENCY RULES ALLOWING CERTAIN USES OF THE PESTICIDE LORSBAN 4E

TO ALL INTERESTED PARTIES:

(1) State of reasons for emergency:

a. The department has determined the necessity of providing an effective alternative to endrin for use in controlling army and pale western cutworm infestations in small grain crops in Montana during the upcoming season.

In implementing that determination, the department applied for and received an emergency exemption from the Environmental Protection Agency for use of Lorsban 4E. Such exemption was granted because of Montana's immediate need for the compound, which occurs prior to its final registration by EPA.

Since, from the time of the application for exemption the department has been uncertain as to whether it would be granted, and if granted, what conditions would be imposed, it has been impossible to adopt or even process for adoption any rules permitting and regulating the use of the compound.

Because of the immediate need for permitting the use of Lorsban, the department finds need for the adoption of rules on an emergency basis. To proceed through the regular rule adoption process would present an imminent peril to the public health, welfare and safety during the this year's cutworm season.

(2) The rules read as follows:

RULE I PROVIDING FOR EMERGENCY SALE AND USE OF LORSBAN 4E

(1) The department is hereby adopting emergency rules allowing the emergency sale and use of Lorsban 4E for the control of army and pale western cutworms on wheat, barley and oats, and on a buffer zone 150 feet in width around margins of treated fields. The total usage shall not exceed 25,000 gallons or 100,000 acres. These emergency rules shall pertain only to the 25,000 gallons of Lorsban 4E labeled specifically for army or pale western cutworm control on wheat, barley and oats.

AUTH & IMP: 80-8-105 (2)(3)(4), MCA.

RULE II DEALER INFORMATION TO BE PROVIDED

(1) Lorsban 4E is classified as restricted for use on small grains to control cutworms. With respect to dealer records and submission of records to the department, all

provisions of A.R.M. 4.10.504 and A.R.M. 4.10.505 shall pertain to Lorsban 4E. Dealer records on the sales of Lorsban 4E shall be submitted to the department in the dealer's monthly report of restricted pesticide sales as required by A.R.M. 4.10.504. Dealer records on the sales of Lorsban 4E shall be provided to the department or its authorized representative upon inspection or at the written request of the department head. Each pesticide dealer or distributor shall maintain a list of sales of Lorsban 4E to other dealers or distributors by name and volume sold. These records shall be subject to review by the department.

(2) In addition to information required for restricted use pesticides by A.R.M. 4.10.504, dealers shall require each purchaser to provide the following information for each purchase of Lorsban 4E:

a. Purchaser's name and address;
b. Purchaser's applicator certification number and expiration date;
c. Specific area and number of acres to be treated;
d. Anticipated date of application;
e. Crop to be treated;
f. Pest to be controlled;
g. Amount of Lorsban 4E purchased.

This information shall be recorded on cards available at the distributor or dealer outlets. Cards shall be completed at that time of sale by the dealer and mailed to the department within 24 hours of the sale.

AUTH & IMP: 80-8-105 (2)(3)(4), MCA

RULE III DIRECTIONS FOR APPLICATION

(1) All pesticide applicators shall use and apply Lorsban 4E in accordance with all federal label directions, precautions, restrictions and the following use directions and precautions:

a. An infestation of army cutworms or pale western cutworms must be confirmed by a certified applicator prior to application of Lorsban 4E.
b. The rate of application shall be:
   For army cutworms - 1 to 1½ pints per acre
   For pale western cutworms - 1 to 2 pints per acre
c. Aerial application will require a minimum of 2 gallons of water per acre as diluent.
d. Ground application will require a minimum of 10 gallons of water per acre as diluent.
e. Applicators may apply Lorsban 4E to noncrop field margins around wheat, barley and oat fields. A buffer zone of up to 150 feet in width around fields may be treated using the rates of application given above.
f. Do not apply within 28 days of harvest.
g. Do not allow livestock to graze treated fields until 28 days after application.

h. Do not apply directly to any body of water and observe drift reduction precautions. Do not apply where excessive runoff is likely to occur. Do not contaminate water by cleaning of equipment or disposal of wastes or excess pesticide.

i. Do not apply or allow drift to weeds or crops in bloom if bees are actively foraging.

j. All applications are limited to certified applicators.

k. Applicators must notify the Montana Department of Agriculture immediately of any misuse, environmental problems, or other adverse effects resulting from the use of Lorsban 4E.

AUTH & IMP: 80-8-105 (2) (3) (4), MCA

(3) This emergency authorization, for the sale and use of Lorsban 4E on wheat, barley and oats, is effective on April 16, 1982 and expires on June 30, 1982.

(4) The authority of the department to adopt the rule is based on Section 80-8-103 (2), (3) and (4) MCA and implements the same.

W. Gordon McOmber, Director
MONTANA DEPARTMENT OF AGRICULTURE

Certified to the Secretary of State April 16, 1982.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the repeal of rules 4.9.501 through 4.9.512, Food & Fuels Program	)))	NOTICE OF REPEAL OF ARM 4.9.501 THROUGH 4.9.512

TO: All Interested Persons.

1. On February 25, 1982, the Department of Agriculture published notice of repeal of 4.9.501 through 4.9.512, Food & Fuels Program, at p. 322, Issue No. 4, MAR 1982.

2. No comments, requests for hearing or testimony were received, and the rules are repealed as proposed.

W. Gordon McOmber, Director
Montana Department of Agriculture

Certified to the Secretary of State 4/19/82.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF LANDSCAPE ARCHITECTS

In the matter of the Amendments of ARM 8.24.405 subsections (5)) and (6) concerning examinations) and ARM 8.24.407 concerning) reciprocity.)	NOTICE OF AMENDMENT OF ARM 8.24.405 (5) & (6) EXAMINATIONS AND ARM 8.24.407 RECIPROCITY

TO: All Interested Persons:

1. On March 11, 1982, the Board of Landscape Architects published a notice of proposed amendment of ARM 8.24.405 subsections (5) and (6) concerning examinations and ARM 8.24.407 concerning reciprocity at pages 446 through 447, 1982 Montana Administrative Register, issue number 5.

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

3. No comments or testimony were received.

BOARD OF LANDSCAPE ARCHITECTS
ESTHER HAMEL, CHAIRMAN

BY: _____
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 19, 1982.

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

In the matter of the amendment of Rule 12.3.101 relating to regulations for issuance of fish and game licenses	) NOTICE OF ADOPTION OF) AMENDMENT OF RULE 12.3.101) RELATING TO REGULATIONS FOR) ISSUANCE OF FISH AND GAME) LICENSES

TO: All Interested Persons.

1. On March 11, 1982, the Montana Department of Fish, Wildlife, & Parks published notice of proposed amendment of rule 12.3.101 relating to regulations for issuance of fish and game licenses at pages 448-449 of the Montana Administrative Register, issue #5.

2. The department has amended the rule as proposed.

3. No comments or testimony were received.

James W. Flynn, Director
Department of Fish, Wildlife, & Parks

Certified to Secretary of State April 12, 1982

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

In the matter of Amendment, Repeal and Adoption of Rules Pertaining to the Renewable Energy Grant and Loan Program	)))	NOTICE OF THE AMENDMENT OF ARM 36.8.101 through 36.8.105, 36.8.111, 36.8.113 through 36.8.116, 36.8.121 through 36.8.124, 36.8.128 and 36.8.130; THE REPEAL OF ARM 36.8.106, 36.8.107, 36.8.112, 36.8.120 and 36.8.129; and, THE ADOPTION OF NEW RULES I THROUGH VII. ALL PERTAINING TO THE RENEWABLE ENERGY GRANT AND LOAN PROGRAM

TO: All Interested Persons

1. On March 11, 1982, the Department of Natural Resources and Conservation (Department) published notice of proposed amendments to ARM 36.8.101 through 36.8.105, 36.8.111, 36.8.113 through 36.8.116, 36.8.121 through 36.8.124, 36.8.128 and 36.8.130; the repeal of ARM 36.8.106, 36.8.107, 36.8.112, 36.8.120 and 36.8.129; and the adoption of new rules 36.8.108, 36.8.109, 36.8.117, 36.8.131, 36.8.132, 36.8.133 and 36.8.134. The notice of proposed amendment, repeal, and adoption, all pertaining to the Renewable Energy Grant and Loan Program, was published at page 458 of the 1982 Montana Administrative Register, issue Number 5.

2. The Department has amended, repealed and adopted the rules as proposed except for the following changes:

36.8.102 DEFINITIONS Unless the context requires otherwise, as used in this subchapter:

(1) "Act" means Title 90, chapter 4, part 1, MCA.

(2) "Commercialization" means the engagement by a new or expanding business incorporated, licensed or otherwise authorized to do business in Montana in developing, designing, building, manufacturing, marketing, distributing, or selling renewable energy forms, processes, systems, system components or information ~~for a profit~~.

(3) "Contract monitoring" means a purposeful examination and supervision of a contractor's performance, plans, records, reports and expenditures to insure compliance with the terms and conditions described in a contractual agreement with the department.

(4) "Demonstration" means a physical display or example to illustrate the operation of a renewable energy system or device and to provide evidence of its performance to a large population.

(5) "Development" means an activity that utilizes the results of research or available knowledge and applies those results or knowledge to the design, construction and testing of hardware, models, or prototypes.

(6) "Educational or informational project" means any project that stimulates research, development, demonstration, commercialization or use of renewable energy through workshops, publications, curriculum development, technical assistance services, audio-visual materials, or other means.

(7) "Financial institution" means any state or federally chartered commercial bank, savings and loan association or credit union authorized to do business or domiciled in the State of Montana and whose deposits are insured by the Federal Deposit Insurance Corporation (F.D.I.C.), the Federal Savings and Loan Insurance Corporation (F.S.L.I.C.) or the National Credit Union Administration (N.C.U.A.). It shall also mean the Farmer's Home Administration, the Federal Land Bank and the Production Credit Association.

(8) "Performance monitoring" means a systematic check, test, or investigation to collect, record, and interpret data that will describe the efficiency, energy output, or other operational functions of a renewable energy system or device.

(9) "Person" means, as defined in subsection 90-4-102(2), MCA, "a natural person, corporation, partnership, or other business entity, association, trust, foundation, any educational or scientific institution, or any governmental unit.

(10) "Research" means a systematic study to discover facts or to discover or revise theories that will bring to a more advanced state the capabilities, understanding, availability, and suitability of a renewable energy source.

AUTH: 90-4-104, MCA IMP: 90-4-104, MCA

36.8.104 ELIGIBLE APPLICANTS (1) Any person may make application for a grant or a loan to fund a project under the Act and these rules.

(2) Persons who are employees <u>of the department</u>, contractors of the energy division <u>working on a conservation or renewable energy project other than under a renewable energy grant or loan</u>, or are members of the board of natural resources and conservation or the renewable energy advisory council (reac) and their immediate families are not eligible for funding. <u>Persons who have a present grant or loan made under the Act and these rules are eligible to apply.</u>

AUTH: 90-4-104, MCA IMP: 90-4-104 and 90-4-105, MCA

3. The following are summaries of the comments received and the Department's response to those comments:

36.8.102 Definitions

(1) Comment: The phrase "for a profit" in the definition of commercialization would effectively prohibit non-profit organizations from obtaining a loan under this program. Non-profit organizations could fulfill the intent of the law by aiding the commericialization of renewable energy-systems provided they could receive loans under this program. The commentor recommends striking the works "for a profit" from the definition of commercialization.

Response: This comment has been accepted and the rule corrected accordingly.

36.8.104 Eligible Applicants

(1) Comment: Excluding "contractors of the energy division" from eligibility in Subsection 2 would eliminate any individual, group, or organization that has a current Renewable Energy Grant Contract or a current contract with another bureau within the energy division. This restriction unnecessarily eliminates a large group of potential grant applicants and may disrupt continuity within the renewable energy program. The commentor recommends that the statement "contractors of the energy division" be dropped from the rule.

Response: The Department agrees in part with the comment and has changed the rule to exclude only "contractor of the energy division working on a conservation or renewable energy project other than under a renewable energy grant or loan". In addition, the Department has added for clarity the following sentence: "Persons who have a present grant or loan made under the act and these rules are eligible to apply". The Department has determined that any further change in rule would create an unacceptable potential for actual conflicts of interest or the appearance of conflicts of interest.

36.8.105 Renewable Energy Advisory Council

(1) Comment: Since the Renewable Energy Advisory Council has provided valuable guidance and oversight to the grants program and, generally, citizen oversight of government programs helps to ensure responsible decisions, the commentor recommends that the proposed changes from "will" to "may" not be made.

Response: The Department intends to create a Renewable Energy Advisory Council with the same basic functions as before that include advising the Department and making recommendations on funding projects. The Council would be created pursuant to Section 2-15-122, M.C.A., which states that any advisory council may not be created by a department head without the approval of the Governor. Because the Department in its rules cannot mandate the Governor's approval, the rule was written with the permissive "may" rather than a mandatory "will". There is no change in policy nor any substantive change to rule 36.8.105.

36.8.116 Application Evaluation Procedure

(1) Comment: The original language of Subsection 3 stipulated the Renewable Energy Advisory Council's (REAC) participation in the evaluation of grant proposals. Modification by the proposed rule eliminates all reference to this participation and leaves the major functions of REAC, i.e., grant review and funding recommendations to the Department, unclear. The commentor recommends that REAC's participation in the grant evaluation process be clarified in the rules or by Department policy.

Response: The commentor is apparently referring to the original language of ARM 36.8.105 which set out the formation and function of the REAC by the use of the mandatory "will". The change to the permissive "may" only reflects the statutory requirements, Section 2-15-122, MCA, for the creation of an advisory council. See the response to the comment on ARM 36.8.105. The Department intends no change in or modification to the function of REAC.

36.8.130 Applications and Results Public

(1) Comment: The commentor recommends that Section 90-4-105, MCA, be added to the implementing section.

Response: This comment has been accepted and the rule corrected accordingly.

The Department has added "of the department" following the word "employees" in ARM 36.8.104(2) to clarify the intended meaning.

4. The authority of the Department to make the amendments and adopt the new rules is granted by Section 90-4-104, MCA. The amendments and new rules implement the sections cited in the notice of proposed action with the addition of section 90-4-105, MCA, as an implemented section of ARM 36.8.130.

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

Certified to the Secretary of State April 19, 1982.

BEFORE THE BOARD OF OIL
AND GAS CONSERVATION

In the matter of the amendment of Rule 36.22.1308 to authorize the acceptance of property bonds from surface owners for domestic use of non-commercial wells.	NOTICE OF AMENDMENT OF RULE 36.22.1308, PLUGGING AND RESTORATION BOND

TO: All Interested Persons.

1. On February 25, 1982, the Board of Oil and Gas Conservation (Board) published Notice of a proposed amendment to ARM 36.22.1308 concerning the acceptance of property bonds from surface owners for domestic use of non-commercial gas wells. The notice was published at page 346 of the 1982 Montana Administrative Register, issue number 4.

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

"36.22.1308 PLUGGING AND RESTORATION BOND (1) The Board, except as hereinafter provided, shall require from the owner a good and sufficient bond on either Form No. 3 or Form No. 14 in the sum of $5,000.00 where one well is to be drilled to any depth payable to the State of Montana conditioned for the performance of the duty to properly plug each dry or abandoned well and to restore the surface of the location to its original contours insofar as such restoration is practicable, unless the owner of the surface requests otherwise and executes a release to that effect in accordance with the rules of the Board.

(2) It is further provided that where the owner is to drill more than one well, the Board shall require from such owner a good and sufficient bond on either Form No. 3 or Form No. 14, in the sum of $10,000.00 payable to the State of Montana and conditioned as provided above. Upon acceptance and approval by the Board, such bond shall be considered as being in compliance with the foregoing provisions. The Board shall require an increase by appropriate rider of any bond from $5,000.00 to $10,000.00 or from $10,000.00 to $20,000.00 when in the opinion of the Board the factual situation warrants such an increase in order for any owner to be in compliance with this rule.

(3) Said bond shall remain in force and effect until the plugging and restoration of the surface has been approved by the Board or a new bond is filed by a successor in interest or the bond is released by the Board. Upon release by the Board, said bond may be terminated and cancelled.

(4) Where the owner of the surface of land upon which ~~a~~ one or more non-commercial ~~gas well has~~ wells have been drilled acquires the well or wells for domestic purposes, the bond provided by the person who drilled the well will be released if said surface owner furnishes a property bond in the amount of

$10,000.00 for a single well or $20,000 for more than one well on Form No. 18.

3. The Board adopted the rule as further amended to provide the same opportunity for posting property bonds for domestic use wells to surface owners who may be able to acquire either a non-commercial gas well or oil well and to allow that more than one such well may be included on the bond.

4. No comments, testimony, or requests for a public hearing were received.

5. The authority of the Board to make the proposed amendment is based on Section 82-11-111, MCA, and the rule implements Section 82-11-123, MCA.

Richard A. Campbell

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

BY: Dee Rickman

Dee Rickman
Assistant Administrator
Oil and Gas Conservation District

Certified to the Secretary of State April 19, 1982.

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

IN THE MATTER of Proposed Amendment of Rule 38.5.506 Regarding Interim Utility Rate Increases Rules.	NOTICE OF ADOPTION OF AMENDMENT OF RULE 38.5.506

TO: All Interested Persons

1. On February 11, 1982, the Department of Public Service Regulation, Montana Public Service Commission published notice of a proposed adoption of amendments to Rule 38.5.506, "CRITERIA FOR APPROVAL OF REQUEST," concerning interim utility rate increases at pages 176-177 of the 1982 Montana Administrative Register issue number 3.

2. The Department has adopted the rule as indicated below with one amendment indicated in (2)(a):

38.5.506 CRITERIA FOR APPROVAL OF REQUEST (1) Consideration of an application to increase rates on an interim basis in a general rate increase proceeding will be guided by generally established principles of utility rate regulation.

(2) The Commission shall calculate all interim rate increase requests in a general rate increase proceeding in the following manner:

(a) Test year booked net utility operating income and test year average rate base will be normalized and annualized, when such test year data is available.

(b) Any adjustments that were made in the most recent Commission general rate order of the utility will also be made using the methodology and rate of return on equity from that order, and applied to the filed test year amounts. These adjustments may be modified and other adjustments made as deemed appropriate by the Commission.

(3) Consideration of an application to increase rates on an interim basis in a tracking case will be guided by:

(a) A showing that the expense item concerned is a clearly identifiable cost to the utility;

(b) A clear showing that the proposed rate increase precisely matches the known increased expenses;

(c) A clear showing that deferred rate relief would result in irreparable financial harm to the petitioning utility; and

(d) Supporting material as enumerated in ARM 38.5.505(3).

(4) All interim rate increase requests must be accompanied by a revenue increase figure calculated in accordance with ARM 38.5.506(2).

3. Comments accepted and rejected by the Commission.

38.5.506(1): Mountain Bell suggested that the phrase "facts in the record and" be retained in this section. The Commission rejects this comment as the intent of the Commission in amending this rule is to eliminate the need for a contested hearing before interim rate relief may be granted. To retain that phrase would mean that a sworn record would need to exist

and that would not be possible without a contested hearing with sworn testimony.

Mountain Bell also suggested that the phrase "generally established principles of utility rate regulation" should be eliminated as being too vague and likely to cause lengthy discussion as to what such principles are. The Commission finds that the phrase "generally established principles of utility rate regulations" is adequately defined in Rule 38.5.506(2)(a) and (b).

38.5.506(2)(a): Both Mountain Bell and Montana Power Company commented that the term "net income" was ambiguous. Mountain Bell suggested using the term "net operating income" and Montana Power suggested the term "utility operating income." The Commission accepted a combination of the two suggestions, for the term, "net utility operating income" as that term more accurately reflects the Commission's intended meaning of the rule.

38.5.506(2)(b): Mountain Bell suggested a new subsection (b) which would allow the utility to incorporate in its interim rate increase request any calculation certain known and measurable changes that have occurred since the latest general rate order such as debt and equity costs. The new subsection would also allow other adjustments if the utility showed it had an income deficiency, sudden decline in income or was unable to finance debt or attract capital without increasing operating income.

Pacific Power and Light commented that the rule did not speak to the treatment of a utility's cost of long-term debt and preferred stock, and believed the rule should be expanded to permit known and measurable increases in cost of such debt and stocks.

The Commission finds that both comments have been incorporated in the rule as proposed.

38.5.506(2): Montana-Dakota Utilities proposed a section that would allow a utility to make adjustments, when calculating its interim rate increase request, that would apply adjustments made in the latest general rate order to the utility's filed pro forma test year amounts. MDU also suggested a definition of the term "pro forma."

Pacific Power and Light also commented that it felt the rule would require interim relief to be based on average historic rate base figures which would result in earnings attrition. PP&L suggested the Commission amend the rule to allow a future test period or an end-of-historic test period as the basis for interim relief, citing the statutory interim rate refund provision as protection against the possibility of the utility earning an unreasonable rate of return due to interim rate increase.

The Commission rejected MDU's comments because (2)(b) defines those post-test year adjustments that will be accepted, thereby eliminating a need to define "pro forma." PP&L's comments are also rejected because (2)(a) merely serves as a

starting point for Commission deliberations, and is compatible with minimum filing requirement rules ARM 38.5.101 through 38.5.184. Section (2)(b) permits the kinds of adjustments contemplated by PP&L.

38.5.506(3): Pacific Power and Light commented that it believed it would be virtually impossible to demonstrate that a denial of an interim increase in a tracking case in Montana would cause irreparable financial harm to the entire PP&L Company.

The Commission's interim policy, when dealing with a multi-state utility has been, as with general filings of multi-state utilities, that significant errosion of Montana approved returns on Montana operations constitutes irreparable financial harm for purposes of this rule.

38.5.506(4): No comments were received and no changes were made in the section.

Montana-Dakota Utilities suggested the Commission adopt an amendment that would have provided that interim rate relief would go into effect 30 days after the filing unless the Commission otherwise suspended the rates for a period of not more than 90 days. The Commission rejects this suggestion. It has historically been Commission policy to try to act on interim rate relief applications within 45 days of their filing, and the Commission meets that deadline in the vast majority of instances. The Commission has not allowed automatic interim rate relief, nor does the Commission want to lose flexibility by being fixed to a certain time by which these applications must be processed.

Pacific Power and Light suggested that the Rule should state when the Commission expects interim rate relief applications to be filed, and whether a second application can be made later in the rate hearing process. The Commission rejects both suggestions. The Commission's long-standing policy is that a utility is allowed only one interim rate application per rate(making) request, and does not choose at this time to alter that policy. The Commission has also allowed the utility, in the past, to choose when it will file its request and finds it unnecessary to specify a certain time when such filing must be made.

RE: Rule 38.5.504: Montana-Dakota Utilities pointed out that with the adoption of Rule 38.5.506 as amended, the Commission should amend Rule 38.5.504 "Hearings." MDU correctly explains that the retention of Rule 38.5.504 would preserve the contested case requirement and provide that interim rate relief could only be granted after a contested case hearing. Rule 38.5.504 has not yet been noticed for amendment by the Commission, but will be in the near future. Any amendment to Rule 38.5.504 will, however, provide that the Commission may require a public hearing when necessary. In view of the inconsistency that will exist between Rule 38.5.506 and Rule 38.5.504 until it is noticed and properly amended, the Commission refers the utilities to its Rule 38.5.508 "Waiver." Rule 38.5.508 allows

the Commission to waive any of its own interim utility rate increase rules, so until Rule 38.5.504 is amended, the Commission will use Rule 38.5.508 when appropriate.

GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE APRIL 19, 1982.

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 ADOPTION OF NEW RULES GOVERNING WATER SERVICE PROVIDED BY PRIVATELY-OWNED WATER UTILITIES ONLY.

TO: All Interested Persons

1. On November 24, 1981, the Department of Public Service Regulation, Public Service Commission, published notice of a proposed adoption of new rules to govern water service provided by privately-owned water utilities and county water districts at pages 1585-1591 of the 1981 Montana Administrative Register issue number 22. On February 2, 1982 at 10:00 a.m., a public hearing was held in the Montana Senate Chambers, State Capitol, Helena, Montana to allow public comment on the proposed rules.

Through testimony presented at the hearing and in written comments submitted during and after the hearing, it became readily apparent that the rules proposed by the Commission could not apply to both privately-owned water utilities and county water districts. In view of this the Commission determined that the proposed rules originally noticed as applying to both privately-owned water utilities and county water districts would be applied only to privately-owned water utilities with amendments as indicated below.

In the future, the Commission intends to propose minimal general water service guidelines to be applied to county water districts. The Commission, therefore, has not included the various comments submitted by county water districts but will use that information in drafting its proposed general guidelines. These guidelines will be noticed for public comment in the Montana Administrative Register when they have been drafted.

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

3. The Public Service Commission has adopted the proposed rules with the following amendments:

Rule I. 38.5.2501 GENERAL RULES FOR PRIVATELY-OWNED WATER UTILITIES ~~AND COUNTY WATER DISTRICTS~~ (1) The following general rules ~~and regulations~~ shall be effective for all privately-owned 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~~ mean privately-owned water utilities, ~~and county water districts~~ and where the term "Commission" is used, it shall mean the Montana Public Service Commission.

(2) Certain of the following general rules allow a utility to adopt, subject to the approval of the Commission,

special rules to fit the utility's local conditions. If a utility adopts any special rules, and an apparent conflict arises between the special rules and these general rules, the general rules shall govern.

RULE II. 38.5.2502 APPLICATION FOR WATER SERVICE (1) All ~~customers~~ consumers wanting water service must make an application ~~at~~ with the utility. ~~office on printed forms setting forth all purposes for which water will be used upon their premises.~~ Except as provided in ARM 38.5.2502(2), the utility may require consumers make a service application at the utility office on printed application forms, which shall set forth all purposes for which the water will be used upon the premises, or the utility may allow the consumer to apply for service via the telephone. A copy of the utility's printed application form and any subsequent modifications shall be submitted to the Commission to become part of the utility's tariff. A deposit for guarantee of payment for water service may be required by the utility of the consumer applying for service pursuant to the deposit rules of the Commission, Title 38, Chapter 5, Sub-chapter 11.

(2) All applications for the original introduction of water service to any premises must be made on printed application forms furnished by the utility and described in ARM 38.5.2501(1) above, and must be signed by the property owner of those premises. When the ownership of the premises changes, the new property owner must make a new application for water service with the utility. A property owner is liable for payment for water service as a consumer, unless ARM 38.5.2502(3) applies. ~~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~~ the application for water service shall be made in the consumer's own name, and ~~the~~ that consumer shall be liable for payment for the water service. In such instances, the utility shall indicate the name of the consumer and the date that the consumer began to receive water service on the original written service application that was signed by the property owner of the premises. ~~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 utility's 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 and any special rules promulgated by the utility.

(5) When an application for new water service has been ~~granted~~ accepted, 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 utility shall assist consumers and/or excavation contractors in locating water service mains and lines prior to the consumer beginning excavation in order to avoid water service interruptions due to broken mains and lines. 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.

(7) Contractors, builders or owners are required to apply for permit for the use of water for building and other purposes in construction work. Consumers are warned not to allow the use of their water fixtures unless the contractors, the builders or the owners produce a permit issued by the utility 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.

RULE III. 38.5.2503 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, except as provided in ARM 38.5.2509(3). 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. Before a utility is required to provide water service to a consumer, ~~T~~the utility's system of service mains

must presently be in place ~~extend to~~ at 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. A utility may require Ppermits for lawn sprinkling which 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~~ shall go back in time as far as is necessary to cover and/or 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~~ but no further than the most recent of either 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, or as directed by the Commission. When overcollection occurs because of a fast meter, ARM 38.5.2513(2) will apply.

RULE IV. 38.5.2504 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, subject to approval of the Commission, adopt special rules to fit local conditions for temporary discontinuance. The utility may assess the consumer a reconnection charge as provided in ARM 38.5.2505(2).

RULE V. 38.5.2505 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 of mailing or service, 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) A utility may terminate water service without advance notice to the consumer ~~Where fraudulent use of water is detected, or where~~ when 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,~~ or where the fraudulent use of water service by an unauthorized person is detected. ~~the water may be shut off without notice in advance~~ The utility may assess a reconnection charge as provided in ARM 38.5.2505(2) before service is recontinued.

(d) All disconnections shall be performed by the utility between the hours of 8:00 a.m. and 12:00 noon, and ~~in~~ no case shall the utility discontinue service on Friday, Saturday, Sunday, or a day prior to holiday except as provided in ARM 38.5.2505(1)(c). ~~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 discontinued ~~turned off~~ for violation of these general rules or the utility's special rules, nonpayment of bills, or as provided in ARM 38.5.2505(1)(c) ~~fraudulent use of water~~, the utility may make a reconnection 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~~ delinquent water bills and a ~~turn-on~~ reconnection charge as set forth in the utility's tariff have been paid or an agreeable pay arrangement has been made between the consumer and the utility.

(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.

~~(5)~~ (3) Temporary Service Failure. Any temporary failure on the part of the utility to supply service by reason of accident or otherwise for a period in excess of 24 hours shall not render the utility liable beyond a pro rata abatement of service charges during such interruption.

~~(3)~~ (4) 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 service ~~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.~~

RULE VI. 38.5.2506 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 rate rules, to fit local conditions. ~~In case of any apparent conflict in rules, the general rules shall govern.~~

RULE VII. 38.5.2507 FLAT RATES (1) Water Uses. The flat rate will cover the use of water for domestic, commercial and industrial 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~~ the 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.

RULE VIII. 38.5.2508 METER RATES (1) Meter rates will apply to all water services ~~not covered by the flat rate schedule.~~ as indicated on the utility's tariff schedule. Any consumer wanting to receive water by meter measurement may have a meter placed by the utility under the following meter rules. ~~and regulations.~~ Meters may be installed on any service when they become necessary to prevent waste of water.

RULE IX. 38.5.2509 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~~ meter must be paid by one consumer when supplied by meter measurement from one service. The utility, however, may enclose the readings of secondary meters with the bill for the ~~whole building~~ single meter service.

(3) In no case will the utility furnish water from one meter to two or more ~~houses,~~ connections, except where master metering is being used ~~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.

RULE X. 38.5.2510 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.

RULE XI. 38.5.2511 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, the utility may estimate the meter reading and render a bill accordingly.

(3) The consumer shall allow the utility reasonable access to the premises receiving water service for the reading of meters.

RULE XII. 38.5.2512 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. A meter registering not in excess of plus or minus two percent of accuracy shall be deemed to be registering correctly.

(2) If an overcollection or undercollection error in billing has occurred due to an inaccurate meter, the utility shall follow ARM 38.5.2503(8).

RULE XIII. 38.5.2513 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 follow ARM 38.5.2505(8) to reconcile the billing error. ~~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. 38.5.2514 METER BILLING (1) Where an overcollection or undercollection error in billing has occurred, the utility shall follow ARM 38.5.2503(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 as provided in ARM 38.5.2505(1)(c).

4. Comments. Rule I. The Commission eliminated the words "county water districts" as the rules will only apply to privately-owned water utilities, and the redundant words "and regulations." The Commission added language to clarify that references in the rules to "Commission" would mean the Montana Public Service Commission.

The Commission intends these general rules to provide uniform statewide water service provided by privately-owned water utilities, but the Commission recognizes that local conditions may warrant special rules to be adopted by the particular utility. Under these general rules, utilities are allowed to adopt such special rules where specifically authorized.

New language was added to Rule I in section (2) to clarify that these general rules will govern whenever there appears to be a conflict with the utility's special rules and the general rules.

The Commission rejected the suggestion by Mountain Water Company that the rules should contain a definitions section as being unnecessary based on the general nature of the rules.

Rule II(1) was rewritten to clarify that a utility has the option of requiring consumers to apply for water service over the telephone or by coming into the utility office and signing an application. However, when the property owner of the premises to be served is making an application for service, Rule II(2) will apply. The rule also requires the utility submit its printed service application form, with any subsequent changes, so that the Commission may monitor the contents of the form for compliance with the rules. The rule was also amended to make reference to the Commission's deposit rules and to allow utilities to use those deposit rules when applicable for water service consumer. Pacific Power and Light recommended that the rule allow the utility the option of written or telephone applications, and the Commission accepted that comment with the Rule II(2) restriction. Where printed application forms are used, Rule II(1) will be applied prospectively.

Rule II(2) clarifies how water service applications are to be made, and clarifies that the property owner is responsible for service payment unless Rule II(3) applies. Mountain Water Company suggested that the Commission clarify how a property owner and a consumer would apply for water service, and the Commission accepted this comment by clarifying both Rule II(1) and (2) to that end. Rule II(2) is intended to be applied prospectively.

Rule II(3) removed the word "contracting" to provide uniformity. The new language clarifies that the utility will keep track of the current consumer who is responsible for water service payment. The Commission rejected the suggestion by Pacific Power and Light that the property owner should be ultimately responsible for payment for service furnished a renter, and therefore, that the utility should not be responsible for keeping the property owner advised as to the consumers receiving water service on the property.

The Commission's policy is that the consumer who is actually receiving the water service is the person ultimately responsible for its payment. In the case of a consumer who is a renter or a leasee, the consumer and not the property owner is liable for the service payment, unless the property owner chooses to pay for all service rendered to consumers on his property.

The Commission recognizes that utilities sometimes have problems collecting past due service bills when the consumer was a renter and leaves without paying. The Commission believes that requiring the utility to maintain, on the property owner's original application for service to the premises, a listing of the consumer receiving service will make it easier for both the utility and the property owner to have closer supervision over the consumer who is liable for the water service payment.

Rule II(4) includes amendments to clarify that it is the utility which decides to accept an application for water service, and also to clarify that a consumer is required to comply with both the Commission's general water rules and any special rules the utility may adopt subject to Commission approval.

Rule II(5) includes clarifying language amendments. The rule specifically requires the utility to assist a consumer with the locating of service mains and lines when the consumer puts in a new line. This was a comment submitted by the City of Missoula.

Butte Water Company commented that it would like to be able to charge for taps, however, the Commission's policy has been that a utility is responsible for the tapping of a service main and should absorb any expense involved.

Rule II (7) is a new section that contains the wording from Rule V(5). This section was moved from Rule V to Rule II at the suggestion of the Mountain Water Company which thought it more logically fit in Rule II "Application for Water Service."

Rule III(1) had language added to reference ARM 38.5.2509(3) concerning metering as an exception to this rule.

Rule III(5) reflects language changes to clarify the intention of the section.

Rule III (6)(b) removes the words "Public Service."

Rule III(7) clarifies that the utility has the option of whether or not to require that its consumers obtain lawn

sprinkling permits. Various utilities commented that this was an area where they should have flexibility, and the Commission agreed.

Rule III(8) removed the phrase "Public Service" so the rule would reflect the uniform use of "Commission."

Pacific Power and Light and Mountain Water Company suggested language that the same time limit be used for both overcollection and undercollection billing errors. The Commission revised the language to provide that the utility will go back to the date of the current consumer's service application or the last meter test. However, the Commission kept the discretionary phrase "unless otherwise directed by the Commission" so it would be possible to apply a different time period where warranted by a particular situation. A cross-reference to ARM 38.5.2513(3) "Fast Meter." was added for clarity.

Rule IV(2) Amendments remove the necessity of written consumer notification to the utility to temporarily discontinue service and eliminates requirements as to how shut-offs of service shall be made.

Comments were clearly in favor of allowing the utilities to adopt special rules for temporary service discontinuance as requested by the consumer and this was accepted by the Commission. Pacific Power and Light commented that it thought consumers who temporarily disconnect should still have to pay the utility's minimum monthly charge and Mountain Water Company commented that the prohibition against a billing deduction for frozen pipes fit more appropriately in Rule V(5). The Commission eliminated the reference to frozen pipes from the rules.

Rule V(1)(a) and (b) were amended to remove the redundant wording "and regulations," and (b) was amended with clarifying language.

Rule V(1)(c) was amended to clarify when a utility may terminate service to a consumer without advance notice. The subsection eliminates language concerning instances where a dangerous condition is found on the consumer's premises as Rule V(4) "Emergency Service Disruption" already covers that instance. The subsection also contains new language to clarify that Rule V(2) "Charge for Reconnection" may be applied by the utility in these instances.

Rule V(1)(d) The Commission rejected the comments of Pacific Power and Light which said that restricting discontinuance of service to the hours between 8:00 a.m. and 12:00 noon prevents the utility from efficiently utilizing its personnel. The Commission finds that such discontinuance restriction is necessary so that the affected consumer will have sufficient time during the utility's business day to try to have service reestablished so that he does not go without water service overnight. Language was added to exempt individuals from the protection of this rule who are in violation of ARM 38.5.2505(1)(c).

Rule V(2)(a) and (b) were amended to clarify that the charge discussed is a reconnection charge, and (b) was amended

with clarifying language.

Rule V(3) is the former Rule V(5) "Temporary Service Failure." The section was moved from (5) to (3) to make the sequence of sections more logical. The language "for a period in excess of twenty-four hours" was added to clarify the time period a utility would be responsible for pro rata abatement of service charges, as suggested by Mountain Water Company. The Commission rejected Pacific Power and Light's comment that a utility should not have abate service charges since temporary service failures are experienced by every utility and do not lessen the cost of furnishing service. By limiting the abatement to service failure periods only in excess of twenty-four hours, the Commission believes it is protecting both the interests of the utility and the consumer.

Rule V(4) is the former Rule (3) "Emergency Service Disruption," and was also moved to make the sequence of sections more logical.

The former Rule V(4) "Water use by Contractors, Builders or Owner" was deleted from Rule V "Utility Discontinuance of Service" and was placed in Rule II(7) as it more logically belongs in "Application for Water Service." This move was suggested by Mountain Water Company and was accepted by the Commission.

Rule VI(1) had the language concerning conflicts between special and general rules eliminated. Rule I now contains that language and applies it throughout the rules whenever the utility is authorized to adopt special rules.

Rule VII(1) has included "commercial and industrial" to the listing of water uses. Language was removed concerning a consumer wrongfully providing other persons with water without permission of the Commission. The removal of this language was done to make the rules uniform. Rule V(1)(c) provides for penalties for wrongful water use and the Commission agreed with Pacific Power and Light that Rule V already adequately covered the concern in Rule VII(1).

Rule VII(2) reflects a clarifying language change.

Rule VIII(1) reflects a clarifying language change and the removal of the redundant phrase "and regulations."

Rule IX(2) reflects clarification language.

Rule IX(3) clarifies that a utility will not provide water service from one meter to more than one service connection unless master metering is being used by the consumer.

This amendment was suggested by Pacific Power and Light as being needed to provide for instances where master metering is used such as with apartment buildings and trailer courts.

Rule XI(1) reflects a clarifying language change.

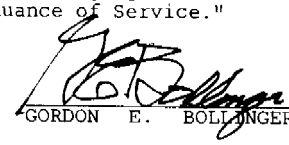
Rule XI(3) is a new section which grants the utility access to the consumer's premises for the purpose of reading the meter. Mountain Water Company felt the inclusion of this section was necessary to prevent any access problems for meter reading particularly when the meter is located inside a building such as in a basement, and the Commission agreed.

Rule XII contains new language to clarify that registration by a meter of plus or minus 2 percent will be considered as accurate registration. Although this average error allowance is included in Rule XIII(2), it was felt necessary to include it in Rule XII "Meter Accuracy" for clarification.

Rule XIII(2) was amended to reference ARM 38.5.2505(8) "Billing Errors," so that all rules involving billing mistakes will handle the reconciliation of the billing uniformly.

Rule XIII Mountain Water Company suggested that sections (2) and (3) be included in Rule XII, however, the Commission rejects this suggestion and has left all sections concerning meter testing under Rule XIII.

Rule XIV(2) includes new language to refer back to ARM 38.5.2505 "Utility Discontinuance of Service."



GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE APRIL 19, 1982.

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

In the matter of the adoption of Rule 46.5.511 pertaining to the reduction of the number of children in foster care for more than 24 months	)))))	NOTICE OF THE ADOPTION OF RULE 46.5.511 PERTAINING TO THE REDUCTION OF THE NUMBER OF CHILDREN IN FOSTER CARE FOR MORE THAN 24 MONTHS

TO: All Interested Persons

1. On January 28, 1982, the Department of Social and Rehabilitation Services published notice of the proposed adoption of a rule pertaining to the reduction of the number of children in foster care for more than 24 months at page 98 of the 1982 Montana Administrative Register, issue number 2.

2. The agency has adopted the rule as proposed with the following changes:

46.5.511 REDUCTION OF THE NUMBER OF CHILDREN IN FOSTER CARE The department shall reduce the number of children who have been in foster care, at any time during the fiscal year, for more than 24 months by not less than 2% of the total number of children in foster care receiving assistance under Title IV-E of the Social Security Act each year commencing with the fiscal year beginning October 1, 1983. 2% of the total number of children in care receiving assistance shall be determined using the figures for September, 1983 and each September thereafter for the subsequent fiscal year.

3. The agency has thoroughly considered all verbal and written commentary received:

COMMENT: It is not clear how the 2% figure is to be determined. At what point in a year is the total number of children in care receiving IV-E assistance to be determined?

RESPONSE: The rule is not clear on this point so it is being changed to provide that 2% is to be taken of the total number of children in care receiving IV-E assistance as of September 30 preceding the start of the fiscal year.

COMMENT: Children receiving IV-E care in treatment facilities or institutional settings should be excluded from the rule.

RESPONSE: Because children in treatment facilities or institutional settings are often forgotten when it comes to permanency planning, it is crucial that the rule apply to them.

COMMENT: The rule should exclude children for whom IV-E pay-

ments are supplemental to SSI payments.

RESPONSE: All children should be reviewed to determine the appropriateness of their care and the services to them. The rationale of reducing the number of children in care plus federal law mandates that these children be included in the rule.

COMMENT: The rule should specify 24 consecutive months of care.

RESPONSE: Specifying 24 consecutive months would not meet early and essential case planning requirements. There are too many children "in and out" of care now.

COMMENT: Does the rule apply to all children receiving IV-E assistance or just those who have been in care 24 months or longer?

RESPONSE: The rule states: "The department shall reduce the number of children who have been in foster care, at any time during the fiscal year, for more than 24 months...".

COMMENT: Is the fiscal year referred to the federal or state fiscal year?

RESPONSE: It is the federal fiscal year which, as stated in the rule, begins the fiscal year October 1, 1983.

John LaFaver
Director, Social and Rehabilitation Services

Certified to the Secretary of State April 19, 1982.

VOLUME NO. 39 OPINION NO. 58

COUNTY COMMISSIONERS - Authority to lease county fairgrounds;
COUNTY FAIR COMMISSIONERS - Authority to lease county fairgrounds;
COUNTY FAIR COMMISSIONERS - Duties and powers;
FAIRGROUNDS - Leasing of, for fair-related and nonfair-related purposes;
STATUTES - Construction of statutes relating to fairgrounds;
MONTANA CODE ANNOTATED - Sections 7-21-3401, 7-21-3403(1), 7-21-3406, 7-21-3407, 7-21-3408, 7-21-3409(1), 7-21-3410 and Title 7, chapter 21, part 34;
OPINIONS OF THE ATTORNEY GENERAL - 20 Op. Att'y Gen. No. 223.

HELD: 1. The county commissioners have the sole authority to lease fairgrounds and related buildings for nonfair purposes.

2. "Limited periods of time" for which the county commissioners can lease fairground property under section 7-21-3409(1), MCA, means any and all periods of time excluding the time during the county fair itself and the three weeks prior to the fair.

9 April 1982

Bruce E. Becker, Esq.
Park County Attorney
Park County Courthouse
Livingston, Montana 59047

Dear Mr. Becker:

You requested an opinion concerning the following questions:

1. Whether the county commissioners or the fair commissioners are responsible for the leasing of fairgrounds and related buildings for nonfair purposes.

2. The meaning of "limited periods of time" for which the county commissioners can lease fairgrounds property under section 7-21-3409(1), MCA.

The sections of the Montana Code Annotated which govern county fairs and fairgrounds are in part 34 of Title 7, chapter 21. Section 7-21-3406, MCA, describes the powers of the county fair commission:

> Powers of county fair commission. Said county fair commissioners shall have control and operation of the fair and the supervision and management of the fairgrounds and also the leasing of buildings and fairgrounds and shall return to the fair fund of the county all revenue obtained from the leasing or renting of the same. (Emphasis added.)

Section 7-21-3407, MCA, describes its duties:

> Duties of county fair commission. Said commission shall do all things necessary to hold a successful county agricultural fair in their respective counties and shall have charge of all fairgrounds and fair property.

Section 7-21-3409(1), MCA, authorizes the board of county commissioners to lease county fairgrounds and buildings "for limited periods of time." The section further provides that "[n]o lease shall be executed to permit the use of said premises during any time within 3 weeks prior to the holding of a county fair." This section clearly intends the county commissioners to have authority to lease during nonfair periods. However, the sections do not expressly state whether the county fair commissioners have the same authority to lease for nonfair matters. In determining legislative intent all the statutes relating to the fairgrounds must be considered as a whole, to be harmonized wherever possible. Crist v. Segna, 38 St. Rptr. 150, 622 P.2d 1028 (1981).

The statutes discussed above limit the duties and powers of the county fair commission to those necessary to hold a successful county fair. See, e.g., § 7-21-3407, MCA. The primary qualification of the county fair commissioners is that they "shall be well qualified to perform the duties of

organizing and successfully carrying on the county fair." § 7-21-3403(1), MCA. The board of county commissioners, on the other hand, retains all other duties and powers regarding nonfair-related matters such as appointing the county fair commission (§ 7-21-3401, MCA); acquisition of fairgrounds (§ 7-21-3408, MCA); funding of fair activities, and levying taxes for purchase and upkeep of land, buildings and equipment for the fairgrounds (§ 7-21-3410, MCA).

The clear intent of section 7-21-3409(1), MCA, is that the county commissioners are responsible for leasing the county fairgrounds and buildings for nonfair-related matters. Leasing for county fair-related matters is the responsibility of the county fair commission. § 7-21-3406, MCA. See, 20 Op. Att'y Gen. No. 223. This conclusion is consistent with the general view that concurrent jurisdiction of two or more agencies should not be construed when it can be avoided. See, for example, Rochester Hospital Services Corp. v. Division of Human Rights, 401 N.Y.S.2d 413 (App. Div. 1977).

Your second question concerns the meaning of "limited periods of time" for which the county commissioners can lease county fair property under section 7-21-3409(1), MCA. This section does not further define the term "limited periods of time." The board of county commissioners has exclusive authority to lease the fairgrounds property during nonfair periods. Thus, the language in this section must be construed accordingly. The Legislature intended to limit the county commissioners' leasing authority when the fair itself is in session and up to the three week period before the fair begins. There is no indication that the Legislature intended to limit the county commissioners' leasing authority any further.

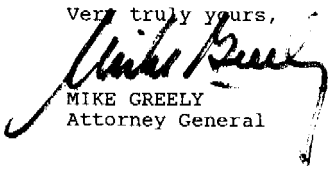
THEREFORE, IT IS MY OPINION:

1. The county commissioners have the sole authority to lease fairgrounds and related buildings for nonfair purposes.

2. "Limited periods of time" for which the county commissioners can lease fairground property under section 7-21-3409(1), MCA, means any and all periods of time excluding the time during the

county fair itself and the three weeks prior to the fair.

Very truly yours,



MIKE GREELY
Attorney General

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, Montana State Capitol, Helena, Montana, 59620.

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

Definition: 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 Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 1981. This table includes those rules adopted during the period January 1, 1982 through March 31, 1982, 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 December 31, 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 in the 1981 and 1982 Montana Administrative Registers.

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