

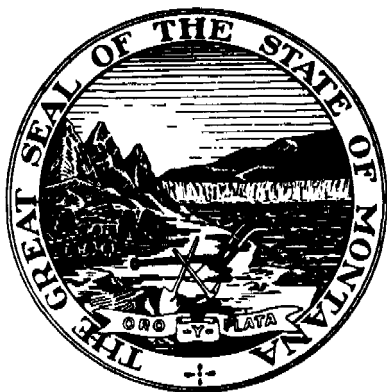
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**MONTANA
ADMINISTRATIVE
REGISTER**

1983 ISSUE NO. 19
OCTOBER 13, 1983
PAGES 1394-1482



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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 19

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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. Special notices and tables are inserted at the back of each register.

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BEFORE THE OFFICE OF THE WORKERS' COMPENSATION JUDGE
OF THE STATE OF MONTANA

In the matter of the repeal	)	NOTICE OF REPEAL AND NOTICE
of rules 2.52.201 through	)	OF ADOPTION OF RULES PER-
2.52.231 and the matter of	)	TAINING TO PROCEDURES OF
adoption of procedural	)	THE OFFICE OF THE WORKERS'
rules	)	COMPENSATION JUDGE
		(No public hearing
		contemplated)

To: All interested persons:

1. On November 26, 1983 the Office of the Workers' Compensation Judge proposes to repeal ARM 2.52.201 through ARM 2.52.231 procedural rules and to adopt new rules of procedure beginning with the number ARM 2.52.301.

2. The rules proposed to be repealed can be found on pages 2-3563 to 2-3585 of the Administrative Rules of Montana.

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

RULE I PETITION FOR TRIAL (1) All requests for trial before the Workers' Compensation Court shall be in petition form, and signed by petitioner or his attorney. The petition shall include the following information:

- (a) A description of the accident;
- (b) The county where the accident occurred, and a request for venue, other than as set forth in Rule VII (3) and (5);
- (c) A short, plain statement of the petitioner's contentions;
- (d) A statement to the effect that the parties have made an effort to resolve the dispute, but have been unable to do so;
- (e) Reference to every particular section of the Montana Code Annotated and the rules in the Administrative Rules of Montana that are involved in the dispute;
- (f) A statement that the petitioner has freely exchanged all available medical records with the defendant pursuant to Rule XI and will continue to do so;
- (g) The identity of the attorney representing the claimant, if any, including the attorney's name, address and telephone number;
- (h) A request for emergency trial shall be indicated in the title of the petition, and the facts constituting the emergency explained in the petition. (Rule VIII)

(2) There is no filing fee. Petitions and all other materials are to be filed with the Clerk of Court at 1422 Cedar-Airport Way, P. O. Box 4127, Helena, MT 59604 until December 31, 1983, and at 5 South Last Chance Gulch, P. O. Box 537, Helena, MT 59624 after January 1, 1984. The party should

file an original and as many copies of the petition as are necessary to serve the adverse parties and furnish a copy to the Administrator of the Division of Workers' Compensation, and should indicate the names and addresses of all adverse parties to be served. The Clerk will issue a receipt for each document filed.

AUTH and IMP: 2-4.201, MCA.

RULE II NOTICE OF REPRESENTATION (1) An initial appearance or notice of representation shall be filed by or on behalf of each party served with a copy of the petition within ten (10) days following date of such service. The notice of representation shall contain the name, address and telephone number of the attorney representing the party.

AUTH and IMP: 2.4.201, MCA

RULE III SERVICE (1) The Court will serve the furnished copies of the petition upon adverse parties and others, as designated in the petitioner's instructions, by mailing them at Helena, Montana, with first class postage prepaid. The petitioner is responsible for providing correct names and addresses.

(2) All pleadings subsequent to the original petition, every written motion, and any other document described in Rule 5, M.R.Civ.P. (1979) shall be accompanied by proof of service as provided in Rule 5, M.R.Civ.P. (1979) when submitted to the Court.

(3) Whenever a party has the right or is required to do some act within a prescribed period of time after the service of a notice or other paper upon him and the notice or paper is served by mail, three days shall be added to the prescribed period.

(4) All material required by these rules, or other order, to be filed with the Court, shall be deemed filed on the date it is served upon other parties as shown on the proof of service.

AUTH and IMP: 2-4-201, MCA

RULE IV ALTERNATIVE PLEADING (1) Alternative pleading is permissible.

AUTH and IMP: 2-4-201, MCA

RULE V JOINING THIRD PARTIES (1) A party may request that a third party be joined in the dispute or controversy. The Court may, for good cause shown, require the third party to become a party to the dispute or controversy, or the Court may grant joinder on such terms and conditions as are necessary to protect the interests of the existing parties, including the interest of a speedy remedy, or the Court may

deny the request.

(2) A request to join a third party may be made at any time prior to trial. The request shall be served on all parties and filed with the Court, together with the proposed third-party petition and copies sufficient for service by the Clerk upon the party sought to be joined. Service by the Clerk shall be in accordance with Rule III (1) and shall be accompanied by an order and notice setting time and place for hearing upon such request.

AUTH and IMP: 2-4-201, MCA

RULE VI INTERVENTION (1) Anyone may request to intervene and become a party in a matter that is set for trial before the Court. The applicant requesting intervention shall serve a copy of the motion to intervene upon all parties. The motion shall state the grounds upon which intervention is sought. The Court, in its discretion, will determine whether or not to allow intervention of the applicant upon consideration of the factors set forth in Rule V (1), and shall notify the applicant and all parties of its decision.

AUTH and IMP: 2-4-201, MCA

RULE VII TIME AND PLACE OF TRIAL GENERALLY (1) For the purpose of setting trials, the Court has divided the year into four terms of three months each, designated as the June term, September term, December term, and March term.

(2) The Court has divided the state into nine geographic areas (subsection (5) of this rule). Except for emergency trials (Rule VIII) or upon stipulation of all parties and consent of the Court to hold trials elsewhere, trials will be held at the time and in the place designated in subsections (3) and (4) of this rule.

(3) Court will be in session at the call of the Court. The Court will not convene in an area where no petition has been filed. Cases will be heard beginning the first full week during the September and March terms in the area cities at the following times, subject to any exceptions the Court may make:

- (a) Butte area, first and second weeks;
- (b) Miles City area, third week;
- (c) Billings area, fourth and fifth weeks;
- (d) Glasgow area, sixth week;
- (e) Great Falls area, seventh and eighth weeks;
- (f) Bozeman area, ninth week;
- (g) Missoula area, tenth and eleventh weeks;
- (h) Helena area, twelfth week;
- (i) Kalispell area, thirteenth week.

During the December term, trials will be held in Helena, subject to any exceptions the Court may make. During the June term, trials may be held in any location set by the Court.

(4) Court will be in session or recess at the convenience of the Court. If all matters before the Court are

not completed on the first day scheduled for trials, the Court will reconvene on the following and as many days thereafter as are necessary to complete the docket.

(5) Each of the nine areas designated for trial schedule purposes is named for the principal city in the counties making up the area as follows:

- (a) Kalispell area:
 - (i) Flathead
 - (ii) Lincoln
- (b) Missoula area:
 - (i) Lake
 - (ii) Mineral
 - (iii) Missoula
 - (iv) Ravalli
 - (v) Sanders
- (c) Butte area:
 - (i) Beaverhead
 - (ii) Deer Lodge
 - (iii) Granite
 - (iv) Jefferson
 - (v) Madison
 - (vi) Powell
 - (vii) Silver Bow
- (d) Bozeman area:
 - (i) Gallatin
 - (ii) Park
 - (iii) Sweet Grass
 - (iv) Wheatland
- (e) Billings area:
 - (i) Big Horn
 - (ii) Carbon
 - (iii) Golden Valley
 - (iv) Musselshell
 - (v) Petroleum
 - (vi) Stillwater
 - (vii) Treasure
 - (viii) Yellowstone
- (f) Miles City area:
 - (i) Carter
 - (ii) Custer
 - (iii) Dawson
 - (iv) Fallon
 - (v) McCone
 - (vi) Powder River
 - (vii) Prairie
 - (viii) Richland
 - (ix) Rosebud
 - (x) Wibaux
- (g) Glasgow area:
 - (i) Daniels
 - (ii) Garfield
 - (iii) Phillips
 - (iv) Roosevelt

- (v) Sheridan
- (vi) Valley
- (h) Great Falls area:
 - (i) Blaine
 - (ii) Cascade
 - (iii) Chouteau
 - (iv) Fergus
 - (v) Glacier
 - (vi) Hill
 - (vii) Judith Basin
 - (viii) Liberty
 - (ix) Pondera
 - (x) Teton
 - (xi) Toole
- (i) Helena area:
 - (i) Broadwater
 - (ii) Lewis and Clark
 - (iii) Meagher

(6) Upon receipt of a petition meeting the requirements of these rules, the Court will set a trial in the area where the accident occurred and at the time and in the place designated in subsections (3) and (4) of this rule and at a time that will allow 60 days' notice to be given of the trial. The Court may, for good cause, hold a trial over to the next regular trial date in or for the area.

AUTH and IMP: 2-4-201, MCA

RULE VIII EMERGENCY TRIALS (1) Trials may be held by the Court upon less than sixty (60) days' notice when good cause is shown. Such trials shall be termed "emergency trials." Facts constituting the emergency must be set forth in the petition in sufficient detail for the Court to determine whether an actual emergency exists. The Court, on its own motion, may set a trial as an emergency trial. When an emergency trial is ordered, the Court shall give reasonable notice of the time and place for a pretrial conference and for the trial.

AUTH and IMP: 2-4-201, MCA

RULE IX SETTING TIME AND PLACE OF TRIAL BY STIPULATION OR IN BEST INTERESTS OF THE COURT (1) Upon stipulation of the parties and consent of the Court, or upon order of the Court, a trial may be held at any time in any area.

AUTH and IMP: 2-4-201, MCA

RULE X PRETRIAL MOTIONS (1) Pretrial motions to dismiss, to quash or for other summary ruling shall be filed in writing on or before the date set for pretrial conference, unless allowed at a later time for good cause shown. Upon filing such motion, the moving party shall also file a

supporting brief or affidavit, and failure to do so shall be deemed an admission that the motion is without merit. An adverse party shall have ten (10) days following service of the motion within which to file an answering brief or affidavit. A reply brief may be filed no later than five (5) days from the date of service of the answer of the adverse party. Unless otherwise ordered, oral argument will not be permitted upon pretrial motions.

(2) An extension of time for filing briefs or affidavits on a motion may be granted by the Court upon oral application without notice to the adverse party. However, whenever such an ex parte extension has been granted, the moving party shall immediately advise the adverse party of the new due date. Except under extraordinary circumstances, extensions of more than ten (10) days from the original due date shall not be granted.

(3) Nothing in this rule shall be construed to preclude the filing or presentation of motions related to matters of discovery or evidence at any time, or for summary ruling at the conclusion of trial.

AUTH and IMP: 2-4-201, MCA

RULE XI MEDICAL RECORDS (1) Prior to any scheduled trial, the parties shall exchange all medical records based upon examination of the claimant. Failure to exchange such materials on a timely basis before trial shall preclude its use at trial. Medical records will only be accepted by the Court as evidence if stipulated to by the parties or by the laying of proper foundation.

AUTH and IMP: 2-4-201, MCA

RULE XII PRETRIAL CONFERENCE AND ORDER (1) A pretrial conference shall precede every trial unless otherwise ordered by the Court.

(2) The Court may appoint a hearing examiner to conduct the pretrial conference and may delegate authority to such hearing examiner to make rulings on all matters discussed at the pretrial conference, including pretrial motions of the parties.

(3) At the time of the pretrial conference, all parties shall exchange written statements of: (a) proposed uncontested facts, (b) contentions of fact, (c) significant or unique questions of law, (d) exhibits, (e) witnesses, and (f) other matters to be included in the pretrial order.

(4) In the discretion of the Court in appropriate circumstances, a pretrial conference may be conducted by a telephone conference call. If a pretrial conference is to be conducted by a conference call, the parties must file with the Court and serve upon opposing counsel written statements as provided in subsection (3) of this rule prior to the date of the conference call. Copies of all proposed exhibits known by

the parties must also be exchanged prior to the conference call.

(5) The Court shall designate one of the parties to prepare a pretrial order which recites the actions taken at the pretrial conference. This pretrial order must be signed by both parties and submitted to the Court for approval. The pretrial order shall supersede all other pleadings and shall set forth the following:

- (a) statement of jurisdiction pursuant to the appropriate statutes and rules;
- (b) motions made by either party;
- (c) uncontested facts;
- (d) stipulations between the parties;
- (e) statement of the issues to be determined by the Court;
- (f) petitioner's and defendant's contentions;
- (g) all exhibits known to the parties at the time of the pretrial conference which may be introduced, whether stipulated to or not, including the approved attorney fee agreement;
- (h) identity of witnesses who may be called, including the name, address, and occupation of each witness, and the subject matter of the testimony each witness will be called to give;
- (i) pretrial discovery desired, e.g., depositions and interrogatories; and
- (j) estimated length of trial and the time and place for trial.

(6) Unless some other schedule is set at the pretrial conference, the final draft of the proposed pretrial order shall be mailed by the party designated to prepare same to the opposing parties within ten (10) days of the pretrial conference. Opposing parties must mail the pretrial order for filing within five (5) days of receipt of same. Additional time may be granted either party by the hearing examiner upon oral application without notice to the adverse party.

(7) Amendments to the pretrial order shall be allowed by stipulation of the parties or leave of Court.

AUTH and IMP: 2-4-201, MCA

RULE XIII DEPOSITIONS (1) Any party may take the testimony of any person, including a party, by deposition upon oral examination prior to trial. Leave of Court, granted with or without notice, must be obtained only if the claimant seeks to take a deposition prior to the expiration of ten (10) days from the date of filing of the petition. The attendance of witnesses may be compelled by subpoena as provided by Rule XIX.

(2) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the proceeding. The notice shall state the time and place for taking the deposition and

the name and address of each person to be examined. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(3) If a party shows that, when he was served with notice under subdivision (2) of this rule, he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.

(4) The Court may, for good cause shown, enlarge or shorten the time for taking the deposition.

(5) Examination and cross-examination of witnesses may proceed as permitted at the trial. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other reliable means. If requested by one of the parties, the testimony shall be transcribed.

Unless otherwise agreed, all objections must be made at the time of taking the deposition and be included within the transcript of the deposition. Evidence objected to shall be taken subject to the objections.

(6) At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the taking of the deposition shall be suspended for the time necessary for the objecting party to move the Court for an order. The Court may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the Court. The provisions of Rule XVII apply to the award of expenses incurred in relation to the motion.

(7) When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him. Any changes in form or substance which the witness desires to make shall be entered upon the deposition, which shall then be signed by the witness under oath, unless the parties and the witness waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within ten (10) days of its submission to him, the officer shall sign it and state on the record the reason, if any, that the deposition has not been signed and it may then be used as fully as though signed.

(8) A deposition of a witness or a party may be used by any party for any purpose unless the Court restricts such usage upon a finding that the interests of justice would be served thereby.

AUTH and IMP: 2-4-201, MCA

RULE XIV INTERROGATORIES (1) A party may serve upon an adverse party, at any time after a trial has been set, written interrogatories to be answered by the party served. The answers shall be signed by the person making them, and the party upon whom the interrogatories have been served shall serve a copy of the answers on the party submitting the interrogatories and on the Court within 20 days after the service of the interrogatories, unless the Court lengthens or shortens the time.

(2) Each interrogatory shall be answered separately and fully in writing under oath unless it is objected to in which event the reasons for objection shall be stated in lieu of an answer. Objections may be made because of annoyance, expense, embarrassment, oppression, irrelevance, or other good cause. Objections are to be signed by the attorney making them. The party answering the interrogatories shall set forth a verbatim recopy of each of the interrogatories, followed by the answer or objection thereto.

(3) The Court will, except in extraordinary circumstances, sustain objections to numerous and complex interrogatories which are not limited to the important facts of the case and which are concerned with numerous minor details.

AUTH and IMP: 2-4-201, MCA

RULE XV MOTIONS TO PRODUCE (1) A party may serve upon an adverse party any time after a trial has been set a request (a) to produce and permit the party making the request, or his agent, to inspect and copy any designated documents or records, or to copy, test, or sample any tangible things, which may be relevant and which are in the possession, custody or control of the party upon whom the request is served; or (b) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the limits of relevancy.

(2) The party upon whom the request is served shall serve a written response within 20 days after service of the request. The Court may allow a longer or shorter time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. For a partial objection the part shall be specified.

(3) If the request is intended to obtain production of medical records, the party to whom it is directed may, in lieu of providing the documents, provide an authorization or release necessary to obtain such medical records.

AUTH and IMP: 2-4-201, MCA

RULE XVI LIMITING DISCOVERY (1) The frequency or extent of use of the discovery methods set forth in Rule XIII, Rule XIV and Rule XV may be limited by the Court if it determines that: (a) the discovery sought is unreasonably cumulative or duplicative, or obtainable from some other source that is either more convenient, less burdensome, or less expensive; (b) the party seeking discovery has had ample opportunity through previous discovery to obtain the information sought; or (c) the discovery is unduly burdensome or expensive, given the needs of the case, the amount in controversy, the parties' available resources, and the values at stake in the case. The Court may act upon its own initiative or pursuant to a motion of either party.

AUTH and IMP: 2-4-201, MCA

RULE XVII FAILURE TO MAKE DISCOVERY--SANCTIONS (1) If a party fails to respond to discovery pursuant to these rules, or makes evasive or incomplete responses to discovery, or objects to discovery, the party seeking discovery may move for an order compelling responses. Upon filing such motion, the moving party shall also file a supporting brief or affidavit and failure to do so shall be deemed an admission that the motion is without merit. An adverse party shall have ten (10) days following service of the motion within which to file an answering brief or affidavit. A reply brief may be filed no later than five (5) days from the date of service of the answer of the adverse party. Unless ordered by the Court, oral argument will not be permitted in motions to compel discovery. With respect to a motion to compel discovery, the Court may impose such sanctions as it deems appropriate, including, but not limited to, awarding the prevailing party attorney fees and reasonable expenses incurred in obtaining the order or in opposing the motion. If the party shall fail to make discovery following issuance of an order compelling responses, the Court may order such sanctions as it deems required and just under the circumstances.

AUTH and IMP: 2-4-201, MCA

RULE XVIII VACATING AND RESETTING PRETRIAL CONFERENCE OR TRIAL (1) The pretrial conference or trial may be vacated and reset by order of the Court, upon motion of counsel for good cause shown, or upon its own motion. After a matter has been vacated and reset once, any subsequent request to vacate and reset shall be accompanied by a statement in writing of the party or counsel setting forth the reasons for not being able to proceed as scheduled.

AUTH and IMP: 2-4-201, MCA

19-10/13/83

MAR Notice No. 2-2-119

RULE XIX SUBPOENA (1) A subpoena shall be issued in accordance with the procedure set forth in Rule 45, M.R.Civ.P. (1979).

(2) In case of disobedience of any subpoena issued and served under this rule or of the refusal of any witness to testify as to any material matter with regard to which he may be interrogated in a proceeding before the Court, the Court may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. If the Court fails or refuses to seek enforcement of a subpoena issued at the request of a party or to compel the giving of testimony considered material by a party, the party may make such application.

(3) Any party serving a subpoena for the production of documentary evidence shall provide all other parties to the dispute reasonable notice of the place, date, and time for such production.

AUTH and IMP: 2-4-201, MCA

RULE XX CONDUCT OF TRIAL (1) Trials will be held in courtrooms when available or any other designated place.

(2) The trial will be conducted in the same manner as a trial without a jury. The trial shall proceed in the following order unless the Court, for good cause and special reasons, otherwise directs:

(a) The party on whom rests the burden of the issues may briefly state his case and the evidence by which he expects to sustain it.

(b) The adverse party may then briefly state his defense and the evidence he expects to offer in support of it, or he may wait and do this at the beginning of his case in chief.

(c) The party on whom rests the burden of the issues must produce his evidence; the adverse party will then follow with his evidence.

(d) The parties will then be confined to rebuttal evidence, unless the Court, for good reasons and in the furtherance of justice, permits either party to offer further evidence in support of its case in chief.

AUTH and IMP: 2-4-201, MCA

RULE XXI INFORMAL DISPOSITION (1) In the discretion of the Court, informal disposition may be made of a dispute or controversy by stipulation, agreed settlement, consent order, or default.

AUTH and IMP: 2-4-201, MCA

RULE XXII SETTLEMENT CONFERENCE (1) In its discretion, the Court may, either on its own motion or upon request of any party, order a settlement conference at any time before

decision in any case pending before the Court. Such settlement conference will normally be conducted by the Workers' Compensation Judge, and may be either in person or by conference telephone call at a time and place as the Court may direct. The purpose of the settlement conference is to encourage and facilitate the settlement of disputes and controversies pending before the Court.

AUTH and IMP: 2-4-201, MCA

RULE XXIII BENCH RULINGS (1) In order to more promptly deliver decisions in cases pending before the Court, particularly those cases that do not involve complex factual questions or unique questions of law, the Court may, in its sole discretion, issue a bench ruling following the close of the testimony in a case. If a bench ruling is issued, the following procedure will be followed:

(a) The Judge will announce his decision to the parties in open Court, outlining the factual and legal reasoning therefor.

(b) The Judge may direct one of the parties, usually the prevailing party, to reduce his decision to writing by preparing written findings of fact, conclusions of law, and judgment.

(c) Following entry of the Court's findings of fact and conclusions of law and judgment, the parties shall have twenty (20) days in which to file objections to the Court's decision and to request a rehearing, pursuant to Rule XXVI.

AUTH and IMP: 2-4-201, MCA

RULE XXIV FINDINGS OF FACT AND CONCLUSIONS OF LAW AND BRIEFS (1) The Court may require briefs or other documents to be filed by either or both parties.

(2) The Court may require either or both parties to file findings of fact and conclusions of law.

(3) Briefs and findings of fact and conclusions of law will be filed at a date set by the Judge or hearing examiner.

(4) Briefs and findings of fact and conclusions of law may not be filed after the due date except by stipulation of the parties or leave of Court.

AUTH and IMP: 2-4-201, MCA

RULE XXV MASTERS AND EXAMINERS--PROCEDURE--RECOMMENDATIONS FOR BENCH ORDERS (1) The Court shall appoint masters or examiners when, in the judgment of the Court, justice will be served.

(2) Masters will be appointed and serve pursuant to Rule 53, M.R.Civ.P. (1979). In the event that a master is appointed, the procedures set forth in Rule 53 shall be utilized insofar as they relate to a trial without a jury.

19-10/13/83

MAR Notice No. 2-2-119

(3) Examiners will be appointed and serve pursuant to 2-4-611 MCA (1979). However, because of the overriding concern in a workers' compensation case to render a prompt decision, especially in matters concerning the payment of a workers' biweekly compensation benefits, and because of the time delays inherent in the procedures set forth in 2-4-621 and 2-4-622 MCA (1979), such provisions are not appropriate in Workers' Compensation Court proceedings within the meaning of 39-71-2903 MCA (1979). In lieu thereof, the Court will utilize the following procedure in cases where a hearing examiner has been appointed:

(a) Following submission of the case, the hearing examiner will submit his proposed findings of fact and conclusions of law to the Judge. The proposed decision of the hearing examiner will not be served upon the parties until after the Judge has made his ruling thereon. The Judge will make his decision as to whether to adopt the proposed findings of fact and conclusions of law of the hearing examiner based solely upon the record and pleadings made before the hearing examiner. Findings of fact made by a hearing examiner will not be rejected or revised unless the Court first determines from a review of the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. Conclusions of law and interpretations of statutes or rules written by a hearing examiner may be reconsidered or altered by the Court upon its own motion. Subject to the provisions of this subsection, the Court will enter its order and judgment adopting the decision of the hearing examiner.

(b) Any party aggrieved by a decision of a hearing examiner adopted pursuant to this rule, may obtain review thereof by filing a motion pursuant to Rule XXVI. Upon the filing of such a motion by either party, the Court will, in its discretion, liberally grant opportunity for oral argument as to whether the decision should be amended, additional evidence should be heard, or a new trial should be granted.

(4) An examiner may, during or at the conclusion of a trial or a pretrial conference, advise the parties that an interlocutory order for payment of benefits or other relief to a party appears to be justified and such an order will be forthwith submitted for approval by the Judge.

AUTH and IMP: 2-4-201, MCA

RULE XXVI NEW TRIAL (1) After a trial, the Court will issue an order or will issue findings of fact and conclusions of law and judgment setting forth the Court's determination of the disputed issues. The parties to the dispute may consider the order or the judgment as a final decision of the Court for

appeal purposes. A party to the dispute may request a new trial before the Court within 20 days after the order or judgment is filed and, if any party submits a request for a new trial, the order or judgment issued by the Court shall not be considered a final decision of the Court for appeal purposes.

(2) If a request for a new trial is filed, the party requesting the new trial shall set forth specifically and in full detail the grounds upon which the party considers the order or judgment to be incorrect. If the Court denies the request for a new trial, the original order or judgment issued by the Court shall be considered the final decision of the Court as of the day the new trial is denied. If a new trial is granted, the matter will be scheduled for trial pursuant to Rule VII. The matter will be determined by the testimony taken at the initial trial and at the new trial. After the new trial, the Court will issue an order or findings of fact and conclusions of law and judgment setting forth the Court's determination of the disputed issues.

(3) If a new trial is not requested or an appeal filed within the time allowed by law, the Court may order the file sent to the Division of Workers' Compensation, subject to any order the Court may make in the future.

AUTH and IMP: 2-4-201, MCA

RULE XXVII APPEALS (1) Appeals from the Workers' Compensation Court shall be as in the case of an appeal from a district court as provided in Rule 72, M.R.Civ.P., except that it shall not be necessary for the Clerk of Court to issue a notice of entry of judgment.

(2) The appellant's required appearance fee is \$20.00. This fee shall accompany the notice of appeal when sent to the Workers' Compensation Court. The check shall be made payable to the Clerk of the Supreme Court.

AUTH and IMP: 2-4-201, MCA

RULE XXVIII RULES COMPLIANCE (1) If a party neglects or refuses to comply with the provisions of this subchapter, the Court may dismiss a matter with or without prejudice, grant an appropriate order for a party, or take other appropriate action. However, the Court may, in its discretion and in the interests of justice, waive irregularities and noncompliance with any of the provisions of this subchapter.

AUTH and IMP: 2-4-201, MCA

RULE XXIX APPEALS TO WORKERS' COMPENSATION COURT UNDER TITLE 39, CHAPTERS 71 and 72; and TITLE 53, CHAPTER 9 (1) An appeal from a final decision of the Division of Workers' Compensation under Title 39, Chapters 71 and 72; and Title 53, Chapter 9, MCA, shall be filed with the Court by filing a

petition for appeal with the Court within thirty (30) days after service of the final decision of the Division. Rule I (2) applies to the filing of a petition.

(2) The petition for appeal shall state the grounds upon which the petitioner contends he is entitled to relief. The petition shall demand the relief to which the petitioner believes he is entitled, and the demand for relief may be in the alternative.

(3) The filing of the petition shall not stay the Division's decision. However, the Court may, upon application of a party, order a stay upon terms which the Court considers proper.

(4) Within ten (10) days after the service of the petition, the Division shall transmit to the Court the original or a certified copy of the entire record of the proceedings under review.

(5) If, before the date set for trial, application is made to the Court for leave to present additional evidence, and it is shown to the satisfaction of the Court that the additional evidence is material and that there were good reasons for failure to present it in the proceedings before the Division, the Court may order that the additional evidence be presented to the Court.

(6) The trial regarding the petition shall be set with other proceedings in accordance with Rule VII.

(7) The Court shall base its decision on the record, additional evidence (if allowed), and oral argument. The Court may require briefs or other documents to be filed by a party, and a proposed order.

(8) Rule XXVI, relating to new trials, applies to decisions under this rule. However, the decision of the Court may or may not be in the form of findings of fact and conclusions of law.

AUTH and IMP: 2-4-201, MCA

RULE XXX DECLARATORY RULINGS (1) The Court has jurisdiction to issue declaratory rulings in genuine disputes arising under Chapter 71, Title 39, MCA.

(2) Proceedings for a declaratory ruling shall be the same as in all other disputes.

AUTH and IMP: 2-4-201, MCA

RULE XXXI REVIEW (1) The Court will annually review and when necessary revise the rules of Court.

AUTH and IMP: 2-4-201, MCA

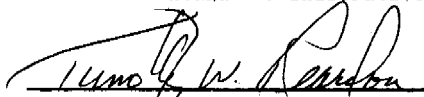
4. ARM 2.52.201 through ARM 2.52.231 are proposed to be repealed because at the time of the recodification of the Administrative Rules of Montana the Office of the Workers' Compensation Judge was not consulted and as a result there

There were no rule numbers reserved. A committee of eight attorneys and the court hearing examiner have held numerous meetings regarding the rules and the result is many proposed amendments and deletions in the existing rules and proposals for additional rules. This committee believes it is essential for clarity to the general public and the practitioner before the court that the rules be set forth in a usable and logical sequence. Simultaneously with the repeal of rules ARM 2.52.201 through ARM 2.52.231 will be the adoption of procedural rules beginning with number ARM 2.52.301. The rationale for adopting the new procedural rules is to clarify discovery procedures, require notice of representation, and to set forth procedures for expediting decisions.

5. Interested parties may submit their data, views or arguments concerning these changes in writing to Clarice V. Beck, Hearing Examiner, Workers' Compensation Court, 1422 Cedar-Airport Way, P. O. Box 4127, Helena, Montana 59604 by November 13, 1983.

6. If a person who is directly affected by the proposed changes 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 Clarice Beck, address above, no later than November 13, 1983.

7. If the agency receives requests for a public hearing on the proposed changes from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed changes; 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. The rules will affect each individual in the state. Notice of a hearing will be published in the Montana Administrative Register.



TIMOTHY W. KEARDON
Judge

CERTIFIED TO THE SECRETARY OF STATE September 30, 1983

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF OPTOMETRISTS

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of ARM 8.36.406 con-) OF ARM 8.36.406 GENERAL
cerning general practice re-) PRACTICE REQUIREMENTS
quirements.)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 12, 1983, the Board of Optometrists proposes to amend rule 8.36.406 concerning general practice requirements.

2. The proposed amendment will add a new subsection (2) and will read as follows: (new matter underlined)

"8.36.406 GENERAL PRACTICE REQUIREMENTS (1) ...

(2) Each registered optometrist must file and have on record with the board the location of each and every office wherein the practice of optometry is conducted by him or her."

3. The board is proposing the amendment to provide the board with current information as to the scope of practice of each professional licensed. With the proliferation of branch offices and department stores offering optometric services, the board feels that this rule will minimize the confusion and prevent unnecessary investigations and enforcement under the act regulating the profession of optometry.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Optometrists, 1424 9th Avenue, Helena, Montana 59620-0407, no later than November 10, 1983.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Optometrists, 1424 9th Avenue, Helena, Montana 59620-0407, no later than November 10, 1983.

6. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, 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 per cent of those persons directly affected has been determined to be 21 based on the 212 licensees.

7. The authority of the board to make the proposed amendment is based on section 37-10-202, MCA and implements sections 37-10-301, 306, and 311, MCA.

-1411-

BOARD OF OPTOMETRISTS
ALVERNE S. KAUTZ, O.D.,
PRESIDENT

BY: 

GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 3, 1983.

19-10/13/83

MAR Notice No. 8-36-8

STATE OF MONTANA
DEPARTMENT OF COMMERCE

In the matter of the proposed)	NOTICE OF PROPOSED AMENDMENT
amendments of 8.44.405 concern-) OF ARM 8.44.405 RENEWALS,	
ing license renewal dates for) 8.48.903 LATE RENEWAL, and	
plumbers, 8.48.903 concerning a) PROPOSED ADOPTION OF A NEW	
license renewal date for pro-) RULE UNDER CHAPTER 36,	
fessional engineers and land) RENEWALS	
surveyors, and proposed adop-) NO PUBLIC HEARING CONTEMPLATED	
tion of a new rule setting a)	
renewal date for optometrists)	

TO: All Interested Persons:

1. On November 12, 1983, the Department of Commerce proposes to amend and adopt the above-stated rules with regard to renewal dates.

2. The proposed amendment of 8.44.405 will amend subsection (4) only and will read as follows: (new matter underlined, deleted matter interlined)

"8.44.405 RENEWALS (1) ...

(4) All master and journeyman licenses shall expire by ~~law one year from the date of issuance of last renewal~~ the 31st of August of each year. Any licensee who fails to renew on or prior to the expiration date will be allowed 30 days from the expiration date as a late renewal grace period. If the license is not renewed on or before the expiration of the 30 days, the license will expire and in order to reinstate the license, a new application and successful completion of an examination will be required. Under no circumstances will the licensee be allowed to work as such during that 30 day period."

3. The 1983 legislature amended section 37-1-101, MCA to include a new subsection (7) which allows the department to set renewal dates for certain of the licensing boards. The Board of Plumbers is one such board. The department, in conjunction with the board has determined that the renewal date to be set for plumbers is August 31st of each year. The authority of the department to make the proposed amendment is based on section 37-1-101 (7), MCA and implements section 37-69-202, MCA.

4. The proposed amendment of 8.48.903 will read as follows: (new matter underlined, deleted matter interlined)

"8.48.903 LATE RENEWAL (1) The failure on the part of any registrant to renew his certificate in the month of December by June 30th as required shall not deprive such person of the right of renewal.

(2) The fee to be paid for the renewal of a certificate after ~~the month of December~~ June 30th shall be increased 10% for each month or fraction of a month that payment of renewal is delayed; provided, however, that the maximum fee for delayed renewal shall not exceed 50% the normal renewal fee."

5. The rationale contained in paragraph 3. again applies in the case of professional engineers and land surveyors. The department, in conjunction with the board, has determined that the renewal date for license renewal for professional engineers and land surveyors is to be June 30th. The authority of the department to make the proposed amendment is based on section 37-1-101 (7), MCA and implements section 37-67-315, MCA.

6. The proposed new rule setting a renewal date for optometrists will read as follows:

"I. RENEWALS (1) On or before July 2 of each year, each registered optometrist shall obtain a renewal of registration in order to continue the practice of optometry in Montana in accordance with Sections 37-1-101 (7) and 37-10-307, MCA."

7. Again the rationale in paragraph 3. applies. The department and the board have agreed to the July 2nd renewal date. The authority of the department to make the proposed adoption is based on section 37-1-101 (7), MCA and implements section 37-10-307, MCA.

8. Both the amendments and the adoption will have a delayed effective date of January 1, 1984, as that is the date the amendment to section 37-1-101, MCA becomes effective.

9. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoptions in writing to Shirley Miller, Bureau Chief, Professional and Occupational Licensing Bureau, Department of Commerce, 1424 9th Avenue, Helena, Montana 59620-0407, no later than November 10, 1983.

10. If a person who is directly affected by the proposed amendments and adoptions 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 Shirley Miller, Bureau Chief, Professional and Occupational Licensing Bureau, Department of Commerce, 1424 9th Avenue, Helena, Montana 59620-0407, no later than November 10, 1983.

11. If the department receives requests for a public hearing on the proposed amendments and adoption from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments and adoptions, 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.

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

DEPARTMENT OF COMMERCE

BY: 

GARY BUCHANAN, DIRECTOR

Certified to the Secretary of State, October 3, 1983.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PRIVATE SECURITY PATROLMEN
AND INVESTIGATORS

In the matter of the proposed)	NOTICE OF PUBLIC HEARING
amendments of 8.50.416 concern-) ON THE PROPOSED AMENDMENTS	
ing license renewal and 8.50.) OF 8.50.416 LICENSE RENEWAL	
422 concerning the fee schedule) and 8.50.422 FEE SCHEDULE	

TO: All Interested Persons:

1. On November 3, 1983, at 1:00 p.m. a public hearing will be held in the Downstairs Conference Room of the Department of Commerce, 1430 9th Avenue, Helena, Montana on the proposed amendments of the above-stated rules.

2. The proposed amendment of 8.50.416 will read as follows: (new matter underlined, deleted matter interlined)

"8.50.416 LICENSE RENEWAL (1) Each license expires on June-30th December 1 following date of issue and to remain current must be renewed on or before each June 30th December 1st.

(2) Each licensee will be notified by mail at his last known address of the current renewal fee and furnished with an application for renewal at-least-30-days-before June-30th-of-each-year prior to expiration of the license.

(3) Each person who applies for renewal of a license shall submit one recent black and white photograph with the application for renewal which will be used for the current identification card. It must be of a size that can be cut to a 1½ inch by 1½ inch and still retain full face, head and shoulders in the photo.

(4) If a licensee who has passed the examination and fails to renew his license within 2 years of its expiration, he may have his license reinstated by payment of delinquent renewal fees. If more than 2 years have expired in an unlicensed status, then he must file a new application and pass the examination before being relicensed."

3. The amendment is being proposed as Chapter 550, section 10, of the 1983 Montana session laws amended section 37-63-301 and allowed the board to set a renewal date for individuals that were licensed on the effective date of the act. The board has set the renewal date for December 1. The authority of the board to make the proposed amendment is based on sections 37-60-202 (10), MCA and implements sections 37-60-301 and 312, MCA.

4. The proposed amendment of 8.50.422 amends subsection (2) of the rule and will read as follows:

"8.50.422 FEE SCHEDULE (1) ...

(2) The fee for renewal of original license in any category shall be ~~\$10.00~~ 50.00.

(3) ..."

5. The board is proposing the amendment to set the renewal fee prescribed in 37-60-301, MCA commensurate with program costs

as mandated by section 37-1-134, MCA. The authority of the board to make the proposed amendment is based on sections 37-1-134 and 37-60-202 (3), MCA and implements section 37-60-312, MCA.

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 the Board of Private Security Patrolmen and Investigators, 1424 9th Avenue, Helena, Montana 59620-0407, no later than November 10, 1983.

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

7. The authority and implementing sections are listed after each proposed amendment.

BOARD OF PRIVATE SECURITY
PATROLMEN AND INVESTIGATORS
CLAYTON BAIN, CHAIRMAN

BY: 

GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 3, 1983.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE COAL BOARD

In the matter of the proposed)
amendments of ARM 8.101.301 -)
8.101.305 and 8.101.307 and the)
proposed adoption of new rules)
relating to the Coal Board's)
loan program authorized by the)
1983 legislature and the making)
of grants and loans to Indian)
tribes.)

NOTICE OF PUBLIC HEARING ON
THE PROPOSED AMENDMENTS OF
ARM 8.101.301 POLICY STATE-
MENT, 8.101.302 PRE APPLICA-
TION FORM (LIF 1-75), 8.101.303
APPLICATION FORM (LIF 2-75),
8.101.304 AGREEMENT FORM (LIF
3-75), 8.101.305 SUBMITTAL
DEADLINES, 8.101.307 WATER
AND/OR SEWER SYSTEMS PROVIDED
BY DISTRICTS and PROPOSED
NEW RULES I. LIMITATIONS
ON LOANS and II. INTEREST
RATES FOR LOANS

TO: All Interested Persons:

1. On November 17, 1983, at 10:00 a.m., a public hearing will be held in Room 106, 2715 Dickinson, Miles City, Montana, to consider the amendment and adoption of rules to implement the Coal Board's loan program authorized by the 1983 legislature and to recognize certain Indian tribes as eligible applicants for Coal Board grants and loans.

2. The proposed amendment of rules 8.101.301 through 8.101.305 and 8.101.307 will read as follows: (new matter underlined, deleted matter interlined)

"8.101.301 POLICY STATEMENT (1) The coal board must adopt rules governing its proceedings, prescribe forms for grant and loan applications, receive and consider applications for grants and loans from the local impact and education trust fund, and award grants and loans to local governmental units, governing bodies of federally recognized Indian tribes, and state agencies to assist local governmental units in meeting the local impact of coal development by enabling them to adequately provide governmental services and facilities which are needed as a direct consequence of coal development.

(2) ..." (authority: Sec. 90-6-205, MCA; implement: Sec. 90-6-205, 209, MCA)

"8.101.302 PRE APPLICATION FORM (LIF 1-75) (1) To evaluate applicants and establish priorities among those who may qualify for grants or loans. Items to be considered are a description of the proposed project, estimated cost, projected completion date and the project's relationship to coal development.

(2) It shall include a citation to the Montana Code Annotated which authorizes the applicant to make expenditures to provide for the particular governmental service or facility. Form available from Administrative Officer.

(3) In addition to the above information an applicant for a loan shall establish the financial feasibility of

the project. A project is financially feasible if the board is satisfied that it will generate sufficient income to repay the loan and to assure adequate operation and maintenance of the project.

(4) An application for a loan shall be accompanied by a written opinion from the applicant's legal counsel that the proposed loan arrangements will comply with all applicable state statutes, including those relating to the form, limits, and procedures for incurring indebtedness.

(5) If the applicant for a grant or loan is the governing body of a federally recognized Indian tribe, its application must include a certification that the applicant waives its jurisdictional immunity from suit on any issue specifically arising from the transaction of a grant or loan obtained under this part and agrees to the adjudication of any dispute arising out of the grant or loan transaction in the District Court of the First Judicial District of the State of Montana. In addition, the applicant must submit proof that it has obtained approval of the Secretary of the United States Department of Interior whenever such approval is necessary." (authority: Sec. 90-6-205, MCA; implement: Sec. 90-6-205, 209, MCA)

"8.101.303 APPLICATION FORM (LIF 2-75) (1) Requiring such additional information as is needed by the board to fully consider eligible recipients of grants and loans. Such additional information shall include local government budgets, documentation of past and current local effort, current comprehensive or ongoing development plan, documentation of citizen participation and firm estimates or bids on the completed project. Form available from Administrative Officer. (authority: Sec. 90-6-205, MCA; implement: Sec. 90-6-209, MCA)

"8.101.304 AGREEMENT FORM (LIF 3-75) (1) To be executed between the Coal Board and local governmental unit establishing legal obligations and responsibilities upon each party to faithfully perform the terms of the grant or loan award. Form available from Administrative Officer." (authority: Sec. 90-6-205, MCA; implement: Sec. 90-6-205, MCA)

"8.101.305 SUBMITTAL DEADLINES (1) Grant and loan preapplications and applications shall be submitted to the Administrative Officer 30 days prior to board considerations.

(2) Other matters shall be submitted to the Administrative Officer 10 days prior to board consideration.

(3) All loan preapplications shall be submitted to the Administrative Officer by August 31 or March 1 of each year for board action during that fiscal year.

(4) Exceptions to (1), (2) and (3) shall be at the board's discretion." (authority: Sec. 90-6-205, MCA;

implement: Sec. 90-6-205, 209, MCA)

"8.101.307 WATER AND/OR SEWER SYSTEMS PROVIDED BY DISTRICTS (1) Improvement districts and county water and sewer districts are eligible for grants and loans to provide for the construction, reconstruction, expansion, and maintenance of a water and/or sewer system that serves:

(a)...

(2) Counties may apply for and receive grants or loans to pay for the expenses of rural improvement districts.

(3) Cities, towns, and consolidated units of local government may apply for and receive grants or loans to pay for the expenses of special improvement districts. (authority: Sec. 90-6-205, MCA; implement: Sec. 90-6-205, 209, MCA)

3. The proposed new rules will read as follows:

"I. LIMITATIONS ON LOANS (1) The board will not consider applications for loans if the source of repayment will be property taxes. For purposes of this rule the term 'property taxes' means ad valorem property taxes." (authority: Sec. 90-6-205, MCA; implement: Sec. 90-6-205, 209, MCA)

"II. INTEREST RATES FOR LOANS (1) Interest rates on loans will be set by the board. In setting these rates, the board will consider:

(a) current prime lending rate;

(b) effect of the interest rate on accomplishing the project;

(c) anticipated ability of the project to produce revenue income; and

(d) length of the proposed repayment period on the loan." (authority: Sec. 90-6-205, MCA; implement: Sec. 90-6-205, 209, MCA)

4. Chapter 690 of Montana's 1983 Session Laws (Senate Bill 186) authorizes the coal board to institute a loan program in addition to its current grant program and provides that federally recognized Indian tribes are eligible for coal board grants and loans. The amendments and new rules proposed herein reflect the changes effected by Chapter 690 and are deemed necessary to implement these changes.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, and arguments may also be submitted to Murdo A. Campbell, the Board's Administrative Officer, Department of Commerce, Capitol Station, Helena, Montana, 59620, no later than November 15, 1983.

6. Mr. Hershel M. Robbins, Chairman of the board, will preside over and conduct the hearing.

7. The sections of the Montana Code Annotated authorizing and implemented by the proposed amendments and new rules are cited after each proposal.

MONTANA COAL BOARD
HERSHEL M. ROBBINS, CHAIRMAN

BY: 

GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 3, 1983.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF PROPOSED AMENDMENT
Amendment of Rule 12.7.101	)	of Rule 12.7.101 relating to
relating to commercial	)	commercial fishing permits
fishing permits.)	

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 14, 1983, the Montana Fish and Game Commission proposes to amend Rule 12.7.101 relating to commercial fishing permits.

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

12.7.101 APPLICATION (1) Any person desiring to harvest nongame fish from any body of water in the state, or whitefish by nets or traps from the Kootenai River or from its tributaries within one mile of the Kootenai River, for sale or commercial distribution must make written application to the director for a commercial fishing permit upon a form furnished by the department.

(2) The form must be signed by the applicant including mailing address and residence of applicant and stating specifically the waters and species of nongame fish desired for harvest and equipment owned or controlled by applicant.

(3) If an application is approved, applicant must then give a bond to the department in favor of the state of Montana in the sum of \$1,000 with corporate surety, conditioned on the faithful carrying out of the provisions of the application and permit. The department will then issue a license describing approved waters, species, seasons, and fishing methods.


AUTH: 87-1-201, 87-1-301, MCA; IMP: 87-3-204, 87-4-601, MCA

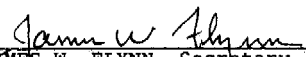
3. The proposed amendments provide for the inclusion of whitefish permits on the Kootenai River within the application proceedings.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to Art Whitney, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, Montana 59620, no later than November 13, 1983.

5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Mr. Whitney no later than November 13, 1983.

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


SPENCER S. HEGSTAD, Chairman
Montana Fish and Game Commission

By: 
JAMES W. FLYNN, Secretary
Montana Fish and Game Commission

Certified to Secretary of State October 3, 1983

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

In the matter of the	)	NOTICE OF PUBLIC HEARING
adoption of rules	)	FOR ADOPTION OF RULES
regarding game farms	)	CONCERNING GAME FARMS

To: All Interested Persons

1. On November 15, 1983, at 7:00 p.m., a public hearing will be held in the Fish and Game Commission Room of the Fish and Game Building, 1420 East Sixth Avenue, Helena, Montana 59620, to consider the adoption of rules relating to the operation of game farms.

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

3. The proposed rules provide as follows:

RULE I APPLICATION AND RENEWAL OF GAME FARM LICENSES

(1) Application for a game farm license shall be made in writing on a form prescribed by the Department of Fish, Wildlife and Parks.

(2) The applicant shall include a \$100 license fee with the initial application.

(3) A game farm license may be renewed prior to January 31 upon payment of a fee of \$25.

(4) All game farm licenses expire on January 31 following the date of issuance.

(5) A game farm operator whose license has expired for more than 30 days will be considered a new applicant and pay the \$100 initial application fee accompanied by an initial application form.

(6) The department may not renew a game farm license until the licensee has submitted the report described by Sec. 87-4-417, MCA.

AUTH: 87-4-422, MCA; IMP: 87-4-409; 87-4-411, MCA.

RULE II PURCHASE AND SALE OF GAME

(1) No game farm operator may purchase, sell, or otherwise transfer any diseased game.

(2) No person may purchase live game from within the state except from the holder of a current game farm license. This rule does not prohibit the purchase of live game delivered from outside the state.

(3) The licensee shall use forms provided by the department to record all purchases, sales, or other transfers of game farm animals.

AUTH: 87-4-422, MCA; IMP: 87-4-416, MCA.

RULE III FENCING FOR CLOVEN HOOFED GAME

(1) The height of a fence shall be at least 8 feet from ground level to top wire.

AUTH: 87-4-422, MCA; IMP: 87-4-411, MCA.

(2) The materials, their specification, and construction shall be as follows:

(a) Posts. Posts shall be durable material of sufficient weight and length to construct and support the fence described without constant replacements; firmly set in the ground and anchored or braced at necessary points; spaced at intervals not to exceed $16\frac{1}{2}$ feet; minimum top diameter of $3\frac{1}{4}$ inches at the 8 foot height, for wood posts. Pine, spruce or fir posts are not acceptable unless pressure-treated with creosote or equivalent preservative.

(b) Wire. Woven and barb wire to be securely fastened to the outside of the posts.

(i) Woven wire. Woven wire to be not less than 84 inches wide and at least equal to the following specifications:

(A) Top and bottom wire not less than 10 gauge or the equivalent, on all width rolls.

(B) Horizontal wires not less than $12\frac{1}{2}$ gauge or the equivalent, with spacing graduated from not more than 4 inches at the bottom to not more than 6 inches at the top.

(C) Vertical wire (stays) not less than $12\frac{1}{2}$ gauge or the equivalent, spaced at intervals not to exceed 6 inches. (To make the mesh at the bottom not more than 4 inches X 6 inches and at the top not more than 6 inches X 6 inches.)

(D) The wire to be properly stretched with the smaller openings at the bottom and the bottom wire not to exceed 2 inches above a ground wire. All depressions exceeding 4 inches below the woven wire and ground wire to be either "aproned" with woven wire or filled with rock or other permanent material.

(ii) Barb wire.

(A) Two point, $12\frac{1}{2}$ gauge galvanized.

(B) A ground wire to be placed at ground level below the woven wire.

(C) A top wire spaced 6 inches above the woven wire to complete a fence measuring overall not less than 8 feet from ground to top wire.

(3) Gates shall be constructed to measurements and specifications consistent with the fence.

(4) Deer- and elk-proof swinging water gaps, supported from steel cables (not less than $\frac{1}{2}$ inch in diameter) constructed to equal the specifications of the fence, shall be provided across all permanent streams and dry watercourses.

(5) Fence right-of-way shall be cleared for a distance of 8 feet on each side of the fence, and all dead timber with a height greater than the distance to the fence shall be felled.

(6) The fence shall be maintained in a game-proof condition at all times. If cloven-hoofed game are able to pass through, under, or over the fence because of any local topographic or other conditions, the licensee shall supplement the fence so as to prevent such passing.

RULE IV FENCING FOR BEARS AND MOUNTAIN LIONS

(1) Minimum specifications:

(a) Size: 50 feet by 20 feet with 6 square-foot house.

(b) Materials:

(i) Chain link fence fabric: 9 gauge.

(ii) Posts: 4 inch outside diameter galvanized steel pipe or 8 inch wood presure-treated.

(iii) Tie wire: 9 gauge galvanized.

(iv) Gates: Steel frame.

(c) Construction: Vertical wire fabric, 1 foot below surface to 6 feet above ground level. 2 feet extensions above 6 feet vertical fence, slanted or arched inward to prevent climbing out. One electric fence wire, 1 foot above ground level and 1 foot away from chain link enclosure fence around interior of enclosure.

AUTH: 87-4-422, MCA; IMP: 87-4-411, MCA.

RULE V REPORTING (1) Reports required by section

87-4-417, MCA, shall be filed on forms provided by the department.

AUTH: 87-4-422, MCA; IMP: 87-4-417, MCA.

RULE VI RECOVERY OF ESCAPED ANIMALS

(1) A game farm licensee must notify the department immediately when game farm animals have escaped from the game farm.

(2) The licensee must recapture the animals within 5 days following escape. If the game farm operator fails to recapture the escaped game animal within 5 days, the department may remove it from the wild by whatever means necessary when the game farm animal will conflict with native species or cause damage to public or private property.

(3) Upon recapture of an escaped game animal the licensee must notify the department immediately. The department may inspect the recaptured animal to confirm that it is a game farm animal.

AUTH: 87-4-422, MCA; IMP: 87-4-419, MCA.

RULE VII IDENTIFICATION OF GAME FARM ANIMALS

(1) Game farm licensees shall provide some identifying mark on each game farm animal. The identification may be provided by any one of the following: ear tag, lip tattoo, brand, or neck collar.

AUTH: 87-4-422, MCA; IMP: 87-4-422, MCA.

RULE VIII CLOVEN-HOOFED ANIMALS AS GAME FARM ANIMALS

(1) All animals of the order Artiodactyla, except the families suidae, camelidae, and hippopotamidae, are game farm animals under the definition described in section 87-4-406(4), MCA, provided that the following animals in the family bovidae are not considered game farm animals under section 87-4-406(4), MCA: domestic cows, domestic sheep, domestic goats and bison.

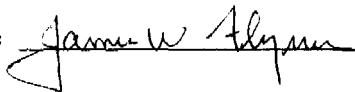
AUTH: 87-4-422, MCA; IMP: 87-4-406(4), MCA.

4. These rules are proposed in response to the enactment of section 87-4-422, MCA, which provided for the promulgation of rules to regulate operation of game farms. At the present time, there are no rules regulating the operation of game farms. These rules provide standards for the operation of game farms.

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 Stan Bradshaw, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, Montana 59620, no later than November 15, 1983. Stan Bradshaw will preside at hearing.

JAMES W. FLYNN, Director
Department of Fish, Wildlife
and Parks
1420 East Sixth Avenue
Helena, Montana 59620

By:



Certified to the Secretary of State:

October 3, 1983

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

In the matter of the	)	NOTICE OF PUBLIC HEARING
adoption of rules	)	FOR ADOPTION OF A RULE
regarding fur farms	)	CONCERNING FUR FARMS

To: All Interested Persons

1. On November 15, 1983, at 7:00 p.m., a public hearing will be held in the Fish and Game Commission Room of the Fish and Game Building, 1420 East Sixth Avenue, Helena, Montana 59620, to consider the adoption of rules relating to the operation of fur farms.

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

3. The proposed rules provide as follows:

RULE I APPLICATION AND RENEWAL OF FUR FARM LICENSE

(1) Application for a fur farm license shall be made in writing on a form prescribed by the Department of Fish, Wildlife and Parks.

(2) The applicant shall include a \$50 license fee with the initial application.

(3) A fur farm license may be renewed prior to January 31 upon payment of a fee of \$25.

(4) All fur farm licenses expire on January 31 following the date of issuance.

(5) A fur farm operator whose license has expired for more than 30 days will be considered a new applicant and pay the \$50 initial application fee accompanied by an initial application form.

(6) The department may not renew a fur farm license until the licensee has submitted the report described by section 87-4-1011, MCA.

AUTH: 87-4-1012, MCA; IMP: 87-4-1003, 87-4-1004, MCA.

RULE II SALE AND PURCHASE OF FURBEARERS

(1) Live furbearers may be sold only by the holder of a valid fur farm license.

(2) No person may purchase live furbearers from within the state except from the holder of a current fur farm license. This rule does not prohibit the purchase of live furbearers from outside the state.

AUTH: 87-4-1012, MCA; IMP: 87-4-1007, MCA.

RULE III FENCING (1) The licensee shall fence or enclose his operation sufficiently to prevent the entry of wild furbearers and to prevent the escape of fur farm animals into the wild.

AUTH: 87-4-1012, MCA; IMP: 87-4-1003, MCA.

RULE IV REPORTING (1) Reports required by section 87-4-1011, MCA, shall be filed on forms provided by the department.

AUTH: 87-4-1012, MCA; IMP: 87-4-1011, MCA.

4. These rules are proposed in response to the enactment of section 87-4-1012, MCA, which provided for the promulgation of rules to regulate operation of fur farms. At the present time there are no rules regulating the operation of fur farms. These rules provide standards for the operation of fur farms.

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 Stan Bradshaw, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, Montana 59620, no later than November 15, 1983. Stan Bradshaw will preside at the hearing.

JAMES W. FLYNN, Director
Department of Fish, Wildlife
and Parks
1420 East Sixth Avenue
Helena, Montana 59620

By: 

Certified to the Secretary of State: October 3, 1983

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

In the matter of the)
adoption of rules)
regarding game bird)
farms)

NOTICE OF PUBLIC HEARING
FOR ADOPTION OF A RULE
CONCERNING GAME BIRD FARMS

To: All Interested Persons

1. On November 15, 1983, at 7:00 p.m., a public hearing will be held in the Fish and Game Commission Room of the Fish and Game Building, 1420 East Sixth Avenue, Helena, Montana 59620, to consider the adoption of rules relating to the operation of game bird farms.

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

3. The proposed rules provide as follows:

RULE I APPLICATION AND RENEWAL OF GAME BIRD LICENSE

(1) Application for a game bird farm license shall be made in writing on a form prescribed by the Department of Fish, Wildlife and Parks.

(2) The applicant shall include a \$50 license fee with the initial application.

(3) A game bird farm license may be renewed prior to January 31 upon payment of a fee of \$25.

(4) All game bird farm licenses expire on January 31 following the date of issuance.

(5) A game bird farm operator whose license has expired for more than 30 days will be considered a new applicant and pay the \$50 initial application fee accompanied by an initial application form.

(6) The department may not renew a game bird license until the licensee has submitted the report described by section 87-4-912, MCA.

AUTH: 87-4-913, MCA; IMP: 87-4-904, 87-4-905, MCA.

RULE II PURCHASE AND SALE OF GAME BIRDS

(1) No game bird farm operator may purchase, sell, or otherwise transfer any diseased game birds.

(2) No person may purchase live game birds from within the state except from the holder of a current game bird farm license. This rule does not prohibit the purchase of live game birds delivered from outside the state.

AUTH: 87-4-913, MCA; IMP: 87-4-911, MCA.

RULE III FENCING (1) The licensee shall fence or enclose his operation sufficiently to prevent the entry of wild game birds and to prevent the escape of game farm birds into the wild.

AUTH: 87-4-913, MCA; IMP: 87-4-904, MCA.

RULE IV REPORTING (1) Reports required by section 87-4-912, MCA, shall be filed on forms provided by the department.

AUTH: 87-4-913, MCA; IMP: 87-4-912, MCA.

4. These rules are proposed in response to the enactment of section 87-4-913, MCA, which provided for the promulgation of rules to regulate operation of game bird farms. At the present time, there are no rules regulating the operation of game bird farms. These rules provide standards for the operation of game bird farms.

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 Stan Bradshaw, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, Montana 59620, no later than November 15, 1983. Stan Bradshaw will preside at the hearing.

JAMES W. FLYNN, Director
Department of Fish, Wildlife
and Parks
1420 East Sixth Avenue
Helena, Montana 59620

By: 

Certified to the Secretary of State:

October 3, 1983

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

In the matter of the	)	NOTICE OF PROPOSED
ADOPTION OF RULES	)	ADOPTION OF RULES
regarding the captive	)	concerning Captive
breeding of raptors.	)	Breeding of Raptors
		NO PUBLIC HEARING
		CONTEMPLATED

TO: All Interested Persons:

1. On November 18, 1983, the Department of Fish, Wildlife and Parks proposes to adopt rules governing the captive breeding of raptors.

2. The proposed rules provide as follows:

Rule I. APPLICATION FOR PERMIT (1) Any persons wishing to apply for a captive breeding permit shall file a written application on a form provided by the department, a copy of a current federal captive breeding permit, and \$20.

AUTH: 87-5-210, MCA; IMP: 87-5-210, MCA.

Rule II. FACILITIES (1) The department adopts and incorporates by reference section 21.30(d)(1) of the federal raptor propagation regulations, Vol. 48, No. 132 of the Federal Register, p. 31609, which sets forth the requirements for the facilities used to maintain raptors. A copy of the federal raptor propagation regulation may be obtained from the Law Enforcement Division of the Montana Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, Montana 59620.

AUTH: 87-5-210, MCA; IMP: 87-5-210, MCA.

Rule III. INCUBATION OF EGGS (1) Each permittee shall notify the department within 5 days from the day the first egg is laid by a raptor held under a raptor propagation permit.

AUTH: 87-5-210, MCA; IMP: 87-5-210, MCA.

Rule IV. MARKING (1) Every raptor possessed under this rule must be banded with a numbered nonreusable marker provided by the Service or with a marker provided by the competent wildlife management authority of a foreign country that meets the federal marking standards described in section 21.30(d)(3) of the federal raptor regulations.

AUTH: 87-5-210, MCA; IMP: 87-5-210, MCA.

Rule V. TAKING RAPTORS OR RAPTOR EGGS FROM THE WILD

(1) Any permit authorizing the permittee to take raptors or raptor eggs from the wild for propagation purposes is subject to the restriction that no raptor described under federal law as "endangered" or "threatened" may be taken from the wild without first obtaining the proper permit from federal authorities.

(2) No more than 4 raptors taken from the wild may be possessed at any one time.

(3) Only nestlings may be taken from the wild for breeding purposes.

AUTH: 87-5-210, MCA; IMP: 87-5-210, MCA.

Rule VI. TRANSFER, PURCHASE, SALE OR BARTER OF RAPTORS OR RAPTOR EGGS

(1) A permittee may transfer any lawfully possessed raptor, raptor egg or raptor semen to another permittee or transfer any raptor to a falconer who holds a valid state falconry permit if no money or other consideration is involved.

(2) No raptor may be traded or transferred until it is two weeks old and only after it is properly banded with a nonreusable marker provided or authorized by the Service, unless it is transferred, sold, or bartered to a state or federal wildlife management agency for conservation purposes.

AUTH: 87-5-210, MCA; IMP: 87-5-210, MCA.

Rule VII. POSSESSION OF EGGS (1) A permittee may possess addled or blown eggs, nests, and feathers from raptors held under permit and may transfer any of these items to any other person authorized by the Service to possess them provided no money or other consideration is involved.

AUTH: 87-5-210, MCA; IMP: 87-5-210, MCA.

Rule VIII. INTENTIONAL RELEASE TO THE WILD (1) Written authorization from the service must be provided to the department prior to any intentional release of any raptor to the wild. The raptor marker must be removed from each bird and immediately returned to the department. A federal bird band must be attached to each raptor by a person designated by the department before its release.

AUTH: 87-5-210, MCA; IMP: 87-5-210, MCA.

Rule IX. RECORDS AND REPORT

(1) The records required by federal regulation 21.30(d)(10) shall be sufficient record for the state.

(2) The permittee shall file with the department a copy of the annual report described in section 21.30(d)(11) of the federal regulations by no later than January 31 of each year.

AUTH: 87-5-210, MCA; IMP: 87-5-210, MCA.

3. These rules are being promulgated in response to the enactment of section 87-5-210, MCA, which provided for the promulgation of rules to regulate the capturing and maintenance of raptors for captive breeding programs. At the present time, there are no rules regulating the capture and maintenance of raptors for captive breeding programs. These rules provide standards for the capture and maintenance of raptors for captive breeding programs.

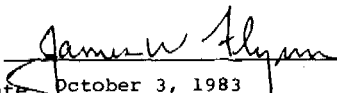
4. Interested parties may submit their data, views, or arguments concerning the proposed rules in writing to Stan Bradshaw, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, Montana 59620, no later than November 18, 1983.

5. If a person who is directly affected by the proposed rules 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 Stan Bradshaw, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, Montana 59620, no later than November 18, 1983.

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

JAMES W. FLYNN, Director
Department of Fish, Wildlife
and Parks
1420 East Sixth Avenue
Helena, Montana 59620

By:



Certified to the Secretary of State October 3, 1983

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

IN THE MATTER of Proposed	)	NOTICE OF PROPOSED AMENDMENT
Amendment of Rules Regarding	)	OF RULES 38.4.142, 38.4.145,
Standards and Procedures for	)	38.4.148, and 38.4.149
Intrastate Rail Rate Regula-	)	REGARDING INTRASTATE RAIL
tion.	)	RATE PROCEEDINGS
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On November 21, 1983 the Department of Public Service Regulation proposes to amend Rules 38.4.142, 38.4.145, 38.4.148 and 38.4.149 regarding standards and procedures for regulation of intrastate rail rates. These rules concern requirements for contract rates.

2. The rules proposed to be amended provide as follows:
38.4.142 GROUNDS FOR REVIEW OF CONTRACTS (1) Within 30 days of the filing date of a contract, the Commission may, on its own motion or on complaint, begin a proceeding to review it.

(2) A contract may be reviewed by the Commission on its own motion, or upon complaint, only on the following grounds:

(a) In the case of a contract other than a contract for the transportation of agricultural commodities (including forest products and but not including wood pulp, wood chips, pulpwood or paper), a shipper can file a complaint only on the grounds that the shipper individually will be harmed because the contract unduly impairs the ability of the contracting carrier or carriers to meet their common carrier obligations under 49 U.S.C. Sec. 11101(a).

(b) In the case of a contract for the transportation of agricultural commodities (including forest products and but not including wood pulp, wood chips, pulpwood or paper), a shipper shall file a complaint only on the grounds that the shipper individually will be harmed because:

(i) the contract unduly impairs the ability of the contracting carrier(s) to meet his common carrier obligations under 49 U.S.C. Sec. 11101(a);

(ii) the rail carrier(s) unreasonably discriminated by refusing to enter into a contract with the shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue and the shipper was ready, willing and able to enter into such a contract at a time essentially contemporaneous with the period such contract was offered; or

(iii) the contract constitutes a destructive competitive practice.

AUTH: Sec. 69-2-101, MCA; IMP, Secs. 69-1-102, 69-14-111 and 69-14-301, MCA

38.4.145 APPROVAL AND IMPLEMENTATION DATE OF CONTRACTS

(1) If the Commission does not institute a proceeding to review a contract, it shall be deemed "expressly approved" on the 30th day after the filing date of the contract.

(2) If the Commission does institute a proceeding to review a contract, it shall be deemed approved:

(a) on the date the Commission approves the contract if the date of approval is 30 or more days after the filing date of the contract;

(b) on the 30th day after the filing date of the contract if the Commission approves the contract prior to the 30th day after the filing date of the contract; or

(c) on the 60th day after the filing date of a contract, if the Commission fails to disapprove the contract.

(3) Transportation or service performed under a contract or amendment may begin, without specific Commission authorization, on or after the date the contract and contract summary or contract amendment and supplement are filed and before Commission approval as defined in ARM 38.4.145(1) and (2) subject to the following conditions:

(a) The contract or contract amendment shall specifically state that the transportation or service may begin on the date of filing and that performance is subject to the conditions of this Rule. The contract summary or supplement shall separately reflect the date of commencement of service under this provision under "duration of the contract," ARM 38.4.150(1)(g).

(b) If the rail equipment standards of ARM 38.4.148 are exceeded, prior relief shall be obtained from the Commission and shall be specifically identified in the contract summary.

(c) If the Commission disapproves or rejects the contract or amendment, the appropriate noncontract tariffs or the contract provisions otherwise in effect under previously approved contracts and amendments will be applicable.

(d) Before Commission approval, the contract or amendment and transportation are subject to Commission jurisdiction, and ARM 38.4.141 through 38.4.152.

(e) Transportation or service may not begin under a contract or an amendment to a contract before the filing date of either the contract or the amendment, respectively.

AUTH: Sec. 69-2-101, MCA; IMP, Secs. 69-1-102, 69-14-111 and 69-14-301, MCA

38.4.148 LIMITATION ON AGRICULTURAL EQUIPMENT AND RELIEF

(1) A rail carrier may enter into contracts for the transportation of agricultural commodities (including forest products and but not including wood pulp, wood chips, pulpwood or paper) that involve the use of carrier owned or leased equipment not in excess of 40 percent of the total number of the carrier's owned or leased equipment, by major car type, except as provided in (2) below.

(2) In the case of a proposed contract between a Class I carrier and a shipper originating an average of 1,000 cars or more per year during the prior three year period by major car

type on a particular carrier, not more than 40 percent of carrier owned or leased equipment used on the average during the prior three year period may be used for such contract without prior authorization by the Commission.

(3) The Commission may grant relief from the limitations of subparagraphs (1) and (2) above if:

(a) a rail carrier or other party requests such relief; or

(b) the Commission on its own initiative considers granting such relief; or

(c) the Commission determines that making additional equipment available does not appear to impair the rail carrier's ability to meet its common carrier obligations under 49 U.S.C. Sec. 11101(a).

AUTH: Sec. 69-2-101, MCA; IMP, Secs. 69-1-102, 69-14-111 and 69-14-301, MCA

38.4.149 SPECIAL TARIFF RULES FOR CONTRACTS (1) Contracts for railroad transportation services and contract tariffs shall be filed with the Commission in accordance with this sub-chapter.

(2) All contracts and contract tariffs shall be filed with the Commission at least 30 days, and not more than 60 days, before the date on which they are to become effective, except as otherwise authorized by the Commission.

(3) "Agricultural commodities," as used in these rules, means unmanufactured agricultural products, and includes forest products and but not including wood pulp, wood chips, pulpwood or paper.

(4) "Unreasonable discrimination," as used in these rules, means, when applied to agricultural shippers, that the railroad has refused to enter into a contract with the shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue, and that the shipper was ready, willing, and able to enter into such a contract at a time essentially contemporaneous with the period during which the contract at issue was offered.

(5) All contract tariffs and supplements shall conform with the Commission's general requirements for form, size and arrangement. These requirements are found at ARM 38.3.2601, et seq.

AUTH: Sec. 69-2-101, MCA; IMP, Secs. 69-1-102, 69-14-111 and 69-14-301, MCA

3. The Public Service Commission is proposing these amendments in order to retain jurisdiction over intrastate rail rates. The Staggers Act of 1980, Public Law 96-448, requires all states desiring to retain jurisdiction over intrastate rail rates to receive certification from the Interstate Commerce Commission (ICC). The ICC may not certify a state until it is demonstrated that the state will adopt and apply standards and procedures consistent with the Interstate Commerce Act, as amended by the Staggers Act. The Commission has determined

that it is in the public's interest to retain traditional state regulation of intrastate rail rates.

These amendments incorporate standards and procedures consistent with the Interstate Commerce Act. They will affect tariff requirements for rail service contracts.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Robert A. Nelson, Public Service Commission, 1227 11th Avenue, Helena, Montana 59620, no later than November 14, 1983.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally, he must make written request for a public hearing and submit this request along with any written comments he has to Robert A. Nelson, Public Service Commission, 1227 11th Avenue, Helena, Montana 59620, no later than November 14, 1983.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental sub-division or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25 persons based on all rail carrier customers in the State of Montana.

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


THOMAS J. SCHNEIDER, CHAIRMAN

CERTIFIED TO THE SECRETARY OF STATE OCTOBER 3, 1983.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF PROPOSED ADOPTION of
Adoption of Rule I relating	)	Rule I relating to a deduction
to a deduction for share-	)	for shareholders of small
holders of small business	)	business corporations making a
corporations making a	)	donation of computer equipment
donation of computer equip-	)	to schools.
ment to schools.)	

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 14, 1983, the Department of Revenue proposes to adopt rule I relating to a deduction for shareholders of small business corporations making a donation of computer equipment to schools.

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

RULE I DEDUCTIONS FOR SMALL BUSINESS DONATIONS OF COMPUTER EQUIPMENT TO SCHOOLS (1) A taxpayer, who is a shareholder of an electing small business corporation, claiming a deduction for gifts of computer equipment as provided for in section 15-30-126, MCA, must attach the following information to the tax return claiming the deduction:

- (a) a complete description of all items donated;
- (b) a statement of the fair market value of each item donated;
- (c) the date of manufacture for each item donated;
- (d) the date the software was developed; and
- (e) a copy of the written statement from the donee in which the donee agrees to accept the property and represents that the property will not be transferred by the donee in exchange for money, other property, or services.

(2) For the purposes of the deduction allowed by 15-30-126, MCA, apparatus intended for use with the computer shall include, but not be limited to, software provided that the software was not developed more than 5 years prior to the date of its donation to a school.

AUTH: 15-30-305, MCA; IMP: 15-30-126, MCA.

3. The Department is proposing this rule because Chapter 447 of the 1983 Laws of Montana provides for a deduction from gross income of corporations and shareholders of electing small business corporations for donations of computer equipment to schools. This rule sets forth the information which must be attached to the return in order to claim the deduction. The rule also clarifies that software is included within the definition of "apparatus intended for use with the computer". The decision to treat software in this manner was arrived at through discussions with the Revenue Oversight Committee on August 26, 1983.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to:

Ann Kenny
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than November 11, 1983.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Ann Kenny at the above address no later than November 11, 1983.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

7. The authority of the agency to make the proposed amendment is based on §15-30-305, MCA, and the rule implements §15-30-126, MCA.



ELLEN FFAVER, Director
Department of Revenue

Certified to Secretary of State 10/03/83

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF PROPOSED ADOPTION of
Adoption of Rule I relating	)	Rule I relating to a deduction
to a deduction for	)	for corporations making a
corporations making a	)	donation of computer equipment
donation of computer equip-	)	to schools.
ment to schools.)	

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 14, 1983, the Department of Revenue proposes to adopt rule 1 relating to a deduction for corporations making a donation of computer equipment to schools.

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

RULE 1 DEDUCTIONS FOR CORPORATE DONATIONS OF COMPUTER EQUIPMENT TO SCHOOLS (1) A taxpayer claiming a deduction for gifts of computer equipment as provided for in section 15-31-114(9), MCA, must attach the following information to the tax return claiming the deduction:

(a) a complete description of all items donated;
(b) a statement of the fair market value of each item donated;

(c) the date of manufacture for each item donated;

(d) the date the software was developed; and

(e) a copy of the written statement from the donee in which the donee agrees to accept the property and represents that the property will not be transferred by the donee in exchange for money, other property, or services.

(2) For the purposes of the deduction allowed by 15-31-114, MCA, apparatus intended for use with the computer shall include, but not be limited to, software provided that the software was not developed more than 5 years prior to the date of its donation to a school.

AUTH: 15-31-501, MCA; IMP: 15-31-114, MCA.

3. The Department is proposing this rule because Chapter 447 of the 1983 Laws of Montana provides for a deduction from gross income of corporations and shareholders of electing small business corporations for donations of computer equipment to schools. This rule sets forth the information which must be attached to the return in order to claim the deduction. The rule also clarifies that software is included within the definition of "apparatus intended for use with the computer". The decision to treat software in this manner was arrived at through discussions with the Revenue Oversight Committee on August 26, 1983.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to:

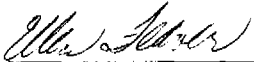
Ann Kenny
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than November 11, 1983.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Ann Kenny at the above address no later than November 11, 1983.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

7. The authority of the agency to make the proposed amendment is based on §15-31-501, MCA, and the rule implements §15-31-114, MCA.



ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 10/03/83

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE)	NOTICE OF PUBLIC HEARING ON
Adoption of Rule I relating)	THE PROPOSED AMENDMENT of
to additional deductions from) Rule I relating to additional	
the net proceeds of non-)	deductions from the net
metallic mines.)	proceeds of nonmetallic mines.

TO: All Interested Persons:

1. On November 3, 1983, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Fifth and Roberts Streets, Helena, Montana, to consider the proposed adoption of rule I relating to additional deductions from the net proceeds of nonmetallic mines.

2. The rule as proposed to be adopted was published at length at pages 1039 and 1040 of the 1983 Montana Administrative Register, issue number 15.

3. The Department has received requests for a public hearing from several interested persons. Accordingly, the Department feels it is in the best interest of all parties to hold a public hearing in this matter.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to:

Ann Kenny
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than November 11, 1983.

5. Barbara Bozman-Moss, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

6. The authority of the agency to make the proposed amendment is based on §15-23-108, MCA, and the rule implements §§15-23-502 and 15-23-503, MCA.



ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 10/03/83

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

In the matter of the repeal	)	NOTICE OF PUBLIC HEARING ON
of Rules 46.5.801, 46.5.802	)	THE PROPOSED REPEAL OF
and 46.5.803, and the adop-	)	RULES 46.5.801, 46.5.802,
tion of rules pertaining to	)	AND 46.5.803 AND THE ADOP-
the licensing of community	)	TION OF RULES PERTAINING TO
homes for persons who are	)	THE LICENSING OF COMMUNITY
developmentally disabled.	)	HOMES FOR PERSONS WHO ARE
	)	DEVELOPMENTALLY DISABLED

TO: All Interested Persons

1. On November 3, 1983, 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 repeal of Rules 46.5.801, 46.5.802 and 46.5.803 and the adoption of rules pertaining to the licensing of community homes for persons who are developmentally disabled.

2. The rules to be repealed, 46.5.801, 46.5.802 and 46.5.803, are on pages 46-257 through 46-268 of the Administrative Rules of Montana.

AUTH: Section 53-20-305, MCA
IMP: Section 53-20-305, MCA

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

RULE I PURPOSE (1) The purpose of these rules is to establish licensing requirements for community homes for developmentally disabled persons.

(2) The purpose of a community home is to provide a family-oriented, home-like residence and related residential services to persons with developmental disabilities so as to enable those persons to enjoy a manner of living that is as close as possible to that considered to be normal in the community.

(3) Residents will reside in the least restrictive environment. Intervention will be the least intrusive into, and the least disruptive of, the person's life and represent the least departure from normal patterns of living that can be effective in meeting developmental needs. The person's developmental needs will be met through domiciliary services, personal-social assistance and program plans and training. Residents will be encouraged to engage in meaningful activity, to develop techniques to become increasingly more independent, and to interact with the community in which they reside.

AUTH: Section 53-20-305, MCA

IMP: Section 53-20-305, MCA

RULE II DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Applicant" means a non-profit or state-operated entity which has completed and submitted to the department a license application/renewal request for the operation of a community home for developmentally disabled persons.

(2) "Community home" means a family-oriented residence or home designed to provide facilities for developmentally disabled persons, as defined in section 53-20-302, MCA.

(3) "Community home staff" means those persons employed by a provider to directly participate in the care, supervision and guidance of the residents in a community home for developmentally disabled persons.

(4) "Department" means the department of social and rehabilitation services.

(5) "Developmentally disabled person" means a person who has a developmental disability as defined in 53-20-202(3), MCA.

(6) "Habilitation" means the process by which the staff assists developmentally disabled persons to acquire and maintain skills, to enable them to cope with their own demands, and to raise the level of their physical, mental and social functioning.

(7) "Individual habilitation plan (IHP)" means a written plan of intervention and action developed as provided for in ARM 46.8.105 by an interdisciplinary team of persons on the basis of a skill assessment and determination of the status and the needs of a developmentally disabled person.

(8) "Provider" means the persons, corporation or other entity furnishing community home services to developmentally disabled persons.

(9) "Resident" means a developmentally disabled person who lives in and receives services from a community home.

(10) "Training" means an organized program for assisting developmentally disabled persons in acquiring, improving or maintaining particular skills.

AUTH: Section 53-20-305, MCA

IMP: Section 53-20-305, MCA

RULE III LICENSE REQUIRED (1) The department will issue a license for a community home to any license applicant meeting requirements established by these rules.

(2) The department will determine based upon a licensing study whether an applicant meets the requirements.

(3) The department will deny a license to any applicant that fails to meet the requirements established by these rules

unless circumstances require that a temporary license be issued or the department determines it is appropriate to issue a provisional license.

(4) The department will issue a license annually on the expiration date of the previous year's license if:

(a) the provider makes written application for issuance at least 30 days prior to the expiration date of its current license; and

(b) the provider continues to meet all standards established by these rules, as determined by the department after a licensing study and upon receipt of certification by the state fire marshal and local health authority.

(5) A community home may be licensed for two or more residents not to exceed eight and, with special written permission from the department, may be licensed for nine to twelve residents.

(6) The department may give special permission for a community home license for nine to twelve residents if the state fire marshal verifies in writing that:

(a) a manually operated fire alarm system is installed;

(b) all sleeping rooms below street floor level have direct access to the outside of the building; and

(c) any corridor or space necessary for safe exit does not pass an exposed vertical opening; or

(d) there are suitable alternatives to subsections (a), (b) or (c) already in place and approved in writing by the state fire marshal.

(7) The department may issue a temporary license not to exceed 60 days to any applicant or provider who has not received a fire marshal or health department certification because of unavoidable delays in the certification process.

(8) The department may in its discretion issue a provisional license for any period, not to exceed 6 months, to any license applicant that has met all applicable requirements for fire safety and has submitted a written plan approved by the department to comply fully with all minimum requirements established by these rules within the time period covered by the provisional license.

(a) The department may renew a provisional license if the license applicant shows good cause for failure to comply fully with all minimum requirements within the time period covered by the prior provisional license, but the total time period covered by the initial provisional license and renewals may not exceed one year.

AUTH: Section 53-20-305, MCA

IMP: Section 53-20-305, MCA

RULE IV LICENSING PROCEDURES (1) An applicant shall apply for a community home license prior to the operation of

such home or to the expiration of a current license. Application shall be made to the department upon forms provided by the department.

(2) The department will upon receipt of the application, conduct a study and evaluation of the applicant.

(3) If the department determines that an application or accompanying information is incomplete or erroneous, the applicant will be notified of the specific deficiencies or errors and shall submit the required or corrected information within 60 days. The department will not issue a license until it receives all required information.

(4) Each applicant shall promptly report to the department changes which would affect the current accuracy of information provided on the application.

AUTH: Section 53-20-305, MCA

IMP: Section 53-20-305, MCA

RULE V LICENSE REVOCATION, DENIAL OR SUSPENSION (1) The department may deny, revoke or suspend a community home license by written notification to the provider if the department determines that:

(a) the facility is not in compliance with fire safety requirements as evidenced in writing by the state fire marshal; or

(b) the program is not in substantial compliance with health rules or any other licensing requirements established by this subchapter; or

(c) the provider has made misrepresentations to the department, either negligent or intentional, regarding any aspect of its operations or facility.

(2) If any violation places a resident in a life threatening situation the license may be immediately revoked.

AUTH: Section 53-20-305, MCA

IMP: Section 53-20-305, MCA

RULE VI FAIR HEARING (1) Any person, corporation or other entity dissatisfied because of either the department's refusal to grant a license or the department's revocation or suspension of a license may request a fair hearing in accordance with ARM 46.2.201 through 46.2.214.

(2) The provider shall cease operation of the community home pending the fair hearing in those instances where the revocation or suspension of the license is based upon actions that the department has determined are imminent life or health endangering situations.

AUTH: Section 53-20-305, MCA

IMP: Section 53-20-305, MCA

RULE VII FIRE, HEALTH AND SAFETY CERTIFICATION (1) A community home will only be licensed by the department if there is written certification from the state fire marshal's office that the home meets the following requirements in addition to the uniform fire code and group R, division 3, of the uniform building code:

(a) Smoke detectors listed by a recognized testing laboratory shall be located at stairways and in any areas requiring separation as set forth in the uniform building code.

(b) A fire extinguisher listed by a recognized testing laboratory with a minimum rating of 2A10BC shall be readily accessible to the kitchen area.

(c) The date and signature of the person(s) checking both the batteries in the smoke detector, monthly, and the fire extinguisher, quarterly, shall be recorded and filed at the home.

(d) Procedures and routes of evacuation shall be readily available in the home.

(e) Training and evacuation drills shall be done at least monthly for all staff and residents and be recorded.

(f) A telephone or other means of notifying the fire department or other emergency services should be readily accessible in the home.

(2) A community home will only be licensed by the department if there is written certification from the local or state health authority that the home meets the following requirements:

(a) For an adequate and potable water supply, a community home must:

(i) connect to a public water supply system approved by the state department of health and environmental sciences (DHES); or

(ii) for community homes utilizing a non-public water system, the department hereby adopts and incorporates by reference the following circulars prepared by the department of health and environmental sciences (DHES):

(A) circular #11 for springs;

(B) circular #12 for water wells;

(C) circular #17 for cisterns;

(D) the circulars mentioned in subsections (A), (B) and (C) set forth the relevant water quality standards and are available from the department of health and environmental sciences, cogsweil building, Helena, Montana.

(iii) if a non-public water supply is used, submit a water sample for analysis at least quarterly to a laboratory licensed by DHES;

(iv) repair or replace the water system when the supply:

(A) contains microbiological contaminants; or

(B) does not have the capacity to provide adequate water for drinking, cooking, personal hygiene, laundry, and water carried waste disposal.

(b) For sewage to be safely disposed of, a community home must:

(i) connect to a public sewage system approved by DHES; or

(ii) if a non-public system is utilized, the department hereby adopts and incorporates by reference bulletin 332, which sets forth standards for sewage disposal. A copy of bulletin 332 may be obtained from the department of health and environmental sciences, cogsell building, Helena, Montana; and

(iii) repair or replace the sewage system whenever:

(A) it fails to accept sewage at the rate of application;

(B) seepage of effluent from or ponding of effluent on or around the system occurs;

(C) contamination of a potable water supply or state waters is traced to the system; or

(D) a mechanical failure occurs.

(c) For solid waste to be safely stored and disposed of, a provider must:

(i) store all solid waste between collections in containers which have lids and are corrosion-resistant, flytight, watertight, and rodent-proof;

(ii) clean all solid waste containers as needed; and

(iii) utilize a private or municipal hauler to transport the solid waste at least weekly to a landfill site approved by the department of health and environmental sciences.

(d) For safety and sanitation a provider must comply with the following structural requirements:

(i) All rooms and hallways must be provided with at least 10 footcandles of light.

(ii) Floors and walls of rooms subject to large amounts of moisture must be smooth and non-absorbent.

(iii) Floor and wall mounted furnishings must be easily moved or mounted in such a way as to allow for easy cleaning.

(iv) Adequate toilet and bathing facilities must be provided:

(A) one toilet and one sink for every six residents;

(B) one tub and shower for every eight residents;

(C) drying space for wash cloths and towels; and

(D) bathing facilities and stairs must be provided with anti-slip surfaces.

(v) Food preparation facilities must be equipped with at least the following:

(A) facilities to adequately wash utensils and equipment;

(B) refrigeration equipment capable of maintaining foods at or below 45° F;

- (C) cooking facilities;
- (D) adequate and clean food preparation and storage areas;
- (E) equipment to insure all food is transported, stored, covered, prepared and served in a sanitary manner; and
- (vi) Separate storage of clean and dirty linen shall be provided.
- (vii) Storage space shall be available for the personal belongings of residents and for food, linen, equipment and other household supplies.
- (viii) There shall be hot and cold water available in the home. Water temperature for hot water must be limited to 120°F or below.
- (e) For adequate housekeeping a provider must insure that:
 - (i) the building and grounds are free, to the extent possible, of harborage for insects, rodents, and other vermin;
 - (ii) the floors, walls, ceilings, furnishings, and equipment are in good repair, free of hazards, clean and free from offensive odors;
 - (iii) cleaning equipment and supplies are provided in sufficient quantity to meet housekeeping needs of the facility; and
 - (iv) every provider must have and adhere to a maintenance policy and schedule which describes the regular maintenance of the home and yard. The maintenance policy shall include type of duties, methods and timelines relating to housekeeping, repairs, and general prevention of accidents and health dangers.
- (f) Poisonous compounds shall not be stored in food preparation areas or food storage areas or in any areas where residents may initiate unsupervised contact.
- (g) Drugs shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security. Outdated and deteriorated drugs and drugs not being used must be removed and disposed of.
- (h) Use of home canned products other than jams, jellies and fruits is prohibited unless the home is approved as a commercial food processor.
- (3) Local health sanitarians are permitted to charge a reasonable fee for their inspection services to the applicant.

AUTH: Section 53-20-305, MCA

IMP: Section 53-20-305, MCA

RULE VIII PHYSICAL SITE REQUIREMENTS (1) The community home shall be located to facilitate the use of community resources. If the home is not within walking distance of community shopping, recreational and other community services;

transportation shall be available at no cost or an affordable cost to the resident.

(2) The design, construction and furnishings of the home shall be home-like and encourage a personalized atmosphere for residents.

(3) Each bedroom shall be limited to not more than three

(3) persons and shall include:

(a) floor to ceiling walls;

(b) one door which can be closed to allow privacy for residents;

(c) a minimal clear floor space of 7' x 9' shall be provided for a single bedroom; 13' x 9' for a double room; and 13' x 17' for a three-bed room. The space does not include closet space; and

(d) at least one window which can be opened.

(4) Lighting shall be available in all living areas as needed.

(5) A comfortable temperature shall be maintained.

(6) The building exterior and yard shall be in good repair and free from hazards such as protruding sharp objects, uncovered wells and cellars and yard maintenance equipment which may be used inappropriately.

(7) All plumbing fixtures shall be in good repair and properly functioning.

(8) Inspection of the heating system and hot water tank shall be made regularly.

(9) For community homes caring for wheelchair and/or other physically handicapped residents, the department hereby adopts and incorporates by reference the American National Standards: specifications for making buildings and facilities accessible to and usable by physically handicapped people. A copy of the specifications is available from the Department of Social and Rehabilitation Services, Community Services Division, 111 Sanders, Helena, Montana 59604.

AUTH: Section 53-20-305, MCA

IMP: Section 53-20-305, MCA

RULE IX RESIDENT SUPPLIES AND EQUIPMENT (1) The provider shall provide the following:

(a) a separate bed of proper size and height for the resident;

(b) clean, comfortable mattress and appropriate bedding which shall be changed as needed and at least once a week;

(c) appropriate furnishings for storage of personal belongings, i.e., a chest of drawers;

(d) access to a mirror;

(e) curtains or window shades which provide privacy;

(f) tables, chairs, sofas, lamps and other furnishings in a common living area for family-like comfort and use;

(g) at least two (2) towels and washcloths per resident, which are changed as needed and at least twice a week; and

(h) personal supplies and other hygienic necessities whenever the resident does not have the ability to provide these supplies.

(2) The provider shall insure that clothing purchase and care includes:

(a) clothing which is appropriate to the chronological ages considering personal choice; and

(b) clothing which is of good quality, appropriate size, seasonable and in good repair.

AUTH: Section 53-20-305, MCA

IMP: Section 53-20-305, MCA

RULE X STAFFING; STAFF RESPONSIBILITIES AND QUALIFICATIONS

(1) The provider shall have a sufficient number of appropriately qualified staff to supervise, care for, and train residents.

(2) There shall be a minimum of one staff person present who is directly responsible for resident care and activities when any resident is in the home. This requirement is not applicable if the resident or residents present in the home have been determined by their individual habilitation planning team to be competent in self-care in such situations.

(3) There shall be a minimum of one appropriately trained person who is directly responsible for planning, implementing and reviewing each community home service and residents' program.

(4) The provider shall employ no staff person who has impairments to his/her ability to protect the health and safety of the residents or who would endanger the physical or psychological well-being and progress of the residents.

(5) The provider shall provide orientation for each new employee within the first week of employment. This orientation includes training in:

(a) familiarization with the residents and the community home's philosophy, organization, policies, activities, programs, practices and goals;

(b) first aid, emergency procedures and accident prevention techniques;

(c) the implementation of the normalization principle;

(d) knowledgeably and tactfully dealing with residents, relatives or guardians and visitors;

(e) meeting needs of residents through care, supervision, and training skills;

(f) attaining skill areas in which the employee has not reached the level of competence for the job;

(g) description of duties, responsibilities, limitations of authority and principal measures of accountability and performances;

(h) rights of residents which include at a minimum those rights as defined by the client's rights policy of the developmental disabilities division of the department (DD 441); and

(i) aversive and deprivation procedures policy as defined by the developmental disabilities division of the department (DD 442).

(6) The provider annually shall provide or obtain continuing training and education of the information listed in subsections (5) (a) - (i) above for each direct care staff.

(7) The provider shall provide documentation and attendance records of training and orientation provided for all new and continuing employees. Agendas, general outlines, narratives and other descriptions may be provided to describe the type of content of said training activities.

AUTH: Section 53-20-305, MCA

IMP: Section 53-20-305, MCA

RULE XI RIGHTS (1) Intervention for the purposes of training shall be the least intrusive into, and the least disruptive of, the person's life and represent the least departure from normal patterns of living that can be effective in meeting developmental needs.

(2) The residents shall not be subjected to treatment of a manner which:

(a) includes abuse or neglect; and/or

(b) limits individual rights without due process.

(3) The utilization in training of aversive procedures or of procedures infringing upon individual rights must meet the approval of the developmental disabilities division and must be presented in writing to the licensing worker.

AUTH: Section 53-20-305, MCA

IMP: Section 53-20-305, MCA

RULE XII HEALTH CARE (1) The provider shall assure each individual of appropriate health care by providing or arranging for:

(a) a primary physician for each resident to provide for health needs;

(b) at least an annual health check-up;

(c) a primary dentist for each resident for at least annual check-ups;

(d) family planning, counseling, mental health and other consultation when appropriate;

(e) medication administration through the procedures listed in Section 53-20-204(2) MCA, and as prescribed;

(f) modified and therapeutic diets as prescribed;

(g) procedures for the detection of signs of injury, disease, abuse and emergency medical care;

(h) drinking water throughout each day;

- (i) a variety of foods which meet the nutritional needs of the residents adjusted for age, sex and activity;
- (j) developing, reviewing and recording weekly menus of meals served;
- (k) adequate meals in a family style manner, as appropriate to the individual residents, three times a day;
- (l) snacks at appropriate times each day;
- (m) a shower or tub bath daily at the most independent level possible and with due regard for privacy;
- (n) residents to brush their teeth daily; and
- (o) written procedures for emergency medical care.

AUTH: Section 53-20-305, MCA
IMP: Section 53-20-305, MCA

RULE XIII RESIDENT'S MONEY AND PERSONAL PROPERTY (1) The provider shall insure that the resident's personal money and personal property is not appropriated or misused by any other person or by the provider and its staff.

(2) The provider is responsible for the accurate preparation and maintenance of a written record of each resident's personal property and personal money.

(3) The provider will keep a current monthly record of each resident's income and sources of income. The monthly expenses, including room and board, for the provider will be determined at the time of admission and will be shown monthly as a deduction from the resident's income received.

AUTH: Section 53-20-305, MCA
IMP: Section 53-20-305, MCA

RULE XIV RECORD KEEPING (1) The provider shall maintain a written record at the community home for each resident which shall include detailed administrative, training, and educational data. The resident's record shall include at least the following:

- (a) name, sex, birthdate, address, parents/relatives, guardianship, other vital statistics, admission and discharge;
- (b) nature of the resident's difficulties;
- (c) services needed by the resident and his/her family;
- (d) the treatment plan, goals of the plan, and anticipated duration of treatment and training;
- (e) measures taken to implement the plan, i.e. individual training programs;
- (f) evaluation of the services the resident received;
- (g) health records, psychiatric and psychological reports, educational information, assessments, official documentation and financial arrangements including resident's income and expenditures related to services provided to resident;
- (h) resident's activities and incident reports;

(2) Other written records kept at the community home shall include:

(a) fire safety requirements and compliance; evacuation of residents and staff; fire safety plans and results of monthly fire drills; and

(b) a list of social service and other service personnel involved with the residents.

(3) The provider administrative file shall be maintained and shall be available upon request of the department. It shall contain at least the following current information and documents:

(a) governing structure including articles of incorporation and by-laws or other legal basis of existence;

(b) name and position of persons authorized to sign agreements of official documentation;

(c) board structure and composition with names, addresses and terms of membership;

(d) existing purchase of service agreements;

(e) insurance coverage;

(f) procedure for notifying parties of changes in facility's policy and programs;

(g) a current organizational chart;

(h) current written job descriptions for all employees, and the names of persons presently employed in those positions;

(i) records of orientation and training for each employee;

(j) personnel and programmatic policies and procedures; and

(k) written grievance procedures which are available to residents and staff.

(4) All entries shall be in ink or indelible pencil, prepared at the time or immediately following the occurrence of the event being recorded, be legible, dated and signed by the person making the entry.

(5) The provider is responsible for the accurate preparation, maintenance and storage of all resident, personal and home records.

(6) The provider shall assure that all resident records are confidential in accordance with all applicable laws and rules and departmental policy.

(7) Records for residents who have been released from the home shall be transferred with the resident or stored by the provider for a period of five years following the release.

(8) When the home ceases operation, the provider shall notify the department in writing as to the location and storage of resident records.


AUTH: Section 53-20-305, MCA

IMP: Section 53-20-305, MCA

4. The proposed rules for the licensing of community homes for developmentally disabled persons and the proposed repeal of the existing rules will further the interests of developmentally disabled persons who are residents of such homes by implementing revised and new standards and procedures which will better protect and see to the best interests of the residents. The current rules have not been revised in several years and are not at this time adequate for serving the purposes for which they are intended. The 1981 Montana Legislature revised the authority and implementing statute 53-20-305, MCA. These proposed rules will reflect the legislative direction provided in the Statement of Intent which accompanied the act amending the statute.

5. 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 November 11, 1983.

6. 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 October 3, 1983.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF AMENDMENT OF
of rules 2.21.123, 2.21.133,	)	RULES 2.21.123, 2.21.133,
and 2.21.137 relating to sick	)	AND 2.21.137 RELATING TO
leave	)	SICK LEAVE

TO: All Interested Persons.

1. On August 25, 1983, the Department of Administration published notice of a proposed amendment of rules concerning sick leave at page 1129 of the 1983 Montana Administrative Register, issue number 16.

2. The department has amended the rules with the following changes:

2.21.133 ACCRUAL AND USE OF SICK LEAVE CREDITS (1) All employees serving in positions that are permanent, temporary, seasonal, part-time and intermittent employees are eligible to earn sick leave credits.

(2) - (9) Same as proposed rule.

(10) Persons simultaneously employed in two or more positions in the same or in different agencies will accrue sick leave credits in each position according to the number of hours worked. Sick leave credits will be used only from the position in which the credits are earned and with the approval of the supervisor or appropriate authority for that position. Only hours paid at the regular hourly rate will be counted. Under no circumstances will an employee accrue sick leave credits for more than 40 hours of work in a week.

(11) Same as proposed rule.

~~(12) Sick leave credits will be used only from the position in which the credits are earned and with the approval of the supervisor or appropriate authority for that position.~~

~~(13)~~ (12) As provided in 2-18-518, MCA, "an employee may not accrue sick leave credits while in a leave without pay status."

(13) An employee who has worked the qualifying period for use of sick leave does not have to repeat that period upon return to work from a continuous leave of absence without pay exceeding 15 working days.

(14) An employee who has not worked the qualifying period for use of sick leave must repeat that period upon return to work from a continuous leave of absence without pay exceeding 15 working days. The employee would not lose any accrued sick leave credits but would not be eligible to use any earned sick leave credits until after working 90 continuous days.

2.21.137 SICK LEAVE REQUESTS (1) - (6) Same as proposed rule.

(7) The agency may require an employee to be examined by a licensed physician or a licensed practitioner of the agency's choice. The agency shall pay the costs of such an examination.

3. The department received the following comments.

COMMENT: In 2.21.133(1) the current language suggests that an employee in probationary status will not earn sick leave.

RESPONSE: The department agrees and has amended the rule to indicate that all employees in positions that are permanent earn leave credits. Employees in probationary status are included in that group.

COMMENT: The department received two comments stating that 2.21.133(12) needs to reflect the fact that this provision relates to employees employed in two or more positions.

RESPONSE: The department agrees and has reorganized the rules, incorporating paragraph (12) into paragraph (10).

COMMENT: Deleting paragraphs (15) and (16) in 2.21.133 removes the requirement that an employee serve a qualifying period of 90 continuous days before being eligible to use accrued sick leave.

RESPONSE: The department has reinstated those sections, now numbered (13) and (14).

COMMENT: Amend rule 2.12.122 Definitions, to include "siblings" in the definition of immediate family.

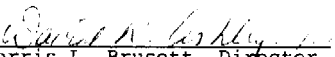
RESPONSE: Making this change would require a new rule action. The department does not propose to make such a change at this time due to lack of support from agencies. The current definition allows care of other family members at the agencies' discretion.

COMMENT: In 2.21.137, add a statement allowing agencies to require an employee to be examined at the agencies' expense.

RESPONSE: The department agrees and such a statement has been added.

COMMENT: Add a section to the rules which would provide that an employee who becomes ill after reporting to work must request the use of sick or other appropriate leave for the remainder of any working hours and that the employee shall not receive regular pay for the remainder of working hours.

RESPONSE: The department believes such time reporting is implicit in the use of sick leave. Adding a specific section to the rules would require a new rule action.

By: 
Morris L. Brusett, Director
Department of Administration

Certified to the Secretary of State, October 3, 1983.

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

In the matter of the adoption of) NOTICE OF ADOPTION OF 8.22.
a new rule concerning hearing) 325 HEARING EXAMINER
examiners.)

TO: All Interested Persons:

1. On June 30, 1983, the Board of Horse Racing published a notice of various proposed amendments and adoptions at pages 683-688, 1983 Montana Administrative Register, issue number 12. All other amendments and adoptions were amended and adopted at page 1082, 1983 Montana Administrative Register, issue number 15, effective August 12, 1983. The board had delayed adoption of the above rule to allow time for further study.
2. The board is adopting the rule exactly as proposed.
3. No comments or testimony were received.

BEFORE THE BOARD OF HEARING AID DISPENSERS

In the matter of the amendment) NOTICE OF AMENDMENT OF ARM
of 8.20.401 concerning trainee-) 8.20.401 TRAINEESHIP REQUIRE-
ship requirements and standards) MENTS AND STANDARDS

TO: All Interested Persons:

1. On August 25, 1983, the Board of Hearing Aid Dispensers published a notice of proposed amendment of 8.20.401 concerning traineeship requirements at pages 1132 and 1133, 1983 Montana Administrative Register, issue number 16.
2. The board has amended the rule exactly as proposed.
3. No comments or testimony were received.

DEPARTMENT OF COMMERCE

BY:


GARY BUCHANAN, DIRECTOR

Certified to the Secretary of State, October 3, 1983.

STATE OF MONTANA
DEPARTMENT OF COMMERCE

In the matter of the adoption) NOTICE OF ADOPTION OF A NEW
of a rule concerning retention) RULE 9.80.103 RETENTION
of bank records) OF BANK RECORDS

TO: All Interested Persons:

1. On June 30, 1983, the Department of Commerce published a notice of public hearing regarding the adoption of a new rule concerning retention of bank records at pages 693 - 695, 1983 Montana Administrative Register, issue number 12.

2. The hearing was held in the downstairs conference room of the Department of Commerce, 1430 9th Avenue, Helena, Montana at 1:30 p.m., August 4, 1983.

In addition to Chris Olson, Bank Examiner Supervisor and Geoffrey L. Brazier, Hearing Examiner, there were five persons in attendance. Three letters were received. No opposition was offered in regard to the rule. Suggestions were made in the letters and at the hearings. All suggestions were considered. Several changes were made in response to the suggestions.

The rule has been adopted as proposed with the following changes: (new matter underlined, deleted matter interlined)

"8.80.103 RETENTION OF BANK RECORDS (1) ...

(3) ...

Correspondent Accounts

Advices.....2
Paid Drafts.....2
Statement.....2
Reconcilements.....2

...

Miscellaneous

Paid officers checks.....7
Dividend checks.....7
~~Correspondence~~.....3
General ledger.....P
Daily statement.....P 3
Wire transfers.....7

(4)...

(5) Records not covered by these rules or section 32-1-491, MCA, are to be retained for a period of time determined appropriate by the bank's board of directors. Such retention periods determined appropriate shall be noted as a permanent part of the boards' minutes."

3. No other testimony or comments were submitted.

DEPARTMENT OF COMMERCE

BY:

GARY BUCHANAN, DIRECTOR

Certified to the Secretary of State, October 3, 1983.

19-10/13/83

Montana Administrative Register

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF MILK CONTROL

In the matter of the amendment)	NOTICE OF AMENDMENT OF RULE
of Rule 8.86.301 (5), (6) (a),)	8.86.301 (5), (6) (a), (b),
(b), (9) (a), (e), (11), (14) (a))	(9) (a), (e), (11), (14) (a)
as it relates to deleting the)	<u>PRICING RULES</u>
references to "marketing areas")	
in the rule to coincide with,)	DOCKET #66-83
and conform to, the repeal of)	
81-23-301, MCA.)	

To All Interested Persons:

1. On August 25, 1983, the Board of Milk Control and the Milk Control Bureau of the Department of Commerce, published a notice proposing to amend Rule 8.86.301, subsections (5), (6) (a), (b), (9) (a), (e), (11), (14) (a) relating to deleting the references to "marketing areas" in the rule to coincide with, and conform to, the repeal of 81-23-301, MCA, at pages 1142 through 1147, 1983 Montana Administrative Register, issue number 16.

2. The Board of Milk Control has amended the rule exactly as proposed.

3. No comments or testimony were received.

BOARD OF MILK CONTROL
CURTIS C. COOK, CHAIRMAN

By: William E. Ross
William E. Ross, Chief
Milk Control Bureau
Department of Commerce

Certified to the Secretary of State October 3, 1983.

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

In the matter of the	)	NOTICE OF
adoption of rule 16.32.373	)	ADOPTION OF A RULE
establishing licensure	)	ESTABLISHING STANDARDS FOR
standards for hospice	)	LICENSURE OF HOSPICES
programs)	

TO: All Interested Persons

1. On August 25, 1983, the department published notice of a proposed adoption of rule 16.32.373 establishing minimum standards for licensure of hospice programs at page 1159 of the 1983 Montana Administrative Register, issue number 16.

2. On October 3, 1983, the department adopted the rule with the following changes:

- 16.32.373 MINIMUM STANDARDS FOR A HOSPICE PROGRAM,
LICENSING AND CERTIFICATION (1)(a) and (b) Same as proposed.
- (2) A hospice program may be licensed to operate either:
- ~~(b)~~ (a) as a part of a licensed hospital without its own license when the department finds that the hospital's hospice program meets the requirements set forth in this rule, or
- ~~(a), (b)~~ as a free-standing hospice with its own hospice license, or when the department finds that it meets the requirements set forth in this rule.
- (3)(a) - (c) Same as proposed.
- (d) Established policies for the administration and operation of the program, including but not limited to:
- (i) Written criteria for program admission and discharge;
- (ii) Procedures for bereavement referrals and assistance;
- (iii) Development of a plan of care;
- (iv) Patient transfer agreements; Agreements with other licensed health care facilities for proper transfer of patients and follow-up of plans of care;
- (v) System(s) for recordkeeping;
- (vi) Patient care procedures; and
- (vii) In-service education.
- (e) Formal, on-going long range planning;
- (f) Development of annual budgets;
- (g) Annual evaluation of each aspect of the hospice program, including the program's quality assurance measures.
- (4) - (5) Same as proposed.
- (6)(a) - (c) Same as proposed.
- (d) All doctor's orders; A record of all doctor's orders, verified at appropriate intervals;
- (e) Progress notes, dated and signed; and
- (f) Evidence of timely action by the patient care team.
- (7) - (10) Same as proposed.

3. Certain comments on the proposed rule as well as the Department's responses are set forth as follows:

COMMENT: Since approximately one-fourth of all hospices in the nation are based out of home health agencies and since in-home care comprises the largest component of hospice care, subsection (2) of the proposed rule should allow for licensure of hospices which are sponsored by home health agencies.

RESPONSE: Senate Bill 208 (Ch. 324, L. 1983) effectively established two categories of hospices eligible for licensure, those which are attached to hospitals and those which are not. The comment is well taken and subsection (2) has been revised to reflect properly the two categories which clearly include hospices based at home health agencies.

COMMENT: All in-home care, whether provided by home health agencies, hospices or private enterprise, should be required to meet basic standards of in-home care.

RESPONSE: Senate Bill 208 (Ch. 324, L. 1983) requires hospices providing in-home care normally performed by home health agencies to provide the same quality of care offered by home health agencies. If the comment suggests a literal application to hospices of the Condition of Participation for home health agencies set forth in 42 CFR 450, Subpart L, then the Department cannot agree. Hospices and home health agencies have fundamentally different roles in the field of health care and Subpart L addresses far more aspects of a home health agency than actual in-home care (e.g., governing body, therapists). Rather, the statutory provision is reasonably applied to assure care of equivalent quality by requiring that hospice in-home care be provided by qualified personnel (e.g., skilled nursing) under the order of a physician and this has been accomplished in various parts of subsections (3) through (9) of the rule.

COMMENT: By what procedures and at what cost will the department make its determination that a hospice program meets the requirements of the rule.

RESPONSE: Licensing determinations will be made initially and annually thereafter by means of on-site evaluations conducted at the administrative office(s) of the hospice applying for licensure. The annual licensing fee shall be \$20 but there shall be no fee for hospices which are part of a licensed hospital. See Section 3, Chapter 324, Laws of 1983.


COMMENT: Please explain what is included in the term "patient transfer agreements" in subsection (3)(d)(iv) of the proposed rule.

RESPONSE: This item is intended to assure that the terms under which hospice patients are transferred from home or from

one health care facility to another are by prior agreement and that transfers do not disrupt the continuation of the patient care plan. Subsection (3)(d)(iv) of the rule has been clarified to express this intent.

COMMENT: Does the requirement in subsection (6)(d) that the hopsice medical record include "all doctor's orders" mean a record of all doctor's orders or the actual orders signed by physicians?

RESPONSE: Inclusion of actual doctor's orders is not necessary for an adequate medical record. However, the record of doctor's orders should be verified by the physician(s) at appropriate intervals. Subsection (6)(d) of the rule has been clarified in this regard.


JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State October 3, 1983

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the amendment of	) NOTICE OF THE AMENDMENT OF
Rules 20.3.201 through 20.3.203,	) RULES 20.3.201 - 20.3.203,
20.3.206 through 20.3.209,	) 20.3.206 - 20.3.209, 20.3.212
20.3.212 through 20.3.216,	) - 20.3.216, 20.3.301 -
20.3.301 through 20.3.303,	) 20.3.303, 20.3.401, 20.3.402,
20.3.401, 20.3.402, 20.3.405,	) 20.3.405, 20.3.406, 20.3.408,
20.3.406, 20.3.408, 20.3.409,	) 20.3.409, 20.3.411 - 20.3.415
20.3.411 through 20.3.415 and	) AND THE ADOPTION OF RULE I -
the adoption of a new rule per-	) 20.3.416
taining to the approval of)
chemical dependency programs,	) (APPROVAL OF CHEMICAL DE-
guidelines for county chemical	) PENDENCY PROGRAMS, GUIDELINES
dependency plans and the certi-	) FOR COUNTY CHEMICAL DEPEND-
fication system for chemical	) ENCY PLANS AND CERTIFICATION
dependency personnel.	) SYSTEM FOR CHEMICAL DEPEND-
	) ENCY PERSONNEL)


TO: All Interested Persons.

1. On August 25, 1983, the Department of Institutions published notice of the proposed amendment of rules 20.3.201 through 20.3.203, 20.3.206 through 20.3.209, 20.3.212 through 20.3.216, 20.3.301 through 20.3.303, 20.3.401, 20.3.402, 20.3.405, 20.3.406, 20.3.408, 20.3.409, 20.3.411 through 20.3.415 pertaining to the approval of chemical dependency programs, guidelines for chemical dependency plans and the certification system for chemical dependency personnel and the proposed adoption of Rule I - 20.3.416 pertaining to the certification system for chemical dependency personnel at pages 1162 through 1192 of the 1983 Montana Administrative Register, issue number 16.

2. The Department has amended the rules and adopted the new rule as proposed with the following changes: The authority citation in Rule 20.3.203 was changed to Section 53-24-208 MCA and the authority citation for the rules in Title 20, Section 3, Subsection 4 to Section 53-24-204 MCA. The above changes were made at the suggestion of Greg Petesch of the Administrative Code Committee. In Rule 20.3.202 (1)(d) the ARM citation has been changed from Section 20.3.401-405 ARM to rules 20.3.401-416 ARM. This was an error discovered by the Department during a review of the rules.

3. No other comments, testimony or requests for a public hearing were received by the Department.

4. The authority for the rules is Sections 53-24-204, 207, 208, 209, 211, 305 MCA and the rules implement Sections 53-24-204, 207, 208, 209, 305, 306 MCA.


CARROLL V. SOUTH, Director
Department of Institutions

Certified to the Secretary of State October 3, 1983.
Montana Administrative Register 19-10/13/83

BEFORE THE BOARD OF LABOR APPEALS
OF THE STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF THE
of rules concerning reconsideration	)	ADOPTION OF RULE
of Board decisions.	)	24.7.315

TO: All Interested Parties.

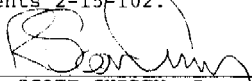
1. On July 28, 1983 the Board of Labor Appeals published a notice of a proposed rule concerning reconsideration of Board decisions at page 938-939 of the Montana Administrative Register, issue number 14.

2. The agency has adopted the rule as proposed.

3. No comments or testimony were received.

4. The authority for the rule is 2-15-102, 2-15-1704 and 39-51-310 and the rule implements 2-15-102.

By:


R. SCOTT CURREY, General Counsel
for MICHAEL WHALEN, Chairman
Board of Labor Appeals

Certified to the Secretary of State September 30, 1983.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF AMENDMENT of Rule
Amendment of Rule 42.15.421	)	42.15.421 relating to a
relating to a deduction for	)	deduction for heads of
heads of households.	)	households.

TO: All Interested Persons:

1. On July 28, 1983, the Department of Revenue published notice of the proposed amendment of rule 42.15.421 relating to a deduction for heads of households at pages 954 and 955 of the 1983 Montana Administrative Register, issue number 14.
2. The Department has amended rule 42.15.421 as proposed.
3. No written comments or testimony were received.
4. The authority for the rule is §15-30-305, MCA, and the rule implements §15-30-122, MCA.

IN THE MATTER OF THE	)	NOTICE OF ADOPTION of Rule
Amendment of Rule 42.15.424	)	42.15.424 relating to ex-
relating to expanded child	)	panded child and dependent
and dependent care deduction.)	)	care deduction.

TO: All Interested Persons:

1. On July 28, 1983, the Department of Revenue published notice of the proposed amendment of rule 42.15.424 relating to an expanded child and dependent care deduction at pages 945 and 947 of the 1983 Montana Administrative Register, issue number 14.
2. The Department has amended rule 42.15.424 as proposed.
3. No written comments or testimony were received.
4. The authority for the rule is §15-30-305, MCA, and the rule implements §15-30-121, MCA.

IN THE MATTER OF THE	)	NOTICE OF AMENDMENT of Rule
Amendment of Rule 42.17.103	)	42.17.103 relating to the
relating to the exemption of	)	exemption of tip income from
tip income from taxation.	)	taxation.

TO: All Interested Persons:

1. On July 28, 1983, the Department of Revenue published notice of the proposed amendment of rule 42.17.103 relating to the exemption of tip income from taxation at pages 952 and 953 of the 1983 Montana Administrative Register, issue number 14.
2. The Department has amended rule 42.17.103 as proposed.

3. No written comments or testimony were received.

4. The authority for the rule is §15-30-305, MCA, and the rule implements §15-30-201, MCA.

IN THE MATTER OF THE	)	NOTICE OF AMENDMENT of Rule
Amendment of Rule 42.31.2101	)	42.31.2101 relating to the
relating to the definition of)		definition of public con-
public contractors and Rule	)	tractors and Rule 42.31.2141
42.31.2141 relating to a	)	relating to a deduction from
deduction from the gross	)	the gross receipts tax.
receipts tax.)	

TO: All Interested Persons:

1. On July 28, 1983, the Department of Revenue published notice of the proposed amendment of rule 42.31.2101 relating to the definition of public contractors and rule 42.31.2141 relating to a deduction from the gross receipts tax at pages 973 and 974 of the 1983 Montana Administrative Register, issue number 14.

2. The Department has amended rules 42.31.2101 and 42.31.2141 as proposed.

3. No written comments or testimony were received.

4. The authority for the rule is §15-50-503, MCA, and the rules implement §§15-50-501 and 15-50-207, MCA.

Eileen Weaver, by
Dan Buckle, Deputy Director for
EILEEN PEPPER, *Eileen Weaver*
Director of Revenue

Certified to Secretary of State 10/03/83

VOLUME NO. 40

OPINION NO. 22

FEES - Property owner in refuse disposal district "receiving a service" for fee assessment even though not actually using facilities;

REFUSE DISPOSAL DISTRICTS - Property owner "receiving a service" for fee assessment even though not actually using facilities;

MONTANA CODE ANNOTATED - Sections 7-13-203 to 212, 7-13-231, 7-13-233.

HELD: A property owner is "receiving a service" for purposes of fee assessment under the refuse disposal district law whether or not he is actually making use of the facilities.

28 September 1983

John P. Connor, Jr., Esq.
Jefferson County Attorney
Jefferson County Courthouse
Boulder, Montana 59632

Dear Mr. Connor:

You have requested my opinion concerning the assessment of fees for refuse disposal districts. Section 7-13-231, MCA, provides in pertinent part: "This fee shall be assessed to all units in the district that are receiving a service, for the purpose of maintenance and operation of said district."

At the present time, the entirety of Jefferson County is included in a refuse disposal district and fees are assessed against all landowners within the district for refuse collection services and establishment and maintenance of a landfill. There are, however, some landowners of the district who are not availing themselves of the services of the district because they maintain their own landfill as permitted by the terms of the Solid Waste Management Act. The question is whether these nonusers are "receiving a service" so that they might be assessed a fee therefor. I conclude that they are.

The confusion in this matter arises when individuals choose not to receive the benefit available to them in a district. However, the benefit does not go to the individual, but to the property itself. As stated in American Jurisprudence 2d:

The benefit is presumed to inure not to the present use, but to the property itself. In other words, the proper measure of benefits accruing to property from an improvement is not limited to the use made of the improvement at the time the improvement is made, but extends to the use which could be made of the improvement in the future if the property were devoted to any use which might reasonably be made of it.

70 Am. Jur. 2d Special Local Assessments § 21.

This link to property is underscored by the fact that unpaid service charge fees become a lien on the property under the provision of section 7-13-233, MCA.

Because of the long-term capital expenditures required in the operation and maintenance of a refuse disposal district, its continued fiscal integrity requires a secure financial base. The Legislature provided an elaborate procedure to protect the landowner in the establishment of a refuse disposal district by requiring public notice, hearing on protest, automatic bar to proceeding by petition, and boundary adjustments. (§§ 7-13-203 to 212, MCA.) The procedural safeguards are at the front end, so that before major financial commitments are undertaken there is sufficient opportunity to carefully examine the propriety of the proposal. Once the boundaries of the district are established and financial commitments are made, however, it is not reasonable to allow individuals to unilaterally decide not to use the service.

There are apparently no Montana court cases interpreting this section of law. In California an analogous case arose where the plaintiff was included in a special improvement district but the sewage from his land would not flow through the new construction. The California court said:

For this court to hold now that appellants cannot be charged their prorated shares of the cost of new construction, merely because the sewage emanating from their properties will not flow into that part of the system, could defeat the very purpose for which the improvement district was formed and would impinge on the legislative body's prerogative to fix the district's boundaries.

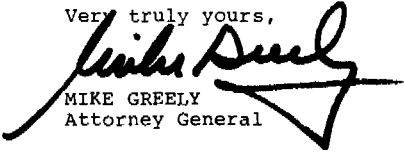
Kalashian v. City of Fresno, 35 Cal. App. 3d 43, 110 Cal. Rptr. 429 (1973).

In the instant case there is no bar to any landowner within the district using its services except his own volition. Its availability to him or a successor in interest of the property is legally enforceable.

THEREFORE, IT IS MY OPINION:

A property owner is "receiving a service" for purposes of fee assessment under the refuse disposal district law whether or not he is actually making use of the facilities.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 40

OPINION NO. 23

CITIES AND TOWNS - Streets and alleys, definition of "discontinue";
COUNTIES - County roads, streets and alleys, definition of "discontinue";
HIGHWAYS - Local roads, streets and alleys, definition of "discontinue";
MONTANA CODE ANNOTATED - Sections 1-2-106, 7-3-4447, 7-3-4448, 7-14-104, 7-14-2601, 7-14-2602, 7-14-2615, 7-14-2616, 7-14-2617, 7-14-4114, 7-14-4115, 60-1-103(1);
REVISED CODES OF MONTANA, 1947 - Section 11-2801.

HELD: The term "discontinue" as utilized in Title 7, chapter 14, parts 26 and 41, MCA, is synonymous with the terms "abandon" and "vacate."

30 September 1983

Mike McGrath, Esq.
Lewis and Clark County Attorney
Lewis and Clark County Courthouse
Helena, Montana 59623

Dear Mr. McGrath:

You have requested my opinion as to whether the term "discontinue" means the same as or something less than "abandonment" as the latter term is defined by section 7-14-2601(3)(b), MCA, with respect to county roads, streets and alleys.

The methods for establishment, alteration and abandonment of county roads are provided by Title 7, chapter 14, part 26, MCA. The law provides that upon appropriate petition the board of county commissioners may "open, establish, construct, change, abandon, or discontinue any county road in the district." § 7-14-2601, MCA. The term "abandonment" is defined as the "cessation of use of right-of-way (easement) or activity thereon with no intention to reclaim or use again and is sometimes called 'vacation'." § 7-14-2601(3)(b), MCA; see also § 60-1-103(1), MCA. The term "discontinue" is not specifically defined in the Montana Code Annotated.

19-10/13/83

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Words and phrases used in the Montana Code Annotated are to be construed according to the context and the approved usage of the language. § 1-2-106, MCA. The word "discontinue" is defined by Webster's New Collegiate Dictionary (1981 ed.) as, "to abandon or terminate by a legal discontinuance;" and by Black's Law Dictionary (5th ed.) as, "the termination or abandonment of a project, structure, highway, or the like." From the plain meaning of the words, "discontinue" and "abandon" appear to be synonymous.

The ambiguity arises in an examination of the context of the statutes utilizing the terms "abandon," "discontinue," "vacate," and "close." With respect to county roads, the statutes refer to "abandonment," "discontinuance," and "vacation" in various combinations. See, e.g., §§ 7-14-2601, 7-14-2602, 7-14-2615, 7-14-104, MCA. A separate procedure is required for "discontinuance" of streets and alleys located in an unincorporated town within the county. §§ 7-14-2616, 7-14-2617, MCA. These statutes use the terms "discontinue," "close," and "vacate" as follows:

(1) The county commissioners may discontinue a street or alley or any part thereof in an unincorporated town or townsite upon the petition in writing of all owners of lots on the street or alley if it can be done without detriment to the public interest.

(2) Where the street or alley is to be closed for school purposes, a petition signed by 75% of the lot owners on the whole street or alley to be closed will be required.

(3) Before acting upon such petition, a notice must be published or posted in three public places, stating when such petition will be acted on and what street or alley or part thereof is asked to be vacated.

§ 7-14-2616, MCA. (Emphasis added.)

The vacation authorized by 7-14-2616 shall not affect the right of any public utility to continue to maintain its plant and equipment in any such street or alley.

§ 7-14-2617, MCA. (Emphasis added.)

For cities and towns, essentially identical statutes appear in the Montana Code Annotated as sections 7-14-4114 and 7-14-4115, MCA. The predecessor to all four sections was section 11-2801, R.C.M. 1947. The Montana Supreme Court commented on the legislative history of section 11-2801, R.C.M. 1947, in State ex rel. Smart v. City of Big Timber, 165 Mont. 328, 334-335, 528 P.2d 688 (1974), as follows:

The history of section 11-2801, R.C.M.1947, indicates it is the product of enactments and amendments dating back to 1887. Historically, it can be divided into three separate sections. The statute originally provided that a city council could discontinue a street upon petition of all the lot owners on that street. Sec. 429, 5th Div.Comp.Stat.1887. In 1929, a bill was introduced in the legislature to add the requirement that the discontinuance must be done "without detriment to the public interest." House Bill No. 39, Twenty-first Legislative Assembly, 1929. The provision for 75% approval of street closings for school purposes was added by the Affairs of Cities committee before the bill was passed. House Journal, Twenty-first Session, p. 125; Sec. 1, Ch. 13, L. 1929. In 1945, the statute was again amended to include the provision that vacation of a street will not affect the rights of public utilities to maintain their equipment there. Sec. 1, Ch. 36, L. 1945.

Our reason for including the rather lengthy history of section 11-2801, R.C.M.1947, is to demonstrate that the present statute is the amalgam of the intent of a number of legislatures. This is important when this single statute purports to deal with the "discontinuance", "closing", and "vacation" of streets. It appears that the terms were thought of by the draftsmen as being interchangeable.

In a later opinion, the Court declared that the term "close" as it appears in section 7-14-4114(2), MCA, pertaining to school purposes, did not mean the same as "vacate." Wynia v. City of Great Falls, 183 Mont. 458, 600 P.2d 802 (1979). In Wynia, the city did not intend

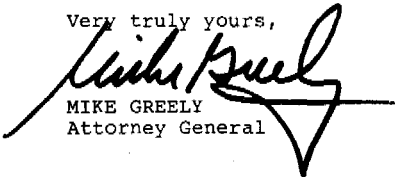
to vacate its legal interest or revoke its acceptance of the dedicated land, but rather intended to maintain its interest for public purposes other than transportation. In closing the streets, the city had followed section 7-14-4114, MCA, but had not followed the separate procedures of sections 7-3-4447 and 7-3-4448, MCA. The latter statutes apply only to cities with the manager-commission form of government. Cities with a mayor-council form of government are bound solely by sections 7-14-4114 and 7-14-4115. If "discontinue" as utilized in Title 7, chapter 14, parts 26 and 41, MCA, does not mean "vacate," then most cities would be left without a statutory procedure by which to terminate their legal interest in streets and alleys within their jurisdiction. This result cannot have been intended by the Legislature. An interpretation which leads to unreasonable results is to be rejected in favor of an interpretation which leads to reasonable results. Yunker v. Murray, 170 Mont. 427, 554 P.2d 285 (1976); Sands, Sutherland's Statutory Construction § 45.12.

Historically, the terms "vacation" and "discontinuance" were ordinarily employed to describe the termination of the existence of a public highway by means of affirmative action by the public authority. 39 Am. Jur. 2d Highways, Streets and Bridges § 138; Annot., 68 A.L.R. 794; Annot., 175 A.L.R. 760; McQuillan, Municipal Corporations § 30.202. The term "abandonment" described the termination of a public highway by nonuser or prescription. 39 Am. Jur. 2d Highways § 138; Annot., 175 A.L.R. 760. By specifically defining "abandonment" as synonymous with "vacation," the Legislature intended to ensure that statutory procedures would be followed with regard to the termination of highways, roads, streets and other public ways. The Legislature did not intend to change the historically accepted definition of "discontinuance."

THEREFORE, IT IS MY OPINION:

The term "discontinue" as utilized in Title 7, chapter 14, parts 26 and 41, MCA, is synonymous with the terms "abandon" and "vacate."

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 bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend 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 the 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 June 30, 1983. This table includes those rules adopted during the period July 1, 1983 through September 30, 1983; and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1983, this table and the table of contents of this issue of the MAR.

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