RESERVE

MONTANA ADMINISTRATIVE REGISTER

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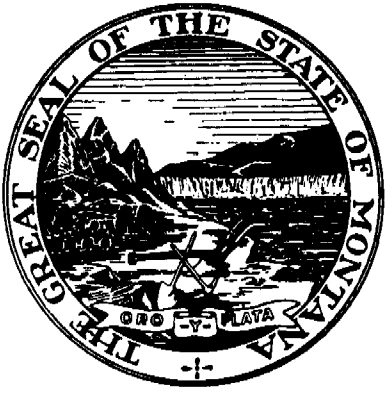


MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 2

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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.

TABLE OF CONTENTS

NOTICE SECTION

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of rules 2.21.8101 through 2.21.8105 relating to equal employment opportunity data collection	)	NOTICE OF PROPOSED REPEAL OF RULES 2.21.8101 THROUGH 2.21.8105 RELATING TO EQUAL EMPLOYMENT OPPORTUNITY DATA COLLECTION
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On February 26, 1983, the department of administration proposes to repeal rules 2.21.8101 through 2.21.8105 relating to equal employment opportunity data collection.

2. The rules proposed to be repealed are on pages 2-1721 through 2-1729 of the Administrative Rules of Montana.

3. The agency proposes to repeal these rules because this form of data collection has become obsolete with the implementation of the personnel/payroll/position control system.

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

Dennis M. Taylor, Administrator
Personnel Division
Department of Administration
Room 130, Mitchell Building
Helena, MT 59620

no later than February 25, 1983.

5. If a person who is directly affected by the proposed repeal of rules 2.21.8101 through 2.21.8105 wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to Dennis M. Taylor, Administrator, Personnel Division, Department of Administration, Room 130, Mitchell Building, Helena, MT 59620, no later than February 25, 1983.

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

7. The authority of the agency to make the proposed rules is based on sections 2-15-112 and 2-18-102, MCA, and the rules implement sections 2-15-112 and 2-18-102, MCA.

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

Certified to the Secretary of State January 17, 1983

STATE OF MONTANA
DEPARTMENT OF COMMERCE

In the matter of the proposed amendment of 8.50.422 concerning the fee schedule for private investigators and patrolmen) NOTICE OF PROPOSED AMENDMENT OF ARM 8.50.422 FEE SCHEDULE) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On February 26, 1983, the Department of Commerce proposes to amend ARM 8.50.422 concerning the fee schedule for private investigators and patrolmen.

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

"8.50.422 FEE SCHEDULE (1)...

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

(3) The fee for original examination or re-examination shall be ~~$10.00~~ $20.00 and must be paid prior to each examination.

(4)..."

3. The department is proposing the amendment as the administrative time allocation for renewal of licenses and proctoring and grading of exams was miscalculated and the current fees do not generate sufficient income to cover the administrative costs.

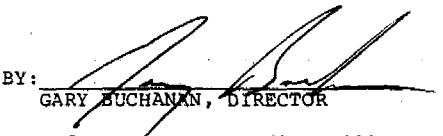
4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to C. F. Hauge, Department of Commerce, 1424 9th Avenue, Helena, Montana 59620-0407, no later than February 24, 1983.

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 C. F. Hauge, Department of Commerce, 1424 9th Avenue, Helena, Montana 59620-0407 no later than February 24, 1983.

6. If the department 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 public 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 20 based on the 207 licensees in Montana.

7. The authority of the board to make the proposed change is based on section 37-60-202, MCA and implements sections 37-60-312, 313, MCA.

DEPARTMENT OF COMMERCE

BY: 
GARY BUCHANAN, DIRECTOR

Certified to the Secretary of State, January 17, 1983.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PROPOSED AMENDMENT
of Rules 10.65.201 and 10.65.202) OF RULES 10.65.201 and
Kindergarten Schedule Variances) 10.65.202 KINDERGARTEN
) SCHEDULE VARIANCES
) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On February 28, 1983, the Board of public Education proposes to amend rules 10.65.201 and 10.65.202 that relate to kindergarten schedule variances.

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

10.65.201 POLICY STATEMENT ON KINDERGARTEN SCHEDULE VARIANCES (1) In accordance with section 20-1-301 and 20-1-302, MCA, school districts are expected to operate kindergarten programs for 180 days with a minimum of two-hour daily classes; however, a variance to this schedule may be granted by the superintendent of public instruction in accordance with board of public education policy. Recognizing that the locations of homes of some kindergarten children, coupled with the normal half-day attendance pattern for kindergarten classes, may cause problems in transporting kindergarten children to and from classes, it is the policy of the board that a variance to the prescribed statutory schedule for kindergarten programs may be granted if the conditions set forth below are met:

(a) Kindergarten classes are scheduled for at least 360 hours during the school year; classes shall not exceed four hours per day, though the daily period for which children are supervised by the district may exceed four hours.

(b) Kindergarten classes are in operation every week of the school year, unless a one-semester schedule has been approved, and for at least eight hours a week. A one-semester kindergarten schedule will be considered for approval only after all other scheduling possibilities have been explored thoroughly.

(c) Kindergarten scheduling variances shall be granted for a period of one school year and must be renewed annually.

AUTH: 20-2-121 IMP: 20-1-302

10.65.202 LOCAL DISTRICT PARTICIPATION (1) Local districts are encouraged to design and propose kindergarten schedules suited to their particular situations. The superintendent of public instruction shall exercise discretionary authority in granting variances to districts with conditions other than those cited above; in all such cases, the superintendent shall advice the board of the action taken.

(2) Kindergarten scheduling variances shall be granted for a period of one school year and must be renewed annually.

AUTH: 20-2-121 IMP: 20-1-302

3. The board of public education is proposing these amendments to assure that all kindergarten schedules are operating in compliance with the law, 20-1-302.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Allen D. Gunderson, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than February 24, 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 Allen D. Gunderson, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than February 24, 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 amendments; 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 100 persons based on 1,000 school administrators in the state of Montana.

7. The authority of the agency to make the proposed amendment is based on section 20-2-121, MCA, and the rule implements section 20-1-302, MCA.

Allen D Gunderson
ALLEN D. GUNDERSON, CHAIRMAN
BOARD OF PUBLIC EDUCATION

By Linda Van Dyn

Certified to the Secretary of State January 17, 1983.

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

In the matter of the amendment of rules 16.8.921, definitions; 16.8.924, concerning redesignation of PSD air quality areas; 16.8.930, stating information required for PSD permit review; and 16.8.936, stating exemptions from PSD review	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 16.8.921, 16.8.924, 16.8.930, and 16.8.936 (Air Quality)

TO: All Interested Persons

1. On March 4, 1983, at 9:00 a.m., or as soon thereafter as it may be heard, a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of rules 16.8.921, 16.8.924, 16.8.930, and 16.8.936.

2. The proposed amendments replace present rules 16.8.921, 16.8.924, 16.8.930, and 16.8.936, the text of which is referred to in their notice of adoption contained in this issue of the Montana Administrative Register. The proposed amendments to ARM 16.8.921 would include fugitive emissions in a determination of "baseline concentration"; add procedure allowing local government to petition for establishment of a baseline date for any county in which such a date is not already set; and require particulate fugitive emissions to be taken into account when determining the potential to emit of a source subject to new source performance standards (NSPS) or emission standards for hazardous air pollutants. The proposed amendments to ARM 16.8.924 would correct incorrect citations to rules. The proposed amendments to ARM 16.8.930 clarify the rule applies only to major stationary sources or major modifications, and allows the department to require a PSD permit applicant to submit information on the impacts of growth occurring after the relevant baseline date, rather than August 7, 1977. The proposed amendments to ARM 16.8.936 edit the rule to make it grammatically correct.

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

16.8.921 DEFINITIONS For the purpose of this subchapter, the following definitions apply:

(1) - (3) same as existing rule

(4) "Baseline concentration" means that ambient concentration level of a pollutant which exists in the baseline area at the time of the applicable baseline date minus, with reference to the baseline concentrations for sulfur dioxide and particulate matter, emissions from major stationary sources on which construction commenced after January 6, 1975. The baseline concentration includes:

(a) The actual emissions, including fugitive emissions, as of the baseline date from other stationary sources in existence on the applicable baseline date, and,

(b) The allowable emissions of major stationary sources which commenced construction before January 6, 1975, but were not in operation by the applicable baseline date.

(5) same as existing rule

(6) (a) "Baseline date" means:

~~(a)~~ (i) for sulfur dioxide:

~~(i)~~ (aa) March 26, 1979, for all areas designated as attainment or unclassified under 40 CFR 81.327;

~~(ii)~~ (bb) for all other areas, the date upon which the area is designated as attainment.

~~(b)~~ (ii) for particulate matter, for each baseline area, the date of the first complete application after August 7, 1977, to construct a stationary source or modification which is major for particulate matter and which is subject to this sub-chapter or required to obtain a permit under Part C of the federal Clean Air Act.

(b) The baseline date may also be established in any county which has not previously established a baseline date upon a petition presented to the department on behalf of the local government unit. Upon receipt of the petition, the department will initiate rulemaking procedures in accordance with the Montana Administrative Procedure Act. After notice and a public hearing by the board, the board shall make a decision on establishing the baseline date.

(7) - (26) same as existing rule

(27) "Potential to emit" means the capability of a source at maximum design capacity to emit any air pollutant after the application of air pollution control equipment. Any enforceable permit condition or regulation which limits hours of operations, the type or amount of material combusted, stored or processed, or other production of emissions limiting factors, is treated as part of its design. Particulate fugitive emissions do not count in determining potential to emit for all source types not listed in subsection (22)(a) of this rule, ARM 16.8.1423, or ARM 16.8.1424.

(28) - (31) same as existing rule

AUTHORITY: Sec. 75-2-111, 75-2-203, MCA
IMPLEMENTING: Sec. 75-2-202, 75-2-203, MCA

16.8.924 REDESIGNATION

(1) - (4) same as existing rule

(5) Any area other than an area to which ARM 16.8.923 refers may be redesignated as Class III if:

(a) The redesignation would meet the requirements of provisions established in ~~accordance with~~ ARM ~~16.8.923(3)~~ 16.8.924(3) and (4);

(b) The redesignation, except any established by any Indian governing body, has been specifically approved by the

Governor, after consultation with the appropriate committees of the Legislature, if it is in session, or with the leadership of the Legislature, if it is not in session and if general purpose units of local government representing a majority of the residents of the area to be redesignated enact legislation, including resolutions where appropriate, concurring in the redesignation;

(c) The redesignation would not cause, or contribute to, a concentration of any air contaminant which would exceed any maximum allowable increase permitted under the classification of any other area or any applicable ambient air quality standard;

(d) Any permit application for any major stationary source or major modification subject to provisions established in ~~accordance with~~ ARM ~~16.8.923(3)~~ 16.8.937 which could receive a permit only if the area in question were redesignated as Class III, and any material submitted as part of that application, were available, insofar as was practicable, for public inspection prior to any public hearing on redesignation of any area as Class III.

(6)-(7) same as existing rule

AUTHORITY: Sec. 75-2-111, 75-2-203, MCA
IMPLEMENTING: Sec. 75-2-202, 75-2-203, MCA

16.8.930 PERMIT REVIEW -- INFORMATION REQUIRED (1) The owner or operator of a proposed major stationary source or major modification shall submit to the department all information necessary to perform any analysis or make any determination required under this sub-chapter. Such information must include:

(a)-(c) same as existing rule

(2) The department may request the owner or operator to provide information on:

(a) The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

(b) The air quality impacts and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since ~~August 7, 1977,~~ the appropriate baseline date in the area the source or modification would affect.

AUTHORITY: Sec. 75-2-111, 75-2-203, MCA
IMPLEMENTING: Sec. 75-2-202, 75-2-203, MCA

16.8.936 EXEMPTIONS FROM REVIEW (1) The requirements of ARM 16.8.932, 16.8.933, 16.8.934, and 16.8.935 do not apply to a major stationary source or major modification if:

(a)-(b) same as existing rule

(c) ~~A proposed major stationary source or major modification with respect to a particular pollutant, if the~~ The allowable emissions of that pollutant from a new source,

or the net emissions increase of that pollutant from a modification, would be temporary and impact no Class I area and no area where an applicable increment is known to be violated; and

(d) ~~As they relate to any maximum allowable increase for~~ The source is located in a Class II area, ~~to a modification of~~ a major stationary source that was in existence on March 1, 1978, is being modified, and ~~if~~ the net increase in allowable emissions of each pollutant subject to regulation under the Montana Clean Air Act from the modification after the application of best available control technology would be less than 50 tons per year.

(2)-(3) same as existing rule

AUTHORITY: Sec. 75-2-111, 75-2-203, MCA
IMPLEMENTING: Sec. 75-2-202, 75-2-203, MCA

4. The Board is proposing three amendments to ARM 16.8.921. The first is proposed because it is needed to clarify that "actual emissions" are to include fugitive emissions, clarifying in particular that dust from coal mines in existence prior to setting of a baseline date is not intended to consume PSD increments. The second amendment -- to the definition of "baseline date" -- is necessary to allow a county, if it so chooses to protect its own air quality, to set the date for particulate matter in advance of the action which ordinarily sets the date -- application for construction in the area of a major stationary source or modification. The third amendment is necessary to clarify that fugitive emissions from sources subject to new source performance standards or emission standards for hazardous air pollutants must be counted when determining whether the source is major, thereby keeping the PSD program in line with EPA requirements.

The amendments to ARM 16.8.924 are necessary to correct rule references which were in error and to conform the rule to parallel federal PSD requirements.

The amendments to ARM 16.8.930 are proposed to clarify the fact that permit requirements are intended to apply only to major stationary sources or modifications, and, in the case of subsection (2)(b), to effect a necessary amendment (over-looked when the rules were first adopted) recognizing that different baseline dates, rather than a single date, may be in effect.

The amendments to ARM 16.8.936 are proposed purely as needed editing to make the section grammatically correct, and effect no substantive change.

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 Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than March 3, 1983.

6. Robert L. Solomon, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority of the Board to make the proposed amendments is based on sections 75-2-111 and 75-2-203, MCA, and the rules implement sections 75-2-202 and 75-2-203, MCA.

JOHN F. McGREGOR, M.D., Chairman

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

Certified to the Secretary of State January 17, 1983

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL of Rules 42.20.141, 42.20.142, 42.10.143, 42.20.144, 42.20.145 and 42.20.146, relating to the appraisal of agricultural lands and the PROPOSED ADOPTION of Rules I through VIII, relating to the appraisal of agricultural lands.	NOTICE OF PUBLIC HEARING ON THE REPEAL of Rules 42.20.141, 42.20.142, 42.20.143, 42.20.144, 42.20.145 and 42.20.146 and the PROPOSED ADOPTION of Rules I through VIII, relating to the appraisal of agricultural lands.

TO: All Interested Persons:

1. On February 17, 1983, at 10:00 a.m., a public hearing will be held in the First Floor Conference Room of the Mitchell Building at Fifth and Roberts Streets, Helena, Montana, to consider the repeal of the above-referenced rules and to consider the adoption of eight new rules relating to the appraisal of agricultural lands.

2. The rules proposed to be repealed can be found on pages 42-2035 through 42-2039 of the Administrative Rules of Montana.

3. Rule 42.20.141 is proposed to be repealed because the Department has revised the manual out of which agricultural land is classified. Rules 42.20.142 through 42.20.146 are proposed to be repealed because the Department has updated and revised the schedules for the valuation of various types of agricultural land.

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

RULE I AGRICULTURAL LAND CLASSIFICATION - MANUAL ADOPTION (1) The department of revenue has herein adopted and incorporated the "Montana Agricultural Land Classification Manual (1983 - as revised)" by reference. Copies of this manual may be reviewed in this department or may be purchased from the department at cost plus mailing. AUTH: 15-1-201 MCA; IMP: 15-6-133 MCA.

RULE II AGRICULTURAL LAND VALUATION - GENERAL PRINCIPLES (1) All taxable agricultural land shall receive an agricultural land value.

MAR NOTICE NO. 42-2-209

(2) The valuation schedules for land shall be based on a 5 year average of experienced income and expense data, beginning with calendar year 1977 and ending calendar year 1981. They shall become effective as of January 1, 1986, and shall remain in effect during the balance of that appraisal cycle.

(3) Each valuation schedule shall be updated to coincide with the commencement of a new appraisal cycle.

(4) The values assigned to each productive grade of agricultural land shall be the capitalized net agricultural income as determined for 1 acre of land in each of the 5 agricultural land classes at each productive grade level within each land class. AUTH: 15-1-201 MCA; IMP: 15-6-133 MCA.

RULE III AGRICULTURAL LAND VALUATION - METHODOLOGY (1) The basic formula for valuing agricultural lands shall be:

(a)

Net Agr. Income Per Unit of Prod. = Gross Agr. Income Per Unit of Prod. - Operating Expense Per Unit of Prod.

(b) This methodology is more specifically stated as follows:

$$NI/unit = \frac{\sum_{i=1}^{n} T_i \, 1_i (P_i - AVC_i)}{N}$$

, where

N.I./Unit = net agricultural income estimate per unit of production.

1_i = the weight (average production) obtained from the conversion factor for the ith crop.

P_i = the average output price

AVC_i = the average operating expense for the ith crop.

N = the number of years for a complete crop rotation. This applies only to irrigated land. This component does not apply in valuing other classes.

T_i = the proportion of total cropland in crop i (for nonirrigated summer fallow and continuously cropped only). This component does not apply in valuing other classes.

(2) Convert net agricultural income estimates per unit of production to net agricultural income per acre. This is done by multiplying the net agricultural income per unit of production estimate by the midpoint of each production level as set for each base crop of each agricultural class. The base crop for each agricultural class shall be:

(a) Nonirrigated farmland (summer fallow) - wheat

(b) Nonirrigated farmland (continuously cropped) - wheat

(c) Grazing land - animal unit
(d) Wild Hay land - hay
(e) Tillable irrigated farmland - alfalfa

(3) Estimate per acre land values from net agricultural income. The following formula shall be used.

$$\text{Land Value Per Acre} = \frac{\text{Net Agricultural Income Per Acre}}{\text{Capitalization Rate}}$$

(4) After the appropriate capitalization rate is chosen, the formula and net agricultural income estimates allow the derivation of updated land values on a per acre basis. The capitalization rate shall include a discount component and an effective tax rate component.

(5) Values for productive grades of land which generate no value by subsections (1) through (4) of this rule shall be determined by setting the value on the lowest productive grade in that class at the value of the lowest productive grade of grazing land. Values for the remaining grades between the last value generated by subsections (1) through (4) of this rule and the value of the lowest productive grade of grazing shall be determined by arithmetically dividing the difference between these two known values equally.

AUTH: 15-1-201 MCA; IMP: 15-6-133 MCA.

RULE IV NONIRRIGATED FARM LAND (SUMMER FALLOW) (1) The following is the schedule for the classification and valuation of nonirrigated farmland (summer fallow):

Bu. Wheat Per Acre on Summer Fallow	Grade	Land Value Per Acre
40 & Over	F1A8	$103.93
38 - 39	F1A7	94.42
36 - 37	F1A6	84.91
34 - 35	F1A5	75.39
32 - 33	F1A4	65.88
30 - 31	F1A3	56.37
28 - 29	F1A2	46.85
26 - 27	F1A1	37.34
24 - 25	F1A	27.83
22 - 23	F1B	18.31
20 - 21	F2A	8.80
18 - 19	F2B	7.92*
16 - 17	F2C	7.05*
14 - 15	F3A	6.17*
12 - 13	F3B	5.30*
10 - 11	F4A	4.42*
8 - 9	F4B	3.55*
Less than 8	F5	2.67*

(2) The values designated by an asterisk (*) in the prior schedule are determined by setting the value for F5 at the value level of G6 grazing. The values for grades F2B through F4B are

determined by arithmetically dividing the difference between F2A at $8.80 and F5 at $2.67 evenly between those productive grades. The resulting values, therefore, will correlate to grazing land values.
AUTH: 15-1-201 MCA; IMP: 15-6-133 MCA.

RULE V NONIRRIGATED FARMLAND (CONTINUOUSLY CROPPED) (1) The following is the schedule for the classification and valuation of nonirrigated farmland (continuously cropped):

Bu. Wheat Per Acre	Grade	Land Value Per Acre
44 & Over	CC1A4	$246.02
42 - 43	CC1A3	233.06
40 - 41	CC1A2	220.11
38 - 39	CC1A1	207.15
36 - 37	CC1A	194.19
34 - 35	CC1	181.23
32 - 33	CC2	168.27
30 - 31	CC3	155.31
28 - 29	CC4	142.35
26 - 27	CC5	129.40
24 - 25	CC6	116.44
22 - 23	CC7	103.48
20 - 21	CC8	90.52
18 - 19	CC9	77.56
16 - 17	CC10	64.60
14 - 15	CC11	51.64
12 - 13	CC12	38.69
10 - 11	CC13	25.73
Less than 10	CC14	12.77

AUTH: 15-1-201 MCA; IMP: 15-6-133 MCA.

RULE VI GRAZING LAND (1) The following is the schedule for the classification and valuation of grazing land:

Acres for 10-Month Grazing Season per 1000 lb. Steer or Equivalent	Grade	Land Value Per Acre
Under 3	G1A2	$119.84
3 - 5	G1A1	86.86
5.1- 5.9	G1A+	63.19
6 - 10	G1A	43.44
11 - 18	G1B	23.97
19 - 21	G2A	17.38
22 - 27	G2B	14.19
28 - 37	G3	10.69
38 - 55	G4	7.47
56 - 99	G5	4.48
100 or Over	G6	2.67

(2) About four range ewes with lambs are considered the equivalent of a 1000 lb. steer. Calves are usually not considered until weaned, and four yearling steers or heifers are considered as equivalent to three 1000 lb. steers. A dry cow is considered the equivalent of a 1000 lb. steer. A range cow with calf is equivalent to a 1000 lb. steer. AUTH: 15-1-201 MCA; IMP: 15-6-133 MCA.

RULE VII WILD HAY LAND (1) The following is the schedule for the classification and valuation of wild hay land:

Tons of Hay Per Acre	Grade	Land Value Per Acre
3.0 & Over	WH1	$294.30
2.5 - 2.9	WH2	249.02
2.0 - 2.4	WH3	203.74
1.5 - 1.9	WH4	158.47
1.0 - 1.4	WH5	113.19
.5 - .9	WH6	67.91
Less than .5	WH7	22.64

AUTH: 15-1-201 MCA; IMP: 15-6-133 MCA.

RULE VIII TILLABLE IRRIGATED LAND (1) The following are the schedules for the classification and valuation of tillable irrigated land, arranged by rotation:

Class 1 (Maximum Rotation)

Tons of Alfalfa Per Acre	Grade	Land Value Per Acre
4.5 & Over	I1A	$717.25
4.0 - 4.4	I1B	641.75
3.5 - 3.9	I2	566.25
3.0 - 3.4	I3	490.75
2.5 - 2.9	I4	415.25
2.0 - 2.4	I5	339.75
1.5 - 1.9	I6	264.25
1.0 - 1.4	I7	188.75
Less than 1.0	I8	113.25

Class 2 (Medium Rotation)

Tons of Alfalfa Per Acre	Grade	Land Value Per Acre
4.5 & Over	I1A	$416.87
4.0 - 4.4	I1B	372.99
3.5 - 3.9	I2	329.11
3.0 - 3.4	I3	285.23
2.5 - 2.9	I4	241.34
2.0 - 2.4	I5	197.46

1.5 - 1.9	I6	153.58
1.0 - 1.4	I7	109.70
Less than 1.0	I8	65.82

Class 3 (Minimum Rotation)

Tons of Alfalfa Per Acre	Grade	Land Value Per Acre
4.5 & Over	I1A	$216.10
4.0 - 4.4	I1B	193.35
3.5 - 3.9	I2	170.61
3.0 - 3.4	I3	147.86
2.5 - 2.9	I4	125.11
2.0 - 2.4	I5	102.36
1.5 - 1.9	I6	79.62
1.0 - 1.4	I7	56.87
Less than 1.0	I8	34.12

AUTH: 15-1-201 MCA; IMP: 15-6-133 MCA.

(5) These rules are being proposed in order that agricultural lands will be appraised, valued and classified in conformity with Montana statutory law. In addition, they will insure that the methods employed to appraise, value and classify such lands are uniform in nature and equitable in result. Proposed Rule I adopts a standardized manual for purposes of agricultural classification. Rule II prescribes certain general principles relating to the valuation of agricultural land. Rule III adopts a specific formula through which agricultural lands would be valued. Rule IV sets forth a specific schedule for the classification and valuation of nonirrigated farmland (summer fallow). Rule V sets forth a specific schedule for the classification and valuation of nonirrigated farmland (continuously cropped). Rule VI sets forth a specific schedule for the classification and valuation of grazing land. Rule VII sets forth a specific schedule for the classification and valuation of wild hay land. Rule VIII sets forth a specific schedule for the classification and valuation of tillable irrigated land.

6. Interested persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted no later than February 25, 1983, to:

Larry Schuster
Department of Revenue
Mitchell Building
Helena, Montana 59620

7. Denny Moreen, Agency Legal Services has been designated to preside over and conduct the hearing.

8. The authority of the Department to repeal the rules is based on 15-1-201, MCA, and the rules implement 15-7-103, MCA. The authority of the Department to make the proposed rules is based on 15-1-201, MCA. The proposed rules implement 15-6-133, MCA.

Ellen Feaver

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 01/17/83

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

In the matter of the amendment of Rule 46.12.703 pertaining to medical services, outpatient drugs, reimbursement	))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.12.703 PERTAINING TO MEDICAL SERVICES, OUTPATIENT DRUGS, REIMBURSEMENT

TO: All Interested Persons

1. On February 22, 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 amendment of Rule 46.12.703 pertaining to medical services, outpatient drugs, reimbursement.

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

46.12.703 OUTPATIENT DRUGS, REIMBURSEMENT

Subsections (1) through (3) remain the same.

(4) Each recipient, unless eligible for exemption, must pay to the pharmacist 50¢ per prescription. ~~except--for-two prescriptions--received-in--any-single-month,-which-are-exempt from-the-50¢-co-payment.~~

(5) The following recipients are exempt from the prescription co-payment:

(a) individuals under 21 years of age;

(b) pregnant women; and

(c) inpatients in a hospital, skilled nursing facility, intermediate care facility or other medical institution if such individual is required to spend for costs of medical care all but his personal needs allowance, as defined in ARM 46.12.4008.

(6) No co-payment will be imposed with respect to emergency prescriptions or family planning prescriptions.

The authority of the Department to amend the rule is based on Section 53-6-113, MCA, and the rule implements Sections 53-6-101, 53-6-113, and 53-6-141, MCA.

3. On September 3, 1982, the President signed into law HR 4961, "The Tax Equity and Fiscal Responsibility Act of 1982". This new public law (PL 97-248) includes provisions which prohibit states from imposing co-payments for services provided to certain Medicaid recipients. The institution of co-payments for prescriptions received by nonexempt recipients would simplify administrative and bookkeeping procedures for pharmacists. It would also meet the Department's objective of implementing co-payments as a cost effective measure.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than March 2, 1983.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State January 17, 1983.

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

In the matter of the amendment of Rules 46.11.120 and 46.11.125 pertaining to the food stamp program; pilot projects	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.11.120 AND 46.11.125 PERTAINING TO THE FOOD STAMP PROGRAM

TO: All Interested Persons

1. On February 23, 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 amendment of Rules 46.11.120 and 46.11.125 pertaining to the Food Stamp Program, pilot projects.

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

46.11.120 FOOD STAMPS, PILOT PROJECTS, MONTHLY REPORTING REQUIREMENTS

Subsections (1) through (3) remain the same.

(4) The department shall notify a household ~~within five (5) days~~ when the household fails to return their monthly report by the report due date or when the household files a report with missing information. This notice shall be sent to the household so that it is received not later than the time benefits are usually received for that month. This notification shall inform the household about the nature of the missing report or information. The household shall have an additional ten (10) days from the date this notice is sent to file the complete monthly report.

(5) Households which fail to file a complete monthly report by their extended filing date shall have their case closed~~.~~ immediately without further notice.

Subsection (6) remains the same.

The authority of the department to amend the rule is based on Section 53-2-201, MCA, and the rule implements Sections 53-2-201 and 53-2-306, MCA.

46.11.125 FOOD STAMPS, PILOT PROJECTS, DETERMINING BENEFITS (1) Except as provided in paragraph (2) below, household benefits shall be determined retrospectively on the basis of the households circumstances reported in their monthly report.

(2) Household benefits shall be determined prospectively in the following situations:

(a) in cases which involve migrant farmworkers who are pursuing migrant farmwork outside of their home area;

(b) in the first two months of eligibility following an initial application;

(c) in the first two months of eligibility when a currently certified household moves into a MRRB project county from a non MRRB county;

(d) when a new member begins to live with a household which is currently on retrospective budgeting, the income and resources of the new member shall be treated prospectively in the first two months of the new members eligibility; and

~~(e) in any month in which the household receives AFDC on a prospective budget basis.~~

(3) Income received in the first two months of eligibility which is no longer available shall not be included in retrospectively budgeted income in the third and fourth months' of eligibility.

The authority of the department to amend the rule is based on Section 53-2-201, MCA, and the rule implements Sections 53-2-201 and 53-2-306, MCA.

3. The department has been granted a waiver from federal regulations in order to make notice procedures for monthly reporting uniform for the Food Stamp and Aid to Families with Dependent Children programs. The proposed change to Rule 46.11.120 provides for a time limit by which households must be given notice. The proposed rule allows counties to develop more flexible work schedules to handle their duties.

The department proposes to delete subsection (2)(e) of Rule 46.11.125 because the Department of Agriculture has not approved the use of this rule.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than March 3, 1983.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State January 17, 1983.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF DENTISTRY

In the matter of the amendments) NOTICE OF AMENDMENT OF ARM
of ARM 8.16.405 concerning the) 8.16.405 FEE SCHEDULE AND
fee schedule for dentists and) 8.16.606 FEE SCHEDULE
8.16.606 concerning the fee)
schedule for dental hygienists.)

TO: All Interested Persons:

1. On December 16, 1982, the Board of Dentistry published a notice of public hearing at pages 2113 and 2114, 1982 Montana Administrative Register, issue number 23.

The hearing was held on January 6, 1983 in the new Highway Department Auditorium, 2701 Prospect Avenue, Helena, Montana. The hearing was convened at 1:30 p.m. Present was the board's administrative assistant, Lisa Casman. The only other person in attendance other than the presiding officer and court reporter was Mary Lou Abbott of the Montana Dental Hygienist's Association, who declined to testify. A letter was received from D. Dean Anderson, D.D.S., Lewistown criticizing the proposals generally and commenting on other unrelated board activities. Mr. Anderson did state he felt the increased costs for lawyers should be borne by the state as a whole.

As board costs must be borne by the boards by statute, legal fees must be covered by the board funds. For this and the reasons stated in the original notice, the board is amending the rules exactly as proposed.

2. No other comments or testimony were received.

DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF MEDICAL EXAMINERS

In the matter of the amendment) NOTICE OF AMENDMENT OF 8.28.416
of ARM 8.28.416 concerning) EXAMINATION
examinations for physicians)

TO: All Interested Persons:

1. On December 16, 1982, the Board of Medical Examiners published a notice of proposed amendment of ARM 8.28.416 concerning examinations at page 2115, 1982 Montana Administrative Register, issue number 23.

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

3. No comments or testimony were received.

DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PLUMBERS

In the matter of the adoption of a new rule requiring licensees to carry their licenses while engaged at the trade.) NOTICE OF ADOPTION OF A NEW RULE 8.44.411 GENERAL RESPONSIBILITIES

TO: All Interested Persons:

1. On December 16, 1982, the Board of Plumbers published a notice of proposed adoption of a new rule requiring licensees to carry their licenses while engaged at the trade at pages 2116 and 2117, 1982 Montana Administrative Register, issue number 23.

2. The board has adopted the rule as proposed.

3. No comments or testimony were received.

DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS

In the matter of the amendments of ARM 8.56.401 concerning definitions and 8.56.406 concerning permits.) NOTICE OF AMENDMENTS OF ARM 8.56.401 DEFINITIONS AND 8.56.406 PERMITS

TO: All Interested Persons:

1. On December 16, 1982, the Board of Radiologic Technologists published a notice of proposed amendments of ARM 8.56.401 concerning definitions and 8.56.406 concerning permits at pages 2118 and 2119, 1982 Montana Administrative Register, issue number 23.

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

3. No comments or testimony were received.

DEPARTMENT OF COMMERCE

BY: _____
GARY BUCHANAN, DIRECTOR

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

In the matter of the repeal of rules 16.8.901 through 16.8.920 and the adoption of new rules for the prevention of significant deterioration of air quality	)))))	NOTICE OF THE REPEAL OF RULES 16.8.901-16.8.920 AND THE ADOPTION OF RULES 16.8.921-16.8.943 (Air Quality)

To: All Interested Persons

1. On August 12, 1982, the board published notice of a proposed repeal of rules 16.8.901-16.8.920 concerning prevention of significant deterioration of air quality, and the proposed adoption of rules 16.8.921-16.8.943 concerning the same subject matter at page 1512 of the 1982 Montana Administrative Register, issue number 15.

2. The board has repealed rules 16.8.901-16.8.920 as proposed, and has adopted rules 16.8.921-16.8.943 with the following changes:

RULE I (16.8.921) DEFINITIONS For the purpose of this sub-chapter, the following definitions apply:

(1) - (5) Same as proposed rule.

(6) "Baseline date" means:

(a) for sulfur dioxide:

(i) March 26, 1979, ~~for sulfur dioxide or March 19, 1982, for particulate matter~~ for all areas designated as attainment or unclassified under 40 CFR 81.327;

(ii) for all other areas, the date upon which the area is designated as attainment.

(b) for particulate matter, for each baseline area, the date of the first complete application after August 7, 1977, to construct a stationary source or modification which is major for particulate matter and which is subject to this sub-chapter or required to obtain a permit under Part C of the federal Clean Air Act.

(7) - (31) Same as proposed rule.

RULES II through XXIII (16.8.922 - 16.8.943) Same as proposed rules.

3. The Montana Power Company was concerned about the inclusion of "fuel cleaning, treatment, or innovative fuel combustion" in the definition of BACT.

Response: The Board has chosen to use a definition nearly identical to the federal definition. Vol. 45, FR 52726 (August 7, 1980) provides guidance to the acceptability of a state-operated program, and states that PSD definitions must closely follow the federal definitions, but need not be verbatim translations. The phrase "fuel cleaning..." is included to ensure consistency with the federal rules.

The Montana Power Company also felt that Rule II (determination of BACT) should be modified to state that the decision

on BACT will be made within a reasonable time, based upon facts when available, so as to allow adequate time for the applicant to design, engineer, and fabricate the control system, and to complete its facility in a timely and economical manner.

Response: The modification was not made because the board felt it unnecessary, since the department is already under severe time restrictions (usually 60 days) to complete the permit processing, including a determination of BACT.

Several commentors felt that redesignation procedures should not require the county commissioners' approval before a redesignation request is made.

Response: The board felt it is appropriate to involve local government in redesignation decisions, counterbalanced by the fact that if the elected officials are not expressing the will of the people, the area residents may elect a new commission which will satisfy the request of the residents.

The Montana Power Company suggested the redesignation rule should allow a source which has already submitted a complete application to be governed by the area classification at the time of the permit submittal, rather than the final classification.

Response: The department made such a proposal to the board in April, 1982. It was included in the proposed version of the rule published in August, and was subsequently adopted.

The Montana Power Company requested that the increment consumption analysis required by Rule VII(1) be modified to include reduction in emissions and that "bubbling" be included.

Response: Modification was considered unnecessary since it was felt that the rule clearly included both reductions and increases in increment consumption. As for "bubbling", another rule incorporating it is currently being developed. It is not necessary to incorporate a bubbling regulation in these rules since it will also apply to non-attainment and the other rules adopted pursuant to the Montana Clean Air Act.

As clarification, the Montana Power Company asked whether a copy of the permit or a copy of the application must be submitted to an affected state (Rule VII).

Response: The board intends that a copy of the application be sent to the affected state.

It was suggested that the redesignation hearing be modified to allow contested case proceedings where appropriate, rather than the less restrictive procedures for rule-making.

Response: The board declined the modification because redesignation represents a rule-making kind of matter, in that a policy question is before the board, and the contested case proceedings are too restrictive for a policy-making action.

The Montana Power Company and others suggested the "baseline area" should be defined as the impact area rather than the entire state.

Response: The definition was already proposed in the August version of the rules and has been retained.

The Montana Power Company felt that the definition of "stationary source" was too vague.

Response: The board disagreed, since the definition is similar to the federal definition and its application and intent are reasonably clear.

The Consolidation Coal Company pointed out an "inconsistency" between the definitionsof baseline area and baseline date, in that the first is based on impact area and the latter, at least as originally proposed, applied to the entire state.

Response: The baseline area and baseline date were defined differently for the purpose of avoiding the necessity of a source having to model the entire state rather than only the area of impact. The final adopted definition of "baseline date", in any case, more closely ties baseline dates to individual baseline areas.

Several commentors suggested there needs to be a method of increment allocation other than the implicit first-come, first-serve method.

Response: The board gave considerable thought to another method, but found no method that was reasonably acceptable to all involved. In light of the low probability of competing increments in the near future, the board found it unnecessary to institute a different rule. The board, however, remains open on this issue and may consider other alternatives in the future.

Several sources commented that the cost of redesignation may be very high and beyond the resources of local government units, suggesting a mechanism be devised to help offset this cost.

Response: The board agreed; Rule IV(3) contains a section which in a case-by-case manner may allow the department to participate in the development of the redesignation document.

It was suggested that actual, rather than modeled, data should be used in accurately assessing increment consumption.

Response: The board agreed and the department stated that actual data, if available, will be used in determining increment consumption.

Richard Steffel requested that "baseline area" be redefined from that sustaining an impact of one ug/m^3, annual average, to a larger area, such as that impacted by one ug/m^3, 24-hour average.

Response: The board rejected the suggestion in the belief that the current definition of baseline area defines an area sufficiently large to include all necessary analysis of increment consumption, and because it would be nearly impossible to define baseline area using a 24-hour value, since this area is different for each day, while the annual average takes into account all meteorological conditions.

The Western Energy Company suggested that Rules VII and VIII should exclude fugitive emissions from such sources as mines, roads, plowed fields, etc., from increment consumption.

Response: Alteration of the rules was deemed unnecessary since only sources constructed after the baseline date will consume increment, and plowed fields would not be considered to consume increment since plowing fields has been occurring for many years prior to establishing a baseline date.

The Montana Petroleum Association felt the exclusions from BACT allowed by Rule IX were unfairly negated by the BACT review requirement for all permitted sources in ARM 16.8.1103.

Response: The board rejected any change in ARM 16.8.1103 because it was not within the scope of the proposed regulations and should be more appropriately addressed to the board in another rule-making effort. Nevertheless, the board believes that there is good cause to continue BACT review on all permitted sources, in that Montana does not have emission limitations for all source types and therefore uses BACT in its place. The board has not found this to be unduly restrictive to industry, evidence of which is the lack of appeals of BACT decisions to the board.

The Montana Petroleum Association requested the newly promulgated EPA stack-height rule be incorporated into these rules.

Response: The board agrees that it is appropriate to consider adoption of the EPA rule. However, there is no need to accomplish this in the context of the PSD rules. The existing stack-height rule, for example, is not located in the PSD rules since its effect extends beyond PSD. The department has already circulated an informal draft of the stack-height regulation, notice of its proposed adoption has been published, and a hearing on the proposal was held January 14, 1983.

Exxon raised the issue that development of the PSD rules at this time is inappropriate on grounds that many of the items that are contained in these new rules have neither been adopted nor implemented by the federal government, and Congress is considering PSD changes.

Response: The board disagreed, not being aware of any proposal before the board that is not already adopted by EPA. The board did not propose any language that had not already been considered by EPA, save some unique Montana features to the program, and prefers to adopt the program in spite of possible congressional action because it is important to eliminate the dual permitting system. The department has committed itself to discuss these changes as they occur with all interested parties, and rule-making, if appropriate, will ensue.

Exxon recommended that the board address the costs of complying with the PSD program compared to the cost of developing a program more compatible with economic growth.

Response: There have been only six PSD permits which would qualify under the proposed rules since 1977. With so few permits, the cost of complying with the program appears reasonable. Although Exxon was interested in economic growth, the failure of Montana to adopt the existing PSD program will not absolve Montana's industries from a compliance responsibi-

lity. If an alternative program were developed, compliance with the national PSD program must still be accomplished. Therefore, two programs would be in effect for the same general purpose. It is difficult to imagine two programs operating to everyone's mutual benefit and working better than only one program. Finally, the board shares the belief that the PSD program allows a well-regulated growth while preventing abuse of a clean air resource.

Exxon requested the baseline concentration definition be modified to make it clear which major stationary sources and modifications are exempt from baseline concentrations.

Response: No modification was made because of the belief the definition is sufficiently clear already, and because the definition is essentially identical to the federal definition.

Exxon suggested baseline area should be determined on the basis of impact defined by ambient monitoring (quality assurance handbooks, etc.)

Response: The board assumed that Exxon desired to make the baseline area smaller since many monitoring instruments cannot detect one ug/m^3 (proposed definition). In order to obtain EPA approval, however, it will be necessary that the definition have the same effect as EPA's. Therefore, any alteration of the definition would make the rule unapprovable and was therefore rejected.

Exxon also proposed addition of a purpose section reading essentially as follows: "Purpose--to review all permit applications required pursuant to sub-chapter 11 for applicability to ensure air quality is maintained at its current high quality."

Response: The board believes that the rules are relatively self-explanatory and a purpose section is not necessary. In addition, the PSD program goes beyond a simple permitting program as implied in the proposal. The purpose of the PSD program is to keep clean air areas clean, one mechanism of which is through the review of major stationary sources and modifications as provided in the rules.

Exxon requested elimination of what it considered an inconsistency between Rule X and ARM 16.8.1105 (information required for permits).

Response: The board felt no inconsistency existed since it intended that the referenced rules remain separate and that both would apply when appropriate. All permitted sources must submit the information required in ARM 16.8.1105. If they are also subject to PSD review, then the requirements of Rule X must also be met, and the same information does not have to be submitted twice.

Exxon requested modification of Rule XIX (innovative control technology) as follows: "(3)(c) The department decides on the basis of sound technical support ~~at any time that~~ the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety."

Response: The board declined on grounds it is not certain

that EPA would approve this change, since it could be argued that this weakens the Montana rule. In addition, the change is unwise in that the burden is transferred to the department, rather than to the source, which should be responsible for demonstrating the reliability, etc., of the controls.

The North Fork Preservation Association and Three Corners Boundary Association requested the board to reinstate the option to have the Governor waive consumption from sources outside the U.S. rather than making the provision self-executing.

Response: The board agreed and inserted the option into the rules.

Ron Erickson wanted to know what would happen in an area which is non-attainment on the date the baseline is set (assuming a state-wide baseline date) and the area later becomes an attainment area and is then subject to PSD.

Response: The amendments to Rule I(6) contained in this notice define how baseline dates are set for non-attainment areas.

Assuming the baseline date were established on a state-wide basis, several commentors expressed concern how it was possible to know the baseline concentration in many areas of Montana when it has never been measured there.

Response: The PSD rules do not necessarily concern themselves with the concentration of pollutants on the baseline date, but rather address only sources that are constructed after the establishment of the baseline date. In other words, it is not especially important to know what happened on the baseline date, but more important to know what happened after the baseline date. Normally, one would perform an air quality model for all sources constructed after the baseline date. The department maintains a computer inventory of all permitted sources of air pollution in the state. This inventory may be used, along with other estimates of non-permitted sources, to obtain estimates of the amount of increment used in any portion of the state. In any event, the board retained a state-wide baseline date for sulfur dioxide alone, allowing the dates for particulate matter to be established separately for each baseline area.

Steve Foster, on behalf of the Montana Coal Council, ASARCO, and PGM, was concerned about the spectre of EPA enforcement of these rules, especially in regard to a state-wide baseline date, since any violation of an increment is federally enforceable. He suggested that this may not be the best approach and that Montana should enforce its own goals and desires by setting more stringent emission standards or by instituting a general air pollution program in counties. In the latter case, the counties could have a more stringent program than mandated by EPA and violations of those standards could be enforced at either the local or state level.

Response: The proposal was rejected in part because it came at too high a price in manpower and dollars. During the

department-held public meetings in June, 1982, on these rules, several people argued against a baseline date on a county-by-county basis because it was too unrealistic to inform each county of its options and to expect each to act on these complicated matters on a timely and informed basis. The proposal presented would be more complicated for county officials than the setting of a county-wide baseline date. In any event, EPA has not been a stumbling block for past PSD permits and its enforcement is unlikely to cause any real problems with the program. In addition, there is some value in having EPA in an oversight role to ensure that there is protection from significant deterioration of air quality.

The Montana Coal Council contended the rules are defective because an EIS is necessary.

Response: The board disagreed, on the basis of the department's Preliminary Environmental Review which was conducted on the proposed rule changes, plus a legal opinion rendered by the department's Legal Division. The conclusion of the PER was that no EIS was necessary. The legal opinion contended, in part, that the changes contemplated in the PSD program, not the PSD program as a whole, were the proper subject of environmental review, and did not merit an EIS. The reader is referred to the PER and legal opinion for further information.

Bison Engineering, on behalf of the Montana Coal Council, contended that it is more difficult to administer the PSD program with a state-wide baseline date than an impact area baseline date.

Response: While it is true that it is more difficult for the source to deal with the state-wide date because of estimation of sources constructed after that date, it is not necessarily true that it is harder for the department to administer. Each method has administrative advantages over the other and neither the board nor the department has suggested that administrative convenience should be the determining factor for baseline date. However, the board, for other reasons noted below, changed the definition of baseline date so that the dates for particulate matter are now set on an area-wide, rather than state-wide, basis.

Several commentors were concerned that agricultural dust could not effectively be segregated from other dust, thereby nullifying the department's position that such dust would not be counted as consuming increment.

Response: It is, of course, easy to separate the two sources when it comes to modeling, since one simply ignores agricultural dust as input to the model. It is also possible to separate the two in monitoring. The department has used this method in the past to identify sources of lead in East Helena, particulates in Butte, and particulates in Missoula. Generally, a method known as chemical mass balance is used. This method is a very powerful technique that uses the concentrations of

approximately 30 elements for each source and air sample. The board is confident that this can be easily accomplished, though relatively expensive to conduct.

Exxon stated that Montana should seek only partial delegation of the PSD program rather than full delegation, obtaining full delegation whenever changes become final in Congress and at the EPA.

Response: There appears to be no advantage to the state in such partial delegation in light of the fact that only six permits would have been required since August, 1977. Partial delegation would continue to keep EPA a major participant in the Montana program, which is not the desired intent of these rules. The board realizes that PSD rules are likely to change at the federal level, but the department has announced its intent to review those changes as they occur. Since the department does not receive any additional money from EPA, there is no advantage to the department to receive only partial delegation.

The department pointed out a defect in the rules in that it is possible that a mining operation may have received a permit before the baseline date and yet the fugitive emissions from the mine could be interpreted to consume increment, a situation which the department felt should not be the effect or intent of the rules. As a remedy, it suggested including in the definition of baseline concentration fugitive emissions from existing sources.

Response: The board was receptive to the change but inadvertently did not adopt it when the rules as a whole were adopted. The change is proposed as an amendment in a separate notice in this issue of the Montana Administrative Register.

Both the department and Bison Engineering pointed out that Rule X(2)(b) unnecessarily requires a source to submit information about air quality impacts since August 7, 1977, and suggested the date be the applicable baseline date rather than August 7, 1977.

Response: The change was inadvertently not made when these rules were adopted but is proposed as an amendment in a separate notice in this issue of the Montana Administrative Register.

The Montana Coal Council, Stillwater PGM, and ASARCO contended that promulgation of PSD rules is not contemplated by Montana's Clean Air Act and is therefore outside of the rule-making authority of the board.

Response: The board solicited a legal opinion on the issue, which was returned citing sections of the Clean Air Act reasonably giving the board PSD rule-making authority, as well as supportive legislative history. The request to terminate rule-making was therefore rejected.

Many commentors felt that fugitive dust emissions should be used to determine whether any source is subject to PSD permitting requirements, not just those specifically listed as

major stationary sources in Rule I(22)(a).

Response: The board believes that the suggested change would present an undue strain on mining operations, especially in view of assertions that these fugitive emission particles are generally large in nature and therefore do not present any serious danger to public health. In addition, the definition is consistent with EPA rules. The department has suggested that when the micron size standard is applied in PSD, the issue will be worth reconsideration. Regardless of PSD review, fugitive emissions from these sources count against increment consumption in any area where the baseline may have been set. It is also noted that BACT control technology requirements are already required by the state under its generic permitting program. Given the existence of the above protections, the board declined to make the requested change.

Richard Steffel suggested that the "significant" levels of emissions used to define a major modification should be those lower levels suggested in earlier EPA rule drafts.

Response: The board has no data to support different levels than those defined in the current EPA rules. In any event, all 25 ton/year sources not specifically excluded in ARM 16.8.1102 must apply for and receive a general permit which requires the source to apply BACT, thereby limiting emissions. Therefore, the suggestion was not adopted.

Several commentors felt the PSD program should be no more restrictive than the federal program.

Response: The board as a rule of thumb rejects this notion. There is no evidence that the state as a whole wishes to confine its control of air, water, and sources of pollution to the standards and levels set by the federal government. In fact, one could convincingly argue the opposite. The Montana legislature has on many occasions passed statutes which were well beyond federal minimums (e.g. the Montana Environmental Policy Act and the Major Facility Siting Act). The board has no intention of following the exact federal line, believing instead that there is no reason why Montana cannot act on its own behalf and set its own goals. As a matter of interest, however, the proposed rules are very similar to the federal rules except as noted throughout these comments. It is believed that the proposed rules are as flexible as can be expected without being overly stringent and yet meet the federal minimum requirements.

The Environmental Defense Fund felt the proposed rules do not fully address the federal requirements for notification to federal land managers for the purposes of analyzing visibility degradation and other related issues.

Response: The board felt that it was unnecessary to include in the rules all of the specific federal PSD requirements of notice to federal land managers. In regard to visibility, the board has yet to develop an approved visibility program pursuant to 40 CFR Part 51, Subpart P. For this reason, the

board has not included those unique visibility requirements in the rule. The submittal of the PSD rule as a SIP modification will not include a request to approve the Montana visibility program. The visibility issue will be dealt with at a later time.

The Consolidation Coal Company suggested a change in the definition of "actual" emissions to include sources in existence or with a complete permit application on or before the baseline date.

Response: The board notes that since an impact area definition of baseline date was finally adopted, the question is moot. There are no sources with pending or complete permits in which increment consuption is of issue. Therefore, the requested change is unnecessary.

Many commentors argued that the definition of "baseline date" should be modified to apply only to an impact area, while many others argued it should remain a state-wide date. The majority of testimony received on the PSD rules in fact revolved around the definition of baseline date. Those in favor of an impact area date argued that: (a) the impact area is a defensible mathematical model for determining a baseline date rather than statewide, which is arbitrary; (b) the statewide baseline date is unduly restrictive of growth, while the impact area date leaves open room for future development; (c) the impact area date is easier to administer; (d) since thereis already sufficient protection of Class I and other special areas, an all-encompassing state-wide date is not necessary; and (e) the state-wide date is contrary to the wishes of Congress. Those in favor of a state-wide date argued that: (a) the state-wide baseline date is the only method which actually protects nearly all of the state from significant deterioration of air quality, and any other method fails to actually implement the program; (b) the state-wide date is easier for the department to administer; (c) a state-wide option would not restrict major growth; (d) there is no real protection for Class I areas since a baseline date would not be established; and (e) since Congress only set minimum standards for PSD, the state-wide option is within the scope of the federal intentions for the program.

Response: The board chose to accept or reject each argument within the context of the two pollutants regulated under PSD--sulphur dioxide and particulate matter. Since sulphur dioxide is generally well-defined in terms of emission sources and tracking, the board believed a state-wide program is the most effective option for it, which at the same time would not improperly restrict development. Particulates, on the other hand, are ubiquitous in nature and their contributors are expensive to pinpoint in compliance and enforcement actions. The board believed, therefore, that the impact area date was the proper choice for particulates since it can more effectively be handled in terms of administration, compliance,

and enforcement. At the same time, the impact area for particulates would not deteriorate air quality beyond reasonable levels.

JOHN F. McGregor, M.D., Chairman

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

Certified to the Secretary of State January 17, 1983

BEFORE THE BOARD OF OIL
AND GAS CONSERVATION

In the matter of the amendment of Board Rule 36.22.601 pertaining to filing and issuance of permits to drill oil or gas wells.	NOTICE OF AMENDMENT OF RULE 36.22.601. NOTICE OF INTENTION AND PERMIT TO DRILL

TO: All Interested Persons

1. On October 28, 1982, the Board of Oil and Gas Conservation published Notice of a proposed amendment to ARM 36.22.601 concerning establishing procedures for the staff to refer applications for drilling permits or approval of recompletion operations to the Board when the applicant's current operations are not in substantial compliance with the Board's rules governing any of the applicant's operations in Montana. The notice was published at page 1887 of the 1982 Montana Administrative Register, issue number 20.

2. The Board has adopted the rule as proposed. Paragraph (2) of the existing rule, which is not amended by this notice, was copied incorrectly in the October 28, 1982 notice of proposed amendment. The correct language for paragraph 2 can be found on page 36-421 of the Administrative Rules of Montana dated 9/30/82.

3. No testimony or requests for public hearing were received. The Board received written comments from Wexpro Company of Salt Lake City, Utah, suggesting that operators be advised when they are not in substantial compliance with Board rules and providing definition of the term "substantial compliance."

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

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

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

Certified to the Secretary of State January 17, 1983.

VOLUME NO. 40 OPINION NO. 1

ELECTIONS - Election of city aldermen, length of term of office after reapportionment;
REAPPORTIONMENT - Length of term of office of city aldermen after reapportionment;
MONTANA CODE ANNOTATED - Sections 7-4-4101, 7-4-4402.

HELD: Aldermen elected to four-year terms in 1981 need not run for re-election in 1983 as a result of reapportionment and redistricting.

6 January 1983

Mae Nan Ellingson
Missoula Deputy City Attorney
201 West Spruce Street
Missoula, Montana 59802

Dear Ms. Ellingson:

You have requested my opinion as to whether the six Missoula aldermen who were elected to four-year terms in 1981 must run for re-election in 1983 as a result of reapportionment. You note in your request that because of the disparity in population among the six existing wards, the Missoula City Council intends to implement a reapportionment plan that will take effect in time for the 1983 local election.

The rules concerning the number of aldermen to be elected and the length of their term of office are a matter of legislative discretion and are set by state law. See Bonner v. District Court, 122 Mont. 464, 206 P.2d 166 (1949). The relevant statutes are sections 7-4-4101 and 7-4-4402, MCA, which provide that there shall be two aldermen from each ward who shall hold office for a term of four years, and that the terms of the two aldermen from each ward shall be staggered, i.e., one of the two terms shall begin every two years. Thus, the six Missoula aldermen who ran for election in 1981 do not, according to state law, stand for re-election until 1985. Because the boundaries of their wards will most likely be changed as a result of the impending reapportionment, the question arises as to

whether all twelve aldermen should run for election in 1983 from the newly-formed wards.

My research has revealed no Montana case law on point. However, over the past two decades several other states have litigated the question of whether representation of a newly-formed district by a holdover elected official is unconstitutional under the one-person one-vote rule set forth in Reynolds v. Sims, 377 U.S. 533 (1964). The holdings in those cases are summarized below.

The majority of courts have held that where the term of an elected official runs beyond the reapportionment year, the official may be held over for the duration of the term for which he or she was elected without resulting in a violation of the notions of equal protection and representative government. See Ferrell v. Oklahoma ex rel. Hall, 339 F. Supp. 73 (W.D. Okla. 1972), aff'd mem., 406 U.S. 939 (1972), where the court held that after reapportionment a two-year transitional period during which holdover state senators would be representing voters in a different geographical area than that from which they were elected did not offend the Equal Protection Clause of the United States Constitution. The court noted:

> It is impossible, where Senate District boundaries are changed, to avoid having some voters represented by a Senator for [sic] whom they had no opportunity to support or oppose. We observe, in passing, that this also happens with regard to new registrants who reach the age of 18 years shortly after an election and to people moving from one area to another. Certainly no one would argue that those voters were thereby denied their constitutional rights.

Id. at 82. In a recent Colorado case, In re: Reapportionment of the Colorado General Assembly, 647 P.2d 191 (Colo. 1982), the Colorado Supreme Court recognized that:

> [T]he complexities of the reapportionment process may result occasionally in a six-year delay of the opportunity of some persons to vote for a [state] senator. Where this result is absolutely necessary [because of the legal requirement of staggered terms], it does not

> constitute a constitutional deprivation unless the change is shown to be the result of an invidious discrimination.

Id. at 198. The Colorado Supreme Court also noted in Kallenberger v. Buchanan, 649 P.2d 314 (Colo. 1982), that:

> Because Colo. Const. Art. V, § 5 requires that state senators be divided "so that one-half of the Senators, as nearly as practicable, may be chosen biennially," the redrawing of district boundaries every ten years results, for two years after the boundaries have changed, in half the members of the Senate being "holdover" senators from pre-Reapportionment districts. This anomaly is addressed by deeming that a holdover senator, although elected from the old district, represents the citizens of the new senate district of which he is a resident.

Id. at 316-17. The idea that an elected official must constantly represent the same individuals who had an opportunity to vote for him or her has been rejected in other cases. See Anggelis v. Land, 371 S.W.2d 857 (Ky. 1963), where the Kentucky Appeals Court stated:

> Although a Senator is required...to be a resident of the district from which he is elected, once he is elected he represents generally all the people of the state and specifically all the people of his district as it exists during his tenure in office. Certainly no one would suggest that a Senator represents only those persons who voted for him. The fact that the persons who are represented by the Senator from the Twelfth District are no longer the ones who elected him indicates there is a hiatus following a redistricting of the state. However, this situation is comparable to that which results when persons move from one district to another.

Id. at 859. And in Selzer v. Synhorst, 113 N.W.2d 724 (Iowa 1962), the Supreme Court of Iowa quoted from Stoyles and Kennedy, Constitutional and Legal Aspects of the Plan, 39 Iowa Law Review, No. 4:

> While representation of a constituency different from that which elected the senator or representative is exceptional, it is sometimes unavoidable if both continuity of the legislative body and responsiveness to population growth and change are to be achieved.

Selzer at 729-730. The court went on to state that "the idea that we are personally represented and represented only by officials for whom we have voted stretches too far the theory of representative government." Selzer at 730.

Holdover of elected officials after reapportionment has also been upheld in California, in Visnich v. Sacramento County Board of Education, 112 Cal. Rptr. 469 (1974), in Griswold v. County of San Diego, 107 Cal. Rptr. 845 (1973), and in Legislature of State of California v. Reinecke, 516 P.2d 6 (Cal. 1973); in Delaware, in Twilley v. Stabler, 290 A.2d 636 (Del. 1972); in Indiana, in Stout v. Bottorff, 249 F. Supp. 488 (S.D. Ind. 1965); in Michigan, in New Democratic Coalition v. Austin, 200 N.W.2d 749 (Mich. 1972); in Nebraska, in Barnett v. Boyle, 250 N.W.2d 635 (Neb. 1977); in Oregon, in McCall v. Legislative Assembly, 634 P.2d 223 (Or. 1981); and in Texas, in Carr v. Brazoria County, Texas, 341 F. Supp. 155 (S.D. Tex. 1972), aff'd mem., 468 F.2d 950 (5th Cir. 1972), in Robinson v. Zapata County, Texas, 350 F. Supp. 1193 (S.D. Tex. 1972), in Pate v. El Paso County, Texas, 337 F. Supp. 95 (W.D. Tex. 1970), aff'd mem., 400 U.S. 806 (1970), and in Childress County v. Sachse, 310 S.W.2d 414 (Tex. 1958). And see Mader v. Crowell, 498 F. Supp. 226 (M.D. Tenn. 1980), where the court refused to order all state senators to stand for re-election in 1980 merely because a reapportionment plan had gone into effect. Tennesseee law required staggered four-year terms for state senators, and although the shifting of boundaries of voting districts resulted in some voters who had last voted in 1976 not being entitled to vote until 1982, the court noted:

> The temporary disenfranchisement of these voters violates neither the equal protection clause nor any other constitutional provision.... Shifts from odd-numbered to even-numbered districts and vice versa are an unavoidable consequence of the reapportionment ordered by this court.

> Moreover, the deprivation suffered is de minimis at most and the remedy urged by plaintiffs would not justify the massive intrusion into the state's political machinery.... The disenfranchisement is temporary in nature....
>
> Plaintiffs submitted no evidence that the General Assembly made these shifts for invidious or discriminatory purposes. Rather, this disenfranchisement results simply from the neutral and inoffensive concatenation of the Tennessee Constitutional provision for overlapping senatorial terms, this court's order requiring reapportionment, and the legislature's laudable objective to achieve near perfection in equalizing the population of senatorial districts. Accordingly, plaintiffs' claim on this ground cannot prevail.

Id. at 231. See also 20 C.J.S. Counties § 77, p. 840; and 67 C.J.S. Officers § 67, p. 375, and § 70, p. 378.

It is true that in a few cases courts have permitted the shortening of the terms of certain elected officials, but only under special circumstances, none of which seem to be apparent in the matter at hand. In In Re Apportionment Law, etc., 414 So. 2d 1040 (Fla. 1982), the Florida Supreme Court held that the Florida Constitution required all state senators to stand for election in order to run from newly-formed districts. The Florida Constitution, however, specifically required that while state senators were elected for four-year terms, after a reapportionment some senators were to be elected for two-year terms in order to maintain staggered terms. And see Williams v. Meyer, 127 N.W. 834 (N.D. 1910), where the North Dakota Constitution mandated shortened terms. There have also been cases where truncation of a term of office was upheld because it was permitted by state law, Groh v. Egan, 526 P.2d 863 (Alaska 1974); or implemented by voter initiative, State ex rel. Christensen v. Hinkle, 13 P.2d 42 (Wash. 1932).

Some courts have also ordered the shortening of terms of office after a reapportionment where the elected officials were subsequently found by the courts to have been elected under an unconstitutional apportionment

plan. See Chavis v. Whitcomb, 307 F. Supp. 1362 (S.D. Ind. 1969), where the court had found multimember districting provisions of the Indiana apportionment statutes to be unconstitutional in that they canceled out the voting strength of a cognizable racial minority.

There is no provision in Montana law, either in the constitution or in the statutes, that authorizes the shortening of an alderman's term of office. The fact that ward boundaries may change as a result of reapportionment and that some voters may be represented for two years by an alderman for whom they had no opportunity to vote has not justified the deviation from state law in other jurisdictions. On the contrary, where state law provides for the length of term of an elected official and for the staggering of terms to insure continuity and stability, these requirements have been held paramount to the temporary disenfranchisement that necessarily follows a reapportionment.

What I have attempted to do in this opinion, absent any controlling decisions from the Montana Supreme Court in this area, is demonstrate how courts from other jurisdictions have interpreted language similar to that found in our statutes. However, a great many questions remain unanswered, to be worked out in the reapportionment scheme itself. In summary, the requirements found in Montana state law regarding four-year staggered terms for aldermen, the absence of any applicable statute authorizing the removal of incumbents from office after reapportionment and the case law of those states to which I have already referred are persuasive.

THEREFORE, IT IS MY OPINION:

> Aldermen elected to four-year terms in 1981 need not run for re-election in 1983 as a result of reapportionment and redistricting.

Very truly yours,

MIKE GREELY
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1982. This table includes those rules adopted during the period October 1, 1982 through December 31, 1982, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 1982, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1982 and 1983 Montana Administrative Registers.

ADMINISTRATION, Department of, Title 2

I-IX (Teachers' Retirement Board)	Leave of Absence Without Pay, p. 1622, 2014
I	Creditable Service for Private School Employment, p. 1565, 2016
2.21.135	and other rules - Sick Leave, p. 1635, 2130
2.21.216	and other rules - Annual Vacation Leave, p. 1625
2.21.301	and other rules - Disaster and Emergency Leave, p. 1619, 2013
2.21.401	and other rules - Military Leave, p. 1632, 2012
2.32.101	Uniform Building Code, p. 1862, 2170
2.32.102	Uniform Housing Code, p. 1866, 2170
2.32.103	Uniform Code for the Abatement of Dangerous Buildings, p. 1868, 2170
2.32.105	Uniform Mechanical Code, p. 1870, 2170
2.32.302	Uniform Plumbing Code, p. 1875, 2170
2.32.601	and other rule - Enforcement of the Elevator Code, p. 1881, 2170

AGRICULTURE, Department of, Title 4

I-XII	Food and Fuels Program, p. 1846
4.10.301	and other rules - Aquatic Herbicides, p. 1566A, 1847

COMMERCE, Department of, Title 8

(Board of Cosmetologists)
8.14.601 and other rules - Applications, School Requirements, Registration, Licenses, Fees, Continuing Education, p. 1715, 2135

(Board of Dentistry)
I Professional Conduct, p. 1579, 1986, 2174
I-VIII Alternative Disciplinary Action, p. 1987, 2175
8.16.405 and other rule - Fee Schedule for Dentists and Dental Hygienists, p. 2113

(State Electrical Board)
8.18.407 Fee Schedule, p. 1722, 2091

(Board of Hearing Aid Dispensers)
8.20.401 and other rules - Traineeship Requirements and Standards - Fees, p. 1990, 2175

(Board of Medical Examiners)
8.28.414 and other rule -Temporary Certificates, Fee Schedule, p. 1814, 2134
8.28.416 Examination for Physicians, p. 2115
8.28.901 and other rules - Standards for Emergency Medical Technicians, p. 2039
8.28.1503 and other rules - Qualifications of Physician's Assistant, Application, Temporary Approval, p. 1812, 2134

(Board of Morticians)
8.30.406 and other rules - Examinations, Renewals, Arrangements, Disclosure Statement, Suspension and Revocation, Continuing Education, Rules of Professional Conduct, p. 1498, 1642, 2137

(Board of Nursing)
8.32.408 and other rules - Temporary Work Permit - Specialty Areas of Nursing, p. 1582, 1816, 1848, 10

(Board of Physical Therapy Examiners)
8.42.402 and other rules -Examinations, Fees , Temporary License - Alternative Disciplinary Action, p. 1995, 2164
8.42.406 Reciprocity License, p. 1992

(Board of Plumbers)
I General Responsibilities, p. 2116

(Professsional Engineers and Land Surveyors)
8.48.903 and other rule - Late Renewal - Fee Schedule, p. 1885, 2134

(Board of Radiologic Technologists)
8.56.401 and other rule - Definitions, Permits, p. 2118

(Board of Realty Regulations)
8.58.412 Inactive License, p. 1724, 2091

(Hard-Rock Mining Impact Board)
I-XIV Rules Governing Proceedings Before the Board, p. 1817, 2140

(Milk Control Bureau)
8.79.101 Purchase and Resale of Milk, p. 2120, 2165

EDUCATION, Title 10

(Superintendent of Public Instruction)

10.16.101 and other rules - Special Education, p. 1652, 1934
10.16.902 and other rules - Special Education, p. 1643, 1934

(Board of Public Education)

I Basic Instructional Program, Special Education, p. 1575, 2018
I-VII External Diploma Program, p. 2063
10.55.108 Alternative Standards, p. 1567, 2017
10.55.202 and other rule - Accreditation Standards, p. 2000, 2176
10.55.204 Principal, p. 1569, 2017
10.55.402 and other rules - Basic Instructional Program, p. 1571, 2017
10.57.102 Definitions - Teacher Certificates, p. 2061
10.58.303 and other rules - Teacher Education Program Standards, p. 1577, 2018
10.60.101 Board of Public Education Policy Statement, p. 2004, 2176

FISH, WILDLIFE & PARKS, Department of, Title 12

12.6.501 and other rules - Outfitters and Professional Guides Regulations, p. 2019
12.6.901 Water Safety Regulations, p. 1654
12.7.501 Fish Disease Certification, p. 1935

GOVERNOR, Title 14

14.8.301 and other rules - Petroleum Industry Reporting Requirements, p. 2092

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

I-V Nondegration Procedures for High Quality Waters, p. 1453, 1602, 2141
I-XV Establishing Groundwater Classifications, Standards, and a Permit Program, p. 1511, 1937
16.8.1201 and other rules - Tall Stacks, Air Quality, p. 2067
16.10.101 Food Standards, p. 2123
16.28.711 and other rules - School Immunization, p. 1655, 1936
16.32.101 and other rules - Review of Certificate of Need Application for New Institutional Health Services and Facilities, p. 1586

INSTITUTIONS, Department of, Title 20

20.10.101 and other rules - Reimbursement Policies, p. 1

JUSTICE, Department of, Title 23

(Fire Marshall Bureau)

23.7.153 and other rules - Sale, Service and Installation of Fire Protection Equipment, p. 1659, 15

STATE LANDS, Department of, Title 26

26.2.501 and other rules - Royalties and Delay Drilling Penalties for Oil and Gas Leases on State Land, p. 2071
26.3.108 and other rule - Renewals of Surface Leases and Preference Rights, p. 1849

LIVESTOCK, Department of, Title 32

I-III Livestock Brands, p. 1726
32.3.2001 Brands and Earmarks, p. 1728
32.15.601 Fees for Filing Notices Regarding Security Agreements, p. 1730

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

I-X Petroleum Industry Reporting Requirements, p. 2092
(Board of Oil and Gas Conservation)
36.22.502 Plugging and Abandonment Procedures for Seismic Shot Holes, p. 1460, 1964
36.22.601 Notice of Intention and Permit to Drill, p. 1887
36.22.1012 and other rules - Samples of Cores and Cuttings - Filing of Completion Reports, Well Logs, Analyses Reports and Surveys - Reports of Producer, p. 1889, 2149

PUBLIC SERVICE REGULATION, Department of, Title 38

I Cost of Service Information, p. 2166
I-II Filing Pipe Line Company Reports, p. 1464, 2097
38.5.504 Hearings on Interim Utility Rate Increases. p. 1892, 2150
38.5.1405 Termination of Gas and Electric Service, p. 2006, 2177

REVENUE, Department of, Title 42

I Clarify Reporting Requirements for Persons Subject to the Gross Proceeds Tax, p. 1683, 2028
I Clarify Reporting Requirements for Persons Subject to the Metaliferous Mines Tax, p. 1685, 2027
I Deduction of Windfall Profit Tax, p. 1908
I-III Deferred Payment of Inheritance Tax, p. 1929, 20
I-XX Alternate Valuation (Special Use) of Certain Farm and Business Real Property, p. 1916, 19
42.6.105 and other rules - Increase in Minimum Child Support Contributions, p. 1899, 2151
42.16.1112 Away-From Home Expenses, p. 1823, 2101