RESERVE

MONTANA ADMINISTRATIVE REGISTER

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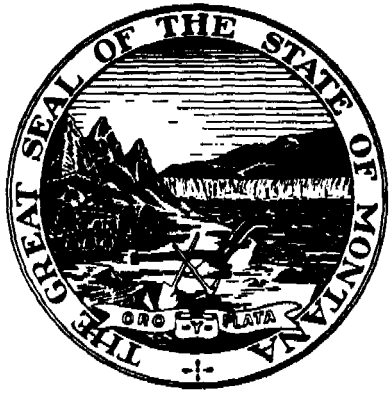

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 22

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of rules 2.21.6501 through 2.21.6504 relating to discipline handling and the adoption of new rules	))))	NOTICE OF THE PROPOSED REPEAL of RULES 2.21.6501 THROUGH 2.21.6504 AND THE PROPOSED ADOPTION OF NEW RULES NOTICE OF PUBLIC HEARING

TO: All Interested Persons.

The notice of proposed agency action published in the Montana Administrative Register on October 27, 1983, is amended as follows because the required number of persons designated therein has requested a public hearing:

1. On December 19, 1983, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, to consider the repeal and adoption of rules relating to discipline handling.

2. The rules proposed to be repealed are found on pages 2-1493 through 2-1495 of the Administrative Rules of Montana. The rules proposed for adoption are found on page 1483 of the 1983 Montana Administrative Register, issue number 20.

3. These rules are proposed to be repealed and replaced with new rules in order to clarify for the state's managers and supervisors the options available to them for taking disciplinary actions and requirements which they must follow in order to implement such actions.

4. Interested persons may present their data, views or arguments either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Dennis M. Taylor, Administrator, Personnel Division, Department of Administration, Room 130 Mitchell Building, Helena, Montana 59620, no later than December 24, 1983.

5. Gale Kuglin, Personnel Division, Department of Administration, Room 130, Mitchell Building, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

6. The authority of the department to make the proposed rule adoption is based on section 2-18-102, MCA, and the rule implements section 2-18-102, MCA.

Morris L. Brusett, Director
Department of Administration

Certified to the Secretary of State November 4, 1983.

STATE OF MONTANA
DEPARTMENT OF AGRICULTURE
BEFORE THE MONTANA AGRICULTURAL LOAN AUTHORITY
OF THE STATE OF MONTANA

In the matter of the proposed adoption of procedural and substantive rules implementing The Montana Agricultural Loan Authority Act	NOTICE OF PUBLIC HEARING FOR THE ADOPTION OF RULES. (MONTANA AGRICULTURAL LOAN AUTHORITY ACT)

TO: All Interested Persons:

1. On December 16, 1983 at 11:00 a.m. the Montana Agricultural Loan Authority (The "Authority") will hold a hearing in the auditorium of the Scott-Hart Building, 303 Roberts, Helena, Montana, to consider the adoption of procedural and substantive rules.

2. The proposed rules are the initial rules to be proposed by The Authority. They do not replace or modify any sections currently found in The Administrative Rules of Montana.

3. The proposed rules provide as follows:

RULE I ORGANIZATIONAL RULE (1) History. The Montana Agricultural Loan Authority was created by Senate Bill 316, (1983 Legislative session), now codified as Title 80, Chapter 12, MCA with an effective date of October 1, 1983.

(2) The Authority is a quasi-judicial board for purposes of Sec. 2-15-124, MCA and is attached to the department of Agriculture for administrative purposes only as provided in Sec. 2-15-121, MCA.

(3) The Authority consists of nine members appointed by the governor, as follows:

(a) one officer from a commercial lending institution;
(b) one fruit farmer or vegetable farmer;
(c) two livestock farmers;
(d) two grain farmers;
(e) one officer from a farm credit association;
(f) The director of the Department of Agriculture;
(g) one public member who is not engaged in farming or affiliated with a commerical lending institution or farm credit association.

(4) One of the nine members is also an attorney licensed to practice law in the state of Montana and the Chairman of the Authority is appointed by the governor.

(5) The Authority is staffed by an administrative officer, in its principal office located at the Department of Agriculture, Capitol station, (Agriculture/Livestock Building, 303 Roberts) Helena, Montana 59620-0211.

(6) Unless otherwise provided by special notice, all inquiries and submissions to the Authority shall be made to its administrative officer at the address stated above. AUTH: 80-12-103 and 2-4-201, MCA; IMP: 2-4-201, MCA.

RULE II PROCEDURAL RULES (1) The Montana Agricultural Loan Authority hereby adopts and incorporates the Attorney General's Model Procedural Rules set out in Title 1, Chapter 3, Administrative Rules of Montana. A copy of these rules may be obtained from the Administrative Officer of the Montana Agriculture Loan Authority, c/o Montana Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620.
AUTH: 80-12-103 and 2-4-201, MCA; IMP: 2-4-201, MCA.

RULE III PUBLIC PARTICIPATION RULES (1) The Montana Agricultural Loan Authority hereby adopts and incorporates the public participation rules of the Department of Agriculture set out in Title 4, Chapter 2 Administrative Rules of Montana. A copy of these rules may be obtained from the Administrative Officer of the Montana Agriculture Loan Authority, c/o Montana Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620.
AUTH: 80-12-103, 2-3-103, MCA; IMP: 2-3-103, MCA.

RULE IV DEFINITIONS (1) When used in these rules, unless the context clearly requires a different meaning:

(a) The "Act" means the Montana Agricultural Loan Authority Act, created by S.B. 316, (1983), and codified in Title 80, Chapter 12, MCA.

(b) The "Authority" means the nine member Montana Agricultural Loan Authority created by Title 2, Chapter 15, Section 2-15-3011, MCA.

(c) The "Department" means the Montana Department of Agriculture.

(d) "Agricultural Improvements" means any improvements, buildings, structure or fixtures suitable for use in farming which are located on agricultural land and may include an existing dwelling for residence. NOTE: However, the ability to finance a personal residence is severely limited due to Internal Revenue Service regulations; therefore, except in certain limited circumstances (when the value of the residence is clearly less than 5% of the amount of the loan) which would require the prior approval of the Authority, it would be necessary to finance the personal residence separately when farmland is being financed with an Authority bond.

(e) "Agricultural Land", as defined in Title 80, Chapter 12, Section 80-12-103, MCA, means land actively devoted to agricultural use as defined in Title 15, Chapter 7, Section 15-7-202, MCA.

(f) "Application" means a completed instrument on a form approved by the Authority. Each Application must include the following: beginning farmer name, address, financial data, evidence of unavailability of alternative credit, description of anticipated use of loan proceeds, amount of loan, loan down payment amount (if any), statement of beginning farmer's net worth determined in accordance with Authority rules, a summary of proposed loan terms and certain certifications of the beginning farmer and lender.

(g) "Beginning Farmer" means an individual who meets all qualifications required under Title 80, Chapter 12, MCA, including a net worth of $250,000 or less and who is a resident of Montana as defined by Title I, Chapter I, Section 1-1-215, MCA and whose primary goal must be directed toward the operation and management of the agricultural pursuit for which the application is made.

All individuals within a partnership, joint venture, or association must meet the definition of a beginning farmer in order to receive a loan through the Authority. The partnership, joint venter or association will not qualify for a loan if any one individual member does not meet the definition of a beginning farmer.

(h) "Depreciable Agricultural Property" means personal property suitable for use in farming for which an income tax deduction for depreciation is allowable in computing federal income tax.

(i) "Farming/Ranching" means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock or the production of timber, or sod or other agricultural enterprises on agricultural land. Farming/Ranching shall not include a processor or distributor of agricultural products or supplies who provides spraying, harvesting, or other farm services on contract.

(j) "Net Worth" means total assets minus total liabilities as determined by the lender, in accordance with rules of the Authority and accepted accounting procedures.

(k) "Lender" means any bank, bank holding company, trust company, mortgage company, national banking association, savings and loan association, life insurance company, any state or federal government agency or instrumentality, or any other financial institution or entity authorized to make mortgage loans or secured loans in this state.

(l) "Total Assets" means assets including, but not limited to the following: cash crops or feed on hand; livestock held for sale; breeding stock; marketable bonds and securities; securities (not readily marketable); accounts receivable; notes receivable; cash invested in growing crops; net cash value of life insurance; machinery and equipment, cars and trucks; farm and other real estate including life estates and personal residence; value of beneficial interest in a trust; government payments or grants; any other assets.

(a) Total assets shall not include items used for personal, family or household purposes by the applicant, but in no event shall such property be excluded to the extent a deduction for depreciation is allowable for federal income tax purposes. All assets shall be valued at fair market value by the participating lender. Such value shall be what a willing buyer would pay a willing seller in the locality. A deduction of ten per cent (10%) may be made from fair market value of farm and other real estate.

m) "Total Liabilities" means liabilities including, but not limited to the following: accounts payable; notes or

other indebtedness owed to any source; taxes; rent; amount owed on real estate contracts or real estate mortgages; judgements; accrued interest payable; any other liabilities. AUTH. 80-12-103, MCA; IMP: 80-12-102, MCA.

RULE V LOAN POWERS AND ELIGIBLE LOAN ACTIVITIES (1) Title 80, Chapter 12, MCA, authorizes the Authority to provide loans for a variety of purposes. The Authority bond program must meet the requirements of Title 80, Chapter 12, MCA, Administrative Rules of the Authority and the U.S. Internal Revenue Service on use of tax-exempt revenue bond proceeds.

(2) Eligible loan activities consist of financing purchases of the following:

(a) Depreciable Agricultural Property - the Authority will finance purchase of personal property suitable for use in farming for which an income tax deduction for depreciation is allowable in computing federal income taxes. Examples are: livestock used for breeding purposes, farm machinery, trucks, etc. Feeder cattle, pigs or lambs do not qualify as depreciable property.

(b) Agricultural Improvements - the Authority will finance the purchase of improvements located on agricultural land which are suitable for use in farming. Examples are: confinement systems for swine, cattle, or poultry, barns and other out buildings, grain storage facilities, silos, tilling and soil conservation practices such as terraces, farm ponds, erosion control structures, waterways, etc.

(c) Agricultural Land - the Authority will finance the purchase of land in Montana suitable for farming/ranching and which is or will be operated for farming/ranching purposes. Purchase of land for speculative purposes is ineligible for loan under this program.

(d) Loan application for the exclusive purpose of acquiring a personal residence is not eligible for a loan under this program.

AUTH: 80-12-103, MCA; IMP: 80-12-201, MCA.

RULE VI LOAN MAXIMUMS (1) Maximum amounts which may be loaned to a beginning farmer are:

(a) Depreciable Agricultural Property loan(s) totaling no more than $500,000 in aggregate.

(b) Agricultural Land and Agricultural Improvements loan(s) totaling no more than $500,000 in aggregate.

(2) The total amount that may be loaned to any individual and/or partnership and/or joint venture, individually, or in the aggregate shall not be more than: $500,000 for depreciable agricultural property and $500,000 for agricultural land.

AUTH: 80-12-103, MCA; IMP: 80-12-103, MCA.

RULE VII LOAN MINIMUMS (1) No minimum loan amount will be required.

AUTH: 80-12-103,MCA; IMP: 80-12-103, MCA.

RULE VIII APPLICANT ELIGIBILITY (1) Basic Authority applicant eligibility requirements are:

(a) The applicant may not have a net worth in excess of $250,000.

(b) There are no age limits for borrowers participating in the Authority, however, Title 41, Chapter 1, Part 3, MCA, will be followed.

(c) The beginning farmer must be a resident of Montana at the time the completed application is submitted to the participating lender.

(d) The beginning farmer must have documented, to the satisfaction of the lender and the Authority, sufficient education, training and experience for the anticipated farming operations for which the loan is sought.

(e) The beginning farmer must, as a condition of loan closing, demonstrate to the satisfaction of the lender and the Authority, access to the following as may be needed: adequate working capital, farm machinery, livestock and agricultural land.

(f) The Authority requires the beginning farmer, at the time of loan application, to show cause to the lender that he or she is unable to secure adequate financing from nongovernmental sources upon terms and conditions which he or she reasonably could be expected to fulfill. In many instances, this will mean the beginning farmer is unable to meet the necessary repayment provisions of a conventional loan with the standard rate of interest, and thus is unable to secure financing on terms or conditions which could be fulfilled. However, the beginning farmer may be able to succeed with interest at the tax-exempt rate. Therefore, the lender who is processing the application could make the determination on the question of unavailability of alternative credit without another lender being involved, using the lower tax-exempt interest rate as the basis for determining that the beginning farmer could succeed. AUTH: 80-12-103, MCA; IMP: 80-12-203 and 80-12-204, MCA.

RULE IX APPLICATION PROCEDURES (1) The Authority will make its loan proceeds available through lenders. Lenders interested in the program must complete and sign the Agricultural Loan Bond Program Application and return it to the Authority office in Helena. The following should be noted:

(a) Application and other forms will be provided by the Authority to lenders as necessary. Lenders may use their own application forms in addition to the approved Authority forms for their own internal loan review purposes, but must take into account any differences that might occur with respect to the Authority forms. Lenders may also use their own financial statement and other forms deemed necessary to document the eligibility of the beginning farmer or his or her ability to repay principal and interest payments.

(b) There is no formal or defined application period. The loan program is ongoing, therefore, a financial institution may become a lender at any time. AUTH: 80-12-103, MCA; IMP: 80-12-103, MCA.

RULE X LOANS TO BEGINNING FARMERS AND SECURITY ARRANGEMENTS (1) Loans to beginning farmers involve the lender, beginning farmer, and the Authority. The program involves either the sale of individual industrial development bonds, to individual lenders or a public bond sale to provide funds for an aggregation of loans. The Authority will make the loan to the eligible beginning farmer and the lending institution will purchase the bond as an investment or the loan will be made from a portion of an aggregate bond sale. To facilitate the making of the loan the lender and the Authority will enter into an agency relationship whereby the lender agrees to act as agent and fiduciary for the Authority for all processing purposes in connection with financing the loan. The lender will make its own security evaluation of the loan and the beginning farmer's ability to repay principal and interest payments. The principal and interest shall be limited obligations, payable solely out of the revenue derived from the debt obligation, collateral, or other security furnished by or or behalf of the beginning farmer (a co-signer on the note is permissible). The bond which is issued by the Authority is a non-recourse obligation. The principal and interest on the bond do not constitute an indebtedness of the Authority or a charge against its general credit or general fund. It should also be noted that any recording or filing fees associated with the loan will be paid by the beginning farmer or lender not the Authority.
AUTH: 80-12-103, MCA; IMP: 80-12-201, MCA.

RULE XI USE OF FINANCIAL AND SECURITY DOCUMENTS (1) The lender should use its own forms of financial statements and security documents which it may feel necessary and appropriate under particular loan circumstances. These items should be referenced in the Beginning Farmer Loan Agreement and their provisions incorporated therein. Any additional requirements not specifically provided for in the Loan Agreement, such as insurance coverage and amounts, should be added by means of addition to the appropriate section. If there is not sufficient room, then they may be added by exhibit incorporated into that section.

(2) The Authority would advise that any security documents or guarantees required to be delivered in connection with a loan clearly state that they are given as additional security for the indebtedness evidenced by the promissory note, the loan agreement, the lender's loan agreement and the Authority's bond and to further secure the agreements, covenants and obligations of the beginning farmer contained in the beginning farmer's loan agreement. The security documents and any guarantees should run directly between the beginning farmer and the lender. The lender may also wish to add a "cross-default" provision to these documents, making an event of default under the loan agreement an event of default under the security documents or guarantee and vice versa.
AUTH: 80-12-103, MCA; IMP: 80-12-103 and 80-12-201, MCA.

RULE XII REPAYMENT OF LOANS (1) The beginning farmer's repayment obligations, under the loan agreement and promissory note, are subject to mandatory prepayment in certain events which are set forth in the loan agreement form. These include the Agreement becoming void or unenforceable, and interest on the bond becoming subject to federal income taxation. In addition, the forms provide for optional prepayment (at the discretion of the lender) in the event of damage, destruction or condemnation of all or any part of the financed properties or project.

(2) The forms provide for prepayment at the option of the beginning farmer, the terms and conditions of which are to be agreed upon between the beginning farmer and the lender. The form of bond setting forth optional prepayment contains blanks which need to be completed by the beginning farmer and the lender. The documents and the structure of the financing require any installment payment made under the Loan Agreement and Promissory Note to be applied against a like installment payable under the bond and the lender agrees that any such prepayments will be so applied to the payment of the bond. The documents will provide, in all instances, that any partial prepayments would be applied in inverse order of principal maturity.

AUTH: 80-12-103, MCA; IMP: 80-12-103, MCA.

RULE XIII ASSIGNMENT OF LOANS (1) Participating lenders may assign a loan in whole or in part to any person. Servicing of the loan may also be assigned, but must at all times be with a participating lender. The Authority must be notified in writing prior to assignment of servicing of the loan.

(2) Generally, an investor may participate in the loan if all the participants are involved in the transaction from the very beginning of the loan and named as holders before the bonds are actually issued by the Authority.

AUTH: 80-12-103, MCA; IMP: 80-12-103, MCA.

RULE XIV FEES AND TERMS OF LOAN (1) If a beginning farmer meets the loan eligibility requirements as set forth in Title 80, Chapter 12, MCA , Rules of the Authority and IRS rules and regulations, the decision whether to enter into the Loan Agreement is between the beginning farmer and the lender. They must agree on terms of the loan such as interest rates, length of loan, down payment, service fees, origination charges and repayment schedule, which may not be any more onerous than that charged to similar customers for similar loans, and take into account the tax-exempt nature of interest on the loan.

(2) In addition, the Authority will receive a non-refundable $100 application fee (submitted by the borrower with application) and a program participation or loan fee not to exceed two percent (2%) of the amount of the loan, however, this fee shall not be less than $200. The participation fee may be financed with the loan. The lender shall collect the participation fee and remit to the Authority at the time of loan closing. The application fee

would be applied to the loan participation fee if the loan is approved by the Authority.

(3) The Authority bond counsel will review each bond for legality and tax exemption. The Authority will pay its bond counsel and other administrative costs from the fees collected from the beginning farmer.

AUTH: 80-12-103, MCA; IMP: 80-12-103 and 80-12-201, MCA.

RULE XV LENDERS (1) Any bank, bank holding company, trust company, mortgage company, national banking association, savings and loan association, life insurance company, any state or federal governmental agency or instrumentality, or any other financial institution or entity authorized to make mortgage loans or secured loans in this state may be with the approval of the Authority, a participating lender.

AUTH: 80-12-103, MCA; IMP: 80-12-103,MCA.

RULE XVI PROCEDURES FOLLOWING BOND ISSUANCE (1) No bond proceeds may be used for a non-qualified purpose or by a non-qualified user. Following disbursement of the bond proceeds, the participating lender and beginning farmer shall certify to the Authority that the proceeds were used by a qualified beginning farmer for a qualified purpose.

AUTH: 80-12-103, MCA; IMP: 80-12-302, MCA.

RULE XVII ASSUMPTION OF LOANS, SUBSTITUTION OF COLLATERAL AND TRANSFER OF PROPERTY (1) Loans may not be assumed without the prior approval of the Authority and then only if the purchaser of the property is an eligible applicant. Equipment and other depreciable property may be exchanged or traded in on similar property, substituted as collateral at the discretion of the lender without the prior approval of the Authority. The benefits of the loan made at the tax-free rate from the proceeds of an Authority bond must remain with the qualified beginning farmer, and no person to whom property is traded or otherwise transferred may obtain the benefits of the Authority loan.

AUTH: 80-12-103, MCA; IMP: 80-12-103 and 80-12-201, MCA.

RULE XVIII PUBLIC HEARING (1) The Authority will conduct public hearings in conjunction with its regularly scheduled Authority meetings to consider loan applications and bond sales. However, in an emergency, some deviation might be made from this procedure. It should be noted that a hearing need not be held before an Authority application is approved, but must be held before the bond documents are approved.

AUTH: 80-12-103, MCA; IMP: 80-12-103, MCA.

RULE XIX RIGHT TO AUDIT (1) The Authority shall have, at any time, the right to audit records of the lender and the beginning farmer relating to a loan and bond to insure that the provisions of the "Act" are followed.

AUTH: 80-12-103, MCA; IMP: 80-12-103, MCA.

RULE XX TAX DEDUCTION (1) The Authority will follow rules of the Montana Department of Revenue implementing the tax deduction provided in Title 80, Chapter 12, Section 80-12-211, MCA, for the sale of qualifying land to a beginning farmer.

(2) Basic Authority applicant eligibility requirements for a beginning farmer are:

(a) The applicant may not have a net worth in excess of $250,000.

(b) There are no age limits for borrowers participating in the Authority, however, Title 41, Chapter 1, Part 3, MCA, will be followed.

(c) The beginning farmer must be a resident of Montana at the time the completed application is submitted to the Authority.

(d) The beginning farmer must have documented, to the satisfaction of the Authority, sufficient education, training and experience for the anticipated farming operations.

(e) The Authority may require certain documents to determine eligibility.

(3) The beginning farmer need not be a recipient of an Authority loan.

(4) A $25 application fee will be charged by the Authority to cover administrative costs.

AUTH: 80-12-103, MCA; IMP: 80-12-211, MCA.

RULE XXI DISCLAIMER (1) The Authority has occasionally included in its rules language with instruction/requirements imposed by statutes, rules, and agreements over which it exercises no authority. While the language is included for informational purposes, this rule disclaims any responsibility for inaccurate, incomplete or outdated provisions. The user is directed to contact the proper authority for information and requirements (Internal Revenue Service, Montana Department of Revenue or individual lenders) as may be necessary.

4. Rule Justifications

A) Rules I, II, and III are necessary for the following reasons:

(a) to provide an awareness of the formation and structure of the Authority;

(b) to provide for model procedural rules under which the Authority will conduct business; and

(c) to provide for rules designed to implement public participation.

B) Rule IV is necessary to adequately define various terms as applicable to the Authority and the Act.

C) Rule V is necessary to identify eligible loan activities.

D) Rules VI and VII are necessary to provide for reasonable loan limits, to provide for reasonable economic capacity and probability for borrower success and to provide for a high level of overall public benefit.

E) Rule VIII is necessary to provide criteria for determining applicant eligibility.

F) Rule IX is necessary to provide applicants and participating lenders with standard application procedures.

G) Rules X, XI, XII, and XIII are necessary to provide for determination of certain loan processing procedures, use of appropriate documents and provisions regarding loan repayment and assignments.

H) Rule XIV is necessary to provide for a uniform application and loan participating fee structure. As there is no general fund appropriation to the Authority, receipt of such fees are necessary to cover administrative costs of the Authority.

I) Rule XV is necessary to specify which organizations may participate as a lender in the Authority loan program.

J) Rule XVI is necessary to ensure compliance with IRS and Authority restrictions related to the use of tax exempt bonds.

K) Rule XVII is necessary to provide for regulation of Authority related loan assumptions and the use of collateral properties.

L) Rule XVIII is necessary to indicate the Authority intent and purpose to conduct public hearings.

M) Rule XIX is necessary to provide authority to the Authority to monitor/audit certain loan and bond related records.

N) Rule XX is necessary to establish Authority criteria for determining qualification for a tax deduction to a seller of agricultural land on contract to a beginning farmer.

O) Rule XXI is necessary as an Authority disclaimer.

5. The authority of the Montana Agricultural Loan Authority to promulgate the proposed rules is based on Section 80-12-103, MCA.

6. Interested persons may present views, arguments or data at the hearing either orally or in writing. Written views, arguments and data may also be submitted to the Chairman of the Montana Agricultural Loan Authority, c/o The Montana Department of Agriculture, 303 Roberts, Helena, Montana 59620-0201, no later than December 23, 1983.

The Chairman of the Montana Agricultural Loan Authority or his designee will preside over and conduct the hearing.

By: Keith Kelly

Keith Kelly, Director
Department of Agriculture and
member, Montana Agricultural
Loan Authority

Certified to the Secretary of State November 14, 1983.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF DENTISTRY

In the matter of the proposed amendment of 8.16.602 concerning allowable functions for dental auxiliaries.	))))	NOTICE OF PROPOSED AMENDMENT OF ARM 8.16.602 ALLOWABLE FUNCTIONS FOR DENTAL AUXILIARIES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 25, 1983, the Board of Dentistry proposes to amend rule ARM 8.16.602 concerning allowable functions for dental auxiliaries.

2. The proposed amendment will add a new subsection (5) and renumber all subsections following: (new matter underlined, deleted matter interlined)

8.16.602 ALLOWABLE FUNCTIONS FOR DENTAL AUXILIARIES

(1)...

(5) In addition to the above listed allowable functions for dental assistants, below listed are allowable functions for orthodontic auxiliaries under the direct supervision of a dentist. All patients must be seen by a dentist at each regular visit to the orthodontist.

(a) taking intraoral photographs,

(b) exposing and developing extraoral x-ray films if qualified by successful completion of the examination administered by the Montana Dental Association,

(c) taking wax bites,

(d) placing and removing orthodontic separators,

(e) removing excess supragingival cement after cementation of bands using hand instruments only,

(f) pre-fitting orthodontic bands with no cementation,

(g) performing oral inspection for oral hygiene, loose brackets, wires and ties,

(h) applying topical floride agents,

(i) fitting and adjusting headgears with no activation,

(j) removing orthodontic archwires,

(k) removing loose orthodontic bands,

(l) replacing lost ligature ties and removing broken archwires,

(m) performing intraoral bending of sharp wires,

(n) performing intraoral finishing of fractured edges on removeable appliances.

(6) To qualify...[former subsection (5)]

AUTH: 37-4-205, 37-4-408, MCA IMP: 37-4-408, MCA

MAR NOTICE NO. 8-16-22

(3) The board is proposing the amendment to define by rule what shall constitute allowable functions for orthodontic auxiliaries. Two complaints were received regarding orthodontic auxiliary personnel, bringing to the board's attention that there was a potential problem due to the fact that the board had not defined what constituted allowable functions for orthodontic auxiliaires.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Dentistry, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than December 23, 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 comments he has to the Board of Dentistry, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than December 23, 1983.

6. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no 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 4 based on the 45 licensees in Montana.

BOARD OF DENTISTRY
DAVID B. TAWNEY, D.D.S.,
PRESIDENT

BY: _____
ROBERT WOOD, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, November 14, 1983.

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

In the matter of the proposed amendments of ARM 8.24.405 concerning examinations, 8.24.409 concerning the fee schedule	NOTICE OF PROPOSED AMENDMENT OF ARM 8.24.405 EXAMINATIONS and 8.24.409 FEE SCHEDULE NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 25, 1983, The Board of Landscape Architects proposes to amend rules ARM 8.24.405 concerning examinations and 8.24.409 concerning the fee schedule.

2. The proposed amendment of 8.24.405 will amend subsections (3) and (6) and will read as follows: (new matter underlined, deleted matter interlined)

8.24.405 EXAMINATIONS (1) ...

(3) ~~A candidate failing to pass any part of the examination may take that part again at a subsequent examination period.~~ Beginning with the June 1984 licensing examination, a first time candidate failing to pass any part(s) of the examination may repeat the part(s) failed twice at two consecutive examinations. Failure to pass the repeated part(s) after the two attempts will result in the candidate not being allowed to repeat the failed part(s) for a period of three years.

(4)...

(6) The written examination shall ~~occupy no less than 8 days and shall~~ cover the subjects of history and theory of landscape architecture relative to landscape architectural design, landscape construction materials and methods, grading and supervisory practice, and a practical knowledge of botany, horticulture, and similar subjects relating to the practice of landscape architecture. Total examination length will be determined by CLARB.

AUTH: 37-66-202, MCA; IMP: 37-66-305, MCA

3. The board is proposing the amendment of subsection (3) as the exam is rewritten every three to four years and therefore, an individual would not be able to lock in on particular questions and finally pass the exam by just simply retaking it year after year. Montana is also one of the few states that allows an individual to continuously take the exam over and over without any limit. Having to wait three years should give a person time to be able to properly prepare to take the exam at a later date. Because major portions of the examination are identical for years, applicants who take the exam repeatedly gain an unfair advantage over other applicants.

MAR. NOTICE NO. 8-24-9

The proposed amendment of subsection (6) is because section 37-66-305 (3), MCA, states that the examination given must be the uniform national examination prepared by the Council of Landscape Architectural Registration Boards. The length of the examination is determined by CLARB (as stated in 8.24.405 (6), MCA, last sentence). The board is under contractural agreement to use the examination from CLARB and therefore, the board has no authority to determine the length of the examination. In view of this the board is amending the rule to delete the 3 day limit.

4. The proposed amendment of ARM 8.24.409 will read as follows: (new matter underlined, deleted matter interlined)

8.24.409 FEE SCHEDULE (1) ...

(3) Landscape Architects Fee Schedule:

Application (not included in examination fees)		$ 75.00
Certificate (license)		35.00
Examination (full)	~~190.00~~	250.00
Examination - Section A	~~30.00~~	45.00
Section B	~~30.00~~	45.00
Section C	~~65.00~~	80.00
Section D	~~65.00~~	80.00
UNE Re-evaluation per sheet for performance problems	~~25.00~~	35.00
License renewal		90.00
Duplicate certificate		35.00
Stamps - Seals		25.00

AUTH: 37-1-134, 37-66-202, MCA; IMP: 37-1-134, 37-66-305, MCA

5. The board is proposing the amendment to set fees commensurate with costs of operating the board programs. CLARB has increased the cost of the examinations to the board. The proposed fees are those the board has determined necessary to cover the increased examination costs as well as the administrative costs connected with the examinations.

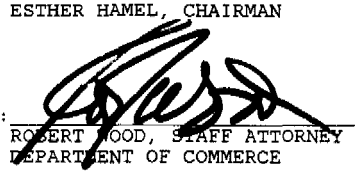
6. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Landscape Architects, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than December 23, 1983.

7. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Landscape Architects, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than December 23, 1983.

8. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is

less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no 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.

BOARD OF LANDSCAPE ARCHITECTS
ESTHER HAMEL, CHAIRMAN

BY: 
ROBERT WOOD, STAFF ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, November 14, 1983.

STATE OF MONTANA
DEPARTMENT OF COMMERCE

In the matter of the proposed amendment of ARM 8.77.102 concerning fees for testing and certification.	))))	NOTICE OF PROPOSED AMENDMENT OF ARM 8.77.102 FEES FOR TESTING AND CERTIFICATION NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 25, 1983, the Department of Commerce proposes to amend rule ARM 8.77.102 concerning fees for testing and certification.

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

8.77.102 FEES FOR TESTING AND CERTIFICATION

(1) Special inspection fees:

(a) units over 5,000 pounds of testing weights ~~$0.30~~ $0.60 a mile;

(b) all other units ~~$0.15~~ $0.30 a mile;

(c) additional time for testing by inspection ~~$10.00~~ $20.00 an hour.

(2) Where fees are not paid within thirty (30) days after inspection, the equipment will be sealed and removed from service by the sealer of weights and measures, or his deputies, until such fees have been paid.

AUTH: Sec. 30-12-202, MCA; IMP: 30-12-203, MCA

3. The fees are being increased in an effort to comply with the recommendation of the Governor's Council on Management that fees more closely reflect the cost of providing services.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to Gary Delano, Bureau Chief, Weights and Measures Bureau, Department of Commerce, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than December 23, 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 comments he has to Gary Delano, Bureau Chief, Weights and Measures Bureau, Department of Commerce, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than December 23, 1983.

6. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of

the legislature, from a governmental agency or subdivision, or from an association having no 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.

DEPARTMENT OF COMMERCE

BY: 
ROBERT WOOD, STAFF ATTORNEY

Certified to the Secretary of State, November 14, 1983.

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

In the matter of the amendment of Rule 8.86.301 (6)(a), (i) (vi), (8)(a), (b), (c), (d) and (e) as they relate to the Class I and Class III price formulas and proposed adoption of a new rule establishing a statewide pool.	NOTICE OF VACATED AMENDMENT OF RULES 8.86.301 (6)(a), (i)(vi), (8)(a), (b), (c), (d), AND (e): PRICING RULES AND PROPOSED ADOPTION OF A NEW RULE: POOLING RULE DOCKET #67-83

TO: ALL INTERESTED PERSONS

1. The notice of hearing on the above stated rule which was published on October 27, 1983 at pages 1498 through 1499, 1983 Montana Administrative Register, issue number 20, is hereby amended cancelling the hearing scheduled for December 2, 1983 at 9:00 a.m. in the Scott Hart Auditorium at 303 Roberts in Helena, Montana.

2. The hearing has been cancelled to allow all affected producers an opportunity to hold meetings and learn more about how the pooling will affect each individual licensee. Any action will be published in the Montana Administrative Register at a later date.

3. Interested persons may contact the Milk Control Bureau, 1424 Ninth Avenue, Helena, Montana 59620-0422 for additional information.

BOARD OF MILK CONTROL
CURTIS C. COOK, CHAIRMAN

William E. Ross

WILLIAM E. ROSS, Chief
MILK CONTROL BUREAU

Certified to the Secretary of State November 14, 1983.

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

In the matter of the amendment of rule 16.10.305 relating to sale of milk and milk products in food processing establishments	))))	NOTICE OF PROPOSED AMENDMENT OF RULE (Milk, Milk Products) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On January 3, 1984, the department proposes to amend rule 16.10.305 relating to sale of milk and milk products in food processing establishments.

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

16.10.305 MILK AND MILK PRODUCTS (1) All milk and milk products, including fluid milk, other fluid dairy products and manufactured milk products, shall meet the standards of quality established for such products by the Department of Livestock. Only Grade A pasteurized fluid milk and fluid milk products ~~shall~~ may be used or offered for sale. Dry milk and milk products may be reconstituted in the establishment if used for cooking purposes only.

3. The Department is proposing this amendment in order to clarify the Department's long-standing interpretation of this rule. The rule applies to food processing establishments, which includes perishible food dealers. The rule prevents the sale of raw milk or other non-Grade A, non-pasteurized milk products in a food store. The rule does not apply to sale of milk at a dairy.

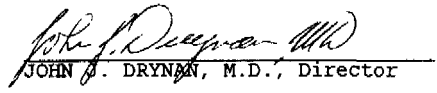
The Department considers this rule necessary for the protection of public health, because of the danger of disease spread by unpasteurized milk from infected cows. Even cows that are inspected regularly can develop infections which may go undetected. Prevention of the sale of raw milk in grocery stores will protect the consumer who might not otherwise be aware of the danger.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Cal Campbell, Food and Consumer Safety Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than December 28, 1983.

5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cal Campbell at the above address no later than December 28, 1983.

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

7. The authority of the department to make the proposed amendment is based on section 50-50-103, MCA, and implements section 50-50-103, MCA.



JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State November 14, 1983

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

In the matter of the amendment of rules 16.44.104, 16.44.106, 16.44.108, 16.44.109, 16.44.202, 16.44.811, 16.44.817, and 16.44.819 governing the permitting of facilities for the treatment, storage and disposal of hazardous waste	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULES (Hazardous Waste Management)

TO: All Interested Persons

1. On December 19, 1983, at 10:00 a.m., a public hearing will be held in Room C209 of the Cogswell Building, Helena, Montana, to consider the amendment of rules 16.44.104, 16.44.106, 16.44.108, 16.44.109, 16.44.202, 16.44.811, 16.44.817 and 16.44.819 pertaining to the permitting of hazardous waste management facilities.

2. The proposed amendments would replace parts of the present rules 16.44.104, 16.44.106, 16.44.108, 16.44.109, 16.44.202, 16.44.811, 16.44.817 and 16.44.819 found in the Administrative Rules of Montana. The proposed amendments would effect only minor changes in the state's regulatory program of hazardous wastes.

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

16.44.104 PERMITTING REQUIREMENTS: EXISTING AND NEW HWM FACILITIES (1) - (7) Same as existing rule.

(8) The requirements of this chapter shall be coordinated with but do not alter the applicable requirements for new facilities set forth in Title 75, chapter 20, MCA (major facility siting).

AUTHORITY: Sec. 75-10-404, 75-10-405, MCA
IMPLEMENTING: Sec. 75-10-405(4), 75-10-406, MCA

16.44.106 APPLICATION FOR PERMIT

(1) - (4) Same as existing rule.

(5) If an owner or operator of a hazardous waste management facility has filed Part A of a permit application and has not yet filed Part B, the owner or operator:

(a) shall file with the department an amended Part A application prior to the effective date of any revision of sub-chapter 3 of this chapter listing or identifying additional hazardous wastes, if the facility is treating, storing, or disposing of any of those newly listed or identified wastes;

(b) shall file with the department an amended Part A application as necessary to comply with the provisions of ARM 16.44.610 for changes during interim status;

(c) The owner or operator of a facility which fails to comply with the updating requirements of subsections (5)(a) and (b) above does not receive interim status as to the wastes not covered by duly filed Part A applications.

~~(5)~~ (6) Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this rule and under ARM 16.44.119 and 16.44.120 for a period of at least 3 years from the date the application is signed.

AUTHORITY: Sec. 75-10-404, 75-10-405(4) MCA
IMPLEMENTING: Sec. 75-10-405(4), 75-10-406 MCA

16.44.108 SIGNATORIES TO PERMIT APPLICATIONS (1) All permit applications shall be signed as follows:

(a) For a corporation: by a ~~principal executive~~ responsible corporate officer. ~~of at least the level of vice-president~~ For the purpose of this subsection, a responsible corporate officer means:

(i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or,

(ii) the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures,

(b) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(c) For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this subsection, a principal executive officer of a federal agency includes:

(i) the chief executive officer of the agency, or

(ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g. regional administrators of EPA).

(2) and (3) Same as existing rule.

(4) Any person signing a document under subsections (1) or (2) of this rule shall make the following certification:

~~"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."~~

"I certify under penalty of law that this document and

all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."
AUTHORITY: Sec. 75-10-404, 75-10-405(4) MCA
IMPLEMENTING: Sec. 75-10-405(4), 75-10-406 MCA

16.44.109 CONDITIONS OF PERMITS The following conditions apply to all HWM permits, and shall be incorporated into the permits either expressly or by reference. If incorporated by reference a specific citation to these rules must be given in the permit.

(1) - (3) Same as existing rule.

(4) ~~The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with the permit.~~ In the event of noncompliance with the permit, the permittee shall take all reasonable steps to minimize releases to the environment, and shall carry out such measures as are reasonable to prevent significant adverse impacts on human health or the environment.

(5) - (23) Same as existing rule.

AUTHORITY: Sec. 75-10-404, 75-10-405(4) MCA
IMPLEMENTING: Sec. 75-10-405(4), 75-10-406 MCA

16.44.202 DEFINITIONS In this chapter, the following terms shall have the meanings or interpretations shown below:

(1) - (14) Same as existing rule.

(15) "Designated facility" means a hazardous waste treatment, storage, or disposal facility which has received an EPA permit or interim status, a permit from the department pursuant to sub-chapters 1 or 6 of this chapter, or a permit from another state authorized by EPA that has been designated on the manifest by the generator as required by ARM 16.44.405.

(16) - (103) Same as existing rule.

AUTHORITY: Sec. 75-10-404, 75-10-405 MCA
IMPLEMENTING: Sec. 75-10-403, 75-10-405, 75-10-406 MCA

16.44.811 FINANCIAL TEST AND CORPORATE GUARANTEE FOR CLOSURE AND/OR POST CLOSURE (1) An owner or operator may satisfy the requirements of this sub-chapter by demonstrating to the regional administrator of the U.S. EPA Region VIII that he or she meets the ~~provision of federal law for the~~ financial

test and corporate guarantee for closure and/or post closure set forth at 40 CFR 264.143(f) and 40 CFR 264.145(f). A copy of the documents submitted to the regional administrator shall be provided to the department within 30 days after ~~the effective date of these rules~~ submittal to the regional administrator.

(2) The department hereby adopts and incorporates herein by reference 40 CFR 264.143(f) and 40 CFR 264.145(f) which are federal agency rules setting forth minimum financial worth and bond rating criteria by which owners and operators of hazardous waste management facilities may demonstrate adequate internal resources for assuring closure and post closure care. A copy of 40 CFR 264.143(f) and/or 40 CFR 264.145(f) may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

AUTHORITY: Sec. 75-10-404, 75-10-405(3) and (4) MCA
IMPLEMENTING: Sec. 75-10-405(3) and (4) MCA

16.44.817 FINANCIAL TEST FOR LIABILITY COVERAGE (1) An owner or operator may satisfy the requirements of ARM 16.44.818 or 16.44.819 by demonstrating to the U.S. EPA Regional Administrator of Region VIII that he or she meets ~~the provision of federal law for~~ the financial test for liability coverage set forth at 40 CFR 264.147(f). A copy of the documents submitted to the Regional Administrator shall be provided to the ~~State of Montana~~ department within 30 days ~~after the effective date of these rules~~ after submittal to the regional administrator.

(2) The department hereby adopts and incorporates herein by reference 40 CFR 264.147(f) which is a federal agency rule setting forth minimum financial worth and bond rating criteria by which owners and operators of hazardous waste management facilities may demonstrate adequate internal resources for liability coverage. A copy of 40 CFR 264.147(f) may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

AUTHORITY: Sec. 75-10-404, 75-10-405(3) and (6) MCA
IMPLEMENTING: Sec. 75-10-405(3) and (6) MCA

16.44.819 REQUIREMENTS FOR LIABILITY COVERAGE: NONSUDDEN ACCIDENTAL OCCURRENCES (1) - (4) Same as existing rule.

(5) For existing facilities, the required liability coverage for nonsudden accidental occurrences must be demonstrated by the dates listed below. The total sales or revenues of the owner or operator in all lines of business, in the fiscal year preceeding the effective date of these rules, will determine which of the dates applies. If the owner or operator of a facility are two different parties, or if there is more than one owner or operator, the sales or revenues of the

owner or operator with the largest sales or revenues will determine the date by which the coverage must be demonstrated. The dates are as follows:

(a) For an owner or operator with sales or revenues totaling $10 million or more, ~~6 months after the effective date of these rules.~~ by March 15, 1984;

(b) For an owner or operator with sales or revenues greater than $5 million but less than $10 million, ~~18 months after the effective date of these rules.~~ by September 15, 1984;

(c) All other owners or operators, ~~30 months after the effective date of these rules.~~ by January 15, 1985.

AUTHORITY: Sec. 75-10-404, 75-10-405(3) and (6) MCA
IMPLEMENTING: Sec. 75-10-405(3) and (6) MCA

4. The Department is proposing these amendments to the rules as part of its ongoing effort to obtain final authorization from the U.S. EPA to administer and enforce the federal hazardous waste management program in Montana pursuant to Subtitle C of the Resource Conservation and Recovery Act, as amended (42 USC 6901 et seq.) The amendments will conform existing department rules to analagous federal provisions and are proposed in response to recent EPA comments and revisions in federal regulations.

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 Complex, Helena, Montana, no later than December 23, 1983.

6. Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, MT, has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed amendments is based on section 75-10-405, MCA, and the rules implement section 75-10-406, MCA.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State November 14, 1983

BEFORE THE BOARD OF PERSONNEL APPEALS
OF THE STATE OF MONTANA

In the matter of the revision of rules pertaining to: (1) Disqualification of a hearing examiner; (2) Number of votes by the Board necessary to make a decision; (3) an internal reference in a rule; (4) who is responsible for service of a counter petition in a Decertification Proceeding; (5) the window period for filing a decertification Proceeding; (6) determination of a bargaining unit prior to an election; (7) dismissal of an unfair labor practice after investigation and when briefs are to be filed before the Board; (8) requests for mediation.	NOTICE OF PROPOSED ADOPTION AND AMENDMENT OF RULES PERTAINING TO PROCEDURES BEFORE THE BOARD OF PERSONNEL APPEALS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On December 26, 1983, the Board of Personnel Appeals proposes to (1) adopt a rule (RULE I) for disqualification of a hearing examiner in an unfair labor practice proceeding, (2) amend ARM 24.26.101 to make clear the number of votes by board members necessary for the board to make a decision, (3) amend 24.26.530 to clarify and correct a reference to another rule, (4) amend ARM 24.26.614 to provide that the employer instead of the board shall serve a document on the other parties in a unit determination proceeding, (5) amend ARM 24.26.643 to provide a new, earlier time period for the filing of decertification petitions by employees of units of the Montana University System or of a community college, (6) amend ARM 24.26.647 to clarify that an existing bargaining unit must be determined prior to an election being held, (7) amend ARM 24.26.680 and adopt a new rule (RULE II) to provide for the dismissal of unfair labor practice charges prior to a formal hearing upon a finding of no probable merit, and to provide a time limit for submission of briefs to Board members, (8)amend 24.26.695 to clarify that a request for mediation is proper whenever a labor dispute exists not just when an impasse is reached.

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

RULE I DISQUALIFICATION OF HEARING EXAMINER (1) A party desiring to disqualify a hearing examiner on an unfair labor practice case must, within 5 days from receipt of information notifying that party of the appointment of the hearing examiner, file with the board a written request to disqualify the

appointed hearing examiner.

(2) If several parties to an unfair labor practice proceeding disqualify the first appointed hearing examiner, then all parties, other than the party who first exercises the right, shall still retain their right to disqualify one succeeding, appointed hearing examiner, subject to the conditions of subsection (1), of this rule. Upon the filing of a timely, written request to disqualify a hearing examiner, the hearing examiner shall take no further action in that case.

(3) If several unfair labor practices are being heard together in one proceeding, each party still has only one peremptory challenge to a hearing examiner for each proceeding.

AUTH: 39-31-104, MCA IMP: 39-31-405 (5), MCA

RULE II DISMISSAL OF COMPLAINT (1) The board shall serve the complaint upon the party charged with the unfair labor practice.

(2) The party so charged shall file a response with the board to the complaint within ten days after receipt of the charges. A response is a letter setting forth in detail facts relevant to the complaint which the Respondent wishes to bring to the Board's attention including a specific reply to each factual allegation made in the complaint.

(3) After receipt of the response, the board shall appoint an investigator to investigate the alleged unfair labor practice.

(4) If after the investigation, the agent designated by the board determines that the charge is without probable merit the board shall issue and cause to be served upon the complaining party and the person being charged notice of its intention to dismiss the complaint. The dismissal becomes a final order of the board unless either party requests a review of the decision to dismiss the complaint. The request for a review must be made in writing within ten days of receipt of the notice of intention to dismiss decision. This request for review must clearly set forth the specific factual and/or legal reasons indicating how the investigator's finding of no probable merit is in error.

(5) If after the investigation or after the appeal provided for in subsection (2) of 39-31-405, MCA, the investigator or the board determines that there is probable merit for the charge, the board shall issue and cause to be served upon the complaining party and the party charged a notice of finding of probable merit.

(6) If a finding of probable merit is made, the person or entity against whom the charge is filed shall file an answer to the complaint. A finding of probable merit is appealable only after the decision of the hearing examiner has been issued.

AUTH: 39-31-104, MCA IMP: 39-31-405, (1), (2), (3), MCA

The rules proposed to be amended provide as follows:

24.26.102 BOARD MEETINGS, QUORUM (1) remains the same.

(2) A majority of the membership, provided that the chairperson is present, constitutes a quorum to do business. ~~A contested case may be heard only by the entire board, or by three members of the board, with at least one member the neutral position, one member representing management, and one member representing employees or employee organizations.~~

In all proceedings before the board, a favorable vote of at least a majority of a quorum is sufficient to adopt any resolution, motion, or other decision.

(3) remains the same.

AUTH: 39-31-104, MCA IMP: 2-15-1705, MCA

24.26.530 FREEDOM FROM INTERFERENCE, RESTRAINT, COERCION, OR RETALIATION (1) (2) (3) remain the same.

(4) After ten days have elapsed from the date of service of the complaint, the board shall commence with step four ~~b~~ d of the formal appeals procedure.

AUTH: 2-18-1011, MCA IMP: 2-18-1011, MCA

24.26.614 EMPLOYER COUNTER PETITION (1) (2) (3) remain the same.

(4) The ~~board~~ employer shall serve a copy of the counter petition upon the petitioner.

AUTH: 39-31-104, MCA IMP: 39-31-207, MCA

24.26.643 PETITION FOR DECERTIFICATION (1) (2) remain the same.

(3) A petition seeking decertification of a bargaining unit comprised of ~~school~~ employees of school districts, units of the Montana University System, or of a community college may only be filed during January of the year the existing collective bargaining agreement is scheduled to terminate, or after the termination of the existing collective bargaining agreement.

(4) through (8) remain the same.

AUTH: 39-31-104, MCA IMP: 39-31-207, MCA

24.26.647 PROCEDURE FOLLOWING FILING OF PETITION FOR DECERTIFICATION (1) remains the same.

(2) An election will be held only after the existing unit has been determined, and an election is found to be warranted.

AUTH: 39-31-104, MCA IMP: 39-31-207, MCA

24.26.680 COMPLAINT (1) (2) (3) remain the same.
~~(4) if the board determines that the facts alleged in the complaint do not constitute an unfair labor practice under section 39-31-401 and 39-31-402, MCA, it shall dismiss the charge.~~

AUTH: 39-31-104, MCA IMP: 39-31-406, MCA

24.26.681 ANSWER (1) The party named in the complaint shall file a formal, written verified answer within ten days after service of the ~~complaint~~ notice of finding of probable merit.
(2) (3) (4) remain the same.

AUTH: 39-31-104, MCA IMP: 39-31-406, MCA

24.26.684 EXCEPTIONS (1) remains the same.
(2) If briefs in support of a party's exceptions are desired to be submitted, those briefs must be filed with the board, or sent directly to the board members, at least ten days before the board hearing or the briefs will not be accepted or considered.

AUTH: 39-31-104, MCA IMP: 39-31-406, MCA

24.26.695 PETITION (1) In the event of ~~an impasse~~, a labor dispute, a petition, in writing, requesting assistance of the board, may be filed with the board by an employee or group of employees, a labor organization, or public employer. The original of the petition shall be signed by the petitioner or his authorized representative, and the original and five copies thereof shall be filed with the board. The petitioner shall serve a copy of the petition simultaneously upon any party named in the petition. The petition shall contain:
~~(1)~~(a) through (g) (2) remain the same.

AUTH: 39-31-104, MCA IMP: 39-31-30 and 39-31-308, MCA

3. The purpose of proposed RULE I is to make clear the procedures to be used by the BPA in implementing 39-31-405 (5), MCA (1983).

The purpose of the proposed amendment to ARM 24.26.101 is to conform the Board's rules to 2-15-1705, MCA (1983).

The purpose of the proposed amendment to ARM 24.26.530 is to clarify and correct a reference to another rule which was amended in 1981.

The purpose of the proposed amendment to ARM 24.26.614 is to have the employer who is filing a counter petition serve the counter petition on the other parties involved. This is consistent with Rule 5, M.R. Civ. P.

The purpose of the proposed amendment to ARM 24.26.643 is to have a uniform time period (window period) for the filing of decertification petitions in educational settings. This is necessary to avoid problems with elections that are caused when bargaining unit members are absent during the summer months.

The purpose of the proposed amendment to ARM 24.26.647 is necessary to clarify the fact that an existing bargaining unit must be determined prior to an election being held. The current rule implies that an election is held in all cases. That is not so. The eligible voters and conformance to ARM 24.26.643 must first be established.

The purpose of the proposed amendment to ARM 24.26.680 and the adoption of RULE II is to make clear Board procedure in implementing 39-31-405 (1), (2) and (3), MCA (1983).

The purpose of the proposed amendment to ARM 24.26.695 is to omit a reference to impasse. The current rule implies that impasse must exist prior to a mediation request. That is not so. Impasse, as the term is defined in labor law, is a conclusion of law and need not be reached prior to a mediation request according to 39-31-307, MCA.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Jim Gardner, Board of Personnel Appeals, Capitol Station, Helena, Montana 59620, no later than December 23, 1983.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Jim Gardner, Board of Personnel Appeals, Capitol Station, Helena, Montana 59620, no later than December 23, 1983.

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

Alan Joscelyn
Chairman, Board
of Personnel Appeals

Certified to the Secretary of State November 14, 1983.

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

In the matter of the adoption of an amendment to a federal agency rule pertaining to the food stamp program, Rule 46.11.101	)))))	NOTICE OF ADOPTION OF AN AMENDMENT TO A FEDERAL AGENCY RULE INCORPORATED BY REFERENCE IN RULE 46.11.101, FOOD STAMP PROGRAM. NO PUBLIC HEARING CONTEMPLATED

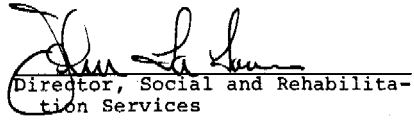
TO: All Interested Persons

1. The Department of Social and Rehabilitation Services hereby gives notice to the adoption and incorporation by reference of later amendments to 7 CFR 272, 273, and 274 published in 48 Fed. Reg. 45442, Wednesday, October 5, 1983. 7 CFR 272, 273, and 274 are presently incorporated by reference in Rule 46.11.101, Food Stamp Program. These amendments provide a general notice to the public concerning adjustments to the Thrifty Food Plan, the amount of the standard deduction, and the maximum amounts for the excess shelter and dependent care deductions available to certain households. A copy of this general notice published in 48 Fed. Reg. 45442, Wednesday, October 5, 1983, may be obtained from the Department of Social and Rehabilitation Services, Economic Assistance Division, Box 4210, 111 Sanders, Helena, Montana 59604.

2. The effective date for the adoption of the later amendment is November 25, 1983. This amendment will be implemented retroactive to October 1, 1983. This exception from the standard effective date of 30 days following publication is taken in order to comply with federal law requiring that the new Thrifty Food Plan and standards shall be effective for all eligible cases as of October 1, 1983.

3. If the department receives requests for a public hearing under 2-4-315, MCA, on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 5,393 persons based on 53,924 food stamp recipients.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State November 14, 1983.

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

In the matter of the repeal of rules 2.52.201 through 2.52.231 and the matter of adoption of procedural rules.	)NOTICE OF REPEAL AND)NOTICE OF ADOPTION)OF RULES PERTAINING TO)PROCEDURES OF THE OFFICE OF)THE WORKERS' COMPENSATION JUDGE

To: All interested persons:

1. On October 13, 1983, the Office of the Workers' Compensation Judge published Notice Of Repeal and Notice Of Adoption Of Rules Pertaining To Procedures Of The Office Of The Workers' Compensation Judge at pages 1394 through 1409 inclusive, Montana Administrative Register, Issue No. 19 of 1983.

2. The Office of The Workers' Compensation Judge has adopted the rules as proposed with the following changes:

Rule I (2.52.301); Rule II (2.52.302); Rule IV (2.52.304); Rule V (2.52.308); Rule VI (2.52.309); Rule VII (2.52.310); Rule VIII (2.52.311); Rule IX (2.52.312); Rule X (2.52.316); Rule XI (2.52.317); Rule XII (2.52.318); Rule XIII (2.52.322); Rule XIV (2.52.323); Rule XV (2.52.324); Rule XVI (2.52.325); Rule XVII (2.52.326); Rule XVIII (2.52.330); Rule XIX (2.52.331); Rule XX (2.52.332); Rule XXI (2.52.333); Rule XXIII (2.52.335); Rule XXIV (2.52.336); Rule XXV (2.52.340); Rule XXVI (2.52.344); Rule XXVII (2.52.348); Rule XXVIII (2.52.349); Rule XXIX (2.52.350); Rule XXX (2.52.351); and Rule XXXI (2.52.360); have been adopted as proposed.

Rule III (2.52.303) Service and Rule XXII (2.52.334) Settlement Conference have been changed as follows:

Rule III SERVICE ON PARTIES AND FILING WITH THE COURT.

(1) Adopted as proposed

(2) All pleadings subsequent to the original petition, every written motion, and any other document described in Rule 5, M.R.Civ.P. ~~(1979)~~ shall be accompanied by proof of service as provided in Rule 5, M.R.Civ.P. ~~(1979)~~ when submitted to the Court. Service by mail is complete on mailing and is deemed served on the date as shown on the proof of service.

(3) Adopted as proposed

(4) All material required by these rules, or other order, to be filed with the Court, ~~shall be deemed filed on the date it is served upon other parties as shown on the proof of service.~~ must be placed in the custody of the clerk within the time fixed for filing. Filing

may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the papers are actually received within the time fixed for filing.

Rule XXII SETTLEMENT CONFERENCE. (1) In its discretion, the Court may, either on its own motion or upon request of any party, order a settlement conference at any time before decision in any case pending before the Court. Such settlement conference will normally be conducted by the ~~Workers' Compensation Judge~~ person who will hear the case and may be either in person or by conference telephone call at a time and place as the Court may direct. The purpose of the settlement conference is to encourage and facilitate the settlement of disputes and controversies pending before the Court.

Rules 2.52.201 through 2.52.231 have been repealed as proposed.

3. Written comment was received from Mr. Patrick Sheehy, Attorney at Law, Billings, Montana, taking exception with Rule XIII regarding depositions. Mr. Sheehy commented the proposed rule is more restrictive than the Montana Rules of Civil Procedure and the Federal Rules of Civil Procedure. This rule was discussed extensively at a public forum in Butte, Montana on October 10, 1983. The rule provides the attorneys the option of stipulating to conducting the deposition other than as set forth in this rule. A second exception from Mr. Sheehy was that the rules do not require a mandatory answer by the defendant. The Court believes the requirement that the defendant and the claimant prepare and exchange written proposed pretrial orders at the time of the pretrial conference which generally will be forty days preceding trial should be sufficient.

Gregory Petesch, Legislative Council, advised that in addition to 2-4-201, MCA, 39-71-2901, MCA, et seq must be cited for implementation.

These rules are adopted to enable the Court to carry out the mandate of the Legislature, to give guidance to interested and involved parties of Court procedures and to allow the parties who appear before the Court to have their claims judicially considered and decided.

JUDGE

November 14, 1983
CERTIFIED TO THE SECRETARY
OF STATE

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF OPTOMETRISTS

In the matter of the amendment of ARM 8.36.406 concerning general practice requirements	)))	NOTICE OF AMENDMENT OF ARM 8.36.406 GENERAL PRACTICE REQUIREMENTS

TO: All Interested Persons:

1. On October 13, 1983, the Board of Optometrists published a notice of amendment of the above-stated rule at pages 1410, 1983 Montana Administrative Register, issue number 19.

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

3. No comments or testimony were received.

STATE OF MONTANA
BEFORE THE DEPARTMENT OF COMMERCE

In the matter of the amendments of 8.44.405 concerning license renewal dates for plumbers, 8. 48.903 concerning a license renewal date for professional engineers and land surveyors, and adoption of a new rule setting a renewal date for optometrists.	)))))))	NOTICE OF AMENDMENT OF ARM 8.44.405 RENEWALS, 8.48.903 LATE RENEWAL, ADOPTION OF A NEW RULE 8.36.410 RENEWALS

TO: All Interested Persons:

1. On October 13, 1983, the Department of Commerce published a notice of amendments and adoption of the above-stated rules at pages 1412 and 1413 1983 Montana Administrative Register, issue number 19.

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

3. No comments or testimony were received.

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

In the matter of the amendments of 8.50.416 concerning license renewal and 8.50.422 concerning the fee schedule.	NOTICE OF AMENDMENT OF ARM 8.50.416 LICENSE RENEWAL and 8.50.422 FEE SCHEDULE

TO: All Interested Persons:

1. On October 13, 1983, the Board of Private Security Patrolmen and Investigators published a notice of public hearing on the proposed amendment of the above-stated rules at pages 1414 and 1415, 1983 Montana Administrative Register, issue number 19.

2. The hearing was held at 1:00 p.m. in the conference room of the Department of Commerce, 1424 9th Avenue, Helena, Montana on November 3, 1983. No persons were present to offer testimony or comments. No written comments or testimony were received.

(3) The board has amended the rules exactly as proposed.

DEPARTMENT OF COMMERCE

BY: _____
ROBERT WOOD, ATTORNEY

STATE OF MONTANA

DEPARTMENT OF COMMERCE

BEFORE THE HEALTH FACILITY AUTHORITY

OF THE STATE OF MONTANA

In the Matter of the Adoption of Substantive and Procedural Rules	NOTICE OF ADOPTION OF RULES 8.120.101; 8.120.201-8.120.206; 8.120.301; 8.120.302

TO: All Interested Persons

1. On September 29, 1983, the Montana Health Facility Authority published a notice of public hearing with respect to the adoption of proposed substantive and procedural rules at pages 1288 through 1294 of the 1983 Montana Administrative Register, issue number 18.

2. The Authority has adopted the proposed substantive and procedural rules with the following change:

8.120.205 CONTENT OF APPLICATION (1) An application should be in the form of a letter and should contain the following information, where applicable: ....

3. At the public hearing Mary Munger, a member of the Montana Health Facility Board, proposed the amendment to the proposed rules set forth in Paragraph 2 above, in order to make it clear that newly formed organizations, which would not be able to provide some of the items required by ARM 8.120.205, are eligible to apply for financing. This proposed amendment was approved by the Board and has been incorporated into the final version of the rules.

4. The authority for the rules is MCA Section 90-7-202, and the rules implement various sections of the Health Facility Authority Act, 1983 Mont. Laws Ch. 703.

Larry Fasbender

LARRY FASBENDER, Chairman
Montana Health Facility Board

Certified to the Secretary of State on November 14, 1983.

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

In the matter of the amendment of rules 16.18.101, organization of the board of water and wastewater operators; 16.18.203, operator certifications; 16.18.204, examinations; 16.18.205, experience/education; and 16.18.206, facility operator	NOTICE OF THE AMENDMENT OF RULES 16.18.101, 16.18.203, 16.18.204, 16.18.205, and 16.18.206 (Water and Wastewater Operators)

TO: All Interested Persons

1. On August 11, 1983, the department published notice of a proposed amendment of rules 16.18.101, referencing the description of the board of water and wastewater operators; 16.18.203, stating requirements for certification of operators; 16.18.204, setting examination requirements; 16.18.205, setting experience and education standards for operators; and 16.18.206, creating exceptions under which plant may be run by a less-than-fully-certified operator; at page 1011 of the 1983 Montana Administrative Register, issue number 15.

2. The department has amended the rules as proposed, the text of which follows (matter stricken is interlined, new material underlined):

16.18.101 ~~BOARD~~ COUNCIL ORGANIZATION (1) The ~~Board of~~ Water and ~~Waste~~ Water Operators Advisory Council is described in ARM 16.1.101 of this code.
AUTHORITY: Sec. 2-4-201 MCA
IMPLEMENTING: Sec. 2-4-201 MCA

16.18.203 CERTIFICATION OF OPERATORS (1) Certification will be granted to an applicant under the grandfather clause (37-42-303(2) MCA) providing he submits a statement from the governing board or owner of a water treatment, water distribution, or wastewater treatment plant stating he was in a position of responsible charge of the facility on July 1, 1967.

(2) If an addition to an existing facility is installed after July 1, 1967, the person who was in responsible charge of the plant on that date and has a grandfather clause certificate may be granted a grandfather clause certificate at a higher classification, providing he participated in the installation, and providing that evidence be presented to the ~~board~~ department that the operator has been trained and is qualified to operate the higher-classified plant.

(3) If an operator moves out of the state or otherwise terminates employment as an operator within Montana, he may renew his certificate annually for a period of two years beyond the expiration date of his current certificate, provided that he pays the renewal fee required by section 37-42-308, MCA, prior to July 1 of each of these years. After

two years, in order to receive a new certificate, he must furnish proof to the ~~board~~ department that he is still employed as an operator of a water or wastewater treatment plant, or water distribution system, or submit a new application and fee to the department.

(4) After receipt by the department of an application and fee and upon approval of the application by the department, a temporary certificate may be issued, effective only until the ~~board~~ council meeting following the date of the next ~~board~~ examination, unless the holder of the temporary certificate fails to take the examination. In the latter case, the temporary certificate is effective only until the date of the examination unless the applicant submits to the ~~board~~ department an excuse in writing for not being present and the ~~board~~ council finds it reasonable, in which case the ~~board~~ department will extend the effective date of the certificate to the date of the ~~board~~ council meeting following the next examination.

(5) In any case where the census shows a city is changed to a higher classification, the fully certified operators of the appropriate system may obtain the higher classification by making written request to the ~~board~~ department and after determination by the ~~board~~ council that the applicant has the education and experience defined in ARM 16.18.205 as necessary to operate the facility.

(6) An operator whose facility has been changed to a higher classification due to a revision of the rules in this chapter will be given certification at that higher classification upon renewal of his annual certificate. The fee required will be for the higher classification.

(7) An operator whose facility has been changed to a lower classification due to a revision of the rules in this chapter will be given certification at that lower classification upon renewal of his annual certificate, and the fee will be for the lower classification, unless he makes a written request to the ~~board~~ department and the ~~board~~ department determines that he is capable of operating a higher classified facility. In that case, he will remain certified at his present classification, and the fee required shall be for that higher certification class.

(8) An operator who has obtained certification in another state may obtain certification in Montana if review of his application and supporting material indicates he has passed an examination at least equivalent to that required by Montana and has experience meeting Montana's minimum requirements.

(9) Certificates shall be renewed each year after payment of the proper fee.

AUTHORITY: Sec. 37-42-202 MCA
IMPLEMENTING: Sec. 37-42-202, 37-42-303 MCA

16.18.204 EXAMINATIONS (1) A person desiring to take the examination for certification as a water treatment plant, wastewater treatment plant, or water distribution system operator must complete the application form and return it to the department at least 15 days before the date of the next examination. The proper fee must accompany the application. Upon approval of the department, the applicant may take the examination.

(2) An operator who is already certified and desires to take an examination for a higher certification level shall submit fees in an amount sufficient to cover the difference between his present fee and the fee for the certification level for which he desires examination.

(3) An operator certified under one classification by examination and another under the grandfather clause will receive one certificate with that classification held under the grandfather clause noted by "(g.c.)".

(4) Class 4 and Class 5 examinations may be given by a member of the staff of the department or a member of the ~~board~~ council at a time and place set by the person administering the examination.

(5) Each person submitting an application for certification will be sent a notice of the time and place of the examination.

(6) Special examinations may be held in the event that the examination date and place regularly set by the ~~board~~ council conflicts with religious beliefs of the applicant and, in that event, the applicant may petition the ~~board~~ department by letter requesting such special examination. If ~~the board~~ department allows such a special examination, it shall set a time and place thereof in its discretion.

(7) Upon written request the ~~board~~ council may give an oral examination to operators in all classifications who fail the written examination. The ~~board~~ council will consider each written request for an oral examination on its individual merit and set the time and place the examination will be held. At the oral examination at least 3 members of the ~~board~~ council or department must be present, one of which will hold a certificate of the same level or higher in the classification being examined.

(8) Examinations will not be returned to examinees, but will be on file for one year in the department. ~~office where the business of the board is conducted.~~ A failing ~~Failing~~ examination will be kept 2 years. An applicant may review his examination in the office.

(9) An operator failing the examination two times may not be issued a temporary certificate; however, he may take the examination whenever it is given upon re-applying and upon receiving the approval of the ~~board~~ department.

~~(11)~~ (10) Duplicate certificates shall be provided by

the ~~board~~ department to persons requesting the same upon the payment of a $2.00 fee.
AUTHORITY: Sec. 37-42-202 MCA
IMPLEMENTING: Sec. 37-42-201, 37-42-202, 37-42-301 MCA

16.18.205 EXPERIENCE/EDUCATION (1) To become fully certified an operator, in addition to passing the certification examination for his specific classification, shall have the following operating experience in a facility of that classification:

(a) First Class - 2 years experience
(b) Second Class - 1 1/2 years experience
(c) Third Class - 1 year experience
(d) Fourth Class - 6 months experience
(e) Fifth Class - No experience requirement

(2) On the determination of the ~~board~~ department that experience gained at a lower classified facility is applicable to a higher classified facility, this experience or a portion of it may be credited toward the experience requirement for the higher classification.

(3) Two days of education in post-secondary engineering training or the equivalent may be substituted for each day of experience, up to 1/2 of the experience requirement.

(4) A person who has passed the examination but lacks the requisite exerience will be issued a certificate as OPERATOR-IN-TRAINING. When the experience requirement is fulfilled, a certificate as OPERATOR will be issued.
AUTHORITY: Sec. 37-42-202 MCA
IMPLEMENTING: Sec. 37-42-201 and 37-42-202 MCA

16.18.206 CERTIFIED OPERATOR IN CHARGE OF FACILITY; EXCEPTIONS (1) Every water treatment plant, waste water treatment plant, or water distribution system must have an individual in responsible charge at the facility site or on call at all times who can be contacted immediately and be at the site within a short period of time.

(2) Except as provided in this rule, the individual in responsible charge of a facility must be a fully certified operator.

(3) An operator with a temporary certificate or an operator-in-training certificate may be the operator in responsible charge of a facility upon request to the department by the facility owner and verification by such owner that the facility is unable to employ a fully certified operator, and upon a finding by the department ~~and the board~~ that the operator has the basic knowledge necessary to operate the facility and that public health will be protected. The department shall base its decision upon the results of on-site inspection of the facility; review of the facility's plans and specifications; review of the operator's records, experience and training; and examination of any other reasonably available and relevant information~~, and will give its recommenda-~~

~~tion to the board~~.

(4) An industrial wastewater treatment plant which discharges to municipal facilities or removes sediment without a surface water discharge does not need a certified operator.

AUTHORITY: Sec. 37-42-202 MCA
IMPLEMENTING: Sec. 37-42-104 and 37-42-202 MCA

3. No comments or testimony were received.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State November 14, 1983

BEFORE THE HIGHWAY COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 18.6.202, regarding definitions relating to outdoor advertising.	))))	NOTICE OF THE AMENDMENT OF RULE 18.6.202, OUTDOOR ADVERTISING DEFINITIONS.

TO: All Interested Persons:

1. On June 16, 1983, the Highway Commission published notice of a proposed amendment to rule 18.6.202 concerning the definition of commercial or industrial activity at page 620 of the 1983 Montana Administrative Register, issue number 11.

2. The commission has amended the rule as proposed with the following changes:

18.6.202 DEFINITIONS

(1) - (4) same as present rule.

(5) A commercial or industrial activity engaged in or established primarily for the purpose of qualifying an area for the ~~establishment~~ displaying of outdoor advertising will not ~~be considered to~~ create an unzoned commercial or industrial area. It shall be ~~conclusively~~ rebuttably presumed that any such activity is for the primary purpose of qualifying an area for outdoor advertising if the activity is not reasonably accessible to the public, if it is not connected to one or more utilities, or if no business is actually conducted on the premises~~, or if there is not at least one employee on the premises for a minimum of 20 hours per week during normal business hours~~.

3. At the public hearing, a number of persons appeared in opposition to the amendment. Representatives of Myhre Advertising, Inc., of Helena, opposed the proposed amendment because they believe it could conflict with local zoning authorities' decisions, it discriminates against businesses only open part time, it is legally inconsistent with the statutory definition of commercial and industrial activities found in Section 75-15-103, MCA, and it is used to justify the Department of Highways' decision regarding a sign located at the Red Rock Mini Storage near Miles City.

A representative of Hardenburg Outdoor Advertising Company of Missoula opposed the rule because he believed there is no need for a rule change and that the present rules are working well. He stated that the proposed amendment is not easily understood and believed it would make some presently permitted signs illegal.

Representatives of Red Rock Village and Red Rock Mini Storage opposed the amendment because they believe it affects the sign and sign permits in litigation in the Red Rock Mini Storage area and that loss of the sign will

adversely affect Red Rock Village, a motel in Miles City. They opposed the conclusive presumption and the authority of the Commission and Department of Highways to determine what constitutes a legitimate business. They opposed the requirement of reasonable access for the reason that it varies from business to business and opposed the requirement of connection to utilities because some legitimate businesses are seasonal. They opposed the requirement that business must be actually conducted on the premises because it is unclear and opposed the 20 hour per week requirement because of part time legitimate businesses. They further opposed the amendment as being an attempt at retroactive rule change.

They presented letters in support of Red Rock Village's position from Mullen Realty, the Miles City - Custer County Planning Board, the Miles City Chamber of Commerce, and Kimball Realty.

Representatives of the Montana Innkeeper's Association appeared in opposition to the amendment. Their attorney opposed the amendment for the reasons that it is inconsistent with the statutory definition and adds a second definition although the Legislature has already acted to define the terms. He stated that the amendment could be circumvented if the value of advertising justified the cost. He also opposed the conditions as being unclear and open to various interpretations. He submitted an amendment to be substituted for the proposed amendment.

These arguments were considered, and as a result, the proposed rule has been amended to change the conclusive presumption to a rebuttable presumption and to delete the requirement that a qualifying business be open for 20 hours per week.

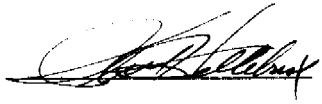
The other objections to the amendment are overruled. The amendment is not inconsistent with the statutory definition. It adds an interpretation which falls within the intent of the Outdoor Advertising Act, which is to restrict signs to areas which are commercial or industrial in nature. The amendment intends to prevent the construction of "businesses" merely for the purpose of permitting outdoor advertising. It does not prohibit the construction of such businesses but prevents the permitting of signs in their vicinity if the area otherwise does not qualify for outdoor advertising.

The amendment is not retroactive and will not affect the Red Rock Mini Storage sign and permit applications for other signs at that location. If they are determined to be legal under current law, they will be grandfathered under the amendment.

The amendment does not affect the authority of local zoning boards since it applies only to outdoor advertising regulated by this Commission and the Department of Highways. The Commission believes that the remaining conditions in the rule are reasonable and can be determined on a

case by case basis. The requirement that the business be connected to one or more utilities does not require constant use of the utilities. The presumption created is rebuttable and can be overcome by evidence that the business used to qualify an area for outdoor advertising is legitimate and is not established primarily for outdoor advertising purposes.

Ilert Hellebust
Chairman

By: 

Certified to the Secretary of State November 14, 1983

BEFORE THE WORKERS' COMPENSATION DIVISION
OF THE STATE OF MONTANA

In the matter of the adoption of new rules concerning the licensing requirements for hoisting operators and crane operators.	))))))	NOTICE OF ADOPTION OF RULES 24.30.1201, 24.30.1202, 24.30.1203, 24.30.1204, 24.30.1205, 24.30.1206 AND 24.30.1207 RELATING TO LICENSING REQUIREMENTS FOR HOISTING OPERATORS AND CRANE OPERATORS

TO: All Interested Persons.

1. On September 29, 1983, the workers' compensation division published notice of the proposed adoption of new rules concerning the licensing requirements for hoisting operators and crane operators at page 1300 of the 1983 Montana Administrative Register, issue number 18.

2. The division has adopted Rule I -- 24.30.1201, Rule II -- 24.30.1202, Rule VI -- 24.30.1206, and Rule VII -- 24.30.1207 as proposed.

The division has adopted Rule III -- 24.30.1203 as proposed with the following changes:

24.30.1203 HOISTING OPERATORS LICENSE REQUIREMENTS

(1) No person shall operate any hoisting equipment except as listed under subsection ~~(7)~~ (8) of this rule, without first obtaining a hoisting operator's license from the division~~.~~ , unless meeting requirements of subsection (6).

Subsections (2)(a)(b) and (3)(a) and (c) remain as proposed.

(3)(b) have passed a physical examination within ~~30~~ 120 days prior to a new application or license renewal each year;

(4) An applicant for a first-class hoisting operator's license shall have no less than three (3) years experience in the operation of hoisting equipment covered by this section ~~and under the direct supervision of a licensed hoisting operator~~; or if between one (1) and three (3) years of ~~such supervised~~ experience, the applicant must pass an actual performance test on the applicable hoisting equipment. This test is conducted by the division to determine equivalent competency and is in addition to the written or oral examination. Applicants with less than one (1) year of experience do not qualify for a first-class hoisting operator's license as described above. Applicants with work experience ~~gained~~ acquired in states that have no licensing requirements will qualify if their notarized certificate of experience indicates they have the required work experience on the applicable equipment.

Subsections (4)(a), (i), (ii), (iii), and (iv) remain as proposed.

(5) An applicant for a second-class hoisting operator's license shall have no less than two (2) years experience in the operation of hoisting equipment covered by this section

~~and under the direct supervision of a licensed hoisting operator~~; or if between one (1) and two (2) years of ~~such supervised~~ experience, the applicant must pass an actual performance test on the applicable hoisting equipment. This test is conducted by the division to determine equivalent competency and is in addition to the written or oral examination. Applicants with less than one (1) year of experience do not qualify for a second-class hosting operator's license as described above. Applicants with work experience ~~gained~~ acquired in states that have no licensing requirements will qualify if their notarized certificate of experience indicates they have the required work experience on the applicable equipment.

Subsections (5)(a), (i) and (ii) remain as proposed.

(6) Persons operating hoisting equipment listed in this rule who have less than one year of experience must work under the direct supervision of a licensed hoisting operator or participate in a certified apprenticeship training program.

~~(6)~~ (7) Application for any license must be accompanied by the following:

Subsections (7)(a), (b), (c), (d), (i), (ii), and (iii) remain as proposed.

(7) (d) (iv) lost license replacement - - $2.

~~(7)~~ (8) Hoisting operator's licenses need not be obtained to operate the following types of equipment:

Subsections (8)(a), (b), (c) and (d) remain as proposed.

(8) (e) hydraulic manlifts.

The division has adopted Rule IV - 24.30.1204 as proposed with the following changes:

24.30.1204 MINE HOISTING OPERATORS LICENSE REQUIREMENTS

(1) No person shall operate mine hoisting equipment when used in raising or lowering persons or materials in underground mines without first obtaining a mine hoisting operator's license from the division, unless meeting the requirements of subsection (8).

(2) The following hoisting licenses are issued under section 50-76-102, MCA, that are applicable to mine hoisting equipment:

(a) first-class mine hoisting operator's license ~~only~~.

Subsections (3)(a) and (c) remain as proposed.

(3) (b) have passed a physical examination within ~~30~~ 120 days prior to a new application or license renewal each year;

(4) An applicant for a first-class mine hoisting operator's license shall have no less than three (3) years experience in the operation of mine hoisting equipment ~~under the supervision of a licensed operator~~; or if between one (1) and three (3) years of ~~such supervised~~ experience, the applicant must pass an actual performance test operating the applicable mine hoisting equipment. The test is conducted by the

division to determine equivalent competency and is in addition to the written or oral examination. An applicant with less than one (1) year of experience in the operation of mine hoisting equipment does not qualify for a mine hoisting operator's license as described above. ~~Mines-using-automatic-hoists-must have-a-licensed-mine-hoist-operator-readily-available.~~ Applicants with work experience ~~gained~~ acquired in states that have no licensing requirements will qualify if their notarized certificate of experience indicates they have the required work experience on the applicable equipment.

(5) The holder of a first-class mine hoisting operator's license can operate all classes of mine hoists ~~only~~.

(6) An applicant for a second-class mine hoisting operator's license shall have no less than two (2) years of experience in the operation of mine hoisting equipment covered by this section; or if between one (1) and two (2) years of experience, the applicant must pass an actual performance test operating the applicable mine hoisting equipment. The test is conducted by the division to determine equivalent competency and is in addition to the written or oral examination. Applicants with less than one (1) year of experience do not qualify for a second-class mine hoisting operator's license. Applicants with experience acquired in states that have no licensing requirements will qualify if their notarized certificate of experience indicates they have the required work experience on the applicable equipment.

(7) The holder of a second-class mine hoisting operator's license can operate mine hoists with engines delivering up to 100 brake horsepower.

(8) Persons operating mine hoisting equipment listed in this rule who have less than one (1) year of experience must work under the direct supervision of a licensed mine hoisting operator or participate in a certified apprenticeship training program.

(9) Mines using automatic hoists must have a licensed mine hoisting operator readily available.

~~(6)~~ (10) Application for a license must be accompanied by the following:

Subsections (10) (a), (b), (c) and (d),(i), (ii) and (iii) remain as proposed.

The division has adopted Rule V - 24.30.1205 as proposed with the following changes:

24.30.1205 CRANE HOISTING OPERATORS LICENSE REQUIREMENTS

(1) No person shall operate any crane hoisting equipment except as listed in subsection ~~(8)~~ (9) of this rule without first obtaining a crane hoisting operator's license from the division~~.~~, unless meeting requirements of subsection (7).

Subsections (2)(a), (b), (c), (d) and (f) remain as proposed.

(2) (e) second-class hydraulic and boom truck;

Subsections (3)(a) and (c) remain as proposed.

(3) (b) have passed a physical examination within ~~30~~ 120 days prior to a new application or license renewal each year;

(4) An applicant for a first-class crane hoisting license, first-class crane hydraulic license, or a first-class gantry and trolley license shall have no less than three (3) years of experience in the operation of crane hoist equipment covered by this section ~~and under the supervision of a licensed crane hoisting operator~~; or if between one (1) and three (3) years of ~~such supervised~~ experience, the applicant must pass an actual performance test on the applicable equipment. This test is conducted by the division to determine equivalent competency and is in addition to the written or oral examination. Applicants with less than one (1) year of experience do not qualify for a first-class crane hoisting license as described above. Applicants with work experience ~~gained~~ acquired in states that have no licensing requirements will qualify if their notarized certificate of experience indicates they have the required work experience on the applicable equipment.

Subsections (4)(a), (b) and (c) remain as proposed.

(5) An applicant for a second-class crane hoisting license or second-class hydraulic and boom truck license shall have no less than two (2) years experience in the operation of crane hoisting equipment covered by this section~~; and under the supervision of a licensed crane hoisting operator~~, or if between one (1) and two (2) years of ~~such supervised~~ experience, the applicant must pass an actual performance test on the applicable crane hoisting equipment. This test is conducted by the division to determine equivalent competency and is in addition to the written or oral examination. Applicants with less than one (1) year of experience do not qualify for second-class crane hoisting licenses as described above. Applicants with work experience ~~gained~~ acquired in states that have no licensing requirements will qualify if their notarized certificate of experience indicates they have the required work experience on the applicable equipment.

Subsection (5)(a) remains as proposed.

(5)(b) The holder of a second-class hydraulic and boom truck license can operate hydraulic cranes or boom trucks ~~only~~ up to 15 tons and 60 feet of boom.

Subsection (6) remains as proposed.

(7) Persons operating crane hoisting equipment listed in this rule who have less than one (1) year of experience may work under the direct supervision of a licensed crane hoisting operator or participate in a certified apprenticeship training program.

~~(7)~~ (8) Application for a license must be accompanied by the following:

Subsections (8)(a), (b), (c), (d)(i), (ii), (iii), (iv) and (v) remain as proposed.

~~(8)~~ (9) Crane hoisting operator's licenses need not be obtained to operate the following types of equipment:

Subsections (9)(a) and (b) remain as proposed.

(9)(c) equipment with excavation attachments or log loading equipment. ~~This includes backhoes except those with a manufacturer's rating of more than 6 tons and a boom length of more than 25 feet and used for hoisting.~~

(d) Line trucks and bucket trucks. ~~(excluded by H.B. 655).~~

3. On October 21, 1983, a public hearing was held by the division of workers' compensation regarding the adoption of the foregoing rules. The division has thoroughly considered all verbal and written commentary received.

COMMENT: In order to minimize the number of operators who might need to be off for a short period of time to take a medical examination, it is suggested that the rule allow the applicant to obtain the examination 120 days prior to renewal rather than the proposed 30 days.

RESPONSE: To facilitate getting physical examinations taken and to reduce the conflict of vacations, doctor availability, etc., the examination period will be expanded in the rules to 120 days prior to license renewal.

COMMENT: Why does the rule require a physical examination every year? Once in three years should be sufficient.

RESPONSE: Annual physical examinations are required by statute for first and second-class licenses. An operator must be physically able and alert at all times when operating crane and hoist equipment around personnel for safety reasons.

COMMENT: Why are hydraulic manlifts not specifically exempted?

RESPONSE: Manlifts or elevators in completed private or public buildings are exempt by statute. Manlifts known as bucket trucks are also exempt. We will add hydraulic manlifts as exempt equipment under the hoisting section.

COMMENT: How can a "backhoe" be classified as a crane? The term refers to one type of digging equipment and if it is misused to hoist materials, does it become a crane?

RESPONSE: Although a backhoe is not classified as either a hoist or a crane, it was included under the crane hoisting rule because of size, boom length, and the ability to lift and lower loads and move loads horizontally. However, because of the specific statutory exclusion of equipment with excavation

attachments in 50-76-103, MCA, the referred to backhoes will be deleted.

COMMENT: The proposed rule on one hand makes it impossible for an individual to obtain a crane or hoisting license unless the operator has one (1) year of experience. On the other hand, another rule states that no person may operate equipment without first obtaining a license. Can this dilemma be resolved?

RESPONSE: Although not specifically stated in statute, we take the position that direct supervision of a crane or hoist operator would be a satisfactory arrangement for obtaining minimum experience without having a license. We are adding to the rule the requirements under which an operator can acquire a year's experience without having a license.

COMMENT: The language governing licensing of operators does not address the problem of experienced hoist operators who move into Montana from another state. Since no other state currently licenses hoist operators, there is no appropriate reciprocal action. Procedures for recognizing this experience should be incorporated in the regulations.

RESPONSE: Applicants' experience requirements in other states are the same as for in-state applicants' experience. In order to further clarify this, the direct supervision requirement for in-state applicants has been deleted.

4. The division of workers' compensation was contacted by the administrative code committee regarding changing the citations referred to as the authority and implementing sections. Therefore, the following changes have been made:

Rule I - 24.30.1201:

AUTH: Sec. ~~2-15-1702 and Sec. 50-71-106, MCA,~~ 50-71-301, MCA.

IMP: Secs. ~~50-71-106,~~ 50-76-102, ~~and~~ 50-76-103, and 50-71-301, MCA.

Rule II - 24.30.1202:

AUTH: Sec. ~~2-15-1702, MCA, and Sec. 50-71-106,~~ 50-71-301, MCA.

IMP: Secs. ~~5-71-106,~~ 50-76-101, 50-76-102, and 50-76-103, and 50-71-301, MCA.

Rule III - 24.30.1203:

AUTH: Sec. ~~2-15-1702, MCA, and Sec. 50-71-106,~~ 50-71-301, MCA.

IMP: Secs. ~~50-71-106 and~~ 50-76-102, and 50-71-301, MCA.

Rule IV - 24.30.1204:
AUTH: Sec. ~~50-71-106,~~ ~~MCA,~~ ~~and~~ ~~Sec.~~ ~~50-73-302,~~ 50-71-301, MCA.
IMP: Sec. 50-73-302, MCA.

Rule V - 24.30.1205:
AUTH: ~~Sees.~~ ~~2-15-1702~~ ~~and~~ ~~50-71-106,~~ Sec. 50-71-301, MCA.
IMP: ~~Sec.~~ ~~50-71-106,~~ Secs. 50-71-301 and 50-76-103, MCA.

Rule VI - 24.30.1206:
AUTH: ~~Sees.~~ ~~2-15-1702~~ ~~and~~ ~~50-71-106,~~ Sec. 50-71-301, MCA.
IMP: Secs. 50-71-325 and 50-76-109, MCA.

Rule VII - 24.30.1207:
AUTH: Sec. ~~2-15-1702,~~ ~~MCA,~~ ~~and~~ ~~Sec.~~ ~~50-71-106,~~ 50-71-301, MCA.
IMP: Sec. ~~50-71-106,~~ 50-71-301, MCA.

GARY L. BLEWETT, Administrator
Workers' Compensation Division

Certified to the Secretary of State November 14, 1983.

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

IN THE MATTER of Proposed amendments, repeal and adoption of rules concerning regulation of intrastate and interstate carriers.	)))))	NOTICE OF AMENDMENT, REPEAL AND ADOPTION OF RULES CONCERNING REGULATION OF INTRASTATE AND INTERSTATE CARRIERS

TO: All Interested Persons

1. On September 29, 1983 Department of Public Service Regulation published notice of proposed amendment, repeal and adoption of new rules concerning regulation of intrastate and interstate carriers at pages 1313-1325 of the 1983 Montana Administrative Register Issue Number 18.

2. Rules 38.3.119 and 38.3.2004 have been repealed.

3. The Commission has adopted the following rules as proposed:

Rule I. 38.3.121 FILING BUSINESS ADDRESSES AND TELEPHONE NUMBERS

Rule II. 38.3.404 NOTICE OF PUBLIC HEARING ON APPLICATION FOR OPERATING AUTHORITY

Rule III. 38.3.2102 NOTICE OF PUBLIC HEARING ON APPLICATION FOR SALE OR TRANSFER OF CERTIFICATE OF AUTHORITY

Rule IV. 38.3.122 BONA FIDE FARMER, RANCHER, OR RAISER OF LIVESTOCK

Rule V. 38.3.1601 INTRASTATE MOTOR CARRIERS

Rule VI. 38.3.1602 REMITTANCE OF C.O.D. COLLECTION

Rule VII. 38.3.1603 SHIPMENT RECORDS

Rule VIII. 38.3.1903 APPLICATION OF SAFETY RULES TO LIGHTWEIGHT VEHICLES

Rule IX. 38.3.1904 EXEMPTION FROM DRIVER SAFETY STANDARDS FOR LOCAL COMMERCIAL VEHICLES

Rule X. 38.3.1905 SAFETY INSPECTION PROGRAM

Rule XII. 38.3.1907 CRITICAL ITEM INSPECTION

Rule XIII. 38.3.1908 INSPECTION REPORT

Rule XIV. 38.3.1909 OUT OF SERVICE ORDERS

Rule XV. 38.3.1910 SAFETY INSPECTION IDENTIFICATION DECALS

Rule XVI. 38.3.1911 LOCATION OF INSPECTIONS

4. The Commission has adopted the proposed rules with the following changes:

Rule XI. 38.3.1906 COMMERCIAL VEHICLE SAFETY ALLIANCE

(1) In order to provide for more uniform and efficient safety inspection, the Montana Public Service Commission, Department of Highways' Gross Vehicle Weight Division and the Department of Justice's Highway Patrol ~~has become a~~ are members of the Commercial Vehicle Safety Alliance (CVSA). The CVSA is made up of several western states and provinces.

(2) As a members of the CVSA, the Montana Public Service Commission, Gross Vehicle Weight Division and Highway Patrol, observes the following goals with respect to its safety inspection program:

(a), (b), (c), (d), (e) No change.

5. The Department of Public Service Regulation has amended the rules as proposed:

38.3.203 REGISTRATION OF INTERSTATE AUTHORITIES

38.3.502 APPLICATIONS FOR TEMPORARY OPERATING AUTHORITY

38.3.601 OPERATION UPON GRANTING OF CERTIFICATE

38.3.602 OPERATION AFTER SALE OR TRANSFER OF CERTIFICATE

38.3.1902 DEPARTMENT OF TRANSPORTATION AND I.C.C. RULES

38.3.2001 LEASING OF POWER EQUIPMENT - GENERAL

38.3.2002 APPROVED EQUIPMENT LEASE AGREEMENT FORM AND REQUIRED PROVISIONS

38.3.2003 DUTIES AND OBLIGATIONS OF LESSOR AND LESSEE UNDER EQUIPMENT LEASE

38.3.2011 INTERCHANGE OF POWER EQUIPMENT

38.3.2014 LEASE OF CERTIFICATES OF OPERATING AUTHORITY - GENERAL

6. COMMENTS: The Montana Motor Carrier Association (MMCA) submitted comments in support of the Commission's proposed rule changes.

Rule IV. The MMCA supports the Rule, but requests an amendment specifying that proper complaints regarding its enforcement will be investigated. The Commission believes that its complaint procedure rules in Title 38, Chapter 2, ARM, adequately address this subject. Reiterating those procedures following other specific provisions would be unnecessarily cumbersome and confusing.

Michael C. Riley, Vice-President, Riley Trucking Service, Inc., opposes adoption of Rule IV. In general, he stated that entities with "tenuous" agricultural connections threaten to displace regulated livestock carriers. The Commission disagrees that an enterprise earning greater than 50 percent of its income from farming, ranching, or raising livestock has a tenuous connection with those activities. More specifically, Mr. Riley argues that Section 69-12-405(2)(a), MCA, was not meant to apply to "for hire" carriers regulated by the Commission. This argument is rejected for two reasons: first, 69-12-405(2)(a) must be read in context with the entire section 69-12-405 dealing with carriers normally subject to regulation; second, such an interpretation would make the exemption meaningless and the Legislature's act idle.

Mr. Riley finally requests that, if an exemption is enforced, a "state of mind" standard be adopted. The Commission agrees that an intent standard is desirable, and has concluded that source of income is the best indicator of intent, and is the only practically enforceable standard.

Rules V, VI, VII. The Montana Hardware and Implement Association, Helena, commented in support of these rules stating that retail hardware and farm implement dealers have previously suffered cash flow problems when carriers have delayed making C.O.D. payments for 30 to 90 days after the date of delivery. These rules will require C.O.D. payment within 10 days of the delivery date.

Rule VIII. The Montana Union of Guards, East Helena, commented in support of this rule stating that commercial carriers have increased their use of lightweight vehicles. Due to the current exemption of such vehicles from safety standards, the Union contends that employers have at times had their employees/drivers operate unsafe vehicles creating a safety hazard for both the drivers and the public. The Union was particularly supportive of the safety rules that would limit the number of hours a driver could drive in a day.

Rule XI. This rule is amended to include the Department of Highways' Gross Vehicle Weight Division and the Department of Justice's Highway Patrol which were inadvertently omitted.

38.3.502. The Anderson, Brown, Gerbase, Cebull and Jones Law Offices, Billings, commented in opposition to the rule change that would require applicants for temporary operating authority to file that application in conjunction with an application for permanent operating authority. Mr. Jerome Anderson contended that while most applicants who apply for temporary operating authority also ultimately file for permanent operating authority, some do not; e.g. applicants with a short-lived transportation service or applicants whose business relationship between the carrier and the shipper deteriorates.

The Commission has determined that Mr. Anderson's comments do not warrant a revision of the rule as proposed. The Commission's Procedural Rule ARM 38.2.305 currently provides that upon good cause the Commission has the ability to waive any of its rules. The instances cited by Mr. Anderson can be adequately handled through use of the rule waiver if the applicant can make a case for such Commission action.

38.3.2002(2)(c). The Montana Motor Carrier Association submitted proposed amendments to this subsection, which the Commission's "Notice of Proposed Rulemaking" had indicated was a rule subsection that would not be changed. The Commission has informed MMCA that it should file a request for rule change with the Commission to amend this subsection.

JOHN B. DRISCOLL, Commissioner

CERTIFIED TO THE SECRETARY OF STATE NOVEMBER 14, 1983.

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

IN THE MATTER of the repeal of Rules 38.5.201, 38.5.202, 38.5.203, 38.5.204 concerning compensation for consumer intervenors in PURPA-related proceedings.	NOTICE OF REPEAL OF RULES 38.5.201, 38.5.202, 38.5.203, 38.5.204

TO: All Interested Persons

1. On September 29, 1983 Department Public Service Regulation published notice of proposed repeal of rules concerning compensation for consumer intervenors in Public Utility Regulatory Policies Act (PURPA)-Related proceedings (Sub-Chapter 2) at page 1312 of the 1983 Montana Administrative Register Issue Number 18.

2. Rules 38.5.201 through 38.5.204 (Sub-Chapter 2) have been repealed.

3. COMMENTS: No comments were received either in support or in opposition to these rules.

JOHN B. DRISCOLL, Commissioner

CERTIFIED TO THE SECRETARY OF STATE NOVEMBER 14, 1983.

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

IN THE MATTER of the adoption of New Rules regarding limitation of liability for customers who were billed incorrectly by gas, ~~and~~ electric, private water and sewer utilities.	NOTICE OF ADOPTION OF NEW RULES PERTAINING TO CUSTOMERS' LIABILITY FOR INCORRECT BILLINGS

TO: All Interested Persons

1. On September 15, 1983 the Department of Public Service Regulation published notice of a proposed adoption of new rules pertaining to liability of natural gas and electricity customers for incorrect billings at pages 1242-1243 of the 1983 Montana Administrative Register Issue Number 17.

2. The Commission has adopted the proposed rules with the following changes:

Rule I. 38.5.901 DEFINITION (1) "Billing error" means any bill issued by a natural gas, ~~or~~ electric, private water or sewer utility that is not designated as an estimate and that understates the amount owed by a utility customer. It also means a utility's failure to bill a customer, although there was energy consumption which would, under the utility's normal billing practices, be billed to the customer.

Rule II. 38.5.902 BILLING ERRORS (1) When a billing error is discovered which is not the result of theft by the customer, ~~meter tampering is discovered,~~ the utility ~~shall~~ may submit a bill to the customer based on the corrected information for a period not to exceed six months from the date the billing error is discovered.

Rule III. 38.5.903 EXEMPTION (1) Billing errors on accounts of industrial customers are exempt from the provisions of these rules.

Rule IV. 38.5.904 EFFECTIVE DATE (1) Utilities are required to comply with this rule for billing errors discovered on and after January 26, 1984. However, utilities are authorized to implement the rule immediately, both for billing errors presently known and for errors which are discovered prior to January 26, 1984.

3. Comments: MDU suggests that the rules should apply to all utilities equally. As proposed, the rules would apply only to electric and gas utilities. The Commission finds some merit in MDU's suggestions, and, therefore, includes private water and sewer utilities in the final rules. Telephone utilities are not included because telephone companies do not currently back bill for billing errors. In addition, because of the information contained in a telephone bill, mistakes are more readily determinable by the customer than is the case with other utility services.

Both MDU and MPC claimed that the proposed exclusion for improper actions by the utility customer was not sufficiently

broad. By this amendment, the Commission agrees in part with these comments. The rule has been amended to include as an exception, theft of utility service, however accomplished. The proposed rule only included theft accomplished by meter tampering. The utilities correctly pointed out that theft could be accomplished by other means, such as bypassing the meter entirely.

In amending this rule, the Commission rejects the utilities' suggested language that would make noncriminal omissions by a customer exempt from the rule. The arguments in favor of such amendments implicitly put responsibility on the customer for discovering billing errors. The Commission does not believe that moving responsibility from the utility to the customer is appropriate. In addition, the Commission does not agree with the utilities that certain omissions on the part of the customer constitute "misconduct." The utilities' amendments would make the customer responsible for back billing if the customer fails to sign up when he or she first moves into a residence. In support of this result, the utilities claim that customers should know that they are using utility services and, therefore, should know that they should be getting a bill. The argument ignores the situation where a renter assumes that utilities are included in rent. The misunderstanding cannot be automatically labelled "misconduct."

MPC offers as another example of "misconduct," the customer who establishes a business in his or her residence, but fails to tell the utility that the account should be changed from a Residential to a General Services Classification. The argument assumes that all customers know that residences and residences with businesses are billed under different tariffs. The Commission does not believe this is common knowledge. As in the other example, the omission may be entirely inadvertent. In any case, the utilities can correct this problem if it truly is a problem by telling their meter readers to report the addition of a business to a formerly residential account. This should allow detection of any substantial business activity.

Should the utilities propose exclusions that clearly differentiate between situations where a customer's failure to act clearly demonstrates an intent to avoid payment for utility services, the Commission will consider such proposals. The suggestions to this rule made by the utilities are, however, too broad, since they include innocent failures by customers as well as those designed to avoid utility payments.

The final example MPC offers as support for its proposed broad exemption is that "occasionally, a customer who applies for service never receives a bill. Somehow the account is not properly placed into the system." The Commission fails to see how this situation can be broadly labelled customer misconduct.

To reiterate: The utility, not the customer, is responsible for assuring that customer accounts are correctly billed. The Commission rejects attempts to shift that burden through exceptions to these rules.

In Rule II, "may" was substituted for "shall" to make clear that utilities are not required back bill at all and that they can back bill for a period going back for a period of less than six months. The amendment is made based on MDU's comment that in some circumstances it back bills for less than six months.

MPC has suggested that the rule be limited to residential customers. As proposed, the rule applies to all customer classes.

The basis for MPC's comments is that large general service and industrial customers are more sophisticated about expected energy usage levels than residential customers and that industrial customers have the option of providing their own meters for energy measurement.

The Commission agrees in part with this argument. Industrial customers are indeed more aware of and sophisticated about utility consumption than other customers; in addition, the opportunity to provide their own meters gives them a means to prevent billing errors not available to other customers.

The Commission rejects MPC's arguments on the issue as they apply to General Service customers, however. As MPC is aware, this class includes the Mom and Pop store as well as large department stores, grocery stores and shopping centers. The latter group of customers might have the sophistication attributed to the General Service class by MPC in its arguments However, MPC has made no persuasive arguments that show this is the case. Recent billing errors involving state agencies in fact suggest that this may not be the case. In any event, MPC's arguments involve only large General Service customers. They ignore small customers in the class, which, the Commission believes, resemble residential customers. MPC has offered no basis upon which to draw a distinction between large and small General Service customers for purposes of this rule.

Montana Power claims that Constitutional requirements mandate a delayed implementation date. With some reluctance, the Commission agrees with this argument. However, Montana Power's suggestion of a six month delay is rejected, and a two month delay is adopted. This is a reasonable period of time in which to allow MPC and other utilities to "clean up" outstanding billing errors in view of Montana-Dakota Utilities representation in its comments that reasonable diligence can result in detection of most errors within that time period.

In addition, through previous discussions with the Commission staff, MPC has been fully aware that adoption of these rules in some form was likely.

Given the current status of computer programming for utility bills, the Commission believes that two months is an adequate time in which to find billing errors.

Amendments to the proposed rules also deal with another timing issue, which is whether it applies to billing errors discovered prior to the effective date of the rule. The Commission believes that it does not have the legal authority to require application of the rule in these situations. It does have the authority to allow the utilities to apply the rule

should they wish to do so, and has given that permission through this amendment. In part, the amendment is made because technically, a utility must charge rates approved by the Commission. This requirement could be interpreted to require utilities to back bill to the extent allowed prior to this rule's effective date. The amendment modifies that requirement so that utilities can treat all customers with back billing problems consistently.

The Montana Power Company (MPC) and the Montana-Dakota Utilities Company (MDU) have contested the Commission's authority to promulgate this rule, on the grounds that there is no specific statutory authority to do so.

The Commission rejects this argument. Utilities have long submitted back billing provisions as part of their service rules, which are approved by the Commission. For example, MPC's Rule 9-9 defines the utility's liability for billing errors. This rule has been in effect for over ten years. These long-standing rules themselves contain provisions limiting back billing liability to six months under certain circumstances. Similarly, Pacific Power and Light Company has tariff Sheet L-2 on file with the Commission which outlines its liability as well as the customer's in case of billing errors.

The area clearly comes within the Commission's authority to prescribe conditions of service by utilities.

Montana Power argues that, Mountain States Telephone and Telegraph co. v. Dist. Ct., 160 Mont. 443, 503 P.2d 256 (1972) is not applicable in this case. The Commissin disagrees. It is indeed ironic that, when a case tilts in favor of the utility, as is the case in Mountain Bell supra, it argues that the Commission can limit utility liability; however, when liability limitation is in favor of the customer, the utility argues that the Commission may not become involved. The Commission cannot accept such a one-sided interpretation of the law.

The tariff at issue in Mountain States, supra, limited common law and statutory damages; so does this rule. In its essential facts, therefore, the Commission finds the case applicable to this rule.

Furthermore, based on its knowledge of the ratemaking process, the Commission concludes that utilities recover any losses occasioned by billing errors through the normal ratemaking process. Recovered revenues represent a double recovery. Therefore, the utilities are in no way damaged by this rule.

MDU suggests that the rule should apply to both under and overbilling. As the rule was proposed, it limits liability only for underbilling. The suggestion indicates that MDU has missed the point of the rule. Utility customers have a right to rely on the accuracy of the bills they receive from utilities each month. It is the utility's responsibility to accurately measure utility usage. When they fail in that duty, it all too often results in a financial burden being placed on utility customers. As previously noted, utilities recover for uncollectibles through the ratemaking process. Customers who

suddenly receive a large bill because of a billing error have no such protection. The rule is designed to give the utility a reasonable opportunity to discover errors while limiting the financial burden placed on customers because of back billing. That intent is not fulfilled by limiting liability for a utility's overcollections.

Mr. Joel W. Davis complained that the rule did not define terms for backpayment or "render any punitive action for the negligent party." The Commission discussed the possibility of including terms under which repayment would be made. The possibility was rejected on the grounds that the Commission experience through its Customer Service Representative strongly suggests that utilities are very flexible in making payment arrangements. That flexibility would be lost if payment terms were defined in the rule.

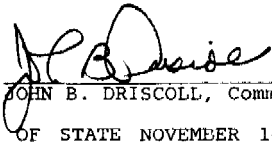
As to Mr. Davis' second point, the Commission does not have authority to punish utilities for what he calls their negligence.

Mr. Davis requested a formal hearing on the rule. The Commission rejected this suggestion because it does not believe substantial new information would be produced through that process. The Commission's own experience with billing errors, plus the comments from individuals and utilities, provides a sufficient basis for the rule.

Robert Keller and Don Didriksen of Didriksen Oil Co. strongly endorsed the rule as drafted. Mr. Keller represented Didriksen Oil when it was back billed by MPC for $8,212.84 for an error going back six years. Both Mr. Didriksen and Mr. Keller pointed out that they had no way of verifying the amount MPC claimed it was owed. This complaint is a good example of why these rules are needed. The Commission believes that the amendments made in the final rule do not affect the portions that these individuals found important.

Pacific Power and Light Company's (PP&L) comments contained an explanation of its current policies when a billing error is discovered, which is included in its tariffs. It did not propose amendments to the proposed rule. PP&L states that, as a general matter, liability limitations should be equitable to both parties, should reflect commonly accepted practices, and should have realistic time limitations. The Commission believes that the rule as adopted complies with these standards.

MPC has commented that if the rule is adopted, service rules should be made consistent. The Commission agrees with this statement. It is the utilities' responsibility to conform its rules to the Commission's rules and they should do so immediately. As the Commission believes is obvious, these rules are intended to supercede existing practices and rules.



JOHN B. DRISCOLL, Commissioner

CERTIFIED TO THE SECRETARY OF STATE NOVEMBER 14, 1983.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rule I (42.15.323) relating to voluntary refund checkoff for nongame wildlife fund.	NOTICE OF ADOPTION of Rule I (42.15.323) relating to voluntary refund checkoff for nongame wildlife fund.

TO: All Interested Persons:

1. On September 29, 1983, the Department of Revenue published notice of the proposed adoption of rule I (42.15.323) relating to a voluntary refund checkoff for the nongame wildlife fund at pages 1028 and 1029 of the 1983 Montana Administrative Register, issue number 18.

2. The Department has adopted rule I (42.15.323) as proposed.

3. No comments or testimony were received.

4. The authority for the rule is §15-30-305, MCA, and the rule implements §15-30-150, MCA.

IN THE MATTER OF THE ADOPTION of Rule I (42.15.414) relating to a deduction for shareholders of small business corporations making a donation of computer equipment to schools.	NOTICE OF ADOPTION of Rule I (42.15.414) relating to a deduction for shareholders of small business corporations making a donation of computer equipment to schools.

TO: All Interested Persons:

1. On October 13, 1983, the Department of Revenue published notice of the proposed adoption of rule I (42.15.414) relating to a deduction for shareholders of small business corporations making a donation of equipment to schools at pages 1437 and 1438 of the 1983 Montana Administrative Register, issue number 19.

2. The Department has adopted rule I (42.15.414) as proposed.

3. No comments or testimony were received.

4. The authority for the rule is §15-30-305, MCA, and the rule implements §15-30-126, MCA.

IN THE MATTER OF THE ADOPTION of Rule I (42.23.418) relating to a deduction for corporations making a donation of computer equipment to schools.	NOTICE OF ADOPTION of Rule I (42.23.418) relating to a deduction for corporations making a donation of computer equipment to schools.

TO: ALL Interested Persons:

1. On October 13, 1983, the Department of Revenue published notice of the proposed adoption of rule I (42.23.418) relating to a deduction for corporations making a donation of equipment to schools at pages 1439 and 1440 of the 1983 Montana Administrative Register, issue number 19.

2. The Department has adopted rule I (42.23.418) as proposed.

3. No comments or testimony were received.

4. The authority for the rule is §15-31-501, MCA, and the rule implements §15-31-114, MCA.

ELLEN FEAVER,
Director of Revenue

Certified to Secretary of State 11/14/83

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

In the matter of the repeal of Rules 46.5.505, 46.5.506 and 46.5.507; the adoption of Rules 46.5.670, 46.5.671, 46.5.672, 46.5.673, 46.5.674, 46.5.675, 46.5.676 and 46.5.677; and the amendment of Rules 46.5.604, 46.5.606 and 46.5.610 pertaining to licensing of youth foster homes.	))))))))	NOTICE OF THE REPEAL OF RULES 46.5.505, 46.5.506, 46.5.507; THE ADOPTION OF RULES 46.5.670, 46.5.671, 46.5.672, 46.5.673, 46.5.674, 46.5.675, 46.5.676 AND 46.5.677; AND THE AMENDMENT OF RULES 46.5.604, 46.5.606 AND 46.5.610 PERTAINING TO YOUTH FOSTER HOMES

TO: All Interested Persons

1. On September 29, 1983, the Department of Social and Rehabilitation Services published notice of the proposed repeal of Rules 46.5.505, 46.5.506, and 46.5.507; the adoption of rules and the amendment of Rules 46.5.604, 46.5.606 and 46.5.610 pertaining to youth foster homes at page 1333 of the Montana Administrative Register, issue number 18.

2. The Department has repealed the rules as proposed.

3. The Department has adopted Rules 46.5.671, YOUTH FOSTER HOME, PHYSICAL CARE; 46.5.672, YOUTH FOSTER HOME, DISCIPLINE; 46.5.673, YOUTH FOSTER HOME, ENVIRONMENTAL REQUIREMENTS; 46.5.674, YOUTH FOSTER HOME, FIRE SAFETY; 46.5.675, YOUTH FOSTER HOME, OTHER SAFETY REQUIREMENTS; 46.5.676, YOUTH FOSTER HOME, TRANSPORTATION; and 46.5.677, YOUTH FOSTER HOME, TRAINING REQUIRED as proposed.

4. The Department has amended Rules 46.5.606 and 46.5.610 as proposed.

5. The Department has adopted Rule 46.5.670 with the following changes:

46.5.670 YOUTH FOSTER HOME, PROGRAM REQUIREMENTS Subsections (1) through (9) remain the same as proposed.

(10) The foster parent shall permit and encourage visitation between the foster child and the child's biological parents, except in those cases where a restriction of visitation is part of a court order or the written case plan.

6. The Department has amended the rule with the following changes:

46.5.604 LICENSES Subsections (1) through (6) remain the same as proposed.

(7) Any applicant who has received services for documented abuse or neglect of a child OR WHOSE OWN CHILDREN HAVE BEEN IN FOSTER CARE shall be denied a foster care license.

7. The department has thoroughly considered all verbal and written commentary received:

Comment: ARM 46.5.671(b)(i) (Rule II) where it states that, "The child shall have a complete physical examination within 30 days after admission to foster care and yearly thereafter." Our concerns are that sometimes our Medicaid cards are not returned within 30 days and it creates some problems in getting a physical examination done without the card. We realize it can be done but it is a nuisance, and we are recommending that the 30 day period be extended to 90 days.

Response: It is an exceptional case that the medical card isn't received within 30 days. The card is effective retroactive to the date of placement; therefore, the requirement remains as proposed.

Comment: ARM 46.7.673(3) (Rule IV) where it states that, "All foster homes shall be equipped with a telephone. Exceptions may be granted by the department." We would suggest that you change "by the department" to the placing agency, eliminating excess correspondence and unnecessary time.

Response: Since the license is issued by the department, any exceptions to the licensing requirements must be approved by the department. In those cases where the licensing study is completed by the placing agency, the study will contain the placing agency's recommendations for exceptions. The only occasions that will require additional time or correspondence are those occasions when the department has reason to disagree with the placing agency's recommendation. The requirement remains as proposed.

Comment: ARM 46.5.677(1) (Rule VIII) - Training takes place on an ongoing basis throughout the year by our department. We would suggest that the exemption should be granted by the placing agency instead of "by the department." Our concerns are that the training received by our foster homes throughout the year on a regular basis is much more effective, pertinent, and to the point, than the training sessions that have been put on by the local SRS Department. We have attended numerous training sessions presented by SRS and have found them to be less effective. Consequently, we would like the freedom to continue our present method of training and instruction of our foster parents. We suggest that throughout this proposal that the placing agency be inserted where generally you have "the department".

Response: Since the license is issued by the department, only the department may grant exemptions to the licensing requirements. The rule mentions training "provided or approved" by the department. The department expects to approve a great deal of foster parent training that is not actually provided by the department. The respondent may seek department approval for its training. The rule remains unchanged.

Comment: One respondent recommended that the following requirement be added to the rules: children in care and custody of the Montana Department of Social and Rehabilitation Services shall not be subjected to any form of physical punishment by care providers or school personnel.

Response: The discipline section of the proposed rules prohibits the use of physical punishment by care providers; however, Montana law allows the use of corporal punishment in the public schools under certain prescribed conditions. Social workers are encouraged to work closely with the schools to inform teachers, administrators and other staff of the unique needs of children in foster care. Any inappropriate use of corporal punishment of foster children by school personnel should be addressed by the department's policy manual and training; therefore, the respondent's recommendation has not been added to the licensing rules.

Comment: A respondent recommended that the department deny a license to any applicant whose own child has been in foster care. The respondent indicated that generally parents who have had their own children in foster care lack the parenting skills and resources that are so necessary to parenting children in foster care.

Response: The department agrees with the respondent and has changed Rule 46.5.604(7) accordingly.

Comment: A respondent pointed out that according to state law, a foster home can have no more than six children.

Response: The definition contained in Montana Code Annotated reads: "Youth foster home" means a youth care facility in which substitute care is provided to one to six children, a youth to whom the foster parents are not related by blood, marriage, adoption or wardship. Nothing in the proposed rules conflicts with the definition; therefore, there has been no change.

Comment: A respondent recommended that the department add the following to ARM 46.5.670 (Rule I): "The foster parent shall permit and encourage visitation between foster child and the child's biological parents except in those cases where a

restriction of visitation is part of a court order or the written case plan."

Response: The department encourages a close working relationship between foster parents, biological parents, the social worker and the child. This relationship is supported throughout the proposed rules but it is not so clearly stated as in the respondent's proposal; therefore, the recommendation has been incorporated as a tenth item under ARM 46.5.670 (Rule I).

Comment: The respondent offered the suggestion that the following be included in the rules: "The foster parents having detailed knowledge of the foster child's needs and behavior shall have an opportunity to participate in the formulation of the written care plan."

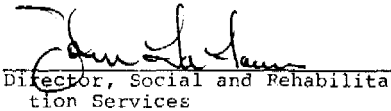
Response: The 1983 Montana legislature passed legislation requiring that foster family care providers be included in the required membership for foster care review committees (Section 41-5-807 MCA). The law is supported through the department's social service policy SS 3008, which requires social workers to notify foster parents of the time and place of foster care review meetings and to encourage the foster parents to attend. This should allow the foster parent sufficient opportunity for input regarding the child's case plan. The proposed rules, therefore, remain unchanged.

Comment: A respondent noted that ARM 46.5.671(1)(b)(i) (Rule II) requiring that a child have a complete physical examination within 30 days after admission is too burdensome on foster parents who serve without reimbursement or government assistance.

Response: The requirement of a physical examination within 30 days of admission is designed to identify as soon as possible any potential health or medical problems of the child which need to be addressed. This is especially important when the child may be adopted at a later time. By requiring physical examinations, the foster parent, placing agency and any prospective adoptive parent will be fully apprised of any medical needs of the child which need to be addressed.

Comment: A respondent representing a church affiliated child placing agency questioned whether 15 hours of training was necessary for volunteer foster parents who primarily care for infants.

Response: The Department feels that training is vital for all foster parents to assist them in providing quality foster care. Training is directed to improve the ability of the foster parent to evaluate the needs of the child. Training can assist foster parents caring for infants in recognizing developmental delays in an infant or other problems which should be treated. The Department feels that the rule as written is not too burdensome and the Department stands ready to assist foster parents in meeting this requirement.



Director, Social and Rehabilitation Services

Certified to the Secretary of State November 14, 1983.

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

In the matter of the amendment of Rule 46.14.304 pertaining to the low income weatherization assistance program; income	)))))	NOTICE OF THE AMENDMENT OF RULE 46.14.304 PERTAINING TO THE LOW INCOME WEATHERIZATION ASSISTANCE PROGRAM

TO: All Interested Persons

1. On September 29, 1983, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.14.304 pertaining to the low income weatherization assistance program; income at page 1341 of the Montana Administrative Register, issue number 18.

2. The Department has amended the rule as proposed.

3. No written comments or testimony were received.

Director, Social and Rehabilitation Services

Certified to the Secretary of State November 14, 1983.

VOLUME NO. 40 OPINION NO. 25

APPROPRIATIONS - Application of budget amendment process;
APPROPRIATIONS - Definition;
BUDGET AMENDMENTS - Contrasted with appropriations;
STATE AGENCIES - Expenditures in excess of appropriations;
MONTANA CODE ANNOTATED - Sections 5-12-101 through 5-12-402;
1889 MONTANA CONSTITUTION - Article V, section 34;
1972 MONTANA CONSTITUTION - Article VIII, section 14.

HELD: The budget amendment process does not apply to appropriation measures enacted by statute.

31 October 1983

David M. Lewis, Budget Director
Budget and Program Planning
Office of the Governor
Room 237, State Capitol
Helena MT 59620

Dear Mr. Lewis:

I have received your request for an opinion on the following questions:

1. What constitutes an "appropriation?"

2. Does the budget amendment process apply in any way to statutory appropriations?

In response to your first question, the definition of "appropriation" must, by necessity, be couched in very general terms and applied on a case-by-case basis. Since no definition of "appropriation" is supplied in the Montana statutes, an examination of the relevant case law is in order. Indicia of an appropriation, according to the case law, include: the setting apart of a specified sum of money for a particular use, object, or person, State ex rel. Toomey v. State Board

of Examiners, 74 Mont. 1, 7, 238 P. 316, 320-21 (1925); the granting of specific authority to spend the funds, State ex rel. Haynes v. District Court, 106 Mont. 470, 480, 78 P.2d 937, 943 (1938); and an expression of an intention by the people that the money in question be disbursed, First National Bank in Bozeman v. Sourdough Land and Cattle Company, 171 Mont. 390, 397, 558 P.2d 654, 657 (1976), and State ex rel. Dean v. Brandjord, 108 Mont. 447, 454, 92 P.2d 273, 276 (1939). With respect to the requirement that there be a setting apart of a specific sum of money, the case law suggests that this requirement may be met even though no exact sum is mentioned, so long as a maximum amount is stated, or the special fund from which the money is to be expended is itself limited in amount. State ex rel. Dean v. Brandjord, 108 Mont. at 456, 92 P.2d at 277.

By contrast, features that do not indicate that an appropriation has been made include: the need for additional independent legislation in order to disburse the funds in question State ex rel. Haynes v. District Court, 106 Mont. at 480, 78 P.2d at 943; and a mere promise or imposition of a duty on the Legislature to appropriate, First National Bank in Bozeman v. Sourdough Land and Cattle Company, 171 Mont. at 397, 558 P.2d at 658, and State ex rel. Dean v. Brandjord, 108 Mont. at 455, 92 P.2d at 276.

While these tests for determining whether a particular statute is an appropriation are somewhat general and thus do not lend themselves to precise application, they do provide a starting place for addressing your inquiry. A more detailed response would require the examination of specific legislation.

Your second question concerns whether the budget amendment process applies to statutory appropriations. According to the staff memorandum that accompanied your request for an opinion, your use of the term "statutory appropriations" is meant to encompass those appropriations that have been made either by an express act of appropriation or by an act of the Legislature without a specific appropriation bill. Some background concerning the use of terms is appropriate. The 1972 Montana Constitution article VIII, section 14 (formerly article V, section 34 of the 1889 Montana Constitution), provides that "no money shall be paid out of the treasury unless upon an appropriation made by law...."

(Emphasis added.) As noted in the staff memorandum accompanying your letter, Montana case law has interpreted the phrase "appropriation made by law" to include not only appropriations made by legislative enactment but also those accomplished by a provision in the state constitution. State ex rel. Buck v. Hickman, 10 Mont. 497, 26 P. 386 (1891); State ex rel. Rotwitt v. Hickman, 9 Mont. 370, 23 P. 740 (1890).

With respect to those appropriations made by legislative enactment rather than by constitutional directive, the Montana Supreme Court has determined that they do not require specific appropriation bills in order to constitute "appropriations made by law." Thus, in State ex rel. Toomey v. State Board of Examiners, 74 Mont. 1, 238 P. 316 (1925), an act authorizing the State Board of Examiners to issue and sell treasury notes and to deposit the proceeds therefrom in the general fund, to be used exclusively for the payment of outstanding warrants against the general fund, was held to be an appropriation, even though there was no direct appropriation authorizing a withdrawal from the general fund. Likewise, in State ex rel. Dean v. Brandjord, 108 Mont 447, 92 P.2d 273 (1939), it was determined that an "appropriation made by law" did not require the introduction of an appropriation bill. See also First National Bank in Bozeman v. Sourdough Land and Cattle Company, 171 Mont. 390, 558 P.2d 654 (1976).

For the purposes of this opinion, I will assume that your second question regarding the applicability of the budget amendment process to "statutory appropriations" refers to those appropriations accomplished by legislative enactment, either with or without introduction and passage of specific appropriation bills, as is permitted by the above-cited law.

In order to determine whether the budget amendment process applies to these statutory appropriations, it is necessary to analyze the intent of the budget amendment legislation. The budget amendment process, first enacted in 1975 as a part of the Legislative Finance Act (see Title 5, ch. 12, MCA), and amended in 1983 (1983 Mont. Laws, ch. 536) requires, inter alia, that budget amendments be certified by the approving authority and submitted through the Legislative Fiscal Analyst to the Legislative Finance Committee before final approval. An examination of the minutes of discussions by the

legislative committees which considered the budget amendment procedure in 1975 and 1983 indicates that the term "budget amendment" refers to appropriations measures that involve expenditures over and above the funds appropriated during a regular legislative session. See Senate State Administration Committee, Consideration of SB 401, Feb. 26, 1975; House Finance and Claims Committee, Consideration of SB 401, March 19-20, 1975; Senate Finance and Claims Committee, Consideration of HB 548, March 16, 1983; House Appropriations Committee, Consideration of HB 548, Feb. 17, 1983. The definition of "budget amendment" included in the 1975 Legislative Finance Act (§ 5-12-102(1), MCA) speaks of "funds in excess of those appropriated by the legislature." In the 1983 amendments (1983 Mont. Laws ch. 536, § 1(4), the definition of "budget amendment" uses the words, "an appropriation to increase spending authority." The scope of the budget amendment process is explained in Board of Regents of Higher Education v. Judge, 168 Mont. 433, 441, 543 P.2d 1323, 1328 (1975), as extending to those expenditures by State agencies in excess of their appropriations.

The above-cited sources support the conclusion that the scope of the budget amendment process is restricted to the expenditure of funds by State agencies in excess of their appropriations.

THEREFORE, IT IS MY OPINION:

The budget amendment process does not apply to appropriation measures enacted by statute.

Very truly yours,

MIKE GREELY
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

Definitions: Administrative Rules of Montana (ARM) is a looseleaf 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 ARM topical index, volume 16. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.
Statute Number and Department	2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.

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, 1983. This table includes those rules adopted during the period October 1, 1983 through December 31, 1983, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 1983, 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 1983 Montana Administrative Registers.

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