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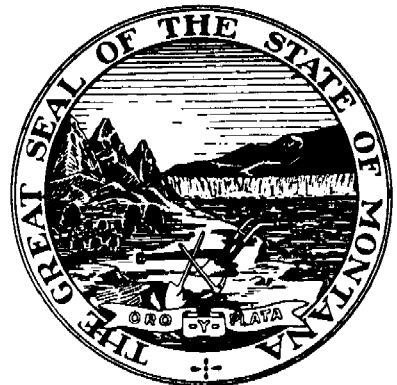
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MONTANA
ADMINISTRATIVE
REGISTER

1983 ISSUE NO. 3
FEBRUARY 10, 1983
PAGES 96-157



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 3

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

In the matter of the amend-)	NOTICE OF THE PROPOSED
ment of rule 2.23.1408	)	AMENDMENT OF RULE 2.23.1408
)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

To: All Interested Persons:

1. On March 14, 1983, the Montana Merit System Council proposes to amend Rule 2.23.1408 which pertains to the operation of the Montana Merit System.

2. The rule proposed to be amended is on page 2-2404 of the Administrative Rules of Montana.

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

2.23.1408 REINSTATEMENT TO A PREVIOUS CLASS OF POSITION

(1) A permanent employee who resigned while in good standing or who was separated without prejudice may be reinstated to the employee's former class of position under the following conditions:

(a) A position must be vacant.

(b) The period of his continuous service with the agency must be greater than or equal to the length of time since he was separated, with a time limit of 3 years from the date of separation.

(c) The employee must also meet current minimum qualifications for the class of position, unless the employee is to be reinstated within a year from the date of separation to the class of position previously occupied or to a lower class in the same series.

~~(2) An employee separated through a reduction in force will be reinstated to his former class of position under the following conditions:~~

~~(a) The position is vacant;~~

~~(b) The separated employee is available for employment;~~

~~(3) Appointments of other eligibles to classes of positions from which an employee was separated by reduction in force may not be made until the separated employee or employees have been offered but refused to reinstatement. The order of reinstatement shall be the last off-first reinstated. (AUTH. and IMP. Sec. 2-18-105, MCA)~~

4. The participating agencies and the Merit System Council are proposing this amendment governing the operation of the Montana Merit System to be consistent with the reduction in work force policy and procedure set forth in ARM Title 2, chapter 21, sub-chapter 50 as amended.

5. Interested persons may present their data, views or arguments concerning the proposed repeal and amendment of the rules in writing no later than March 10, 1983, to:

Norman H. Grosfield, Chairman
Montana Merit System Council
Personnel Division
Department of Administration
Room 130, Mitchell Building
Helena, Montana 59620

6. If a person who is directly affected by the proposed amendment of rule 2.23.1408 wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to: Norman H. Grosfield, Chairman, Montana Merit System Council, Personnel Division, Department of Administration, Room 130, Mitchell Building, Helena, Montana 59620, no later than March 10, 1983.

7. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons directly affected, from the 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 25 persons.

8. The authority of the council to make the proposed rules is based on Section 2-18-105, MCA, and the rules implementing Section 2-18-105, MCA.



Norman H. Grosfield, Chairman
Merit System Council

Certified to the Secretary of State January 31, 1983.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF MEDICAL EXAMINERS

IN THE MATTER of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of ARM 8.28.420 con-) OF ARM 8.28.420 FEE SCHEDULE
cerning fees.)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 12, 1983, the Board of Medical Examiners proposes to amend rule ARM 8.28.420 regarding the fee schedule.

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

"8.28.420 FEE SCHEDULE (1) The following fees will be charged:

(a)...

(d) Examination fee \$100.00 \$180.00

(e)..."

3. The board is proposing the amendment to correspond to the amendment of rule 8.28.416 which was proposed on December 16, 1982 at page 2115, 1982 Montana Administrative Register, issue number 23. The board amended the rule on examinations and inadvertently neglected to also amend rule 8.28.420, the fee schedule rule. The amendment is proposed as the suppliers of the national examination have increased the cost to the board to \$160 per examination. The remaining \$20 charged by the board is to cover the costs in administering the examination.

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

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

6. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental agency or subdivision; or from an association having not less than 25 members who will be directly affected, a 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 5 based on the 50 applicants per year.

7. The authority of the board to make the proposed amendment is based on section 37-3-203, MCA and implements section 37-3-308, MCA.

BOARD OF MEDICAL EXAMINERS
THOMAS J. MALEE, M.D., PRESIDENT

BY: 

GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, January 31, 1983.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF MORTICIANS

In the matter of the proposed) NOTICE OF PUBLIC HEARING
adoption of rules requiring) ON PROPOSED ADOPTION OF SUB-
continuing education for funer-) CHAPTER 7, CONTINUING EDUCA-
al directors and morticians) TION RULES
licensed in Montana)

TO: All Interested Persons:

1. On March 4th, 1983, at 10:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the adoption of rules requiring continuing education for funeral directors and morticians.

2. The proposed rules do not replace or modify any section currently found in the Montana Administrative Code. Rules for continuing education were proposed and published on July 29, 1982 in the 1982 Montana Administrative Register, issue number 14. A hearing was scheduled in issue number 17 and the hearing was held on October 8, 1982. Because of suggestions and concerns expressed at the hearing and at later meetings with the Administrative Code Committee, the board has made changes and is at this time renouncing all the proposed rules.

3. The rules as proposed will read as follows:

" I. DEFINITIONS (1) For the purpose of these rules, the following definitions shall apply:

(a) 'Continuing education' is defined as an academic course, workshop, seminar, or other accepted activity developed for the purpose of increasing or sustaining the proficiency of the licensee to better serve the public.

(b) 'Licensee' means any person licensed to practice as a mortician or as a funeral director in the state of Montana.

(c) 'Approved program or activity' means a continuing education program meeting the standards set forth in these rules, which program has received advance approval by the board pursuant to these rules.

(d) 'Accredited sponsor' means a person or organization sponsoring continuing education activities which has been approved by the board as a sponsor pursuant to these rules.

(e) 'The continuing education compliance period' shall comprise the twenty-four month period immediately prior to the licensee's renewal date.

(f) 'Inactive practitioner' for purposes of these rules shall mean an individual who has applied for and been granted a waiver of compliance with these rules and who has obtained a certificate of exemption.

(g) 'Conditional permission to practice' shall mean written permission granted by the board to an individual to practice as a mortician or funeral director for a period not to exceed one year, during which time he must obtain

the required number of hours of continuing education." (authority - Sections 37-19-202, 316, MCA; implement - section 37-19-316, MCA)

" II. CONTINUING EDUCATION REQUIREMENTS (1) Beginning June 30, 1984, each licensee in this state shall submit with his or her renewal application, satisfactory proof of completion of a minimum of 6 clock-hours of continuing education courses approved by the board per year or 12 clock-hours of continuing education courses for a 2 year period. Credit may be given for board approved continuing education programs completed between January 1, 1983 and the effective date of these rules.

(a) Compliance with the requirements of continuing education is a prerequisite for license renewal.

(b) For those morticians newly licensed in January or February of a given year, the fulfillment of the continuing education requirements will not be required for an 18 month period from the date of licensure.

(c) For those morticians newly licensed in July of a given year, the fulfillment of the continuing education requirements will not be required for a 12 month period from the date of licensure.

(2) Hours of continuing education credit may be obtained by attending and participating in continuing education courses, workshops, seminars or other accepted activities either previously accredited by the board or otherwise meeting the requirements herein and approved by the board.

(3) During the time an organization, educational institution, or person is an accredited sponsor, all continuing education programs of such organization or person must have board approval.

(4) A licensee desiring to obtain credit for completing more than 12 hours of approved continuing education credits during any 2 licensure years shall report such carry-over credit to the board on or before the expiration of his or her current license year. Such carry-over credit shall be limited to no more than 6 clock hours.

(5) It is the responsibility of each licensee to finance his or her costs of continuing education." (authority - Sections 37-19-202, 316, MCA; implement - section 37-19-316, MCA)

" III. STANDARDS FOR APPROVAL (1) A continuing education course, workshop, seminar, or other accepted activity shall be qualified for approval if the board determines that:

(a) it constitutes an organized program of learning which contributes directly to the professional competency of the licensee in serving the public;

(b) it relates to the practice of mortuary science;

(c) it is conducted by individuals considered experts in the subject matter of the program by reason of education, training or experience; and

(d) it is accompanied by a paper, manual, or written outline which substantially pertains to the subject matter of the program.

(2) Except as may be allowed by the board, no licensee shall receive credit exceeding 3 credit-hours of the annual total required hours, for correspondence work, satisfactory completion of such correspondence work shall be certified by the agency providing the education.

(3) No licensee shall receive credit exceeding 3 credit-hours of the annual total required hours for business management courses that do not directly relate to the consumer of mortuary services.

(4) No licensee shall receive credit exceeding 3 credit-hours of the annual total required hours for instructing classes or conducting seminars in mortuary science related fields.

(5) Credit will be granted on an individual basis upon approval by the majority of the board." (authority - Sections 37-19-202, 316, MCA; implement - section 37-19-316, MCA)

"IV. ACCREDITATION OF SPONSORS (1) The board may require of an organization or person not previously accredited by the board, which desires accreditation as a sponsor of courses, programs, or other continuing education activities, its education history for the preceding 2 years, including approximate dates, subjects offered, total hours of instruction presented, and the names and qualifications of instructors. By January 1 of each year, commencing January 1984, accredited sponsors may be required to report to the board in writing the education programs conducted during the preceding calendar year, on a form approved by the board. The board may at any time re-evaluate an accredited sponsor. If after such re-evaluation, the board finds there is a basis for consideration of revocation of the accreditation of a sponsor, the board shall give notice in writing to that sponsor of the hearing on the revocation of accreditation at least 30 days prior to such hearing." (authority - Sections 37-19-202, 316, MCA; implement - section 37-19-316, MCA)

" V. PRIOR APPROVAL OF ACTIVITIES (1) An organization or person other than an accredited sponsor, which desires prior accreditation of a continuing education program of any nature, shall apply to the board prior to its semi-annual meeting on a form provided by the board. The applicant shall be notified in writing of the board's decision within 15 days after such decision. The application shall state the dates, subjects offered, total hours instruction, names and qualifications of speakers and other pertinent information." (authority - Sections 37-19-202, 316, MCA; implement - section 37-19-316, MCA)

" VI. POST APPROVAL OF ACTIVITIES (1) An organization or a licensee seeking credit for attendance and participation in an educational program which was not conducted by an accredited sponsor nor otherwise approved shall submit to the board, within 30 days after completion of such activity, its dates, subjects, instructors and their qualifications, and the number of credit hours requested therefor. Within 30 days after receipt of such application, the board shall advise the licensee in writing by mail whether the activity is approved and the number of credit hours allowed. A licensee may be denied credit for the activity if he or she fails to comply with the requirements of this paragraph." (authority - Sections 37-19-202, 316, MCA; implement - section 37-19-316, MCA)

" VII. REVIEW OF PROGRAMS (1) The board may monitor or review any continuing education course, workshop, seminar, or other accepted activity already approved by the board and upon evidence of significant variation in the program presented from the program approved, may disapprove all or any part of the approved hours granted the program." (authority - Sections 37-19-202, 316, MCA; implement - section 37-19-316, MCA)

" VIII. HEARINGS (1) In the event of a denial, in whole or in part, of any application for accreditation or approval of a continuing education course, workshop, seminar, or other accepted activity, the applicant or licensee shall have the right to hearing pursuant to Title 2, Chapter 4, part 6, MCA." (authority - Sections 37-19-202, 316, MCA; implement - section 37-19-316, MCA)

" IX. ATTENDANCE RECORD REPORT (1) The accredited sponsor shall make a written report of the Montana licensees in attendance, and send a signed copy of such attendance to the office of the board upon completion of the continuing education course, but in no case later than 30 days following the date of such activity. In the event attendance is falsified, credit shall not be given and possible disciplinary action may be taken against the licensee." (authority - Sections 37-19-202, 316, MCA; implement - section 37-19-316, MCA)

" X. EXCEPTIONS - NOT ENGAGING IN THE PRACTICE OF FUNERAL SERVICE (1) The board has authority to make a written exception from the continuing education requirements for those persons who certify that they do not intend to engage in the practice of funeral service. Applicants for certificate or license renewal must certify their intention to the board on a form prescribed by the board. The board defines 'practice of funeral service' to mean a person engaging in providing shelter, care and custody of human dead; in the practice of preparing of the human dead by embalming or other methods for burial or other

disposition; in making arrangements at or prior to need, financial or otherwise, for the providing of such services and/or the same of funeral merchandise, whether for present or future use; or, in general, engaging in the practice or performing any functions of funeral directing and/or embalming as presently known including those stipulated herein." (authority - Sections 37-19-202, 316, MCA; implement - section 37-19-316, MCA)

" XI. DISABILITY OR ILLNESS (1) The board may, in individual cases involving disability or illness, grant waivers of the minimum education requirements or extensions of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application therefor shall be made on forms provided by the board and signed by the licensee and a person licensed to practice the healing arts. Waivers of minimum educational requirements may be granted by the board for a period of time not to exceed 24 months. In the event that the disability or illness upon which a waiver has been granted continues beyond the period of this waiver, the licensee shall apply for an extension of the waiver." (authority - Sections 37-19-202, 316, MCA; implement - section 37-19-316, MCA)

" XII. HARDSHIP EXCEPTION (1) The board has authority to make a written exception for reasons of individual hardship including health, military service, foreign residence, retirement, inaccessibility to programs or interference with an interstate practice." (authority - Sections 37-19-202, 316, MCA; implement - section 37-19-316, MCA)

" XIII. OTHER EXCEPTIONS (1) The board has authority to prescribe an amplified program or schedule of continuing education for an individual on an annual case-by-case basis should the board decide such amplification in the basic requirement and/or programs which qualify are in the public's best interest." (authority - Sections 37-19-202, 316, MCA; implement - section 37-19-316, MCA)

" XIV. REINSTATEMENT OF INACTIVE PRACTITIONERS

(1) Inactive practitioners who have been granted a waiver of compliance with these regulations and obtained a certificate of exemption, shall prior to engaging in the practice of mortuary science or funeral service in the state of Montana satisfy the following requirements for reinstatement:

(a) submit written application for reinstatement to the board upon forms provided by the board, and

(b) furnish within one year from the date the board grants conditional permission to practice, evidence of one of the following:

(i) full time practice as a mortician or funeral

director in another state of the United States or the District of Columbia and completion of continuing education for each year of inactive status in Montana, not to exceed 12 hours,

(ii) completion of a total number of hours of accredited continuing education computed by multiplying 6 by the number of years a certificate of exemption shall have been in effect for such applicant, not to exceed 12 hours,

(c) in addition to option (i) and (ii) above, for those individuals who have been inactive for a period in excess of 5 years, successful completion of the Montana state rule examination will be required.

(d) Conditional permission to practice while obtaining the requirements under subsection (b) above will be granted for a period not to exceed 1 year. No conditional permission will be granted for a second time if the requirements for continuing education are not fulfilled within the time period allowed.

(2) The same requirements of this rule must be fulfilled by those licensees who let their licenses become suspended by non-renewal." (authority - Sections 37-19-202, 316, MCA; implement - section 37-19-316, MCA)

" XV. PENALTY FOR NON-COMPLIANCE (1) Morticians or funeral directors who have not requested inactive status and/or have not complied with the requirements of 12 hours of continuing education within a 2 year period shall be subject to suspension or revocation of license after hearing." (authority - Sections 37-19-202, 316, MCA; implement - section 37-19-316, MCA)

4. The board is proposing the rules to implement section 37-19-316, MCA. The board is proposing the adoption because of the number of changes which affect the funeral industry that are occurring changes in human relations, increased number of organ donations, and even advances in medicine. The board feels it is extremely important for the profession to maintain high standards and feels the continuing education rules are a necessity to guarantee the continued competency of its licensees.

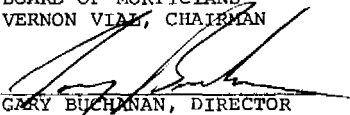
5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Morticians, 1424 9th Avenue, Helena, Montana 59620-0407, no later than March 10, 1983.

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

7. The authority and implementing sections are cited after each proposed rule.

BOARD OF MORTICIANS
VERNON VIAL, CHAIRMAN

BY:


GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, January 31, 1983.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF SPEECH PATHOLOGISTS AND AUDIOLOGISTS

IN THE MATTER of the proposed)	NOTICE OF PROPOSED AMENDMENTS
amendments of 8.62.402 concern-) OF ARM 8.62.402 DEFINITIONS,	
ing definitions, subsection (5),) 8.62.403 APPLICATIONS FOR	
8.62.403 concerning applica-)	LICENSE, 8.62.413 FEES, 8.62.
tions, 8.62.413 concerning fees) 501 SUPERVISOR-RESPONSIBILITY	
8.62.501 concerning supervisor)	FOR AIDE, 8.62.703 CONTINUING
responsibility for aides, and)	EDUCATION REQUIRED - WHEN
8.62.703 concerning continuing)	
education.)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 12, 1983, the Board of Speech Pathologists and Audiologists proposes to amend the above stated rules.

2. The proposed amendment of 8.62.402 amends subsection (5) and will read as follows: (new matter underlined, deleted matter interlined)

"8.62.402 DEFINITIONS (1)...

(5) Whenever the term license is used in these rules, it shall refer to a valid Montana full status license as issued under this act. It does not imply probationary, provisional, or temporary license."

3. The board is proposing the amendment to differentiate between full status licensees and probationary licensees. There has been some confusion among the licensees with regard to this. The authority of the board to make the proposed amendment is based on section 37-15-202, MCA and implements section 37-15-202, MCA.

4. The proposed amendment of 8.62.403 amends subsection (2) and will read as follows: (new matter underlined, deleted matter interlined)

"8.62.403 APPLICATIONS FOR LICENSE (1)...

(2) Every application shall be typed or written in ink, signed ~~and notarized under the penalty of perjury~~ and accompanied by the appropriate application fee and by such evidence, statements or documents as therein required.

(3)..."

5. The board is proposing the amendment to eliminate the requirement of a notary seal on the application. In 1980 the Committee on Government Paperwork made the recommendation that notary seals be eliminated from applications when not required by statute. The authority of the board to make the proposed change is based on section 37-15-202, MCA and implements section 37-15-302, MCA.

6. The proposed amendment of 8.62.413 changes the fees and will read as follows: (new matter underlined, deleted matter interlined)

"8.62.413 FEES (1)...

(3) The initial license fee for a speech pathologist

shall be ~~\$25-00~~ \$50.00.

(4) The initial license fee for an audiologist shall be ~~\$25-00~~ \$50.00.

(5) The initial fee for a combined speech pathology/audiology license shall be ~~\$25-00~~ \$50.00.

(6) The initial fee for a probationary speech pathology and/or audiology license shall be ~~\$25-00~~ \$50.00.

(7) ..."

7. The board is proposing the amendment as section 37-1-134, MCA allows the licensing boards to set fees commensurate with program costs. These are the amounts the board determined are necessary to cover the administrative costs. The authority of the board to make the proposed amendment is based on sections 37-1-134 and 37-15-202, MCA. The amendment implements section 37-1-134, MCA.

8. The board is proposing to amend 8.62.501 as follows: (new matter underlined, deleted matter interlined)

"8.62.501 SUPERVISOR-RESPONSIBILITY FOR AIDE (1) All persons working in the capacity of a speech pathology or audiology aide must be under the direct supervision of a fully licensed speech pathologist or audiologist. This supervisor assumes full legal and ethical responsibility for the tasks performed by the aide and for any services or related interactions with a client.

(2) The fully licensed speech pathologist or audiologist who supervises one or more aides should have a commitment to working with and utilizing the services of the aide(s). This supervisor should have training in the supervisory skills necessary to work with the aide(s). The work setting of the supervisor must allow for adequate direct and indirect supervision and monitoring of the aide(s)."

9. The board is proposing the amendment as too many aides have been supervised by probationary licensed speech pathology and audiology personnel. The board feels that this practice is not adequately protecting the consuming public. The authority of the board to make the proposed change is based on section 37-15-202, MCA and implements 37-15-102, MCA.

10. The proposed amendment of 8.62.703 amends subsection (1) and will read as follows: (new matter underlined, deleted matter interlined)

"8.62.703 CONTINUING EDUCATION REQUIRED - WHEN (1) All licensees applying to the board for renewal of their license ~~for the third or subsequent license period~~ shall provide proof of the following appropriate continuing education units.

(a)..."

11. The board is proposing the amendment as the statement was originally included to account for initial licensees prior to the installation of continuing education. All licensees must now meet the continuing education requirements and the statement is no longer required.

12. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Speech Pathologists and Audiologists, 1424 9th Avenue, Helena, Montana 59620-0407 no later than March 10, 1983.

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

14. 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 not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 30 based on the 300 licensees.

15. The authority and implementing sections are indicated after each proposed change.

BOARD OF SPEECH PATHOLOGISTS
AND AUDIOLOGISTS
PATTI DuBRAY, CHAIRMAN

BY: 

GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, January 31, 1983.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
amendment of Rule 23.7.111	)	AMENDMENT OF RULE 23.7.111
adopting the Uniform Fire	)	adopting the Uniform Fire
Code by reference.	)	Code by reference.
)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons.

1. On March 12, 1983, the Department of Justice proposes to amend rule 23.7.111 which adopts and incorporates the Uniform Fire Code and listed appendices.

2. The rule as proposed to be amended provides as follows:
23.7.111 UNIFORM FIRE CODE (1) The Department of Justice hereby adopts and incorporates ~~in these rules~~ by reference the Uniform Fire Code, International Conference of Building Officials, 1979 1982 edition, and the appendices listed in subsections (a) through (g) with the modifications appearing in subsections (2) through (6). Copies of the Uniform Fire Code and appendices may be obtained from the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601. Information is available upon request from the State Fire Marshal Bureau, Department of Justice, 303 North Roberts, Helena, Montana 59620.

(a) Appendix AI-B: Recommended Safeguards and Safe Practices for the Protection of Tanks Containing Flammable or Combustible Liquids in Locations that May be Flooded Stairway Identification.

(b) Appendix BII-A: Recommended Guide to Safe Practice Protection from Corrosion for Underground Pipe, Fittings and Tanks Containing Flammable Liquids Suppression and Control of Hazardous Fire Areas.

(c) Appendix CII-B: Rifle Ranges Protection of Flammable or Combustible Liquids in Tanks in Locations That May Be Flooded.

(d) Appendix DIII-A: Standards and Publications Representing Nationally Recognized Good Practice Test Procedures For Fire Extinguishing Systems.

(e) Appendix EIII-C: Suppression and Control of Hazardous Fire Areas Fire Alarm Systems.

(f) Appendix GIV-A: Test Proceedings for Fire Extinguishing Systems Interior Floor Finish.

(g) Appendix HVI-B: Stairway Identification Model Citation Program.

(h) As used in the Uniform Fire Code, the following definitions apply:

(a) The terms "chief," "fire chief," "fire marshal," and "fire prevention engineer" are treated as referring to the State Fire Marshal.

(b) The terms "fire department" and "bureau of fire prevention" are treated as referring to the Fire Marshal Bureau of the Department of Justice.

(c) "Building official" is treated as referring to the administrator of the Building Codes Division of the Department of Administration.

(d) "City" is treated as referring to the State of Montana.

(3) The Department of justice ~~does not adopt~~ amends the following first paragraphs from of section 10.301(c):

~~"When required by the chief an approved water supply capable of supplying required fire flow for fire protection shall be provided to all premises upon which buildings or portions of buildings are hereafter constructed. When any portion of the building protected is in excess of 150 feet from a water supply on a public street, there shall be provided, when required by the chief, on-site fire hydrants and mains capable of supplying the required fire flow.~~

~~Water supply may consist of reservoirs, pressure tanks, elevator tanks, water mains or other fixed systems capable of supplying their required fire flow, in setting the requirements for fire flow, the chief may be guided by the standard published by the Insurance Services Office, "Guide For Determination of Required Fire Flow."~~

(4) The Department of Justice does not adopt the provisions of Article 4 of the Uniform Fire Code concerning permits or certificates. ~~Rather, ARM 23-7-121 through 23-7-155 apply.~~

(5) If there is any conflict between the Uniform Fire Code and chapters 3 or 61 ~~(relating to Fire Marshal Bureau)~~ of Title 50 ~~(relating to Health and Safety)~~ of the Montana Code Annotated, the provisions of the Montana Code Annotated control.

(6) This rule establishes a fire protection code to be used in conjunction with the Uniform Building Code, ARM ~~2-2-11(1)-21100~~ 2.32.101.

~~(7) Copies of the Uniform Fire Code and appendices may be obtained from the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601. Copies are also available upon request from the Fire Marshal Bureau, Department of Justice, 1409 Helena Avenue, Helena, Montana 59601.~~

3. It is the intent of the Fire Marshal Bureau to use the Uniform Fire Code in conjunction with the Uniform Building Code as adopted by Rule 2.32.101 of the Administrative Rules of Montana, by the Department of Administration. The Uniform Fire Code and the Uniform Building Code are companion Codes.

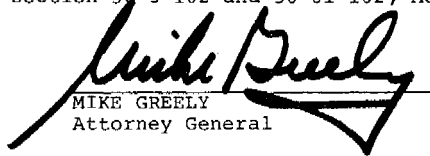
4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Robert E. Kelly, State Fire Marshal, Room 371, Scott Hart Building, 303 North Roberts, Helena, Montana 59620, no later than March 10, 1983.

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 Robert E. Kelly, State Fire Marshal, Room 371, Scott Hart Building, 303 North Roberts, Helena, Montana 59620, no later than March 10, 1983.

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

ture; 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 more than 25 persons.

7. The authority of the agency to make the proposed amendment is based on section 50-3-102(2)(a) and 50-61-102, MCA, and the rule implements section 50-3-102 and 50-61-102, MCA.


MIKE GREELY
Attorney General

Certified to the Secretary of State January 31, 1983.

BEFORE THE BOARD OF CRIME CONTROL
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
amendment of Rule	)	AMENDMENT OF RULE
23.14.408	)	23.14.408
	)	(Requirements for the
	)	Supervisory Certificate)
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On March 17, 1983, the Board of Crime Control proposes to amend Section 23.14.408 which provides for the requirements for awarding the Supervisory Certificate.

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

23.14.408 REQUIREMENTS FOR THE SUPERVISORY CERTIFICATE

Sections (1) and (2) shall remain the same.

(a) if the council determines the training to be equivalent to the supervisory course the officer must successfully complete an equivalency test, approved by the Council and administered by M.L.E.A., by achieving a cumulative score of 75% or more. The Council will require those who fail to successfully complete the supervisory course and the legal school at M.L.E.A. Those who pass the equivalency test must successfully complete the legal school at M.L.E.A. before they are eligible for the certificate.

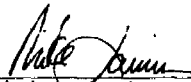
3. The amended rule provides standards for those peace officers who have prior law enforcement training and experience at the supervisory level in another state, are presently employed at that level by Montana law enforcement agencies and are requesting supervisory certification.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Mr. Clayton Bain, Executive Director, P.O.S.T. Advisory Council, 303 North Roberts, Helena, Montana 59620 no later than March 15, 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 Mr. Bain no later than March 15, 1983.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental sub-division or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 145 persons based on the number of peace officers registered with the P.O.S.T. Advisory Council.

7. The authority to make the proposed amendment is based on Section 44-4-301 MCA. The implementing authority is contained in Section 7-32-303 MCA and Section 7-32-4112 MCA.



(Administrator)

Certified to the Secretary of State on January 24, 1983

BEFORE THE BOARD OF CRIME CONTROL
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
amendment of Rule	)	AMENDMENT OF RULE
23.14.409	)	23.14.409
	)	(Requirements for the
	)	Command Certificate)
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On March 17, 1983, the Board of Crime Control proposes to amend Section 23.14.409 which provides for the requirements for awarding the Command Certificate.

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

23.14.409 REQUIREMENTS FOR THE COMMAND CERTIFICATE

Sections (1) and (2) shall remain the same.

(a) if the council determines the training to be equivalent to the command course, the council shall review the officer's training, education and experience background to determine if the officer meets or exceeds all of the requirements for the Command Certificate. If so, the Council will award the certificate. If the officer does not, the Council shall deny the application and notify the officer as to what is necessary for the officer to meet the requirements.

3. The amended rule provides standards for those peace officers who have prior law enforcement training and experience at the command level in another state, are presently employed at that level by Montana law enforcement agencies and are requesting command certification.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Mr. Clayton Bain, Executive Director, P.O.S.T. Advisory Council, 303 North Roberts, Helena, Montana 59620 no later than March 15, 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 Mr. Bain no later than March 15, 1983.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental sub-division or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 145 persons based on the number of peace officers registered with the P.O.S.T. Advisory Council.

7. The authority to make the proposed amendment is based on Section 44-4-301 MCA. The implementing authority is contained in Section 7-32-303 MCA and Section 7-32-4112 MCA.



(Administrator)

Certified to the Secretary of State on January 24, 1983

BEFORE THE BOARD OF CRIME CONTROL
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
amendment of Rule	)	AMENDMENT OF RULE
23.14.410	)	23.14.410
	)	(Requirements for the
	)	Administrative Certificate)
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On March 17, 1983, the Board of Crime Control proposes to amend Section 23.14.410 which provides for the requirements for awarding the Administrative Certificate.

2. The rule as proposed to be amended provides as follows:
23.14.410 REQUIREMENTS FOR THE ADMINISTRATIVE CERTIFICATE
Section (1) and (2) shall remain the same.

(a) if the Council determines the training to be equivalent to the administrative course, the Council shall review the officer's training, education and experience background to determine if the officer meets or exceeds all of the requirements for the Administrative Certificate. If so, the Council will award the certificate. If the officer does not, the Council shall deny the application and notify the officer as to what is necessary for the officer to meet the requirements.

3. The amended rule provides standards for those peace officers who have prior law enforcement training and experience at the administrative level in another state, are presently employed at that level by Montana law enforcement agencies and are requesting administrative certification.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Mr. Clayton Bain, Executive Director, P.O.S.T. Advisory Council, 303 North Roberts, Helena, Montana 59620 no later than March 15, 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 Mr. Bain no later than March 15, 1983.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental sub-division or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 145 persons based on the number of peace officers registered with the P.O.S.T. Advisory Council.

7. The authority to make the proposed amendment is based on Section 44-4-301 MCA. The implementing authority is contained in Section 7-32-303 MCA and Section 7-32-4112 MCA.



(Administrator)

Certified to the Secretary of State on January 24, 1983

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF PROPOSED
of Rule 24.9.260, relating to	)	AMENDMENT OF RULE
the use of hearing examiners	)	24.9.260 (COMMISSION
by the Commission	)	USE OF HEARING EXAM-
		INERS)
		NO PUBLIC HEARING
		CONTEMPLATED

TO: All Interested Persons:

1. On March 14, 1983, the Human Rights Commission proposes to amend rule 24.9.260 which provides for the use of hearing examiners by the Commission.

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

24.9.260 TIME FOR REVIEW OF HEARING EXAMINER DECISIONS.

(1) Often the Commission will appoint a hearing examiner to a case as outlined in ARM 24.9.239. ~~The hearing examiner is not a member of the Commission's staff.~~ The hearing examiner may be a member of the Commission staff, a member of the Commission, a member of the Attorney General's staff, or any other person chosen by the Commission with due regard to the expertise required for the particular matter.

(2) From the time of appointment of the hearing examiner until he presents to the Commission his proposal for a decision, the hearing examiner will hear and decide all motions made in connection with the case. None of the prior decisions of the hearing examiner are reviewable by the Commission until his proposal for a decision is presented except a refusal to allow an action to proceed as a class action, or the denial of a motion to disqualify the hearing examiner, unless manifest injustice would result.

3. The Commission's rules presently preclude the use of staff members as hearing examiners. The Commission proposes this amendment in order to provide for needed flexibility in the scheduling of and budgeting for hearings. The proposed amendments comply with the provisions of the Montana Administrative Procedure Act regarding the use of hearing examiners in contested cases before the Commission.


4. The authority of the Commission to make the proposed amendment is based on section 49-2-204, MCA, and the rule as amended implements sections 49-2-505, 2-4-611, and 2-4-621, MCA.

5. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to Raymond D. Brown, Human Rights Division, Capitol Station, Helena, Montana, 59620, no later than March 11, 1983.

6. If a person who is directly affected by the proposed amendments wishes to express his data views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Raymond D. Brown, Human Rights Division, Capitol Station, Helena, Montana, 59620, no later than March 11, 1983.

HUMAN RIGHTS COMMISSION
JOHN FRANKINO, CHAIR

BY:


RAYMOND D. BROWN
ADMINISTRATOR
HUMAN RIGHTS DIVISION

Certified to the Secretary of State January 31, 1983


BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

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

TO: All Interested Persons:

1. In order to facilitate public convenience, the Department has decided to hold a second public hearing on the matter of the appraisal of agricultural lands on February 28, 1983, at 7:00 p.m., in the basement of the Moose Lodge, 415 North Merrill Avenue, Glendive, Montana.

2. This hearing will be a continuance of the hearing to be held on February 17, 1983, in Helena, Montana. The proposed rules to be repealed and rules to be adopted were published at length at pages 58 through 64 of the 1983 Montana Administrative Register, issue number 2.


ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 01/31/83

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of Rule 46.12.216	)	THE PROPOSED AMENDMENT OF
pertaining to restriction of	)	RULE 46.12.216 PERTAINING
access to medical services	)	TO MEDICAL SERVICES

TO: All Interested Persons

1. On March 3, 1983, at 9:30 a.m., a public hearing will be held in Room 304, Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rule 46.12.216 pertaining to restriction of access to medical services.

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

46.12.216 RESTRICTION OF ACCESS TO MEDICAL SERVICES

(1) A recipient of medicaid recipient may be restricted to obtaining medical services from specified providers only if the economic assistance division department determines that the individual is overutilizing medical services which are covered by the medicaid program recipient utilization is excessive, inappropriate, or fraudulent with respect to medical need.

(2) Overutilization means use of Restriction and continued restriction may be imposed on physician services, drugs, emergency room care or any other medical services covered by the medicaid program when: the individual's condition does not warrant the service or frequency of services:

(a) the recipient's medical condition does not warrant the service or frequency of services; or

(b) there is unwarranted multiple provider usage which results in the receipt of unnecessary services; or

(c) there is repeated use of emergency rooms for routine medical services; or

(d) there is admission of or conviction for forgery of medicaid drug prescriptions by the recipient; or

(e) the recipient utilizes a medicaid card in any unlawful or fraudulent manner.

(3) Designated review organization means an organized group or an individual who has contracted with the department or is designated by law to determine whether services are medically necessary. Payment records, reports from medical consultants, and other pertinent recipient or service information, shall be

(a) The designated review organization may review the medical services received by individuals eligible for medical assistance. The findings of the designated review organization shall be used by the economic assistance division department in decisions related to recipient overutilization or other abuse.

~~(4) -- Suspected cases of overutilization may be referred to the economic assistance division by any provider of medical services, employee of any department of public welfare, the designated review organization, or any interested person.~~

(4) A recipient's restriction will not apply to other members of the household.

(5) Medicaid payment for routine medical services provided to a restricted recipient will be made only to the designated provider/s except in bona fide emergency situations or, when the primary physician refers the recipient to another physician.

(56) ~~Individuals~~ Recipients will be notified in writing within at least ten days prior to ~~of~~ the date of the intended action restricting medical services which are to be paid for by the medicaid program.

(67) The ~~economic assistance division~~ department will determine the providers that ~~an individual~~ a recipient can use and the restrictions on services. The ~~individual~~ recipient will have an opportunity to specify the providers he prefers and his preference will be ~~accepted~~ approved unless the ~~division~~ department determines that ~~there is good cause for not accepting the individual's preference~~ the provider has been sanctioned by the department in accordance with ARM 46.12.401, the designated review organization has determined that the provider has not properly managed the medical care of a recipient who has been restricted, or the provider will not accept the recipient as a patient. If the recipient does not provide to the department a written response of their provider preference prior to issuance of medicaid ID card for month that intended action is to take place, the recipient's ID card may be held for 15 days from the date of intended action in order for the department to make the selections. ~~The list of designated providers will be in effect until the individual notifies the division in writing that he wishes to change providers. The division will have 30 days to take action on the request.~~

(8) Restricted recipients may request a change of providers. The request must be in writing and submitted to the department for approval. Provider changes will not be approved unless the department determines that there is good cause for the requested provider change/s. The department will have 30 days to take action on the request.

(79) All ~~individuals~~ restricted recipients will be reviewed one year from the date of the restriction or at more frequent appropriate intervals by the ~~economic assistance division~~ department.

(810) The ~~individual~~ recipient has the right to appeal any departmental action in accordance with ARM 46.2.202. When a recipient's utilization appears to be excessive but for whom there is insufficient data to justify a restriction, the department may recommend to the recipient that he voluntarily

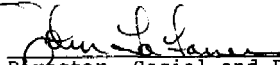
limit himself to one primary physician and one pharmacy. When this action is taken, the recipient shall be informed that his utilization of medicaid services shall be reviewed within one year. (AUTH: 53-6-113, MCA; IMP: 53-6-104, MCA)

3. The department initiated a program to restrict overutilization of Medicaid services in 1979. With the implementation of the surveillance and utilization review subsystem of the Medicaid Management Information System, the department can now operate a much more effective Medicaid services overutilization restriction program.

Aside from the obvious cost savings of an effective overutilization restriction program, other changes have been proposed for more efficient administration. Additionally, more recipient rights and department options have been specified.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than March 11, 1983.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State January 31, 1983.

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

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

TO: All Interested Persons

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:

1. 47 Fed. Reg. 51551, Tuesday, November 16, 1982. 7 CFR 272, 273, and 274 are presently incorporated by reference in Rule 46.11.101, Food Stamp Program. These amendments provide for several changes in the use of the standard utility allowance including making the standard allowance a state option, requiring federal approval of standard allowances, deleting the requirement that the standard be adjusted to reflect seasonal variations, restricting eligibility for the standard allowance for heating and cooling costs to households which actually incur these costs, and requiring the proration of the standard allowance among separate households sharing the same residence. A copy of 7 CFR 272, 273, and 274 published in 47 Fed. Reg., Tuesday, November 16, 1982, may be obtained from the Department of Social and Rehabilitation Services, Economic Assistance Division, Box 4210, 111 Sanders, Helena, Montana 59604.

The effective date for the adoption of the later amendment is February 10, 1983. This exception from the standard effective date of 30 days following publication is taken in order to comply with federal law requiring implementation of this amendment January 1, 1983.

2. 47 Fed. Reg. 52328, Friday, November 19, 1982. 7 CFR 272, 273, and 274 are presently incorporated by reference in Rule 46.11.101, Food Stamp Program. These amendments provide for changes in: the definition of a household, what benefits a household will receive when it first applies for benefits and in subsequent months, and when USDA will update benefit levels and allowable deduction amounts to account for changes in the cost of living. A copy of 7 CFR 272, 273, and 274 published in 47 Fed. Reg. 52328, Friday, November 19, 1982, may be obtained from the Department of Social and Rehabilitation Services, Economic Assistance Division, Box 4210, 111 Sanders, Helena, Montana 59604.

The effective date for the adoption of the later amendment is February 10, 1983. This exception from the standard effective date of 30 days following publication is taken in order to comply with federal law requiring implementation of this amendment January 1, 1983.

3. 47 Fed. Reg. 53309, Friday, November 26, 1982. 7 CFR 272, 273, and 274 are presently incorporated by reference in Rule 46.11.101, Food Stamp Program. These amendments provide that all household members furnish social security numbers, eliminate the requirement that state agencies comply with federal standards with regard to points and hours of certification and issuance, give state agencies the authority to verify any information included on the food stamp application and require that individuals with questionable citizenship be ineligible for participation in the program until their citizenship is verified. A copy of 7 CFR 272, 273, and 274 published in 47 Fed. Reg. 53309, Friday, November 26, 1982, may be obtained from the Department of Social and Rehabilitation Services, Economic Assistance Division, Box 4210, 111 Sanders, Helena, Montana 59604.

The effective date for the adoption of the later amendment is February 10, 1983, except for the citizenship provisions of the rule which must be implemented on or before April 1, 1983. This exception from the standard effective date is taken in order to comply with federal law requiring implementation of this amendment by February 1, 1983.

4. 47 Fed. Reg. 53828, Tuesday, November 30, 1982. 7 CFR 272, 273, and 274 are presently incorporated by reference in Rule 46.11.101, Food Stamp Program. These amendments impose a maximum allowable limit of \$100 in liquid resources and limit expedited service to households with less than \$150 in monthly gross income, or destitute migrant or seasonal farmworker households. The amendments change the time frame by which expedited services must be provided and require verification of income and resources to the extent practicable within the time frame. A copy of 7 CFR 272, 273, and 274 published in 47 Fed. Reg. 53828, Tuesday, November 30, 1982, may be obtained from the Department of Social and Rehabilitation Services, Economic Assistance Division, Box 4210, 111 Sanders, Helena, Montana 59604.

The effective date for the adoption of the later amendment is February 10, 1983. This exception from standard effective date of 30 days following publication is taken in order to comply with federal law requiring implementation of this amendment February 1, 1983.

5. 47 Fed. Reg. 55463, Friday, December 10, 1982. 7 CFR 272, 273, and 274 are presently incorporated by reference in Rule 46.11.101, Food Stamp Program. These amendments require that a portion of the income and resources of an alien's sponsor and the sponsor's spouse be used in determining the eligibility and allotment level of a sponsored alien. A copy of 7 CFR 272, 273, and 274, published in 47 Fed. Reg. 55463, Friday, December 10, 1982, may be obtained from the Department of Social and Rehabilitation Services, Economic Assistance Division, Box 4210, 111 Sanders, Helena, Montana 59604.

The effective date for the adoption of the later amendment is February 10, 1983. This exception from the standard effective date of 30 days following publication is taken in order to comply with federal law requiring implementation of this amendment February 1, 1983.

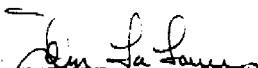
6. 47 Fed. Reg. 55903, Tuesday, December 14, 1982. 7 CFR 272, 273, and 274 are presently incorporated by reference in Rule 46.11.101, Food Stamp Program. These amendments change the definition of a household, establish a definition of disability to include disabled veterans and disabled spouses and children of veterans, provide for the use of both the gross and net eligibility standards for households with no elderly or disabled members, make changes in the resource provisions for certain retirement plans, change the definition of an initial month, allow states the option to accept participation in Aid to Families with Dependent Children as satisfaction of the Food Stamp Program's resource test for certain households, restrict the eligibility of students, and allow states to more promptly reduce benefits or terminate households based on written information provided by the household. A copy of 7 CFR 272, 273, and 274 published in 47 Fed. Reg. 55903, Tuesday, December 14, 1982, may be obtained from the Department of Social and Rehabilitation Services, Economic Assistance Division, Box 4210, 111 Sanders, Helena, Montana 59604.

The effective date for adoption of the later amendment is February 10, 1983. This exception from the standard 30 days following publication is taken in order to comply with federal law requiring implementation of this amendment February 1, 1983.

7. 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 5,210 persons based on 52,100 food stamp recipients.

8. 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 January 31, 1983.

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

In the matter of the)	
amendment of rules)	
26.2.501, 26.3.210 and	)	NOTICE OF ADOPTION OF
26.3.211 relating to	)	AMENDMENT OF ARM 26.2.501,
royalty charges and	)	26.3.210, AND 26.3.211
delay drilling penalties)	
for oil and gas leases)	
on state land)	

To: All Interested Persons

1. On November 24, 1982, the Department of State Lands published notice of proposed amendment of rules relating to royalty charges and delay drilling penalties for oil and gas leases on state land at page 2071 through 2075 of the 1982 Montana Administrative Register, issue no. 22.

2. The board has amended 26.2.501, 26.2.210 and 26.3.211 exactly as proposed.

3. Comments were received from the Montana Petroleum Association and from General Hydrocarbons, Inc. A summary of their comments follows:

(a) General Hydrocarbons, Inc. stated that it was in support of the proposed amendments. The Montana Petroleum Association stated that it was in favor of the amendments, but it did make two suggestions for further revision of the rules. First, it was suggested that due to the large number of stripper wells in the state it would be possible to keep those wells producing economically for a longer time if the royalty rate was kept at 12½% for such wells. Secondly, it was suggested that, in the future, consideration be given to allowing lessees who hold leases in Overthrust Belt areas to choose between remaining with the sliding scale rate or the flat 13% rate.


The department carefully considered the above comments. The following is the department's response to the comments:

(a) Pursuant to directions from the Board of Land Commissioners the department is continuing to study the desirability of imposing a different royalty rate for stripper well operations. If, in the future, the department is presented with facts or gathers sufficient data to indicate that stripper wells should be assessed a 12½% royalty, then, at that time, such an amendment to the rules will be considered.

(b) At this time, the department believes that it is not advisable to make a distinction in royalties charged for those operations which are in the Overthrust Belt. This response is primarily based upon the difficulty of defining, with certain-

ty, which areas are included in the Overthrust Belt. It would require additional rule making to set forth exactly which areas the different rules would apply to and, at this time the department is not able to make that determination. In addition, the uniform rate is easier to administer and was proposed partly for this reason. If, in the future, the department is able to make an exact determination of the areas in the Overthrust Belt and is presented with evidence to justify different rates for the different areas then the department will consider a further revision of these rules.

As a result of these considerations, the rules are adopted as proposed.


Dennis Hemmer, Commissioner
Department of State Lands

Certified to Secretary of State January 19th, 1983.

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


In the matter of the amend-	)	NOTICE OF AMENDMENT OF
ment of Rules 46.13.401,	)	RULES 46.13.401, 46.13.402
46.13.402 and 46.13.403	)	and 46.13.403 PERTAINING TO
pertaining to the low income	)	THE LOW INCOME ENERGY
energy assistance program	)	ASSISTANCE PROGRAM

TO: All Interested Persons

1. On December 16, 1982, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.13.401, 46.13.402 and 46.13.403 pertaining to the low income energy assistance program at page 2126 of the 1982 Montana Administrative Register, issue number 23.

2. The department has amended the rules as proposed. The rule pertaining to BENEFIT AWARD MATRICES was incorrectly typed as Rule 46.13.402 in MAR Notice No. 46-2-358. The correct rule number is 46.13.401, BENEFIT AWARD MATRICES.

3. No comments or written testimony were received.



Director, Social and Rehabilitation
Services

Certified to the Secretary of State January 31, 1983.

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

In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rules 46.16.102 and	)	RULES 46.16.102 AND
46.16.106 pertaining to the	)	46.16.106 PERTAINING TO THE
end stage renal program.	)	END STAGE RENAL PROGRAM

TO: All Interested Persons

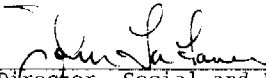
1. On December 30, 1982, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.16.102 and 46.16.106 pertaining to the end stage renal program at page 2168 of the 1982 Montana Administrative Register, issue number 24.

2. The department has amended the rules as proposed.

3. Comments and written testimony received have been thoroughly considered by the department and are as follows:

COMMENT: The purpose of the ESRD Program is to provide care for financially needy persons. Eligibility determination should be made considering only the assets of the individual, not those of other family members in the household.

RESPONSE: The rule changes proposed at 46.16.102 and 46.16.106 amend the financial eligibility requirements for the ESRD Program. Financially responsible relatives are defined as parents of children under age 18 or the claimant's spouse; therefore, adults living in the home of their parents are now relieved of the responsibility of using their parents' income and resources when applying for ESRD services.



Director, Social and Rehabilitation Services

Certified to the Secretary of State January 31, 1983.

VOLUME NO. 40

OPINION NO. 2

ELECTIONS - Election of state senators, length of term of office after reapportionment;
LEGISLATURE - Length of term of office of state senators after reapportionment;
REAPPORTIONMENT - Length of term of office of state senators after reapportionment;
OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 1 (1983);
MONTANA CONSTITUTION - Article V, sections 3 and 14.

HELD: The terms of office of members of the Montana State Senate who were elected in 1982 may not be shortened as a result of reapportionment and redistricting.

21 January 1983

Senator Stan Stephens
Office of the President
Montana State Senate
P.O. Box 156, Capitol Station
Helena, Montana 59620

Dear Senator Stephens:

You have requested my opinion as to whether the terms of office of members of the Montana State Senate who were elected in 1982 must be shortened as a result of reapportionment and redistricting.

As you noted in your request, I recently issued an opinion concerning a similar inquiry having to do with the terms of office of Missoula aldermen. See 40 Op. Att'y Gen. No. 1 (1983). That opinion concluded that aldermen elected to four-year terms in 1981 did not need to run for re-election in 1983 as a result of reapportionment and redistricting. The conclusion was based on the fact that Montana state law provided for four-year terms for aldermen, without establishing any procedure for shortening the terms after reapportionment. No Montana Supreme Court decision has been rendered on this issue, so research of the law in other states was necessary. This research disclosed a number of court decisions in jurisdictions where similar

questions had arisen. Those decisions hold that unless there is a constitutional or statutory provision authorizing shortened terms, an elected official whose term runs beyond the reapportionment year may be held over for the duration of the term for which he or she was elected without resulting in a violation of the notions of equal protection and representative government. I refer you to the cases cited in the Missoula aldermen opinion.

With respect to the terms of State Senators, the Montana Constitution, Mont. Const. art. V, § 3, provides for four-year terms on a staggered basis. The 1972 Constitution's Transition Schedule contained a procedure for all senate terms to end on December 31, 1974, and for the State Senators subsequently elected to draw lots to establish a term of two years for one-half of their number. This provision specifically applied to the first election of state legislators to take place after the reapportionment plan became effective in February, 1974, and was necessary to implement the 1972 Constitution's new requirement of staggered terms for State Senators. That section of the Transition Schedule was to be removed from the Constitution as soon as it had been executed. The provisions of section 5, Terms of Legislators, were executed and certified by a letter from the Attorney General to the Secretary of State on March 24, 1977.

The transcripts of the 1972 Constitutional Convention include a brief discussion by delegates as to whether terms of state senators should be shortened upon reapportionment. See March 7, 1972, transcript at 1568-69. The discussion is inconclusive with one delegate suggesting that if the terms were to be shortened the convention should specifically address that issue, and another delegate noting that the courts would deal with the problem. Even if the transcripts were clear as to the constitutional delegates' intent, the courts would not consider them unless there is some ambiguity in the language of the Constitution. See Sutherland, Statutes and Statutory Construction (1973) at § 46.04. The language of Mont. Const. art. V, § 3 is clear. State Senators shall be elected for a term of four years. The Montana Constitution and Montana statutes provide no authority for changing those terms after reapportionment. The terms of those members of

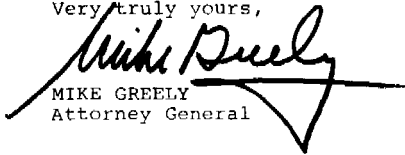
the State Senate who were elected in 1982 do not expire until 1986.

The reapportionment plan is the responsibility of the Montana Districting and Apportionment Commission. The Commission has the inherent authority under the Montana Constitution article. V, section 14 to do what is necessary to implement a plan that complies with the State's laws. See Cargo v. Paulus, 635 P.2d 367 (1981). This means that the Commission must not only redraw district boundaries, but also designate the election dates for the new districts. Various states have handled the details of reapportionment differently with respect to how holdover senators fit into the reapportionment plan. In Montana, these details are the responsibility of the Districting and Apportionment Commission.

THEREFORE, IT IS MY OPINION:

The terms of office of members of the Montana State Senate who were elected in 1982 may not be shortened as a result of reapportionment and redistricting.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 40

OPINION NO. 3

COUNTIES - General relief, work as prerequisite;
COUNTY GOVERNMENT - General relief, work as prerequisite;
COUNTY GOVERNMENT - Poor fund, rate of payment for work;
LABOR RELATIONS - Davis-Bacon Act, prevailing wages for similar work;
LABOR RELATIONS - Prevailing wage not minimum wage;
LABOR RELATIONS - Work as prerequisite for eligibility for general relief;
PUBLIC ASSISTANCE - Work as prerequisite for general relief;
PUBLIC ASSISTANCE - Requirement for prevailing wage for similar work;
MONTANA CODE ANNOTATED - Sections 18-2-401, 53-3-204, and 53-3-304.

- HELD: 1. Section 53-3-304, MCA, requires all participants in the "workfare" program to be paid, i.e. receive benefits, at the prevailing rate of wages paid by the county for similar work.
2. The prevailing wage is the most frequent or commonly used rate of pay.
3. The county may pay the minimum wage only if similar work has generally been performed for the minimum wage or if the county has never had similar work performed.
4. To determine what is similar work the county should classify the work to be performed under the program with other work closely resembling the type currently being done for the county.

24 January 1983

John D. LaFaver, Director
Department of Social and
Rehabilitation Services
Room 301, SRS Building
Helena, Montana 59620

3-2/10/83

Montana Administrative Register

Dear Mr. LaFaver:

You have requested my opinion regarding the "workfare" provisions of the general relief statutes of the State of Montana.

Under Montana law county governments are obligated to provide general relief assistance to those individuals whose "income and resources are insufficient to provide the necessities of life." § 53-3-204, MCA. General relief is the bottom rung on the public assistance ladder. Often individuals lacking eligibility for other public assistance programs are referred to general relief as the last resort. As a prerequisite to eligibility for general relief an individual may be required to perform public service work, § 53-3-304, MCA.

Your first question is whether section 53-3-304, MCA, requires all participants in the program to be paid the prevailing rate of wages. Section 53-3-304, MCA, provides:

Power of county department to require recipient to perform county work. If the county has work available which a recipient of general relief is capable of performing, then the county department of public welfare may require the recipient to perform the work at the prevailing rate of wages paid by that county for similar work, to be paid from the county poor fund in place of granting him general relief. The county department of public welfare shall provide coverage under the Workers' Compensation Act for those recipients of general relief working under the provisions hereof and may enter into such agreements with the division of workers' compensation of the department of labor and industry as may be necessary to carry out the provisions of this section. (Emphasis added.)

A cardinal principle of statutory construction is that the intent of a legislative body must first be determined from the plain meaning of the words used, and if the interpretation of the statute can be so determined, courts may go no further and apply any other

means of interpretation. Keller v. Smith, 170 Mont. 399, 553 P.2d 1002 (1976). Where the language of the statute is plain, unambiguous, direct and certain, the language speaks for itself and there is nothing left to construe. Dunphy v. Anaconda Company, 151 Mont. 76, 438 P.2d 660 (1968).

The statute is not ambiguous. If the county chooses to have the recipient perform the work, then the county must account for all of the work performed at the prevailing rate of wages paid by the county for similar work.

Your next question concerns the circumstances under which the county may pay the minimum wage. Section 53-3-304, MCA, requires the county to pay "the prevailing rate of wages paid by that county for similar work." The term "prevailing rate of wages" is a term of art in labor law and has been the subject of considerable litigation. The term has been defined in cases which involved the federal Davis-Bacon Act, 40 U.S.C. 276a-7, and similar state laws. Montana's "Little Davis-Bacon Act" is codified at section 18-2-401, MCA.

"Prevailing wage" has generally been defined to mean the market or the most frequent or commonly used rate of pay. Department of Labor and Industry v. Altemose Const. Co., 368 A.2d 875 (Pa. 1977); Union School District of Keene v. Commission of Labor, 176 A.2d 332 (N.H. 1961). In Campbell v. City of New York, 244 N.Y. 317, 155 N.E. 628 (1927), Judge Cardozo approved a definition of the prevailing rate of wages to be the "rate paid to a majority" in the same trade or, if not a majority, at the same rate as the rate paid "the greatest number" or under certain circumstances the "average rate."

Prevailing rate does not mean the minimum wage. The minimum wage is the lowest wage--the county cannot pay less than the minimum wage. The state minimum wage is currently \$2.75 per hour for work which is not subject to the federal minimum wage of \$3.35 per hour. A county worker may be subject to the Fair Labor Standards Act (federal minimum wage) if the employee is performing "nontraditional" work for the county; that is, work which is not a normal government service. The county may determine if the work is subject to the FLSA by

calling the Wage and Hour Division of the U.S. Department of Labor in Salt Lake City, Utah.

If the Legislature had wanted the prevailing wage to be only the minimum wage rate, it would have said "minimum wage." In ordinary usage the word "prevailing" is not synonymous with the word "minimum." Thus the county can pay the minimum wage only when it is the prevailing wage paid by that county for the type of work being performed. It may also be appropriate to pay the minimum wage if similar work has never been performed for the county.

The final question you raise is related to interpretation of the term "similar work." Like prevailing wage, "similar work" is a term of art in labor law. While neither the Davis-Bacon Act nor the Little Davis-Bacon Act refers to "similar work," these acts do refer to "work of similar character."

The "character similar" language...requires only that the Secretary's determination reflect the similarity of the labor to be performed under government contracts to other labor being performed in the locality, not to other types of work on government projects. In other words, the minimum wages determined for laborers on bridges of a certain size must be the prevailing wages paid to laborers on similar bridges in the local area. (Emphasis added.)

Tennessee Roadbuilders Ass'n v. Marshall, 446 F. Supp. 399, 402 (M.D. Tenn. 1977); R.S. Audley Inc. v. State, 408 A.2d 410 (N.H. 1979). Black's Law Dictionary, 4th Edition, p. 1554 defines "similar" to mean "nearly corresponding; resembling in many respects; somewhat like; having a general likeness." In State ex rel. City Council of Butte v. Weston, 29 Mont. 125, 132, 74 P. 415 (1903), the Montana Supreme Court stated: "The word 'similar' does not mean identical in form and substance."

The county should establish categories for similar work. Recipient work should be placed in a category that most closely resembles work which has been performed for the county. It would be appropriate to categorize the work which the recipient performs into such general

classifications as carpentry, plumbing, painting, etc. Then if a recipient is asked to perform custodial work, he should be paid at the prevailing rate received by the county's custodians. Moreover, it makes no difference that the recipient only works part time or performs services that would not be performed but for the program. Finally, if the work falls within the coverage of a collective bargaining agreement that agreement may control the wages to be paid to the recipients. Anderson v. County of Jo Daviess, 401 N.E.2d 265 (Ill. 1980).

There is little doubt that the legislative purpose of section 53-3-304, MCA, is similar to the congressional purpose in passing the Davis-Bacon Act. Davis-Bacon was designed to protect employees of government contractors from substandard wages and to promote the hiring of local labor rather than cheap labor from distant sources. U.S. v. Binghampton Construction, 347 U.S. 171 (1953); North Georgia Building and Construction Trades v. Goldschmidt, 651 F.2d 697 (5th Cir. 1980). Davis-Bacon also serves to "protect local contractors from unfair competition and to prevent disturbance of the local economy." U.S. v. Cappeletti Bros. Inc., 621 F.2d 1309, 1313, n.11, (5th Cir. 1980).

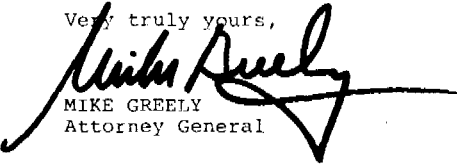
Section 53-3-304, MCA, was designed to prevent "workfare" from depressing the wage rate being paid to existing county employees or employees of contractors for the county, and to prevent the replacement of existing county employees or contractors with recipients of general relief. The Legislature sought to prevent the counties from using general relief funds to supplant regular funds used to perform the normal services which are provided by the county. The counties must implement the program in a manner that is consistent with these goals.

THEREFORE, IT IS MY OPINION:

1. Section 53-3-304, MCA, requires all participants in the "workfare" program to be paid, i.e. receive benefits, at the prevailing rate of wages paid by the county for similar work.
2. The prevailing wage is the most frequent or commonly used rate of pay.

3. The county may pay the minimum wage only if similar work has generally been performed for the minimum wage or if the county has never had similar work performed.
4. To determine what is similar work the county should classify the work to be performed under the program with other work closely resembling the type currently being done for the county.

Very truly yours,



MIKE GREELY
Attorney General

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

* * * * *

IN THE MATTER OF THE APPLICATION)	
OF THE NORTHERN PLAINS)	
RESOURCE COUNCIL AND THE ROSEBUD)	
PROTECTIVE ASSOCIATION FOR A)	FINDINGS OF FACT,
DECLARATORY RULING CONCERNING)	CONCLUSIONS OF LAW,
CONDITION 12(d) OF THE CERTIFI-)	OPINION, ORDER AND
CATION FOR COLSTRIP 3 AND 4)	NOTICE OF OPPORTUNITY
MADE PURSUANT TO THE MAJOR)	FOR JUDICIAL REVIEW
FACILITY SITING ACT, SECTION)	
75-20-101, <u>et seq.</u>)	

The Montana Board of Natural Resources and Conservation (Board) met on January 21, 1982 to consider the Petition for Declaratory Ruling in the above-entitled matter. The Board, after notice and review of the briefs filed by all parties, hereby makes a declaratory ruling as follows:

I. FINDINGS OF FACT

1. On August 11, 1982 the Northern Plains Resource Council and the Rosebud Protective Association (Petitioners) filed an Application for Declaratory Ruling and affidavit concerning Condition 12(d) of the Board's 1976 Colstrip 3 and 4 Certification Decision by the Board under the Montana Major Facility Siting Act. Petitioners' Application for Declaratory Ruling was filed under Section 2-4-501, MCA, of the Montana Administrative Procedure Act.

2. Condition 12(d) of the Board's 1976 Colstrip 3 and 4 Certification reads as follows:

"That the sludge pond or ponds shall be completely sealed. If the conventional

means such as compaction and bentonite application do not seal the pond(s), as indicated by monitoring wells, the Applicants shall install and operate, then extreme measures even up to complete sealing by a plastic membrane shall be taken."

3. Petitioners seek a declaratory ruling that Condition 12(d) of the 1976 Colstrip 3 and 4 Certification requires the Section 5 and 6 sludge pond to be:

(A) Completely sealed with conventional methods such as compaction and bentonite lining and, if necessary, completely sealed with a membrane liner.

(B) Constructed in such a manner that allowable seepage from the Section 5 and 6 sludge pond will be zero or as close to zero as possible.

4. The Board met on November 5, 1982 to establish procedures to be followed in considering Petitioners' Application for Declaratory Ruling. The following parties appeared at the November 5, 1982 Board meeting and were represented by counsel in the above-entitled matter:

(A) Petitioners and their counsel of record, Mr. Andy Patten.

(B) The Montana Power Company and the consortium of utilities constructing Colstrip 3 and 4 (Utilities) and their counsel of record, Mr. John L. Peterson and Mr. Ed Bartlett.

5. On November 4, 1982 the Utilities submitted the final

design plans and specifications for the Section 5 and 6 sludge pond to be constructed for Colstrip 3 and 4 to the Department of Natural Resources and Conservation (DNRC). A copy of the final design plans and specifications was also submitted to Petitioners and the Department of Health and Environmental Sciences (DHES) on November 5, 1982. A water resources monitoring system report for the Section 5 and 6 sludge pond was also submitted by the Utilities to the Board, DNRC, DHES and Petitioners on or about December 9, 1982.

6. Based on discussions with Petitioners, Utilities, DNRC and DHES at the November 5, 1982 Board meeting, a Notice of Briefing Schedule was issued by the Board and served on the parties on November 19, 1982. The Notice of Briefing Schedule required all parties to raise any procedural objections to Petitioners' Application for Declaratory Ruling and to argue the substance of Petitioners' Application for Declaratory Ruling as described in paragraph 3 of these Findings of Fact. All parties have fully complied with the Board's Notice of Briefing Schedule.

II. OPINION

The procedural objections raised by the parties must be addressed before there can be any consideration of the

substance of Petitioners' Application for Declaratory Ruling. Petitioners seek a declaratory ruling under Section 2-4-501, MCA, of the Montana Administrative Procedure Act (MAPA) which reads in pertinent part as follows:

Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency ... A declaratory ruling or the refusal to issue such a ruling shall be subject to judicial review in the same manner as decisions or orders in contested cases.

The Board has adopted the Attorney General's model procedural rules concerning declaratory rulings (ARM 36.1.201, 1.3.227, 1.3.228 and 1.3.229) to the extent that the rules are not inconsistent with the Major Facility Siting Act.

Can Petitioners use MAPA's declaratory ruling provisions to seek a determination of what the 1976 Board meant when it imposed Condition 12(d)? The answer appears to be no.

Section 2-4-501, MCA, can only be used to determine if Condition 12(d) is "applicable" to Colstrip 3 and 4 and Utilities. Petitioners' Application for Declaratory Ruling does not ask for a determination of whether Condition 12(d) "applies" to the Section 5 and 6 sludge pond. The question of applicability has not been raised and probably would not be disputed by Utilities. Instead, the Petitioners ask the

present Board to "construe" or define what the 1976 Board meant in adopting Condition 12(d). Such a request is not appropriate under Section 2-4-501, MCA, of MAPA.

Petitioners' Application for Declaratory Ruling must also be dismissed because Petitioners do not have standing to seek a declaratory ruling under Section 2-4-501, MCA. The Montana Administrative Procedures Handbook, State Bar of Montana, at 89 contains the following comment by Professor McCrory on the history of the declaratory ruling section of MAPA:

"It is not uncommon for an individual to be uncertain as to whether particular activity which he contemplates would violate a statute or an agency rule or order. A dilemma results; forego the activity and avoid the potential problem, or engage in the activity and risk the consequences of violating a statute, rule or order. (This section) is intended to eliminate the injustices created by such dilemmas by providing a procedure for agencies to make declaratory rulings. (This section) embodies the declaratory ruling provisions of the Revised Model Act with one addition. The final sentence has been modified (and language added) to insure that agencies do not have unlimited discretion in refusing to make declaratory rulings" (Emphasis added.)

This comment clearly indicates the declaratory ruling option is available to a person who is about to undertake an activity which might be subject to regulation. The Petitioners in this case are not undertaking the activity which is the subject of

the Application for Declaratory Ruling.

The Attorney General's model rules on declaratory rulings confirm the limited availability of declaratory rulings. Model Rule 24 (ARM 1.3.229) reads as follows:

"A declaratory ruling is binding between the agency and the petitioner concerning the set of facts presented in the petition." (Emphasis added.)

Under Model Rule 24, a Board ruling on the substance of Petitioners' Application would be binding on Petitioners but not on Utilities who are involved in constructing the Section 5 and 6 sludge pond. Thus, the Attorney General's model rules appear to recognize that agency declaratory rulings should be limited to situations where a person engaged in an activity that might be subject to regulation can obtain a ruling from the agency without binding others engaged in similar activities. Any other interpretation of Section 2-4-501, MCA, and Model Rule 24 could lead to a circumvention of the rule-making and contested case processes as the means of setting enforceable policy.

Model Rule 24 also makes it clear that a decision on the substance of Petitioners' Application for Declaratory Ruling would be binding on Petitioners as to those facts presented in the petition. (Petitioners object to the consideration of any

additional evidence, including the final design plans and specifications for the Section 5 and 6 sludge pond.) This limitation on the facts that can be considered in a declaratory ruling proceeding reaffirms that Section 2-4-501, MCA, cannot be used to generally adjudicate the substantive questions raised in Petitioners' Application. Both parties have substantial legal rights involved in any determination of allowable seepage or the appropriate technology to be used in constructing the Section 5 and 6 sludge pond. It would be inappropriate to make such a substantive determination based solely on the facts stated in Petitioners' Application for Declaratory Ruling.

Based on the preceding, Applications for Declaratory Ruling are apparently designed to enable persons engaged in an activity which might be subject to regulation to determine whether certain regulations, rules or orders are applicable. The declaratory ruling section of MAPA is not intended to be a general adjudication statute by which a third party can seek a determination of how a rule, statute or order should be applied to someone other than the petitioner. Petitioners have made it clear that they seek an adjudication of their legal rights (Petitioners' January 10, 1983 Reply Memorandum, p. 2).

It is not possible to determine Petitioners' legal rights without adjudicating the rights of Utilities. Questions concerning allowable seepage rates and the technology that can be used in the construction of the Section 5 and 6 sludge pond clearly involve the substantial legal rights of both parties. There are other provisions of the Major Facility Siting Act and state law that must be used for such a determination of legal rights.

Although Petitioners' Application for Declaratory Ruling is hereby dismissed, it is appropriate to outline the steps the Board will take to address the substantive issues raised in Petitioners' Application. The Board will direct the Department of Natural Resources and Conservation to undertake a thorough examination of the final design plans and specifications for the Section 5 and 6 sludge pond, including the economics of the various alternatives available for construction of the ponds and Utilities proposed monitoring program. The Board will also request the Department to review Utilities' study of the impacts of the existing sludge ponds on vegetation. The Board will request that the Department work with the Department of Health and Environmental Sciences on water quality issues that may arise in the course of the study. The Board is directing

the Department to conduct this study under its continuing monitoring responsibilities as set forth in Section 75-20-402, MCA, of the Montana Major Facility Siting Act. The question of whether any future Board action will be necessary will be addressed after the Department submits its report.

Petitioners' Application for Declaratory Ruling is dismissed for the reasons herein stated. The Board makes no ruling on the other legal objections and arguments made by the parties.

III. CONCLUSIONS OF LAW

Petitioners' Application for Declaratory Ruling concerning the allowable seepage rate and the appropriate technology to be used in constructing the Section 5 and 6 sludge pond for Colstrip 3 and 4 cannot be considered under Section 2-4-501, MCA, of MAPA.

IV. ORDER


Petitioners' Application for Declaratory Ruling concerning Condition 12(d) of the Colstrip 3 and 4 Certification is hereby dismissed.

V. NOTICE OF OPPORTUNITY FOR JUDICIAL REVIEW

Any party to this proceeding is entitled to judicial review of this Order in accordance with Sections 2-4-501 and

2-4-702, MCA. Judicial review may be obtained by filing a Petition in District Court within thirty (30) days after service of this Order.

DATED this 21st day of January, 1983.


BOARD OF NATURAL RESOURCES
AND CONSERVATION
Gordon V. Holte, Chairman

CERTIFICATE OF SERVICE

I, Norma J. Andriolo, Department of Natural Resources and Conservation, do hereby certify that on the 24th day of January, 1983, I served a copy of the attached Findings of Fact, Opinion, Conclusions of Law, Order, Notice and Opportunity for Judicial Review in the Matter of the Application of the Northern Plains Resource Council and the Rosebud Protective Association for a Declaratory Ruling Concerning Condition 12(d) of the Certification for Colstrip 3 and 4 made pursuant to the Major Facility Siting Act upon the following by depositing a true copy in the U.S. Mail, postage, addressed to each as follows:

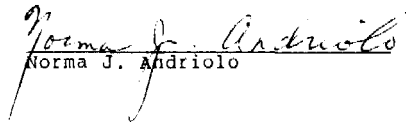
James A. Patten
Patten and Renz
2812 First Avenue North
Billings, MT. 59101

G. Steven Brown
Retained Counsel for the
Board of Natural Resources
and Conservation
1313 Eleventh Avenue
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John L. Peterson
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Jim Waltermire
Secretary of State
Capitol Station
Helena, MT. 59620

Ed Bartlett
Attorney at Law
Montana Power Company
40 East Broadway
Butte, MT. 59701


Norma J. Andriolo

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 1982. This table includes those rules adopted during the period January 1, 1983 through March 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 December 31, 1982, this table and the table of contents of this issue of the MAR.

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