MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of 12.6.106(1)(a) concerning the removal of ice shelters; and 12.6.901 (1)(e) concerning counter-clockwise direction of water skiers; and 12.6.903 (5) concerning the use of electric motors on the Helena Valley Equalizing Reservoir	NOTICE OF PROPOSED AMENDMENT OF ARM 12.6.106(1)(a), REMOVAL OF ICE SHELTERS; AND 12.6.901(1)(e) CONCERNING COUNTERCLOCKWISE DIRECTION OF WATER SKIERS; AND 12.6.903 (5) CONCERNING THE USE OF ELECTRIC MOTORS ON THE HELENA VALLEY EQUALIZING RESERVOIR

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 16, 1983, the Montana Fish and Game Commission proposes to amend Rules 12.6.106(1)(a) concerning the removal of ice shelters; 12.6.901(1)(e) concerning counterclockwise direction of water skiers; and 12.6.903(5) concerning the use of electric motors on the Helena Valley Equalizing Reservoir.

2. The proposed amendment of 12.6.106(1)(a) will read as follows: (new matter underlined, deleted matter interlined)

12.6.106 REMOVAL OF SHELTER (1) Removal each day.

(a) Users of fishing shelters on the following waters shall remove such shelters in their entirety from the ice each day after fishing:

(i) Brown's Lake
(ii) Georgetown Lake
(iii) Deadman's Basin~~.~~
(iv) Echo Lake
(v) Fitzpatrick Lake
(vi) Helena Valley Equalizing Reservoir.

AUTH & IMP: 23-1-106(1) and 87-1-303, MCA

3. The amendments are proposed to eliminate the problem landowners have encountered with vandalism and littering during the hours of darkness and to prevent debris from accumulating on the lakes.

4. The proposed amendment of 12.6.901(1)(e) will read as follows: (new matter underlined, deleted matter interlined)

12.6.901 WATER SAFETY REGULATIONS (1) ...

(e) On the following waters all boats pulling, taking off with, and landing water skiers will travel in a general, consistent counterclockwise direction:

Missoula County: Alva Lake, Inez Lake, Seeley Lake~~.~~
Carbon County: Cooney Reservoir.

AUTH & IMP: 23-1-106(1), MCA and 87-1-303, MCA

5. The proposed amendment is made to promote public safety, by preventing collisions between skiers and ski-boats operating in a disorderly fashion.

6. The proposed amendment of 12.6.903(5) will read as follows: (new matter underlined, deleted matter interlined)

12.6.903 HELENA VALLEY EQUALIZING RESERVOIR ...

(5) Manually operated boats and boats powered by electric motors only will be allowed on the reservoir. Boat regattas and racing are prohibited on the reservoir.

AUTH & IMP: 23-1-106(1), MCA and 87-1-303, MCA

7. The original regulation not allowing motors to be used on the reservoir was specifically designed to prevent gas-powered motors which pollute the drinking water source and create substantial noise. Since the use of electric motors was not contemplated at the time the rules were created, the department proposes to allow the use of electric motors since they cause neither water nor noise pollution.

8. Persons interested in any of the above amendments may submit their data, views, or arguments concerning the proposed amendments in writing to Kevin C. Meek, Department of Fish, Wildlife, and Parks, 1420 East 6 Avenue, Helena, Montana 59620, no later than May 1, 1983.

9. 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 a written request for a hearing and submit this request along with any written comments he has to Kevin C. Meek, Department of Fish, Wildlife, and Parks, at the above address, no later than May 1, 1983.

10. If the department receives requests for a public hearing on the proposed amendments from either 10% or 25 people, 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.

11. The authority and the implementing sections to make the proposed amendments are based on Secs. 23-1-106(1) and 87-1-303, MCA.

Spencer S. Hegstad, Chairman
Montana Fish & Game Commission

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

Certified to Secretary of State March 14, 1983

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

In the matter of the adoption of a NEW RULE, relating to the outfitter examination, permitting an applicant who fails the written outfitter examination to take it a second time within a one-year period.	NOTICE OF INTENT TO ADOPT NEW RULE -- OUTFITTER EXAMINATION NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 16, 1983, the Department of Fish, Wildlife, and Parks proposes to adopt a new rule relating to the outfitter examination, permitting an applicant who fails the written outfitter examination to take it a second time within a one-year period.

2. The proposed rule would provide as follows:

RULE I. OUTFITTER EXAMINATION (1) Outfitter license applicants who fail the written outfitter examination may take the examination a second time in conjunction with each license year application. An outfitter applicant who fails the written examination must wait six months before retaking the examination.

3. The above rule is proposed pursuant to the request of the Montana Outfitter Council. It is the intent of the rule to allow outfitter applicants who fail the written examination an opportunity to retake the examination six months later. It has been brought to the department's attention that waiting one year in between examination periods has created hardship for several applicants.

4. Interested parties may submit their data, views, or arguments concerning the proposed adoption of the new rule in writing to Kevin C. Meek, Department of Fish, Wildlife, and Parks, 1420 East 6 Avenue, Helena, Montana 59620, no later than May 2, 1983.

5. If a person who is directly affected by the proposed new rule wishes to express data, comments, views, or arguments orally or in writing at a public hearing, that person must make written request for a hearing and submit this request along with any written comments to Kevin C. Meek, Department of Fish, Wildlife, and Parks, at the above address, no later than May 2, 1983.

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

the proposed new rule; 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.

7. The authority and implementing section to make the new rule is based on Sec. 87-4-106, MCA.

Orville W. Lewis
Deputy Director

Certified to Secretary of State March 21, 1983

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

In the matter of the repeal of Rule 12.2.202 relating to the department policy for distribution of license holder lists and other department lists	NOTICE OF PROPOSED REPEAL OF RULE 12.2.202 -- DISTRIBUTION OF DEPARTMENT LISTS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 16, 1983, the Department of Fish, Wildlife, and Parks proposes to repeal Rule 12.2.202 relating to the department policy for distribution of license holder lists and other department lists.

2. The rule proposed to be repealed appears on page 12-17 through 12-18 of the Administrative Rules of Montana.

3. The agency proposes to repeal this rule because it has been superseded by Section 2-6-109, MCA. The aforementioned statute addresses the problems set forth in the rule proposed to be repealed.

4. Interested parties may submit their data, views, or arguments concerning the proposed repeal in writing to Kevin C. Meek, Department of Fish, Wildlife, and Parks, 1420 East 6 Avenue, Helena, Montana 59620, no later than May 2, 1983.

5. If a person who is directly affected by the proposed repeal of Rule 12.2.202 wishes to express his data, comments, 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 to Kevin C. Meek, Department of Fish, Wildlife, and Parks, at the above address, no later than May 2, 1983.

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

7. The authority and implementing sections to make this repeal are based on Sections 87-1-201 and 87-1-301, MCA.

Orville W. Lewis
Deputy Director

Certified to the Secretary of State March 21, 1983.

6-3/31/83 MAR Notice No. 12-2-114

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

In the matter of the adoption of rules providing for exemption of certain transmission lines from the provisions of the Major Facility Siting Act	))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES PROVIDING FOR EXEMPTION OF CERTAIN TRANSMISSION LINES FROM THE PROVISIONS OF THE MAJOR FACILITY SITING ACT

TO: All Interested Persons

1. On April 29, 1983, at 10:00 A.M. in the Old Highway Auditorium, Scott Hart Building, 303 Roberts Street, Helena, Montana a public meeting will be held to consider the adoption of new rules providing for exemption of certain transmission lines from the provisions of the Major Facility Siting Act.

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

3. The proposed rules provide as follows:

RULE I DEFINITIONS In these rules:

(1) An "upgrade" means an existing transmission line of a voltage and length covered by the act which is being converted to a line of higher operating voltage, or being converted from single circuit to double circuit, using the same centerline.

(2) A "relocation" means an existing transmission line of a voltage and length covered by the act which is being moved to a new location outside the existing right-of-way.

(3) A "reconstruction" means a transmission line of a voltage and length covered by the act which is being rebuilt in the same right-of-way, including reconductoring, replacement of poles or towers, crossarms, or insulating hardware.

(4) A "game range" means land owned, leased, or otherwise controlled by the Montana department of fish, wildlife, and parks or the U.S. fish and wildlife service and managed as wildlife habitat. It includes all game management areas.

(5) A "wildlife refuge" means land owned, leased, or otherwise controlled by the U.S. fish and wildlife service as part of the national wildlife refuge system.

(6) A "critical habitat for rare, threatened, or endangered species" means areas designated by the U.S. fish and wildlife service pursuant to the endangered species act of 1973.

(7) A "big game security area" means an area of land more than 0.5 miles from an existing road or right-of-way which is recognized by the Montana department of fish, wildlife and parks or other land management agency as providing essential escape cover or other secure habitat for big game species.

AUTH: 75-20-202, MCA
IMP: 75-20-202, MCA

RULE II ELIGIBLE EXEMPTIONS FOR UPGRADES The upgrade of an electric transmission facility is exempt from provisions of the act if all the following conditions are met:

(1) The upgrade falls into one of the following categories:

(a) 69 kV or less upgraded to no more than 115 kV,

(b) 100 kV or 115 kV upgraded to no more than 161 kV,

(c) 161 kV upgraded to no more than 230 kV,

(d) 230 kV single circuit upgraded to 230 kV double circuit;

(2) The upgraded line in Montana is 30 miles or less in length;

(3) The facility will be rebuilt in the same right-of-way using existing access roads; or if additional right-of-way or new access roads are required, the person submits a notorized statement from each affected landowner stating that the landowner has been contacted by the person, is willing to work with the person to identify an acceptable location on his/her property for additional right-of-way or access road easement, and is willing to grant additional right-of-way or access road easement. This statement in no way binds the landowner who still has the right to negotiate a fair and reasonable price for the right-of-way or easement.

(4) The mean structure height of new structures will not be greater than 1.5 times the mean height of existing structures, and the upgrade will use one of the following:

(a) no change in poles;

(b) single wood pole changed to taller single wood pole or to wood pole h-frame structures;

(c) wood pole h-frame changed to taller wood pole h-frame or to triple pole double circuit wood structures;

(d) in the case of 230 kV single circuit changed to 230 kV double circuit, woodpole h-frame changed to steel lattice towers;

(5) The upgraded line and new access roads do not:

(a) cross or pass within the following zones: one-half mile for an upgrade up to 161 kV, or within one mile for 230 kV,

(i) an area designated by the federal government as part of the national wilderness preservation system, or an area currently being studied for possible inclusion in the system;

(ii) primitive areas and lands managed specifically for their roadless and primitive recreation values by the U.S. forest service, bureau of land management, or other federal or state agency;

(iii) national or state parks, national natural landmarks, national or state monuments, and other lands managed by federal or state agencies specifically to preserve their natural aesthetic qualities.

(b) cross a national or state game range or wildlife refuge, or cross critical habitat for rare, threatened, or endangered species;

(c) cross irrigated cropland if the upgrade would result in an undesirable change in irrigation practice on the land;

(d) cross a platted subdivision or a residential area with more than four homes within one-quarter mile of the line in any mile of the line, in those cases where an upgrade involves an increase in height or change in type of structure;

(e) pass through the middle ground or foreground of the viewshed from a state or federal highway for more than 10 miles;

(f) cross a stream classified by the Montana department of fish, wildlife, and parks as a class one stream. This subsection applies only to new access roads.

(6) If the upgraded line or new access roads cross or pass within the specified distance of the following areas (a) through (f), all such instances must be listed in the information supplied to the department under Rule V, and include proposed mitigation measures. The department will consider the impacts and mitigation measures in preparing its construction and mitigation standards if the line:

(a) crosses or passes within one-half mile of a designated campground, interpretive site, rest area, picnic or day use recreational area, fishing access site, class one or two fishery or other designated outdoor recreation site.

(b) crosses or passes within one-half mile of nesting sites of bald eagles, golden eagles, peregrine falcons, prairie falcons, merlins, ferruginous hawks, great blue herons, double-crested cormorants, or other colonial water birds;

(c) crosses areas designated by the U.S. forest service or bureau of land management as research natural areas, areas of critical environmental concern, special interest areas, research botanical areas, or other areas which include old-growth forests greater than 5 acres which have not been burned or logged for at least 100 years, and mature cottonwood forests where average canopy height is 50 feet or more;

(d) crosses wetlands, waterfowl concentrations or feeding flight paths identified by the Montana department of fish, wildlife, and parks or the U.S. fish and wildlife service;

(e) crosses areas having highly erosive or unstable soils as indicated by soil conservation service data;

(f) crosses historic or archaeological sites listed on the national register of historic places, or which have been determined eligible for listing on the national register, or passes within the foreground or middle ground viewshed of an historic site for which the undisturbed natural setting of the site is one of the criteria that contributes to its eligibility for listing on the national register.

(7) The person demonstrates that historic and archaeolgical properties that would be affected by the proposed undertaking, if any, have been identified and evaluated pursuant to applicable historic preservation laws.

(8) The person agrees that the upgrade and new access roads will be built in accordance with construction and mitigation standards established by the department for the facility.

AUTH: 75-20-202. MCA
IMP: 75-20-202, MCA

RULE III ELIGIBLE EXEMPTIONS FOR RELOCATIONS Relocation of an electric transmission facility is exempt from provisions of the act if all the following conditions are met:

(1) The facility or portion of the facility being relocated is 30 miles or less in length and 230 kV or less, the relocation is not part of a longer relocation project that would otherwise be covered under the act, and the new location substantially reduces environmental impacts over the current line location.

(2) A person desiring to construct an exempt upgrade (Rule II) or reconstruction (Rule IV) may relocate a portion of the facility if the relocated portion will reduce environmental impacts over current conditions.

(a) A combined upgrade-relocation in Montana may not exceed 30 miles in length if it is to qualify for exemption.

(b) The relocated portion of a reconstruction in Montana may not exceed 30 miles in length if it is to qualify for exemption.

(3) The person submits as evidence of landowners' consent to give easements for access roads and right-of-way a notarized statement from each affected landowner containing the information specified in Rule II (3).

(4) The relocated line and access roads do not:

(a) cross or pass within one mile of the areas specified in Rule II (5) (a); an exception to the one-mile zone is made if the current line crosses one of these specified areas and the relocation would remove the current line from the area;

(b) cross the areas specified in Rule II (5) (b);

(c) cross platted subdivisions, irrigated croplands where the relocation would result in an undesirable change in irrigation practice on the land, or a residential area with more than four homes within one-quarter mile of the line in any mile of the line;

(d) pass through the middle ground or foreground of the viewshed from a state or federal highway for more than 10 miles;

(e) cross a big game security area, or a stream classified by the Montana department of fish, wildlife and parks as a class one stream.

(5) If the relocated line or new access roads cross or pass within the specified distances of the areas listed in Rule II (6), all such instances must be listed in the information supplied to the department under Rule V, including proposed mitigation measures. The department will consider the impacts and mitigation measures in preparing its construction and mitigation standards.

(6) The person demonstrates that any historic and archaeological properties that would be affected have been identified and evaluated pursuant to applicable historic preservation laws.

(7) The person agrees that the relocation and access roads will be built in accordance with construction and mitigation standards established by the department for the facility.

AUTH; 75-20-202,MCA
IMP: 75-20-202,MCA

RULE IV ELIGIBLE EXEMPTIONS FOR RECONSTRUCTION A person reconstructing an electric transmission facility is exempt from provisions of the act if all the following conditions are met:

(1) The facility being reconstructed is 230 kV or less.

(2) The reconstruction will be in the same right-of-way as the existing facility and will use existing access roads. If additional right-of-way or easements for new access roads are required, the person shall submit evidence of landowner consent as specified in Rule II (3).

(3) The construction will be of the same type and configuration, and the mean height will not be greater than 1.25 times the mean height of existing structures.

(4) The person demonstrates that if any new access roads or right-of-way affect historic and archaeological properties, these properties have been identified and evaluated pursuant to applicable historic preservation laws.

(5) The person agrees that the reconstruction will be built in accordance with construction and mitigation standards established by the department for the facility.

AUTH: 75-20-202,MCA
IMP: 75-20-202,MCA

RULE V NOTICE OF INTENT TO CONSTRUCT AN EXEMPT FACILITY Prior to initiation of construction, a person desiring to construct an exempt facility shall give public notice briefly describing the proposed facility, its location, and the intent to construct an exempt facility to persons residing in the area in which any portion of the proposed facility may be located. Notice shall be given by publication of this information once in each of three consecutive weeks in newspapers of general circulation in the areas to be affected by the proposal. The person desiring to construct an exempt facility shall also publish a display ad in those newspapers, describing the proposal, to further inform those persons who might be affected. The person desiring to construct an exempt facility shall also inform the department, board, department of health, board of health, and those agencies listed in 75-20-211(3), MCA, by certified mail or personal service, providing a copy of the public notice, and in addition shall provide the following information:

(1) a description of the existing facility that is to be modified, in a level of detail sufficient to enable the department and the board to determine its location and its structural and operation characteristics; the description must include U.S.g.s. 7.5' or 15' quadrangle maps with the existing line plotted on them or if these are unavailable the line must be demarcated on maps with a scale of 1:125,000 or larger;

(2) a description of the facility as it will be relocated, reconstructed, or upgraded, in sufficient detail for the department to develop specific construction and mitigation standards for the facility. U.S.g.s. 7.5' or 15' quadrangle maps showing the proposed line location must be supplied, or if these are unavailable, the line must be demarcated on maps with a scale of 1:125,000 or larger;

(3) an explanation of the reason for the reconstruction, relocation, or upgrade;

(4) an explanation that demonstrates how each of the conditions listed in Rules II, III, or IV are or will be met;

(5) a list of the landowners (names, addresses, phone numbers) that would be crossed by the facility or access roads.

AUTH: 75-20-202,MCA
IMP: 75-20-202,MCA

RULE VI BOARD ACTION Within six months after receiving the notice and information provided in Rule V, the board at an open meeting shall approve the construction and mitigation standards as developed by the department or as modified as the board deems necessary and appropriate. The board shall notify the person proposing to construct an exempt facility that the facility is exempt if constructed in compliance with the construction and mitigation standards and the notice and information required in Rule V.

AUTH: 75-20-202,MCA
IMP: 75-20-202.MCA

RULE VII CONSTRUCTION MONITORING BY DEPARTMENT The department shall monitor construction to ensure compliance with the construction standards.

AUTH: 75-20-202,MCA
IMP: 75-20-202,MCA

RULE VIII LOCAL, STATE, AND FEDERAL PERMITS A person relocating, reconstructing, or upgrading an exempt facility under these rules is responsible for compliance with all applicable local, state, and federal approvals, consents, permits, certificates, or other conditions for the construction, operation or maintenance of the exempt facility.

AUTH: 75-20-202,MCA
IMP: 75-20-202,MCA

4. The Board is adopting these rules in order to carry out the mandate of section 75-20-202, MCA, which provides for the establishment of specific exemptions for the relocation, reconstruction or upgrading of transmission facilities. The Board has determined that the transmission lines meeting the criteria set out in these rules comply with the exemption provision of section 75-20-202,MCA.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written

data, views or arguments may also be submitted to Laurence Siroky, Administrator, Energy Division, at 32 South Ewing, Helena, Montana, no later than April 29th, 1983.

6. Laurence Siroky has been designated to preside over and conduct the hearing.

7. The authority and implementing sections are listed at the end of each rule.

BY: _____
Leo Berry, ~~Jr.~~
Director
Department ~~of~~ Natural Resources and Conservation

Certified to the Secretary of State, March 21, 1983.

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

IN THE MATTER of Proposed Adoption of the New Rules Regarding Standards and Procedures for Intrastate Rail Rate Regulation.	))))))	NOTICE OF PROPOSED ADOPTION OF NEW RULES REGARDING INTRASTATE RAIL RATE PROCEEDINGS AND REPEAL OF RULES 38.4.101 THROUGH 38.4.104 NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On May 9, 1983 the Department of Public Service Regulation proposes to adopt new rules regarding standards and procedures for regulation of intrastate rail rates. These rules concern tariff filing requirements, complaint proceedings, standards for determining market dominance and rate reasonableness, contract rates, and exemptions. The Commission proposes to repeal conflicting Rules 38.4.101 through 38.4.104 concerning rail tariff filing.

2. The proposed rules provide as follows:

Rule I. NOTICE PERIOD FOR FILING RAILROAD TARIFFS (1) Except as otherwise provided in paragraph (d), the notice period for filing railroad tariffs which contain new or changed rates, classifications, rules, practices or other provisions shall be as follows:

(a) The tariff shall be on file with this Commission at least 20 days prior to its effective date for rates or provisions published in connection with new service or changes resulting in increased rates or decreased value of service.

(b) The tariff shall be on file with this Commission at least 10 days prior to its effective date for changes resulting in decreased rates or increased value of service, or changes resulting in neither increases nor reductions.

(c) The tariff shall be on file with this Commission at least 45 days prior to its effective date for joint rate surcharges and cancellations filed pursuant to the provisions of 49 U.S.C. Sec. 10705a.

(d) Railroad contracts shall be filed with this Commission pursuant to the provisions of Rule XXIV.

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

Rule II. CONTENT OF NOTICE (1) Each rate publication filed with the Commission shall be on forms prescribed by the Commission and shall contain such information as the Commission may require, including but not limited to:

(a) a tariff containing all relevant and material provisions relating to the rate and its application.

(b) a statement of the effect which the rate shall have on the carrier's revenue (increase, decrease, no change).

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

Rule III. CONSEQUENCE OF DEFECTIVE NOTICE (1) No rate shall be considered published under the provisions of the Staggers Act unless notice has been given in compliance with this section. However, if a tariff is filed and becomes effective despite some defect, the rates, charges, fares, classifications, rules, etc., in that tariff are in effect and will be applied until cancelled or amended.

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

Rule IV. COMMENCEMENT OF INVESTIGATION AND SUSPENSION PROCEEDINGS (1) When a new individual or joint rate (except general rate increases, inflation-based increases, or fuel adjustment surcharges filed under the provisions of 49 U.S.C. Sec. 11501(b)(6) over which the Commission has no jurisdiction) or an individual or joint classification, rule, or practice related to a rate is filed by a rail carrier, the Commission may; in order to determine whether the proposed rate, classification, rule or practice is discriminatory, unreasonable, or in any other way violates applicable law:

(a) on its own initiative, commence an investigation proceeding, or

(b) upon protest of an interested party commence an investigation proceeding, or

(c) upon protest of an interested party commence an investigation and suspension proceeding.

(2) Rates based on limited carrier liability may be published and filed with the Commission, without prior approval, pursuant to 49 U.S.C. Sec. 10730. However, such rates will be subject to protest on grounds such as unreasonableness or nonconformance with the tariff publication requirements found in 49 CFR 1300.4(i)(11).

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

Rule V. DURATION OF SUSPENSION PERIOD (1) The Commission shall complete a proceeding commenced under Rule IV within five months from the effective date of the proposed rate, classification, rule or practice except that if the Commission reports to the Interstate Commerce Commission that it cannot make a final decision within that time and explains the reason for the delay, it may then take an additional three months to complete the proceeding and make a final decision.

(2) If the Commission does not render a final decision within the applicable time period the rate, classification, rule or practice shall become effective immediately or, if already in effect, shall remain in effect.

(3) If a railroad makes a tariff filing to adjust an intrastate rate, rule or practice under 49 U.S.C. Sec. 11501(d) to that of similar traffic moving in interstate commerce, and the Commission investigates or suspends such tariff filing, the carrier may apply to the Interstate Commerce Commission to review the matter if the Commission has not acted with finality by the 120th day after the tariff was filed. If the carrier

elects not to refer the matter to the Interstate Commerce Commission the Commission may decide the issue within five months, as provided for in this subsection.

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

Rule VI. GROUNDS FOR SUSPENSION (1) The Commission may not suspend a proposed rate, classification, rule, or practice unless it appears from the specific facts shown by the verified statement of a person that:

(a) it is substantially likely that the protestant will prevail on the merits;

(b) without suspension, the proposed rate change will cause substantial injury to the protestant; and

(c) because of the peculiar economic circumstances of the protestant, the provisions of Rule XIII do not protect the protestant.

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

Rule VII. MARKET DOMINANCE (1) When the new individual or joint rate is alleged to be unreasonably high, the Commission, within 90 days after the start of a proceeding under this Chapter, shall determine whether or not the railroad proposing the rate has market dominance over the transportation to which the rate applies.

(2) If the Commission finds that the railroad proposing the rate has market dominance over the transportation to which the rate applies, it shall then proceed to determine whether or not the proposed rate exceeds a maximum reasonable level for that transportation.

(3) If the Commission finds that the railroad proposing the rate does not have market dominance over the transportation to which the rate applies, it shall not make a determination on the issue of reasonableness.

(4) A finding by the Commission that the proposed rate has a revenue - variable cost percentage which is equal to or greater than the percentages found in 49 U.S.C. Sec. 10709(d)(2) does not establish a presumption that the railroad has or does not have market dominance over such transportation, or that the proposed rate exceeds or does not exceed a reasonable maximum level.

(5) Evidentiary guidelines for the determination of whether or not the railroad has market dominance over the transportation to which the rate applies shall be found in Rules XV through XVIII.

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

Rule VIII. REASONABLENESS (1) Except for nonferrous recyclables, the Commission shall evaluate the reasonableness of a rate only after market dominance has been established. In determining whether a rate is reasonable, the Commission shall consider among other factors, evidence of the following:

(a) the amount of traffic which is transported at

revenues which do not contribute to going concern value and efforts made to minimize such traffic;

(b) the amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on such traffic can be changed to maximize the revenues from such traffic; and

(c) the carrier's mix of rail traffic to determine whether one commodity is paying an unreasonable share of the carrier's overall revenues.

(2) A rate on nonferrous recyclable material is presumed to be unreasonable when it is set at a revenue to variable cost ratio greater than 146 percent.

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

Rule IX. BURDEN OF PROOF (1) The burden shall be on the protestant to prove the matters described in Rule VI.

(2) The burden of proof regarding market dominance is as follows:

(a) The respondent railroad shall bear the burden of showing that the Commission lacks jurisdiction to review the proposed rate because the rate produces a revenue - variable cost percentage that is less than the percentages found in 49 U.S.C. Sec. 10709(d)(2). The railroad may meet its burden of proof by showing the revenue - variable cost percentage for that transportation to which the rate applies is less than the threshold percentage cited in 49 U.S.C. Sec. 10709(d)(2). The protestant may rebut the railroad's evidence with a showing that the revenue - variable cost percentage is equal to or greater than the threshold percentage in 49 U.S.C. Sec. 10709(d)(2).

(b) The protestant shall bear the burden of demonstrating that there exists no effective intramodal or intermodal competition for the transportation to which the rate applies. Respondent railroad may rebut the protestant's showing with evidence that effective intramodal or intermodal competition exists.

(c) If intramodal and intermodel competition is shown not to exist, the respondent railroad shall have the burden of proving that either product or geographic competition for the involved transportation does exist. The protestant shall then have the burden of proving that such competition is not effective.

(3) The burden of proof regarding reasonableness of rate increases is as follows:

(a) A party protesting a rate increase shall bear the burden of demonstrating its unreasonableness if such rate:

(i) is authorized under Rule X; and

(ii) results in a revenue - variable cost percentage for the transportation to which the rate applies that is less than the lesser of the percentages described in clauses (i) and (ii) of 49 U.S.C. Sec. 10707a(e)(2)(A).

(b) The respondent railroad shall bear the burden of

demonstrating the reasonableness of a rate increase if such rate:

(i) is greater than that authorized under 49 U.S.C. Sec. 10707a, or

(ii) results in a revenue - variable cost percentage for the transportation to which the rate applies that is equal to or greater than the lesser of the percentages described in clauses (i) and (ii) of 49 U.S.C. Sec. 10707a(e)(2)(A); and

(iii) the Commission initiates an investigation under Rule X.

(4) A party protesting a rate decrease shall bear the burden of demonstrating that the rate does not contribute to the going concern value of the railroad, and is therefore unreasonably low. A party may meet its burden by making a showing that the rate is less than the variable cost for the transportation to which the rate applies.

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

Rule X. ZONE OF RATE FLEXIBILITY (1) A rail carrier may raise any rate pursuant to the limitations described in 49 U.S.C. Sec. 10707a. Base rates increased by the quarterly rail cost adjustment factor may not be investigated or suspended. In addition, a railroad may increase any rate by 6 percent per annum (to a maximum of 18 percent) over the four year period following enactment of the Staggers Act. Thereafter, railroads not earning adequate revenues, as defined by the Interstate Commerce Commission, may raise rates 4 percent per year. Neither the 6 percent or 4 percent increase shall be suspended. If the increase results in a revenue to variable cost ratio that equals or exceeds 190 percent, the Commission may investigate the rate either on its own motion or on complaint of an interested party.

(2) In determining whether or not to investigate the rate this Commission shall consider:

(a) the amount of traffic which the railroad transports at revenues which do not contribute to going concern value and efforts made to minimize such traffic;

(b) the amount of traffic which contributes only marginally to fixed costs and the extent to which rates on such traffic can be changed to maximize the revenues from such traffic;

(c) the impact of the challenged rate on national energy goals;

(d) state and national transportation policy; and

(e) the revenue adequacy goals incorporated in the Interstate Commerce Act.

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

Rule XI. MONETARY ADJUSTMENTS FOR SUSPENSION ACTIONS (1) In the event the Commission does not suspend but investigates a proposed rate increase under Rule VI, the Commission shall require the rail carrier to account for all amounts received

under the increase until the Commission completes its proceedings. The accounting shall specify by whom and for whom the amounts are paid. When the Commission takes final action, it shall require the carrier to refund to the person for whom the amounts were paid that part of the increased rate found to be unreasonable, plus interest at a rate equal to the average yield (on the date that the "Statement of Monetary Adjustment" is filed - see Appendix A, Rule XIII) of marketable securities of the United States Government having a duration of 90 days.

(2) If a rate is suspended and any portion of such rate is later found to be reasonable, the carrier shall collect from each person using the transportation to which the rate applies the difference between the original rate and the portion of the suspended rate found to be reasonable for any services performed during the period of suspension, plus interest at a rate equal to the average yield (on the date that the "Statement of Monetary Adjustment" is filed - see Appendix A, Rule XIII) of marketable securities of the United States Government having a duration of 90 days.

(3) Rate Decreases with Suspension - In the event the Commission suspends a proposed rate decrease under Rule VI which is later found to be reasonable, the rail carrier may refund any part of the decrease found to be reasonable if the carrier makes the refund available to each shipper who participated in the rate, in accordance with the relative amount of such shipper's traffic transported at such rate.

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

Rule XII. FILING PROCEDURES (1) Protests against proposed rail tariffs, and replies thereto, shall be filed in conformance with Commission procedural rules, Title 38, Chapter 2, ARM, and requirements set forth below.

(2) The protested tariff should be identified by making reference to the name of the railroad or its publishing agent, to the Commission number, to the specific items or particular provisions protested and to the effective date of the protested publication. Reference should also be made to the tariff and specific provisions thereof that are proposed to be superseded.

(3) When suspension of a tariff is requested, the protest shall incorporate sufficient facts to:

(a) meet the criteria for suspension as set foth in Rule VI; and

(b) to sustain the applicable burdens of proof as set forth in Rule IX. Further, the protest should include any additional information that would support suspension of the proposed rate.

(4) A protest against and a request for suspension of a tariff filed by a railroad or its publishing agent shall be received by the Commission at least:

(a) ten days prior to the effective date, when the proposed change is to become effective upon not less than 20 days notice;

(b) five days prior to the effective date, when the proposed change is to become effective upon not less than 10 days notice.

(5) A reply to a protest shall adequately identify the protested tariff. Further it shall contain sufficient facts to rebut the allegations made in the protest and to sustain the applicable burdens of proof as set forth in Rule IX.

(6) Replies to protests must be received by the Commission not later than:

(a) the fourth working day prior to the effective date when the proposed change is to become effective upon not less than 20 days notice;

(b) the second working day prior to the effective date when the proposed change is to become effective upon not less than 10 days notice.

(7) In emergencies, telegraphic protests and replies are acceptable provided that they include statements to the effect that they are copies of original protests or replies which have been signed, verified, and mailed to the Commission. The telegrams shall also indicate the method of verification (e.g., by statements sworn to before a notary public). The telegrams shall also include a certification that copies either have been, or will be immediately, telegraphed to the proponent carriers or their publishing agents in the case of protests, or to the protestants in case of replies.

(8) Should a protestant desire to proceed further against a tariff which is not suspended or investigated or which has been suspended and the suspension vacated and the investigation discontinued, a separate later complaint should be filed.

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

Rule XIII. REFUND OR COLLECTION OF FREIGHT CHARGES (1) Except as otherwise provided, when the Commission finds, pursuant to Rule XI, that a railroad shall make refunds on freight charges collected or that the railroad is entitled to collect additional freight charges, but the amount cannot be ascertained upon the record before it, the party entitled to the refund or the railroad entitled to collect additional monies, as the case may be, shall immediately prepare a statement showing details of the shipments involved in the proceeding, in accordance with Appendix A (Statement of Monetary Adjustment, Rule XIII). The statement shall not include any shipment not covered by the Commission's findings.

(2) If the shipments moved over more than one route, a separate statement shall be prepared for each route and separately numbered, except that shipments as to which the collecting carrier is in each instance the same may be listed in a single statement if grouped according to routes.

(3) The party entitled to the refund shall submit its statement, together with the paid freight bills on the shipments, or true copies thereof, to the carrier which collected the charges, for verification and certification as to its

accuracy.

(4) If the railroads are entitled to additional monies, the carrier collecting the initial freight charges shall prepare the statement for and on behalf of the involved carriers.

(5) All discrepancies, duplications, or other errors in the statements shall be adjusted by the parties and corrected agreed statements submitted to the Commission.

(6) The certificate shall be signed by a general accounting officer of the carrier and shall cover all of the information shown in the statement.

(7) If the carrier which collected the charges is not a respondent to the proceeding, its certificate shall be concurred in by like signature on behalf of a carrier named as a respondent in the proceeding.

(8) Statements so prepared and certified shall be filed with the Commission whereupon it shall consider entry of an order awarding refunds or collection of additional freight charges as the case may be.

APPENDIX A

STATEMENT OF MONETARY ADJUSTMENT

Claim of _____ under decision of the Montana Public Service Commission in Docket No. _____.

_____ Date of shipment.
_____ Date of delivery or tender of delivery.
_____ Date charges were paid.
_____ Car initials.
_____ Car number.
_____ Origin.
_____ Destination.
_____ Route.
_____ Commodity.
_____ Weight.
_____ Rate.
_____ Amount.
_____ Rate.
_____ Amount.
_____ Refund (or monies due) on basis of Commission's decision.
_____ Charges paid by (1).

Claimant hereby certifies that this statement includes claims only on shipments covered by the findings in the docket above described and contains no claim for refund (or monies due) previously filed with the Commission by or on behalf of claimant or, so far as claimant knows, by or on behalf of any person, in any other proceedings, except as follows: (here indicate any exceptions, and explanations thereof)

Total amount of refund (or monies due) $ _____. The undersigned hereby certifies that this statement has been checked against the records of this company and found correct.

_____
(Claimant)

By_____

_____
(Address)

_____
(Date)

Date _____ concurred (2) in: _____ Company. By _____.

(1) Here insert name of person paying charges in the first instance, and state whether as consignor, consignee, or in other capacity.

(2) For concurring certificate in case the collection carrier is not a defendant.

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

Rule XIV. WAIVER OF MONIES DUE TO RAILROAD (1) If a railroad wishes to waive collection of amounts due pursuant to Rule XI, when such amounts are more than $2,000.00, a petition for appropriate authority may be filed by the railroad, with the Commission, in the form of a Letter of Intent to Waive Insignificant Amounts. The petition should contain the following information:

(a) The name and address of the customer for whom the railroad wishes to waive collection.

(b) The names and addresses of the railroads involved in the intended waiver and a statement certifying that all railroads concur in the action.

(c) The amount intended to be waived.

(d) The number of the investigation and suspension docket involved, the beginning and ending dates of the suspension period, and any other pertinent tariff information.

(e) The points of origin and destination of the shipments and the routes of movement, if relevant.

(f) A brief statement of justification for the intended waiver, including the anticipated costs of billing, collecting and/or litigating if the waiver is not permitted.

(2) Protests to waivers of monies due shall be filed with the Commission within 30 days of the Commission's receipt of the railroad's Letter of Intent to Waive Insignificant Amounts.

If the protest is not filed within the 30 day period, it will not be considered as being timely filed.

(3) The protest shall identify the investigation and suspension docket number, shall clearly state the reasons for objection and shall certify that a copy has been served on all parties named in the Letter of Intent to Waive Insignificant Amounts.

(4) Replies to a Letter of Objection shall be filed no later than the 45th day after the Commission's receipt of the Letter of Intent to Waive Insignificant Amounts. If the reply to the protest is not filed within the 45 day period, it will not be considered as being timely filed.

(5) If the protest is timely filed, the Commission will consider the Letter of Intent to Waive Insignificant Amounts as being contested. The Commission will notify all parties to the proceeding that the petition is contested and the railroad shall not be allowed to take any further action until the Commission makes its findings and enters an appropriate order granting or denying the petition to waive monies due.

(6) If the amount to be waived is $2,000.00 or less, no petition need be filed prior to waiver of monies due, provided that this exemption may be invoked by the railroad only once for any person who uses the original rate during the suspension period. However, a statement informing the Commission of the investigation and suspension docket number, the action taken, the date of the action and the amount of monies due that were waived shall be submitted to the Commission within 30 days of the waiver.

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

Rule XV. INTRAMODAL COMPETITION (1) Intramodal competition refers to competition between two or more railroads transporting the same commodity between the same origin and destination. A shipper has rail alternatives when, for a given purpose, he can be served by more than one railroad or combination of different railroads. The degree to which these alternatives compete with one another depends on such factors as:

(a) the number of rail alternatives;

(b) the feasibility of each alternative as evidenced by:

(i) physical characteristics of the route associated with each alternative that are indicative of the feasibility of using that alternative for the traffic in question (e.g., circuity, track conditions, etc.); and

(ii) the direct access of both the shipper and the receiver to each of the rail alternatives as evidenced by individual rail sidings, neutral terminal companies or reciprocal switching; or if direct access is not available, then the feasibility of using local trucking to transport the commodity to or from terminals;

(c) the transportation costs associated with each alternative (to determine if actual use of alternatives is due to excessive rates charged by the rail carrier in question);

(d) collective ratemaking among the railroads in question as evidenced by rate bureau involvement; and

(e) evidence of substantial rail-related investment or long-term supply contracts.

(2) These factors should be considered in connection with the preparation and submission of evidence pertaining to the presence or absence of effective intramodal competition. This list is neither exhaustive nor mandatory but provides a general indication of the type of evidence that would be appropriate.

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

Rule XVI. INTERMODAL COMPETITION (1) Intermodal competition refers to competition between rail carriers and other modes for the transportation of a particular product between the same origin and destination. Motor carriage is the main source of intermodal competition for railroads.

(2) Effective competition from motor carriage may be deduced from the following types of evidence:

(a) the amount of the product in question that is transported by motor carrier where rail alternatives are available;

(b) the amount of the product that is transported by motor carrier under transportation circumstances (e.g., shipment size and distance) similar to rail;

(c) physical characteristics of the product in question that may preclude transportation by motor carrier; and

(d) the transportation costs of the rail and motor carrier alternatives.

(3) Other types of evidence on the feasibility or nonfeasibility of motor carriage as an alternative to rail will also be considered.

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

Rule XVII. GEOGRAPHIC COMPETITION (1) To establish the potential for geographic competition, evidence should be submitted concerning the following:

(a) the number of alternative geographical sources of supply or alternative destinations available to the shipper or receiver for the product in question;

(b) the number of these alternative sources or destinations served by different carriers; and

(c) that the product available from each source or required by each destination is the same.

(2) To determine whether effective geographic competition actually exists, evidence showing the feasibility of each source or destination and the likelihood of competition should be presented. This evidence may be as follows:

(a) the distance associated with each alternative source or destination;

(b) relevant physical characteristics of the route associated with each alternative;

(c) the access of the shipper or receiver to each transportation alternative;

(d) the capacity of each source to supply the product in question or the capacity of each destination to absorb the product in question;

(e) the transportation costs associated with each alternative;

(f) collective ratemaking among the railroads in question as evidenced by rate bureaus; and

(g) evidence of substantial rail-related investment or long-term supply contracts.

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

Rule XVIII. PRODUCT COMPETITION Evidence as to the existence of product competition should reflect the availability to the shipper or receiver of feasible substitutes and show that these substitutes can be obtained through the use of other carriers or modes without substantially greater cost, transportation or otherwise. To demonstrate whether a feasible substitute exists, the following types of evidence, among others, may be submitted:

(a) use of a substitute product(s) by the receiver or shipper in question or by others with similar needs and under similar conditions;

(b) the prices of the substitute product(s) relative to the product in question;

(c) the efficiency of the substitute product(s) relative to the product in question; and

(d) the explicit and implicit transportation costs of the substitute product(s) and the product in question.

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

Rule XIX. ZONE OF RATE FLEXIBILITY (1) Base rates increased by the quarterly rail cost adjustment factor may not be found to exceed a reasonable maximum for the transportation involved. Complaints against rate increases effected under subsection (c) and (d) of 49 U.S.C. Sec. 10707a shall be considered pursuant to provisions of subsection (e) of said Section.

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

Rule XX. MARKET DOMINANCE (1) The Commission shall determine within 90 days of the start of a complaint proceeding whether the carrier has market dominance over the transportation to which the rate applies. If the Commission finds that the carrier has market dominance, it may then determine that rate to be unreasonable if it exceeds a reasonable maximum for that transportation. In making a determination of market dominance, the Commission shall find that the rail carrier establishing the challenged rate does not have market dominance over the transportation to which the rate applied if the rail carrier proves that the rate charged results in a revenue-variable cost percentage which is less than that stated in 49 U.S.C. Sec. 10709(d)(2).

(2) If the Commission determines that a rail carrier does not have market dominance over the transportation to which a particular rate applies, the rate established by such carrier for such transportation shall be found reasonable.

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

Rule XXI. REASONABLENESS OF RATES (1) Rail rates shall not be established below a reasonable minimum. Any rate for transportation by a rail carrier that does not contribute to the going concern value for such carrier is presumed to be not reasonable.

(2) Rail rates which equal or exceed the variable cost of providing the transportation are conclusively presumed to contribute to the going concern value of that rail carrier, and are therefore presumed not to be below a reasonable minimum.

(3) In determining whether a rate is reasonable, the Commission shall consider the policy that railroads earn adequate revenues as well as evidence of the following:

(a) the amount of traffic which is transported at revenues which do not contribute to going concern value and efforts made to minimize such traffic;

(b) the amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on such traffic can be changed to maximize the revenues from such traffic; and

(c) the carrier's mix of rail traffic to determine whether one commodity is paying an unreasonable share of the carrier's overall revenues.

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

Rule XXII. BURDEN OF PROOF (1) The defendant railroad shall bear the burden of showing that the Commission lacks jurisdiction to review a rate because the rate produces a revenue - variable cost percentage that is less than the percentages found in 49 U.S.C. Sec. 10709(d)(2).

(2) A party complaining that an existing rate is unreasonably high shall bear the burden of proving that such rate is not reasonable.

(3) A party complaining that an existing rate is unreasonably low shall bear the burden of demonstrating that the rate does not contribute to the going concern value of the carrier, and is therefore unreasonably low.

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

Rule XXIII. NONAPPLICABILITY Complaints shall not be entertained by the Commission to the extent that they challenge the reasonableness of the following rate adjustments:

(a) general rate increases;

(b) inflation-based rate increases; or

(c) fuel adjustment surcharges.

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

Rule XXIV. CONTRACTS (1) A contract is an agreement entered into by one or more rail carriers with one or more purchasers of rail service to provide specific services under specified rates and conditions.

(2) Rail carriers providing transportation subject to the jurisdiction of the Commission, shall file with the Commission an original and one copy of all contracts entered into with one or more purchasers of rail services. These contracts shall be accompanied by two copies of the contract tariff that contains a summary of the nonconfidential elements of the contract in the format specified in 49 CFR 1300.300-1300.315.

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

Rule XXV. GROUNDS FOR REVIEW OF CONTRACTS (1) Within 30 days of the filing date of a contract, the Commission may, on its own motion or on complaint, begin a proceeding to review it.

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

(a) In the case of a contract other than a contract for the transportation of agricultural commodities (including forest products and paper), a shipper can file a complaint only on the grounds that the shipper individually will be harmed because the contract unduly impairs the ability of the contracting carrier or carriers to meet their common carrier obligations under 49 U.S.C. Sec. 11101(a).

(b) In the case of a contract for the transportation of agricultural commodities (including forest products and paper), a shipper shall file a complaint only on the grounds that the shipper individually will be harmed because:

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

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

(iii) the contract constitutes a destructive competitive practice.

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

Rule XXVI. FILING OF COMPLAINTS (1) A complaint shall be filed with the Commission by the 18th day after the filing date of the contract.

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

Rule XXVII. COMMISSION DECISION UPON REVIEW OF CONTRACT (1) Within 30 days after the date a proceeding is commenced to review a contract, the Commission shall decide

whether the contract violates the provisions of 49 U.S.C. Sec. 10713. If the Commission finds that such a violation exists, it shall:

(a) disapprove the contract; or

(b) in the case of agricultural contracts where the Commission finds unreasonable discrimination by a carrier in accordance with 49 U.S.C. Sec. 10713(d)(2)(B), order the carrier to provide rates and services substantially similar to the contract at issue with such differences in terms and conditions as are justified by the evidence.

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

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

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

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

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

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

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

Rule XXIX. LIMITATION OF RIGHTS OF A RAIL CARRIER TO ENTER FUTURE CONTRACTS (1) The Commission may limit the right of a rail carrier to enter into future contracts if it determines that additional contracts would impair the ability of the rail carrier to fulfill its common carrier obligations under 49 U.S.C. Sec. 11101(a). The Commission shall handle such determinations on a case-by-case basis and may investigate either on its own initiative or upon the filing of a verified complaint by a shipper which demonstrates that it individually has been harmed by a carrier's inability to fulfill its common carrier obligations as a result of existing contracts.

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

Rule XXX. ENFORCEMENT (1) The exclusive remedy for an alleged breach of a contract approved by the Commission shall be an action in an appropriate state court or United States district court, unless the parties otherwise agree in the contract.

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

Rule XXXI. LIMITATION ON AGRICULTURAL EQUIPMENT AND RELIEF (1) A rail carrier may enter into contracts for the transportation of agricultural commodities (including forest products and paper) that involve the use of carrier owned or

leased equipment not in excess of 40 percent of the total number of the carrier's owned or leased equipment, by major car type, except as provided in (2) below.

(2) In the case of a proposed contract between a Class I carrier and a shipper originating an average of 1,000 cars or more per year during the prior three year period by major car type on a particular carrier, not more than 40 percent of carrier owned or leased equiment used on the average during the prior three year period may be used for such contract without prior authorization by the Commission.

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

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

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

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

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

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

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

(3) "Agricultural commodities," as used in these rules, means unmanufactured agricultural products, and includes forest products and paper.

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

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

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

Rule XXXIII. CONTRACT TARIFF TITLE PAGE (1) The title page of every contract tariff and of every supplement shall show the following in the order named:

(a) In the upper right-hand corner, the contract tariff identification number, as specified in Rule XXXIV.

(b) The corporate name of the issuing carrier and, listed alphabetically, the corporate names of any other rail carriers participating in the contract tariff.

(c) The words "Contract Tariff."

(d) Whether the contract tariff includes a through movement over more than one railroad.

(e) Commodity or commodities to be transported under the terms of the contract.

(f) Date of issue and date effective.

(g) Duration of the contract.

(h) At the bottom of the page, the name, title and mailing address of the individual responsible for compiling and filing the contract tariff.

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

Rule XXXIV. CONTRACT TARIFF NUMBERING SYSTEM (1) Each issuing carrier shall sequentially number the contract tariffs it issues. These sequential numbers shall be included in the contract tariff identification number printed on the contract tariff title page and on the first page of the contract itself. The contract tariff identification number shall include the word "MPSC", the industry standard alphabet code for the issuing railroad (limited to four letters), the letter "C", and the sequential number, with each separated by a hyphen, as illustrated in the following example: the 357th contract filed by the Burlington Northern Railroad would have the following contract tariff identification number: "MPSC-BN-C-0357".

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

Rule XXXV. CONTRACT TARIFF CONTENT (1) Contract tariffs shall contain a short narrative summary of the nonconfidential terms of the contract as follows:

(a) Name(s) of participating carrier(s). A list, alphabetically arranged, of the corporate names of all carriers that are parties to the contract.

(b) The commodity or commodities to be transported under the contract.

(c) If the commodity identified is an agricultural commodity, the origin station(s) and the destination station(s); otherwise, the words, "Origin/Destination Stations-Not Applicable".

(d) The duration of the contract.

(e) The mileage of the movement covered by contract, or in the event the contract covers multiple movements or routings, the mileages of each of the routings. Mileage shall be rounded to the nearest 50 miles.

(f) The number of cars, by major car type, owned or leased by the carrier(s) listed in (a) above, used in providing the transportation covered by the contract or by options to the contract. Also, the maximum number of cars to be used during any single (peak) month shall be specified. In addition, if the commodity identified is an agricultural commodity then the

participating rail carrier(s) shall certify:

(i) that the equipment used does not exceed 40 percent of the capacity of the rail carrier's owned or leased cars by major car type, and

(ii) in the case of an agricultural shipper who originated an average of 1,000 cars or more per year during the prior three year period by major car type, that the equipment used does not exceed 40 percent of the rail carrier's owned or leased cars used on the average by that shipper during the previous three years.

(g) The base rate for the services provided, presented in the same units (tons, hundredweight, ton-mile, carload, trainload, etc.) as used in the contract. (If the contract utilizes existing tariff rates, appropriate tariff references shall be sufficient.)

(h) Special features included in the contract. This item shall identify the existence of, but not the terms of special features such as, but not limited to, rate escalation clauses, transit privileges, services or transit time commitments, guaranteed car supply, annual volume requirements, minimum percentage of traffic requirements, etc.

(i) If the commodity is identified as agricultural, the details of the escalation clause (if any) shall be provided.

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

Rule XXXVI. EXEMPTIONS (1) From time to time the Interstate Commerce Commission, pursuant to 49 U.S.C. Sec. 10505, may exempt certain classes of rail traffic from interstate regulation. Traffic so exempted shall not be regulated on an intrastate basis.

(2) This Commission may, in addition, conduct exemption proceedings, initiated either upon its own motion or pursuant to a petition, to consider the exemption of traffic which has not been considered by the Interstate Commerce Commission.

(3) If, after a hearing or hearings on a proposed exemption, the Commission decides the issue warrants further study, it shall initiate rulemaking in accordance with the Montana Administrative Procedure Act.

(4) The Commission shall exempt a person, class of persons, or a transaction or service when it finds that further regulation:

(a) is not necessary to carry out state and national transportation policy; and

(b) either

(i) the transaction or service is of limited scope, or

(ii) further regulation is not needed to protect shippers from the abuse of market power.

(5) The Commission may specify the period of time during which an exemption is effective. The Commission may revoke entirely or in part an exemption which it has previously granted if it determines that such action is necessary to carry out state and national transportation policy.

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

3. The rules proposed to be repealed are on pages 38-363 and 38-364 of the Administrative Rules of Montana.

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

These rules provide detailed standards and procedures consistent with the Interstate Commerce Act. They will affect tariff filing requirements, procedures for investigating and suspending rates, complaint requirements, burdens of proof, standards regarding market dominance and rate reasonableness, rail service contracts, and exemptions.

The Commission proposes to repeal ARM 38.4.101 through 38.4.104 since the ICC has determined that rules of this nature are inconsistent with the Interstate Commerce Act in requiring pre-justification of tariffs. The ICC will not certify states requiring pre-justification.

5. Interested parties may submit their data, views or arguments concerning the proposed adoption and repeal in writing to Robert A. Nelson, Public Service Commission, 1227 11th Avenue, Helena, Montana 59620, no later than May 2, 1983.

6. If a person who is directly affected by the proposed adoption and repeal wishes to express his data, views and arguments orally, he must make written request for a public hearing and submit this request along with any written comments he has to Robert A. Nelson, Public Service Commission, 1227 11th Avenue, Helena, Montana 59620, no later than May 2, 1983.

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

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

9. The authority for the Commission to make these rules and repeal ARM 38.4.101 through 38.4.104, is based on Section

69-2-101, MCA, and the proposed rules implement Sections 69-1-102, 69-14-111 and 69-14-301, MCA.

THOMAS J. SCHNEIDER, Chairman

CERTIFIED TO THE SECRETARY OF STATE MARCH 21, 1983.

BEFORE THE MERIT SYSTEM COUNCIL
OF THE STATE OF MONTANA

In the matter of the amendment of the rule 2.23.1408	)))	NOTICE OF THE AMENDMENT OF RULE 2.23.1408

TO: All Interested Persons.

1. On February 10, 1983, the Montana Merit System Council published notice of proposed amendment of rule 2.23.1408 concerning the operation of the Montana Merit System Council at page 96 of the 1983 Montana Administrative Register, issue number 3.

2. The Council has amended the rule as proposed.

3. No comments or testimony were received.

Norman H. Grosfield, Chairman
Merit System Council

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

In the matter of the amendment of ARM 8.28.420 concerning fees.	NOTICE OF AMENDMENT OF ARM 8.28.420 FEE SCHEDULE

TO: All Interested Persons:

1. On February 10, 1983, the Board of Medical Examiners published a notice of proposed amendment of 8.28.420 concerning the fee schedule at pages 98 & 99, 1983 Montana Administrative Register, issue number 3.

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

3. No comments or testimony were received.

DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF MORTICIANS

In the matter of the adoption of rules requiring continuing education for funeral directors and morticians	NOTICE OF ADOPTION OF SUB-CHAPTER 5, CONTINUING EDUCATION RULES, 8.30.501 through 8.30.515

TO: All Interested Persons:

1. On February 10, 1983, the Board of Morticians published a notice of public hearing at pages 100 through 106, 1983 Montana Administative Register, issue number 3. The hearing was to consider the adoption of rules for continuing education.

2. The hearing was convened at 10:04 a.m., March 4, 1983, in the auditorium of the Social and Rehabilitation Services building, 111 Sanders, Helena, Montana. In addition to board members, Everett Bullis and Jeff Sherlock, present were Diana C. Cutler, Administrative Assistant for the Board, Brinton Markle, Staff Attorney for the board, Robert Wood, Hearing Examiner, and Roland D. Pratt, Executive Director of the Montana Funeral Directors Association. No testimony was offered and no other persons were present. No written testimony was presented at or prior to the hearing.

3. The board has adopted the continuing education rules as proposed, with the exception that the sub-chapter where the rules will be located is sub-chapter 5, rather than 7, as shown in the notice.

DEPARTMENT OF COMMERCE

BY: _____
GARY BUCHANAN, DIRECTOR

Certified to the Secretary of State, March 21, 1983.

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

In the matter of the amendments of 8.62.402 concerning definitions, subsection (5); 8.62.403 concerning applications; 8.62.413 concerning fees; 8.62.501 concerning supervisor responsibility for aides; 8.62.703 concerning continuing education.	NOTICE OF AMENDMENT OF ARM 8.62.402 DEFINITIONS; 8.62.403 APPLICATIONS; 8.62.413 FEES; 8.62.501 SUPERVISOR-RESPONSIBILITY FOR AIDE; 8.62.703 CONTINUING EDUCATION REQUIRED - WHEN

TO: All Interested Persons:

1. On February 10, 1983, the Board of Speech Pathologists and Audiologists published a notice of proposed amendment of the above-stated rules at pages 107 through 109, 1983 Montana Administrative Register, issue number 3.

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

3. One comment was received from the Administrative Code Committee, noting that the implementing and authority sections were not listed for the amendment of 8.62.703, continuing education. The authority of the board to make this change is based on section 37-15-202, MCA and implements section 37-15-309, MCA. No other comments or testimony were received.

BOARD OF SPEECH PATHOLOGISTS
AND AUDIOLOGISTS
PATTI DuBRAY, CHAIRMAN

BY: _____
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, March 21, 1983.

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

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

TO: All Interested Persons

1. On January 27, 1983, the board published notice of proposed amendments of rules 16.8.921, 16.8.924, 16.8.930, and 16.8.936 concerning prevention of significant deterioration of air quality at page 53 of the 1983 Montana Administrative Register, issue number 2.

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

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

(1) - (5) same as proposed

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

(i) - (ii) same as proposed

(b) The baseline date may also be established in any county which has not previously established a baseline date, upon a petition presented to the department on behalf of ~~the local government unit~~ either that county's board of commissioners or any elected alternative form of government adopted by it pursuant to Title 7, Chapter 3, Parts 1 through 7, MCA. Upon receipt of the petition, the department will initiate rulemaking procedures in accordance with the Montana Administrative Procedure Act. After notice and a public hearing by the board, the board shall make a decision on establishing the baseline date.

(7) - (31) same as proposed

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

16.8.924 REDESIGNATION same as proposed
AUTHORITY: Sec. 75-2-111, 75-2-203, MCA
IMPLEMENTING: Sec. 75-2-202, 75-2-203, MCA

16.8.930 PERMIT REVIEW -- INFORMATION REQUIRED same as proposed
AUTHORITY: Sec. 75-2-111, 75-2-203, MCA
IMPLEMENTING: Sec. 75-2-202, 75-2-203, MCA

16.8.936 EXEMPTIONS FROM REVIEW same as proposed
AUTHORITY: Sec. 75-2-111, 75-2-203, MCA
IMPLEMENTING: Sec. 75-2-202, 75-2-203, MCA

3. Don Reed, representing the Environmental Information Center, expressed support for the amendment allowing counties to petition to set their own baseline dates, commenting that it was consistent with his interpretation that both the federal and Montana Clean Air Acts are written to allow as much local control as reasonably possible.

Ed Bartlett, representing Western Energy and Montana Power, opposed the same provision on grounds that it injected politics into what he viewed to be basically a technical issue. In particular, he was concerned about the definition of the "local government unit" that might petition to set the baseline date, lest it be interpreted to allow a non-elected body such as a local planning board to petition. The board retained the amendment allowing counties to petition because strong support for it had been expressed during earlier PSD hearings and because the board felt a county should be able to trigger the baseline date on its own initiative to protect its own air quality. However, it substituted language for "local government unit" stating specifically the elected forms of county government which could petition, to eliminate the confusion Mr. Bartlett feared.

JOHN F. McGREGOR, M.D., Chairman

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

Certified to the Secretary of State March 21, 1983

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

In the matter of the amendment of rules 16.8.1201, 16.8.1202, and 16.8.1203, governing tall stacks	)	NOTICE OF THE AMENDMENT OF RULES 16.8.1201, 16.8.1202 AND 16.8.1203 (Air Quality)

TO: All Interested Persons

1. On November 24, 1982, the board published notice of the amendment of rules 16.8.1201, 16.8.1202, and 16.8.1203, concerning use of tall stacks by sources emitting air pollutants at page 2067 of the 1982 Montana Administrative Register, issue number 22.

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

16.8.1201 DEFINITIONS (1) For purposes of this subchapter, the following definitions apply:

(a) - (c) Same as proposed.

(d) "Good engineering practice (GEP) stack height" means the greater of:

(i) 65 meters, or

(ii) $H_G = H + 1.5 L$

where: H_G = good engineering practice stack height, measured from the ground level elevation at the base of the stack

H = height of nearby structure(s) measured from the ground level elevation at the base of the stack

L = lesser dimension (height or projected width) of nearby structure(s);

(iii) such height as an owner or operator of a source demonstrates to the satisfaction of the department is necessary to prevent excessive concentrations of any air pollutant through the use of field studies or fluid models after notice and opportunity for public hearing.

(e) "Excessive concentrations" for the purpose of determining good engineering practice stack heights in fluid modeling or field studies means a maximum concentration of any air contaminant in excess of an ambient air quality standard, due in part or whole to downwash, wakes or eddies which is at least 40 percent in excess of the maximum concentration of any air contaminant experienced in the absence of downwash, wakes or eddy effects produced by nearby structures or terrain.

(f) - (g) Same as proposed.

(2) "Nearby", as used in (1)(d)(ii) above, means that distance up to five times the lesser of the height or width dimension of a structure, but not greater than 0.8 km (1/2

mile). The height of the structure is measured from the ground-level elevation at the base of the stack.
AUTHORITY: Sec. 75-2-111, 75-2-203, MCA
IMPLEMENTING: Sec. 75-2-203, MCA

16.8.1202 REQUIREMENTS Same as proposed.
AUTHORITY: Sec. 75-2-111, 75-2-203, MCA
IMPLEMENTING: Sec. 75-2-203, MCA

16.8.1203 EXCEPTIONS (1) Same as proposed.
(2) The good engineering practice (GEP) stack height for any source seeking credit because of plume impaction must comply with the following:
~~(i)~~ (a) The source must determine its GEP for downwash, wake, or eddies using any of the 3 methods described in ARM 16.8.1201(d). Using this GEP, the source must show that its plume would come into contact with elevated terrain features and, together with background concentrations, cause a violation of a national or Montana ambient air quality standard or an applicable prevention of significant deterioration increment. If such a demonstration of plume impaction is not demonstrated through the model, credit for plume impaction is not applicable.
~~(ii)~~ (b) The source's maximum allowable emission limitation will be determined using the downwash stack GEP height determined above and assuming that the terrain feature or features causing the impaction is ~~no taller than~~ equal to its downwash GEP height.
~~(iii)~~ (c) The source may adjust its GEP stack height to account for plume impaction on actual terrain features above the downwash GEP stack height.
AUTHORITY: Sec. 75-2-111, 75-2-203, MCA
IMPLEMENTING: Sec. 75-2-203, MCA

3. T. N. Schug, representing Exxon, requested the definition of "dispersion technique" be amended to show that the impact of use of a fan or reheater is to enhance plume rise, rather than to obtain a less stringent emission limitation. Although the suggestion had merit, the change was not made because it was uncertain whether it would be acceptable to the Environmental Protection Agency and the change's actual effect would be negligible at best.

The Environmental Protection Agency (EPA) requested the following changes:

(a) Adding to the third alternative for determining "good engineering practice stack height" [16.8.1201(1)(d)(iii)] language indicating that height necessity is to be determined by the Department, and that the purpose of the extra necessary height is to prevent excessive concentrations of any air pollutant. Appropriate language was added.

(b) Including in the definition of "excessive concentrations" that the term was used in the context of field studies as well as fluid modeling studies. The suggestion was adopted.

The Department requested a definition be included of "nearby", as used in one of the alternatives to determine GEP for stack height, since "nearby" is otherwise too vague a term, and suggested a version of the EPA definition be adopted. The Board agreed and did so.

The Department also requested that 16.8.1203(2)(b) be amended to correct an error and to conform the language to EPA standards so that a maximum allowable emission limitation will be based on the assumption that the height of a terrain feature interacting with a smoke plume is equal to, rather than no taller than, the source's downwash GEP height. The Board adopted the change to meet EPA standards.

The numbering of subsections under 16.8.1203(2) has been corrected to comply with rulemaking format.

JOHN F. McGREGOR, M.D., Chairman

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

Certified to the Secretary of State March 21, 1983

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the AMENDMENT OF RULE 23.7.111 adopting the Uniform Fire Code by reference.	))))	NOTICE OF THE AMENDMENT OF RULE 23.7.111 adopting the Uniform Fire Code by reference.

TO: All Interested Persons.

1. On February 10, 1983, the Department of Justice, State Fire Marshal Bureau, published notice of a proposed amendment of rule 23.7.111 pertaining to the adoption of the Uniform Fire Code and listed appendices, at page 110 of the 1983 Montana Administrative Register, issue number 3.

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

23.7.111 UNIFORM FIRE CODE (1) The Department of Justice hereby adopts and incorporates by reference the Uniform Fire Code, International Conference of Building Officials, 1982 edition, and the appendices listed in subsections (a) through (g) with the modifications appearing in subsections (2) through (67). 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)(b)(c)(d)(e)(f)(g) same as proposed rule.

(2)(a)(b)(c)(d)(3) same as proposed rule.

(4) The Department of Justice also amends Section 61.105, to include:

EXCEPTION: Commercial or industrial occupancies using burners designed to burn crankcase oil or waste oil containing gasoline. Such burners shall be approved, and shall be installed in accordance with the manufacturer's instructions and the terms of their listing.

(45) same as proposed rule.

(56) same as proposed rule.

(67) same as proposed rule.

3. No public hearing was held. A written statement was received from W. James Kembel, Administrator, Building Codes Division of the Department of Administration. Mr. Kembel is in support of the proposed amendment, as the rule is compatible with those adopted by the Building Codes Division and will place both agencies under the same editions of the model codes. The Bureau received telephone calls from Bruce Svenrum, Fire Chief, Missoula Rural Fire Department, Missoula, and from Kirt McGruder, Fire Safety Specialist, Exxon Corporation, Billings. Chief Svenrum and Mr. McGruder requested clarification of the rule.

MIKE GREELY
Attorney General

BY: Mike Greely

Certified to the Secretary of State March 21, 1983.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through 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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