MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 9

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of new rules, the amendment of rules and the repeal of rules relating to the administration of moving and relocation expenses	)))))))	NOTICE OF PROPOSED ADOPTION OF NEW RULES, AMENDMENT OF RULES 2.21.4907, 2.21.4911, AND 2.21.4914, AND REPEAL OF RULES 2.21.4912 AND 2.21.4913 RELATING TO MOVING AND RELOCATION EXPENSES NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 18, 1984, the Department of Administration proposes to adopt new rules, amend rules 2.21.4907, 2.21.4911, and 2.21.4914, and repeal rules 2.21.4912 and 2.21.4913 pertaining to moving and relocation expenses.

2. The rules proposed to be repealed are on pages 2-1261 and 2-1262 of the Administrative Rules of Montana.

3. The proposed rules provide as follows:

RULE I POLICY AND OBJECTIVES (1) It is the policy of the state of Montana to pay moving and relocation expenses for an employee who is required by an agency to move to another geographic location to conduct agency business. Moving and relocation expenses shall be administered according to conditions described in this policy.

(2) It is the objective of this policy to establish a consistent method for the administration of moving and relocation expenses paid by state agencies.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE II COVERED MOVES (1) When a state agency requires an employee to move to another location at a distance of 50 map miles or more, the agency shall pay moving and relocation expenses. A move to a location less than 50 map miles away may be paid at the agency's discretion. A move required by an agency includes the relocation of an employee where the agency:

(a) changes the location of the employee's current job;

(b) reassigns the employee to a different job at a different location, or

(c) relocates a work unit. The amount of moving and relocation expenses paid shall be determined by the agency consistent with this policy and will not exceed established maximums.

(2) A state agency may pay no expenses, some expenses, or all allowable expenses for moves which are not required by the agency as described in subsection (1) above. The payment of moving and relocation expenses is at the agency's discretion for moves such as:

(a) an employee-initiated move where the employee applies for and accepts a position in a different location;

(b) the move of an employee who loses his job as a result of a reduction-in-force and accepts a position with the same agency during the preference period, as provided in 2.21.5001, et. seq., ARM;

(c) the move of an employee newly hired to the agency who accepts a position in other than the current place of residence, or

(d) the move of an employee to a location less than 50 map miles away whether or not the move is required by the agency. The granting of and extent of moving and relocation expenses paid for moves not required by the agency is at the agency's discretion, shall be administered consistent with this policy and will not exceed established maximums.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE III TIME, TRAVEL AND PER DIEM ALLOWANCE (1) State agencies may pay mileage and/or per diem as provided in 2.4.101 et. seq., ARM, for a reasonable amount of time before, during, and after the effective date of the move to allow the employee to seek a home in the new location, conduct the move, and complete the relocation of the permanent residence.

(2) As soon as a move has been confirmed, the employing agency must determine the amount of time, travel, and per diem needed to accomplish the move.

(3) The amount of time, travel, and per diem approved by the agency to allow the employee to accomplish the move may not exceed 7 working days, unless the agency director or designee approves a request to exceed the 7 working day limit. Requests to exceed the 7 working day limit must be approved by the agency director or designee in advance. The 7 working days need not be consecutive days.

(4) Agencies shall only pay moving and relocation expenses for the actual amount of time, travel, and per diem necessary to accomplish the particular move.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE IV LIMITATIONS (1) An agency may enter into a written agreement with an employee whereby the agency agrees to pay some or all of the employee's moving and relocation expenses consistent with this policy in return for a commitment from the employee to work for the agency for a specified period of time after completion of the move, not to exceed 1 year. The agreement may specify that in the event the employee fails to remain with the agency, the employee shall reimburse the agency for some or all of the amount expended by the agency. The reimbursement provisions of the agreement should be specific.

(RULE IV: Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

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

2.21.4907 DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "Immediate family" means the employee's spouse and any dependent child or dependent adult living in the employee's household.

~~(1)~~ (2) "Moving and relocation expenses" means the costs ~~to move an employee's household belongings either by commercial moving company or by personal means and living expenses incurred during exploratory trips~~ approved by the agency:

(a) to allow an employee to move household and personal belongings; and

(b) to assist the employee with the relocation of the permanent residence.

~~(2) "Eligible employee" means an employee who at the request of the agency moves to another geographic location.~~

(3) "Commercial moving company" means a legally contracted transfer and storage corporation ~~governed by federal tariff rates and~~ regulated by the interstate commerce commission, regulated by the public service commission, or regulated by both and which also may be a company authorized to give a preference in price to the state of Montana.

(4) "Household and personal belongings" means personal property which may be transported legally in interstate commerce and which belongs to an employee and the immediate family at the time of the move. The term includes household furnishings, equipment and appliances, furniture, clothing, books, snowmobiles, vehicles with 2 or 3 wheels and similar property. It does not include such items as automobiles, airplanes, livestock, firewood, or property belonging to any person other than the employee or the immediate family, except when approved in advance by the agency director or designee.

~~(4)~~ (5) "Preference in price" means a reduced tariff rate which some commercial moving companies may elect to offer to the state for employee moves, ~~which are initiated by the state.~~

~~(5)~~ (6) "Military tariff rate" means a type of preference in price which some commercial moving companies may elect to offer to the state for employee moves, ~~which are initiated by the state.~~

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

2.21.4911 ARRANGEMENTS FOR MOVE (1) The employing agency ~~will~~ may pay the moving and relocation expenses of an employee for packing and moving household and personal belongings by commercial moving company up to, but not exceeding, the maximum allowable weight of 12,000 pounds.

~~(2) To assist in establishing the most favorable tariff rate for an employee move by commercial moving company, the agency must submit a requisition (Form 221A) to the department of administration, purchasing division. Such requisition must contain the employee's name, agency, origin, destination, and anticipated dates the move is to take place. Names of commercial moving companies capable of performing the move may be included as suggested vendors.~~

~~(3) If time or other circumstances do not allow formal bidding, the agency may contact appropriate movers directly to obtain quotations, which may incorporate a preference in price allowed to the State of Montana.~~

~~(4)~~ (2) ~~Whenever possible, t~~The agency should secure the military tariff rate from a prospective commercial moving company.

~~(5)~~ (3) If a commercial moving company provides the state of Montana any preference in price, that company must file a courtesy copy of the bill of lading with the public service commission, ~~citing the state as authorizing the move~~. if the moving company does not have an approved tariff on file with the public service commission or if the public service commission requests a copy.

~~(6)~~ (4) Trailer or truck rental for moving purposes may be authorized. A mileage allowance at the prevailing rental rate a mile for miles driven, not to exceed the actual rate, ~~will~~ may be paid if a rental truck or trailer or a private truck or trailer are used to make the move.

~~(7)~~ (5) The actual cost of unblocking, blocking, unhooking, and hooking and transportation ~~will~~ may be paid for a mobile home, if by PSC certified carrier.

~~(8)~~ (6) ~~The state will not pay the~~ At the agency's discretion, the agency may pay some or all costs of storage.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

2.21.4914 SALARY PAYMENTS (1) The employee is paid normal salary at a regular time rate and accrues all benefits for ~~exploratory trips or during the actual move~~ the time approved by the agency to allow the employee to accomplish the move. Under no circumstances may the employee earn compensatory time or overtime during ~~exploratory trips or the move~~ the time approved by the agency to allow the employee to accomplish the move.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

5. These rules are proposed to be adopted, amended, and repealed to clarify when a state agency is required to pay moving and relocation expenses and when the payment of such expenses is at a state agency's discretion, to expand the definition of terms used, and to establish the maximum amount of days an employee may be allowed to use to accomplish a move.

6. Interested parties may submit their data, views or arguments concerning the proposed adoption, amendment, and repeal in writing to:

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

no later than June 15, 1984.

9-5/17/84

7. If a person who is directly affected by the proposed adoption, amendment, and repeal of rules wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to: Dennis M. Taylor, Administrator, Personnel Division, Department of Administration, Room 130, Mitchell Building, Helena, Montana 59620, no later than June 15, 1984.

8. If the agency receives requests for a public hearing on the proposed adoption, amendment, and repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption, amendment, and repeal; 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 at least 25 persons.

9. The authority of the agency to make the proposed adoption, amendment, and repeal is based on 2-18-102, MCA, and the rules implement 2-18-102, MCA.

Morris L. Brusett, Director
Department of Administration

Certified to the Secretary of State May 7, 1984.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

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

TO: All Interested Persons.

1. On June 11, 1984, at 7 p.m. in Room C-209, Cogswell Building, Helena, a public hearing will be held to consider the repeal of rules 2.21.6501 through 2.21.6504 relating to discipline handling and the adoption of new rules.

2. The rules proposed to be repealed are on pages 2-1493 through 2-1495 of the Administrative Rules of Montana.

3. The proposed rules provide as follows:

RULE I SHORT TITLE (1) This sub-chapter may be cited as the discipline handling policy.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE II POLICY AND OBJECTIVES (1) It is the policy of the state of Montana that:

(a) state employees who fail to perform their jobs in a satisfactory manner or whose behavior otherwise interferes with or disrupts agency operations be subject to disciplinary action, up to and including discharge;

(b) disciplinary action be administered for just cause, as defined in this policy; and

(c) an employee be informed of the cause for disciplinary action and offered the opportunity to respond.

(2) It is the objective of this policy to establish procedures for taking formal disciplinary action against an employee.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE III DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "Corrective counseling" means constructive corrective actions taken to improve unsatisfactory employee behavior in a positive, nonthreatening manner prior to or during the administration of formal disciplinary action. The action may include, but are not limited to, coaching or counseling meetings, and training.

(2) "Management" means the employee's supervisor and other supervisors in a direct line of authority above the employee's supervisor.

(3) "Progressive discipline" means a process of applying disciplinary actions which may progress from less serious actions to more serious actions based upon the initial severity, on the repeated nature or on a pattern of misconduct or poor performance. Progressive discipline may range from corrective

counseling to discharge.

(4) "Formal disciplinary action" means a written warning, suspension without pay, disciplinary demotion, discharge or similar disciplinary action which adversely affects the employee. It does not include corrective counseling or oral warnings which are informal actions.

(5) "Documentation" means a record of facts, incidents or other materials used as evidence to support the administration of a disciplinary action.

(6) "Just cause" means reasonable, job-related grounds for taking a disciplinary action based on failure to satisfactorily perform job duties or disruption of agency operations. Just cause includes, but is not limited to, an actual violation of an established agency standard, legitimate order, policy, or labor agreement, failure to meet applicable professional standard or a series of lesser violations, if the employee would reasonably be expected to have knowledge the action or omission may result in a disciplinary action.

(7) "Due process" means ensuring an employee:

(a) is informed of the action being taken and the reason for it; and

(b) has an opportunity to respond to and question the action and to defend or explain the questioned behavior or actions.

(8) "Written warning" means a written disciplinary notice intended to notify an employee of unsatisfactory performance or behavior that disrupts agency operations and to communicate management's expectations to the employee. It includes a warning of the consequences of failure to make required improvements or corrections.

(9) "Suspension without pay" means a leave of absence without pay ordered by management which requires an employee to remain off the job for just cause.

(10) "Disciplinary demotion" means the reclassification of an employee's position to a lower grade or the transfer of an employee to a position at a lower grade for just cause. A disciplinary demotion must include a reduction in position duties corresponding with the new position title and grade. A disciplinary demotion shall be carried out in accordance with the rule on involuntary demotion found in Montana Operations Manual, Volume III, Policy 3-0505, the pay plan rules (copies available at the Personnel Division, Department of Administration.)

(11) "Discharge" means, for purposes of this policy, the termination of an employee's employment for just cause.

(12) "Employee" means an employee in a permanent position who has attained permanent status, as both terms are defined in 2-18-101, MCA. It does not mean an employee in a permanent position, who has not attained permanent status, or an employee in a position defined as temporary, as all these terms are defined in 2-18-101, MCA.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE IV INFORMAL ACTIONS (1) Corrective counseling and oral warnings are informal actions which may be used at the option of management prior to or in addition to formal discipline to deal with performance deficiencies or misconduct. They are not part of formal discipline and are not grievable. Documentation is encouraged, but is not required.

(Auth. 2-18-102, MCA; Imp 2-18-102, MCA)

RULE V FORMAL DISCIPLINARY ACTIONS (1) When formal disciplinary action is necessary, just cause, due process and documentation of facts are required. Formal disciplinary actions include, but are not limited to, written warning, suspension without pay, disciplinary demotion and discharge.

(2) Management shall, when appropriate, use progressive discipline. However, the appropriateness of using progressive discipline in each case lies within the discretion of management. The specific disciplinary actions taken and the order in which disciplinary actions are taken depend on the nature and severity of the performance deficiency or behavior that disrupts agency operations. Discharge should not be an initial disciplinary action except in severe cases of unsatisfactory performance or behavior that disrupts agency operations.

(3) Each formal disciplinary action shall include a written notification to the employee which includes, but is not limited to, the following:

(a) the just cause for the disciplinary action;

(b) the disciplinary action to be taken, including dates and duration where applicable;

(c) the improvements or corrections expected, and the consequences of failure to make the required improvement or correction, if applicable.

(4) The employee shall be offered the opportunity to review, sign and date any notice of a formal disciplinary action and shall have the opportunity for verbal and/or written response. The employee's signature indicates that the employee has had the opportunity for review, but not necessarily that the employee agrees with the action. If the employee refuses to sign, a witness to such refusal, in addition to the supervisor, shall sign and date the notice.

(5) Where notices cannot be issued in person, they should be delivered by certified mail.

(6) All formal disciplinary actions must be documented. Documents will be maintained in accordance with the employee record keeping policy, 2.21.1501 et. seq. ARM.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

RULE VI GRIEVANCES (1) An employee, as defined in Rule III, may file a grievance under the grievance policy, 2.21.8001 et. seq., ARM, based on receipt of a formal disciplinary action which includes, but is not limited to, written warning, suspension without pay, disciplinary demotion or discharge.

(2) No employee may file a grievance based on corrective counseling or oral warnings.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA).

Rule VII CLOSING (1) This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA).

4. These rules are proposed to be repealed and replaced with new rules to clarify for supervisors the minimum steps required to take a disciplinary action; to require that just cause, due process and documentation be present when a disciplinary action is taken; to differentiate between a formal disciplinary action which requires just cause, due process and documentation and other types of informal actions; to remove references to punitive discipline; to define just cause and the steps required to implement due process; to identify the types of actions which an employee may grieve; to limit coverage of these rules to employees who have attained permanent status.

5. Interested parties may submit their data, view or arguments concerning the proposed repeal of rules and adoption of new rules in writing to:

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

no later than June 15, 1984.

6. Mark Cress, Chief, Employee Relations Bureau, Personnel Division, Department of Administration, Mitchell Building, Helena, MT. 59620, has been designated to preside over and conduct the hearing.

7. The authority of the agency to adopt these rules is based on 2-18-102, MCA, and the rules implement 2-18-102, MCA.

Morris L. Brusett, Director
Department of Administration

Certified to the Secretary of State May 7, 1984.

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the amendment of rule ARM 2.32.101 concerning the adoption of the Uniform Building Code by reference	))))))	NOTICE OF PUBLIC HEARING FOR AMENDMENT OF RULE ARM 2.32.101 concerning the Uniform Building Code

TO: All Interested Persons:

The notice of proposed agency action published in the Montana Administrative Register on April 26, 1984, is amended as follows because section 50-60-204, MCA, requires a public hearing prior to any adoption, amendment, or repeal of the State Building Code:

1. On June 15, 1984, at 9:00 a.m., a public hearing will be held in the Social Rehabilitation Services Building, Auditorium, 111 Sanders, Helena, Montana, to consider the amendment of rule ARM 2.32.101, Incorporation by Reference of Uniform Building Code, which adopts the Uniform Building Code, 1982 edition, by reference.

2. The proposed amendment provides as follows:

2.32.101, INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE (1) (a) through (d) remains the same.

(e) Section 3305(h) Openings. 1. Doors. of the Uniform Building Code, of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities as defined in Section 50-5-101, Montana Code Annotated (MCA). Section 50-5-101, MCA defines "health care facility" as any building used to provide health services, medical treatment, nursing, rehabilitative, or preventive care to persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospitals, infirmaries, kidney treatment centers, long-term care facilities, mental health centers, out-patient facilities, public health centers, rehabilitation facilities, and adult day-care centers.

3. The Division is proposing this amendment to the rule in order to comply with the Legislative change to Section 50-60-205, MCA, passed during the 48th Legislature, through House Bill No. 361 (Chapter 168, Laws of 1983).

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to John Bobinski,

Associate Counsel, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, no later than June 15, 1984.

5. John Bobinski, Associate Counsel, Insurance and Legal Division, Department of Administration, Capitol Station, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

6. The authority of the agency to make the proposed amendment is based on Sections 50-60-104 and 50-60-203, MCA, and the rule implements Sections 50-60-103, 50-60-104 and 50-60-205, MCA.

MORRIS L. BRUSETT, Director
Department of Administration

By: Morris Brusett
Morris L. Brusett

Certified to the Secretary of State May 7, 1984.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the ADOPTION OF A RULE establishing a State Plan of Operation for distribution of federal surplus property.	))))))	NOTICE OF PUBLIC HEARING

TO: All Interested Persons.

1. On June 6, 1984, at 9:00 AM, a public hearing will be held in Room 160 of the Mitchell Building, Helena, Montana, to consider the adoption of a rule establishing a permanent State Plan of Operation for distribution of federal surplus property.

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

3. The proposed rule provides as follows:

RULE I ADOPTION OF STATE PLAN OF OPERATION - FEDERAL SURPLUS PROPERTY (1) As authorized by Section 18-5-202, MCA, the department of administration (hereinafter department) hereby adopts and incorporates by reference the "State of Montana, Federal Surplus Property Plan of Operation in Compliance with 41 CFR 101-44 and Public Law 94-519" (referred herein as the State Plan of Operation) promulgated by the department and filed with the General Services Administration of the United States government on July 1, 1977, and as revised March 19, 1984, pursuant to section 203(j)(4) of the Federal Property and Administrative Services Act of 1949 (40 USC 484). The state plan of operation establishes the operating procedure and practices to be followed by the department for the fair and equitable distribution of federal surplus personal property to those units of state and local government and certain nonprofit, tax-exempt, educational and health institutions as are determined to be eligible to receive such surplus personal property under section 203(j) of the act. Copies of the state plan of operation may be obtained from the Department of Administration, Purchasing Division, Room 165, Mitchell Building, Helena, Montana 59620.

4. The department is proposing this rule to comply with the requirements of the Federal Property and Administrative Services Act of 1949 (hereinafter the Act), section 203(j)(4)(A) which requires each state to develop a plan of operation for its state agency for surplus property before the state can participate in the donation program. Pursuant to the Act, Montana adopted a temporary plan of operation and filed it with the General Services Administration of the federal government in 1977 and has operated under the temporary plan since 1977. The federal General Accounting Office has determined

that all states must replace their temporary plans with permanent plans. This rule is proposed to adopt the permanent plan of operation to meet the federal requirements for continued participation in the federal surplus property donation program.

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 Ms. Laurie Ekanger, Administrator, Purchasing Division, Department of Administration, Room 165, Mitchell Building, Helena, Montana 59620, no later than June 14, 1984.

6. M. Valencia Lane has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rule is based on section 18-5-202, MCA, and the rule implements section 18-5-202, MCA.

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

Certified to the Secretary of State May 7, 1984

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PLUMBERS

In the matter of the proposed amendments of 8.44.403 concerning applications, 8.44.404 (1),(1)(a), (8) concerning examinations, 8.44.405 (2),(3) concerning renewals, 8.44.406 concerning duplicate and lost licenses, and proposed adoptions of a new rule setting out a fee schedule.	)	NOTICE OF PROPOSED AMENDMENT OF ARM 8.44.403 APPLICATIONS, 8.44.404 EXAMINATIONS, 8.44.405 RENEWALS, 8.44.406 DUPLICATE AND LOST LICENSES, and PROPOSED ADOPTION OF A NEW RULE SETTING OUT A FEE SCHEDULE
		NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 16, 1984, the Board of Plumbers proposes to amend and adopt the above-stated rules.

2. The amendment of 8.44.403 will amend subsection (2), add new subsections (3) and (4) and will renumber all remaining subsections and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1235 and 8-1236, Administrative Rules of Montana),

"8.44.403 APPLICATIONS (1) ...

(2) No application for examination will be considered unless it is accompanied by the proper duly documented supporting evidence and is received ~~30~~ 60 days prior to the examination date.

(3) Those applications received after the deadline will be processed for the following examination.

(4) If an application is withdrawn, no refund of the application fee will be made.

~~(3)~~ (5) ..."

Auth: 37-69-202, MCA Imp: 37-69-303, 304, 305, MCA

3. The board is proposing the amendment to indicate application must be submitted 60 days prior to the examination. Rule 8.44.404 was amended some time ago to reflect the change. The board requires the applications 60 days prior to the examination to allow sufficient time for board review of the application, as well as sufficient time for the applicant to submit any additional evidence or evidence that was lacking with the original application. The addition of subsection (3) is proposed so that applicants are aware of the procedure followed for late applications. It is currently part of subsection (1) of rule 8.44.404 and will be amended out of that rule. The proposed addition of a new subsection (4) is to clearly state the application fee will not be refunded. In the past the board only charged one fee

for the application and the examination and refunded a portion for those individuals who did not take the examination. As the board is now requiring separate fees for application and examination, it felt that refund of the application fee was not necessary. The administrative costs are incurred prior to the examination.

4. The proposed amendment of 8.44.404 will amend subsections (1), (1)(a), and (8) and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1237, Administrative Rules of Montana).

"8.44.404 EXAMINATION (1) ~~All applications must be submitted on forms furnished by the department 60 days prior to the examination and must be accompanied by the $100.00 examination fee. These applications received after the deadline will be processed for the following examination.~~ Individuals who have been approved for the examination shall be required to submit an examination fee 15 days prior to the examination date. Re-examination fees, ~~which are $100.00,~~ must be submitted ~~30~~ 15 days prior to the examination.

~~(a) If an application is withdrawn prior to the scheduling of the examination, the fee less $30.00 administrative costs may be refunded at the discretion of the board.~~

(2) ...

(8) When an applicant fails to take the first examination for which he was scheduled, he may have his ~~application~~ examination fee apply towards the next examination for which he is scheduled. However, if the applicant fails to take the second examination, his fee shall be forfeited and application for any subsequent examination will require another ~~application~~ examination fee."

Auth: 37-69-202, MCA Imp: 37-69-304, 305, 306, MCA

5. The amendment of subsection (1) is proposed to clarify that an examination fee is to be paid prior to taking the examination, after the application has been approved. The amendment allows for payment of the examination fee 15 days prior to the examination. A re-examination fee is required to be paid within 15 days prior to the examination also. Subsection (1) (a) has been deleted as it refers to the application fee. The board is currently proposing the charging of both an application fee to cover on the costs of approving the application and a separate examination fee to be charged after the application has been approved and prior to the examination. The amendment of subsection (8) removes the word application fee and replaces it with examination fee. The use of the two separate fees will eliminate the need for a refund when an individual is not approved to take the

examination or for some reason withdraws his application prior to the time of scheduling for the examination.

The reference to the fee amount has been removed as all fees are being placed in a fee schedule. The adoption of a fee schedule for all fees allows for amendment of only the fee schedule when fees are changed, rather than several different rules.

6. The proposed amendment of 8.44.405 will delete subsection (2) and (3) and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1238, Administrative Rules of Montana).

"8.44.405 RENEWALS (1) ...

~~(2) The annual renewal fee for a master plumber shall be $60.00.~~

~~(3) The annual renewal fee for a journeyman plumber shall be $60.00.~~

~~(4)~~ (2) ..."

Auth: 37-69-202, MCA Imp: 37-69-307, MCA

7. The amendment is proposed to remove the reference to the fee amounts, which will be placed in a separate rule, entitled Fee Schedule. This will eliminate amending several different rules whenever a fee is changed.

8. The proposed amendment of 8.44.406 will read as follows: (new matter underlined, deleted matter interlined)

"8.44.406 DUPLICATE AND LOST LICENSES (1) Duplicate licenses shall be provided by the board to persons requesting the same in writing, upon payment of the replacement fee ~~of $1.00~~."

Auth: 37-1-134, 37-69-202, MCA Imp: 37-1-134, 37-69-202, MCA

9. The amendment is proposed as stated in paragraph 7. to eliminate reference to a fee amount. Again the fee will be placed within a rule entitled Fee Schedule.

10. The proposed adoption of a new rule setting out a fee schedule will read as follows:

I. "FEE SCHEDULE

(1)	Application fee	$30.00 non-refundable
(2)	Examination fee	95.00
(3)	Re-examination fee	95.00
(4)	Initial License Fee	85.00 prorated by quarter
(5)	Renewal fee	85.00
(6)	Replacement of certificates	15.00"

Auth: 37-1-134, 37-69-202, MCA Imp: 37-1-134, 37-69-307, MCA

11. The adoption is proposed to place all fees in one fee schedule as well as to set fees commensurate with program area costs as mandated by section 37-1-134, MCA. The above fees are those the board has determined necessary to cover the administrative costs associated with the FY 85 budget, as well as the remainder of the administrative costs for FY 84.

12. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoption in writing to the Board of Plumbers, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than June 14, 1984.

13. If a person who is directly affected by the proposed amendments and adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Plumbers, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than June 14, 1984.

14. If the board receives requests for a public hearing on the proposed amendments and adoption from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments and adoption, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 93 based on the 930 licensees in Montana.

BOARD OF PLUMBERS
DONALD KRISTENSEN, CHAIRMAN

BY: _____
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, May 7, 1984.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE MILK CONTROL BUREAU

In the matter of the amendment of Rule 8.79.101 (8) as it relates to reporting of butterfat test results	) NOTICE OF PROPOSED AMENDMENT) OF RULE 8.79.101 TRANSACTIONS) INVOLVING THE PURCHASE AND RE-) SALE OF MILK WITHIN THE STATE -) RULE DEFINITIONS)) NO HEARING CONTEMPLATED) DOCKET #70-84

TO: All Interested Persons.

1. On June 16, 1984, the Department of Commerce proposes to amend Rule 8.79.101 (8) to require distributors to report butterfat test results to producers when requested. The proposed amendment occurred as a result of a petition filed by Mr. Phil Strope on behalf of several Hutterite Colonies requesting the proposed change. The proposed amendment will become effective June 29, 1984.

2. The purpose of the amendment is to require distributors to report information concerning butterfat testing results when information is requested by producers. The rule as proposed to be amended would read as follows:

"8.79.101 TRANSACTIONS INVOLVING THE PURCHASE AND RESALE OF MILK WITHIN THE STATE - RULE DEFINITIONS (1) . . .

(8) Each distributor must maintain a record of butterfat tests of each producer's milk or cream covering each pay period and on demand, provide each producer with each butterfat test result made for that producer during the pay period for which the information was requested.

. . . "

Auth: 81-23-104, MCA Imp: 81-23-105 and 81-23-402 MCA

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Milk Control Bureau, 1430 Ninth Avenue, Helena, Montana 59620 not later than June 14, 1984.

4. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Milk Control Bureau, 1430 Ninth Avenue, Helena, Montana 59620 not later than June 14, 1984.

5. If the Bureau receives request for a public hearing on the proposed amendments from either 10% or 25, whichever is less of the persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from

an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. 10% of those persons directly affected has been determined to be 39 based on approximately 390 licensees doing business in Montana.

Gary Buchanan, Director
Department of Commerce

By William E Ross
William E. Ross
Bureau Chief
Milk Control Bureau

Certified to the Secretary of State May 7, 1984.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed adoption of a rule relating to obligating debts incurred for the purchase of property	NOTICE OF PROPOSED ADOPTION OF RULE RELATING TO OBLIGATING DEBTS INCURRED FOR THE PURCHASE OF PROPERTY NO PUBLIC HEARING CONTEMPLATED

To: All Interested Parties.

1. On June 18, 1984, the superintendent proposes to adopt the following rule:

Rule 1. OBLIGATION OF DEBTS INCURRED FOR THE PURCHASE OF PROPERTY.

The district may obligate debts incurred for the purchase of property subject to the following rules:

(1) Obligations can be made for personal property only.

(2) Obligations can be made only on forms designed by the office of the superintendent of public instruction and which are consecutively numbered by the district as used.

(3) Obligations are only valid if a copy of the purchase order is attached to the obligation record.

(4) The obligation record with the attached purchase order must be in the office of the county treasurer by the 30th of June.

(5) Obligations must be liquidated prior to midnight on September 30 of the same calendar year.

(6) The liquidation of obligation must use the same number originally given the obligation record.

(7) The liquidation of obligation must have the same dollar amount shown on the obligation record.

(8) Obligations not liquidated by midnight, September 30 will lapse and payment must then be charged against the current budget.

(9) After September 30 and before October 30, the school district must submit to the superintendent of public instruction an amended expenditure report (forms 20 and 21) for the preceding school fiscal year.

2. This rule is proposed in order to comply with a change in law adopted by the 1983 Legislature which will become effective for the 1983-84 school year.

3. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Dr. Gary L. Steuerwald, Assistant Superintendent for Administrative Services, Office of Public Instruction, Helena, Montana 59620, no later than June 18, 1984.

4. If a person who is directly affected by the proposed adoption wishes to express data, views and arguments orally or in writing at a public hearing, he or she must

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. 10% of those persons directly affected has been determined to be 39 based on approximately 390 licensees doing business in Montana.

Gary Buchanan, Director
Department of Commerce

By William E Ross
William E. Ross
Bureau Chief
Milk Control Bureau

Certified to the Secretary of State May 7, 1984.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed adoption of a rule relating to obligating debts incurred for the purchase of property	NOTICE OF PROPOSED ADOPTION OF RULE RELATING TO OBLIGATING DEBTS INCURRED FOR THE PURCHASE OF PROPERTY NO PUBLIC HEARING CONTEMPLATED

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2. This rule is proposed in order to comply with a change in law adopted by the 1983 Legislature which will become effective for the 1983-84 school year.

3. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Dr. Gary L. Steuerwald, Assistant Superintendent for Administrative Services, Office of Public Instruction, Helena, Montana 59620, no later than June 18, 1984.

4. If a person who is directly affected by the proposed adoption wishes to express data, views and arguments orally or in writing at a public hearing, he or she must

make written request for a hearing and submit this request along with any written comments to Dr. Gary L. Steuerwald, Assistant Superintendent for Administrative Services, Office of Public Instruction, Helena, Montana 59620, no later than June 18, 1984.

5. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption, from the Administrative Code Committee of the legislature, from a governmental subdivision or agency, or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons based upon the number of Montana school districts which are subject to the new law.

6. The authority of the department to make proposed adoption is based on Section 20-9-102, MCA, and the rule implements Section 20-9-209, MCA.

BY: _____
Ed Argenbright
State Superintendent

Certified to the Secretary of State, May 7, 1984.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of a rule relating to the Gifted and Talented Children Program.	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF RULE - GIFTED AND TALENTED

TO: All Interested Persons.

1. On June 11, 1984 at 10:00 a.m. to 12:00 p.m., a public hearing will be held in the Board of Regents Conference Room, 33 South Last Chance Gulch, Helena, Montana 59620 in the matter of adoption of rules relating to Gifted and Talented Children.

2. The proposed rule does not replace or modify any section currently found in the Montana Administrative Rules.

3. The proposed rule provides as follows:

RULE I GIFTED AND TALENTED (1) Every school district shall make an identifiable effort to provide educational services to the gifted and talented pupils which are commensurate with their needs and which foster a positive self-image.

(2) Such services will be outlined in a general district plan which includes:

(a) Identification of talent areas and their priorities;

(b) Standards for pupil identification and participation;

(c) A curriculum which is specific about subject matter areas, instructional materials and which allows for a modified school day;

(d) Teacher selection and preparation;

(e) Objective criteria for evaluating progress;

(f) Supportive services;

(g) Parent awareness and education;

(h) Procedures for student dismissal or reassignment.

(3) The Superintendent of Public Instruction shall be responsible for:

(a) The implementation of MCA 20-7-903 and 904;

(b) Promulgating, monitoring and reporting on the Board policy;

(c) Providing technical assistance to school districts;

(d) Assistance with the pooling of resources between districts.

4. The board of public education is proposing this rule to:

(a) Ensure that every school district in the State of Montana fulfills the constitutional mandate that "it is the goal of the people to establish a system of education which will develop the full educational potential of each person."

(b) To provide minimum criteria for a policy for gifted and talented children in each district.

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 Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than June 14, 1984.

6. Ted Hazelbaker, Chairman, and Hidde Van Duym, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana have been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed adoption is based on section 20-2-121(7) and (11) and 20-7-101, and the rule implements section 20-7-903, MCA. This rule is to be in effect June 30, 1987.

Ted Hazelbaker

TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

By: Hidde Van Duym

Certified to the Secretary of State April 23, 1984

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 10.55.402 Minimum Units for Graduation	NOTICE OF PROPOSED AMENDMENT OF RULE 10.55.402 MINIMUM UNITS FOR GRADUATION NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 16, 1984, the Board of Public Education proposes to amend rule 10.55.402(2) minimum number of units for graduation.

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

10.55.402 BASIC INSTRUCTIONAL PROGRAM, HIGH SCHOOL, JUNIOR HIGH, MIDDLE SCHOOL AND GRADES 7 AND 8 BUDGETED AT HIGH SCHOOL RATES (1) Remains the same.

(2) A high school shall require a minimum of ~~16 units~~ 16 units in 1983-84, 18 units in 1984-85 and 20 units in 1985-86 for graduation including ninth grade units; however, at its discretion, the governing authority may require additional units of credit for graduation. A unit of credit shall be given for satisfactory completion of a full-unit course. At the discretion of the local administrator, fractional credit may be given for partial completion of a course.

(3) through (10) remain the same.

AUTH: Sec. 20-2-121(7); 20-7-101 and 20-7-111.
IMPL: Sec. 20-2-121(7) and 20-7-101

3. The increase in minimum number of units for graduation is necessary to strengthen the core of the curriculum and provide a higher level of shared education as a foundation for performance during the after-school years.

4. Interested parties may submit their date, views or arguments concerning the proposed amendments in writing to Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than June 14, 1984.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than June 14, 1984.

6. If the Board receives requests for a public hearing on the proposed amendment from 10% of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association

having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 4500 or 10% of 45,000 students in secondary schools.

7. The authority of the Board to make the proposed amendment is based on section 20-2-121(7); 20-7-101 and 20-7-111, MCA, and the rule implements sections 20-2-121(7) and 20-7-101, MCA.

Ted Hazelbaker

TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

By: Linda Van Dyke

Certified to the Secretary of State April 30, 1984

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 10.62.101, 10.62.102 and 10.62.103, Certification of Fire Services Training School.	))))	NOTICE OF THE PROPOSED REPEAL OF RULES FOR CERTIFICATION OF FIRE SERVICES TRAINING SCHOOL. NO PUBLIC HEARING IS CONTEMPLATED.

TO: All Interested Persons.

1. On June 16, 1984, the Board of Public Education proposed to repeal rule 10.62.101, 10.62.102 and 10.62.103, Fire Department Instructor Certification, Course Certification and Certification of Firefighter I, Certified Firefighter II, and Advanced Certified Firefighter III in their entirety.

2. The rules proposed to be repealed are on pages 10-951, 10-952 and 10-953 on the Administrative Rules of Montana.

3. The Board of Public Education proposes to repeal these rules because non-compliance of the rules will have no effect. The rules regulate a voluntary service.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than June 14, 1984.

5. If a person who is directly affected by the proposed repeal wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments to Ted Hazelbaker, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than June 14, 1984.

6. If the Board receives requests for public hearing on the proposed repeal from either 10% or 25, 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. The percent of those persons directly affected is determined to be none because the rule affects no one's rights.

7. The authority of the Board to make the proposed repeal is based on section 20-31-102 and 20-31-201, MCA, and the rule implements section 20-31-102, MCA.

Ted Hazelbaker

TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

9-5/17/84

MAR Notice No. 10-3-78

By: Linda Van Dyke

Certified to the Secretary of State April 30, 1984

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 12.5.401 relating to oil and gas leasing policy for department-controlled lands	))))	NOTICE OF PROPOSED AMENDMENT OF Rule 12.5.401 - OIL AND GAS LEASING POLICY FOR DEPARTMENT-CONTROLLED LANDS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 28, 1984, the Fish and Game Commission proposes to amend Rule 12.5.401 regarding the oil and gas leasing policy for department-controlled lands.

2. The proposed rule will amend the current rule found in 12.5.401 of the Administrative Rules of Montana.

3. The proposed rule provides as follows:

12.5.401 OIL AND GAS LEASING POLICY FOR DEPARTMENT-CONTROLLED LANDS (1) ~~The primary responsibility of the fish and game commission is the protection and preservation of fish and wildlife habitat along with providing both recreational lands and recreational opportunities.~~ The purpose of resource management on lands controlled by the department of fish, wildlife and parks is to maintain and enhance conditions for fish, wildlife and recreational activities. Oil and gas leasing, if accommodated, will be consistent with that purpose. Minimizing damage or losses is not the objective. Improving wildlife's potential and recreational opportunities is the objective. Oil and gas leasing must be consistent with state and federal laws and regulations governing the use of lands acquired with federal funds. Derived income, if any, should be clearly and directly routed into programs benefiting the fish, wildlife and recreational resource.

(2) The following procedures only apply to those lands where the department owns both the mineral rights and the surface rights. Applications for seismic permits or for oil and gas leasing on lands controlled by the department will be considered on an individual basis according to the following procedures:

(a) Applications for seismic exploration permit for activities that cause no surface disturbance other than that necessary for seismic tests must be accompanied by a preliminary environmental review prepared by the department in accordance with the rules and regulations promulgated under the Montana Environmental Policy Act and adopted by the department. A permit, if granted by the department and approved by the commission, will be only for the purpose described in the preliminary environmental review and shall imply no right to engage in any activity not described in that review and will be for a specified period of time.

(b) ~~Applications for leases for the purposes of exploratory well drilling or development shall be accompanied by a complete environmental impact statement prepared by the department, consistent with the rules and regulations promulgated under the Montana Environmental Policy Act.~~ "Surface occupancy" leases for oil and gas development activity will not be issued, unless they are required to protect against asset depletion by drainage. In these instances, the lessee shall bear all costs incurred by the department in the monitoring of exploration and development.

(c) ~~The impact statement shall include all necessary stipulations to ensure that oil and gas drilling and extraction shall not adversely affect the purposes for which department properties were acquired, and shall be agreed to by the applicant. Cost of preparation of this environmental impact statement shall be borne by the applicant.~~ On parcels of 640 acres or less, it shall be the general policy of the commission to issue "no surface occupancy" leases after the preparation of a preliminary environmental review.

(d) ~~Upon review of the application, environmental impact statement, and special stipulations, the department may or may not grant the lease, subject to commission approval.~~ In most instances, tracts larger than 640 acres have been purchased with federal funds. On these areas the issuance of a lease may be in conflict with the purpose for which the area was purchased. If a preliminary environmental review indicates that the area could potentially be leased, then an environmental impact statement shall be prepared. The cost of the environmental impact statement shall be borne by the applicant, except in those instances wherein an individual other than the applicant is the lessee. Upon review of the environmental impact statement, the commission may or may not grant the lease.

(e) ~~In the event that a lease application for drilling an exploratory well or conducting oil and gas development activities is filed with the commission or department, the holder of an unexpired seismic exploration permit shall have the first right to apply for such a lease, provided he meets all the special conditions and stipulations specified by the department or commission.~~ The method of issuance of a lease shall be at the discretion of the commission, and may involve competitive bidding, direct negotiation, or any other method deemed appropriate.

(f) ~~On matters relating to oil and gas leasing other than those affecting the fish, wildlife, and recreational resources, the commission adopts the rules and regulations promulgated by the Montana department of state lands as found in ARM, Title 26, Chapter 6, Sub-Chapter 1.~~

AUTH: 87-1-301, 23-1-106, MCA; IMP: 87-1-303, 23-1-102, MCA

4. The purpose of the proposed amendment is to comply with federal regulations and to bring department policy more in line with the reasons the department possesses such land.

5. Interested persons may present their data, views or arguments concerning the proposed rule in writing to Stan Bradshaw, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, Montana 59620, no later than June 14, 1984.

6. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Stan Bradshaw, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, Montana 59620, no later than June 14, 1984.

7. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25, based on the approximate number of people who expressed an interest in the department's current oil and gas leasing policy.

SPENCER S. HEGSTAD, Chairman
Montana Fish and Game Commission

Certified to Secretary of State May 7, 1984

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

In the matter of the amendment of rules 16.16.101, 16.16.103 through 16.16.110, 16.16.301 through 16.16.310, 16.16.603 through 16.16.606, 16.16.803 through 16.16.805, and the repeal of 16.16.115, 16.16.311, and 16.16.802, and the adoption of RULES I, II, and III, concerning all aspects of the application for and granting of sanitary approvals of subdivisions	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT REPEAL, AND ADOPTION, OF RULES (Sanitation in Subdivisions)

TO: All Interested Persons

1. On June 26, 1984, at 10:00 a.m., a public hearing will be held in Room C209 of the Cogswell Building, Helena, Montana, to consider the amendment of of rules 16.16.101, 16.16.103 through 16.16.110, 16.16.301 through 16.16.310, 16.16.603 through 16.16.606, 16.16.803 through 16.16.805, the repeal of 16.16.115, 16.16.311, and 16.16.802, and the adoption of RULES I, II, and III, concerning all aspects of the application for and granting of sanitary approvals of subdivisions.

2. The proposed amendments would generally revise Title 16, Chapter 16 of the Administrative Rules of Montana, which rules implement the Department's responsibilities under the Montana Sanitation in Subdivisions Act, Title 76, Chapter 4, MCA. The Department is updating and clarifying the rules to provide a review process which is prompt and efficient but which also continues to protect public health and water quality and, in conjunction with the Subdivision and Platting Act, Title 76, Chapter 3, MCA, promotes high quality subdivision development in Montana. The rules proposed to be repealed can be found on pages 16-809, 16-822, and 16-849 of the Montana Administrative Code.

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

16.16.101 DEFINITIONS

(1) "Adequate water supply" means a water supply which meets the following criteria:

~~(a) Quality - public systems shall meet or exceed the minimum primary and secondary EPA drinking water standards as may be adopted by the department, unless an exemption or variance has been granted by the department.~~

(a) Quality - the maximum contaminant levels established in ARM Title 16, Chapter 20, sub-chapter 2 shall not be exceeded unless a waiver has been provided by the department.

~~(b) Quality - individual systems shall meet recommended standards for chemical tests listed in subsection (2)(b) of ARM 16.16.303.~~

(b) Quantity - the following flows shall be provided:

(i) For individual water supply systems, the flow indicated in ARM 16.16.303(5).

(ii) For multiple family water supply systems, recommendations provided by Department Circular 84-11.

(iii) For public water supply systems, the flow determined by the department in accordance with ARM 16.20.401.

~~(c) Quantity - provides 8-gal/min. for a minimum of two (2) hours for an individual homesite and provides the quantities accepted in "Design of Small Water Systems" by Joseph Salvato, Jr. for multiple family or public systems.~~

~~(d)~~ (c) Dependability - The necessary quantity and quality of water ~~will~~ must be available at all times unless depleted by emergencies.

(2) "Certificate of Survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(3) "Condominium" means the ownership of single units with common elements located on property.

(4) "Condominium living unit" means a part of the property of a condominium intended for occupancy.

(5) "Conventional subsurface sewage treatment system" means the process of sewage treatment in which the effluent is applied below the soil surface by distribution through horizontal open-jointed or perforated pipes in accordance with the requirements of Septic Tank Bulletin 332 for individual systems and Department Circular 84-10 for multiple family systems.

~~(3)~~ (6) "Individual water system" means any domestic water system which is not a public or multiple family system.

~~(4)~~ (7) "Individual ~~sewerage~~ sewage system" means any ~~sewerage~~ sewage system which is not a public or multiple family system.

(8) "Living unit" means the area under one roof occupied by a family. For example, a duplex is considered two living units.

~~(5)~~ (9) "Lot" is synonymous with "parcel" for purposes of this chapter.

~~(6)~~ (10) "Multiple family ~~sewerage~~ sewage system" means a non-public sanitary ~~sewerage~~ sewage system which serves or is intended to serve ~~between~~ two through nine living units. ~~families, the total people served shall not exceed 24.~~

~~(7)~~ (11) "Multiple family water supply system" means ~~any installation or structure~~ a non-public water supply system designed to provide ~~domestic or potable~~ water for human consumption to serve ~~between~~ two through nine living units. ~~families. The total people served shall not exceed 24.~~

~~(8)~~ (12) "Municipal" ~~means relating~~ pertains to ~~a~~ an incorporated city or town ~~as described in section 76-1-103(1), MCA~~.

~~(9)~~ (13) "Parcel" means a part of land which is created by a division of land or a space in an area used for recreational camping vehicles ~~and mobile homes~~ or trailers.

~~(10)~~ (14) "Plat", for the purposes of this chapter, ~~and sections 76-4-103, 76-4-104, 76-4-105, 76-4-121, 76-4-122, 76-4-123, and 76-4-127, MCA~~, means a graphical representation of a subdivision showing the division into lots, blocks, streets, alleys, and other divisions and dedications, and any document which graphically describes a division of land, including a certificate of survey.

~~(11)~~ (15) "Public sewage ~~disposal~~ system" means a ~~sewage disposal~~ system for collection, transportation, treatment and disposal of sewage designed to serve either ~~that serves~~ ten or more ~~families~~ living units for at least 60 days out of the calendar year, or 25 or more persons ~~for a period of~~ at least 60 days out of the calendar year.

~~(12)~~ (16) "Public water supply system" means ~~any installation or structure to provide domestic or potable water to~~ a system for the provision of water for human consumption from any community well, water hauler for cisterns, water bottling plant, water dispenser or other water that is designed to serve ten or more ~~families~~ living units for at least 60 days out of the calendar years or ~~a total of~~ 25 or more persons ~~for~~ a ~~period of~~ at least 60 days out of the calendar year.

~~(13) "Well" means an artificial excavation that derives water from the interstices of rocks or soil which it penetrates.~~

(17) "Seasonal high groundwater level" is the vertical distance from the natural ground surface to the groundwater surface as observed as a free water surface in an unlined hole during the time of the year when the groundwater is the highest, or has been saturated as may be indicated by mottling (soil color patterns).

~~(14)~~ (18) "Spring" is an opening in the earth's surface from which water issues or seeps.

~~(15)~~ (19) "Septic tank" means a storage settling tank in which settled sludge is in immediate contact with the sewage flowing through the tank while the organic solids are decomposed by anaerobic bacterial action.

(20) "State waters" means any body of water, irrigation system or drainage system, either surface or underground; it does not apply to irrigation waters where the waters are used up within the irrigation system and the waters are not returned to any other state waters.

(21) "Trailer" means a camping trailer, mobile home, motor home, pickup camper, or travel trailer.

(22) "Well" means an artificial excavation that derives water from the interstices of rocks or soil which it penetrates.

~~(16) "Subsurface sewage treatment system" means the process of sewage treatment in which the effluent is applied to the soil or subsoil by distribution through horizontal open-jointed or perforated pipes.~~

~~(17) "Usable area" means that portion of a lot that can be used for the placement of water supply and sewage treatment systems. Unusable areas shall include but not be limited to roadways, watercourses, utility easements and rock outcroppings.~~

AUTHORITY: Sec. 76-4-104 MCA
IMPLEMENTING: Sec. 76-4-104 MCA

16.16.103 APPLICATION FORMS (1) One copy of the appropriate application form must be submitted to the department:

(a) ~~The~~ A joint subdivision application form is to be used for proposed subdivisions requiring department review as well as local government review ~~as well as department review.~~ under the Subdivision and Platting Act, Title 76, Chapter 3, MCA, and may be obtained from the department.

(b) Application form E.S. 91A is to be used for parcels created by certificates of survey exempt from local government review and for removal of sanitary restrictions from undeveloped lots within existing subdivisions.

(c) Application form E.S. 91B is to be used for parcels that have existing structures using water or ~~sewerage~~ sewage systems. These parcels may be in the process of being created by certificate of survey or may be existing lots in a subdivision from which sanitary restrictions are being removed.

AUTHORITY: Sec. 76-4-104 MCA
IMPLEMENTING: Sec. 76-4-104, 76-4-125 MCA

16.16.104 INFORMATION SUBMITTED WITH APPLICATION (1) The following information shall be submitted to the department:

(a) A copy of a preliminary plat or final plat if the subdivision is subject to local review, or if exempt from local review, a certificate of survey suitable for filing with the county clerk and recorder. (See ARM 16.16.106, 16.16.108 and 16.16.110 for details.)

(b) A completed joint subdivision application form for subdivisions requiring local review and approval or the appropriate E.S. 91A or E.S. 91B form for subdivisions exempt from local review. (See ARM 16.16.103, 16.16.106, 16.16.108 and 16.16.110 for details.)

(c) Where individual water supply or sewage disposal systems are proposed, three ~~Two~~ copies of maps or plat(s) showing existing water supply or sewage treatment systems

~~in the vicinity of~~ adjacent to the subdivision, surface water bodies in the area, lot layouts specifying locations of proposed water systems and sewage treatment systems, percolation tests and soil tests locations. (See ARM 16.16.304 for details.)

(d) Storm drainage plans for removal of stormwater runoff including a A contour map showing lots, drainages and drainage structures. (See ARM 16.16.310 for details.)

(e) Where public water supply or ~~sewerage~~ sewage systems are proposed, ~~two~~ three copies of plans and specifications prepared by an engineer. (See ARM 16.16.302 for details.)

(f) Where ~~Multiple~~ multiple family systems ~~shall be designed in accordance with the standards set forth for public systems if a lot size reduction is requested.~~ are proposed, three copies of plans and specifications and supporting documents. (See ARM 16.16.305 for details.)

(g) Where individual water systems are proposed, evidence that the source is adequate in terms of quality, quantity and dependability. (See ARM 16.16.303 for details.)

(h) Where individual sewage treatment systems are proposed, detailed soils information, percolation tests in the subsurface sewage treatment area, groundwater information, and slope across treatment area (or a contour map with a minimum contour interval of two feet). (See ARM 16.16.304 for details.)

(i) ~~If the proposed subdivision is not within a department approved solid waste district, a solid waste approval form must be submitted.~~ The name of the solid waste district and the solid waste disposal site that will serve the subdivision. If on-site disposal is proposed, a plan detailing soils, hydrology and method of handling. (See ARM 16.16.309 for details.)

~~(j) Storm drainage plans for removal of storm water runoff. (See ARM 16.16.310 for details.~~

~~(k)~~ (j) A copy of the environmental assessment when required by the local governing body under the provisions of section 76-3-504, MCA.

~~(l) A subdivision approval statement from the local health officer or his designated representative.~~

AUTHORITY: Sec. 76-4-104 MCA
IMPLEMENTING: Sec. 76-4-104, 76-4-125 MCA

16.16.105 SUBDIVISION AND PLATTING ACT EXCLUSIONS SUBJECT TO DEPARTMENT REVIEW (1) ~~The exceptions stated in~~ Subdivisions excluded from local land use review under sections 76-3-207(1)(a), 76-3-207(1)(b), 76-3-207(1)(d), 76-3-208 and 76-3-210(1), MCA, are nonetheless subject to the provisions of this chapter.

AUTHORITY: Sec. 76-4-104 MCA
IMPLEMENTING: Sec. 76-4-125 MCA

16.16.106 REVIEW PROCEDURES (1) Upon receipt of a subdivision application, the department will have 60 days for final action. If an environmental impact statement is required, final action must be taken within 120 days.

(a) If the application is incomplete, the department or local review agent ~~will~~ shall deny the application, ~~explain~~ set forth the deficiencies to the ~~developer or engineer~~ applicant or his representative and ~~invite them to resubmit when additional information is available~~ shall review such additional information when resubmitted.

(b) When an application for a subdivision is resubmitted and there are ~~substantial~~ changes in the resubmittal which ~~affect the adequacy of the water or sewerage systems~~ substantially modify the design or operation of the water supply or sewage systems, the department may request an additional review fee.

~~(2) When individual water or sewerage systems are proposed the department must review two copies of a map or a plat showing the proposed location of water supply or sewage treatment systems and details regarding the suitability of their placement as listed in ARM 16.16.303(1) and 16.16.304(8). The department will return one copy of the approved plat or map to the developer or engineer if applicable.~~

~~(3) Where public water or sewerage is proposed, department review will proceed in two steps. The initial step will be the review of the preliminary plat and preliminary plans and specifications for the water and sewerage systems. The department will comment on the adequacy of the preliminary information. Preliminary plans and specifications consist of:~~

~~(a) Size and material of sewer and water lines.~~

~~(b) Slope and plan view of both systems superimposed on the plat.~~

~~(c) Manhole and lamphole locations.~~

~~(d) Description of water and sewer line crossings.~~

~~(e) Hydrant and blowoff locations.~~

~~(f) Special details in water and sewer systems, i.e., water booster pumps, lift pump stations, pressure reducers, etc.~~

~~(g) Statement from governing body accepting responsibility for providing water and sewer service to the subdivision.~~

~~(h) Statement from city assuring the present water and sewerage system can handle the anticipated load.~~

~~(i) Approval of preliminary plans by public works director or city engineer.~~

~~(4) Final review will commence when a copy of the plat to be signed by the local governing body has been submitted to the department along with two copies of the final plans and specifications for the water and sewerage systems.~~

~~(5) All subdivisions submitted to the department after November 3, 1975, shall be reviewed under conditions set forth in this chapter. Subdivisions submitted before November 3, 1975, shall be reviewed under conditions set forth in this chapter in effect during that time.~~

(2) Any undeveloped subdivision lot (a lot without a structure requiring water supply or sewage disposal) submitted for review which was recorded with sanitary restrictions prior to July 1, 1973, shall be reviewed in accordance with requirements set forth in this chapter. In cases where any requirements of this chapter would preclude the use for which each lot was originally intended, then the applicable requirements (including the absence thereof) in effect at the time such lot was recorded shall govern except that sanitary restrictions in no case shall be lifted from any such undeveloped lot which cannot satisfy any of the following requirements:

(a) Where a subsurface sewage treatment system is utilized, at least 4 feet from the natural ground surface to the seasonal high groundwater;

(b) The site for any subsurface sewage treatment system may not exceed 25% in slope;

(c) No part of the lot utilized for the subsurface sewage treatment system may be located in a 100 year floodplain.

(d) Where a subsurface sewage treatment system is utilized, soil conditions demonstrating a capacity for safe treatment and disposal of sewage effluent.

(3) The department hereby adopts and incorporates by reference ARM 16-2.14(10)-S14340 (1977); MAC 16-2.14(10)-S14340 (1976, 1975, 1973); Regulation 51.300 (1970); Regulation No. 136 (1961) which set forth former department requirements for sanitary review of subdivisions. Copies of ARM 16-2.14(10)-S14340 (1977); MAC 16-2.14(10)-S14340 (1976, 1975, 1973); Regulation 51.300 (1970); Regulation No. 136 (1961) are available upon request from the Subdivision Section, Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

AUTHORITY: Sec. 76-4-104 MCA
IMPLMEMENTING: Sec. 76-4-104, 76-4-125 MCA

16.16.108 LOCAL REVIEW (1) The department shall enter into a written review agreement with local governments that have ~~qualified personnel~~ persons as determined by the department to be qualified to review water supply, sewage and solid waste disposal facilities for subdivisions involving five or fewer parcels except where such subdivisions involve the extension of public water supply or sewer systems.

(a) When the department and local governments have entered into a review agreement, the ~~developer~~ applicant shall submit the subdivision application to the designated personnel of the local government.

(b) The local government shall agree to review water supply, sewage and solid waste disposal systems according to the provisions of this chapter.

~~(b)~~ (c) Local governments shall have 50 days from the date of receipt of a subdivision application to forward to the department the complete application and the local government's recommended action on the application.

~~(c) The local government shall agree to review water supply, sewage and solid waste disposal facilities according to the provisions of this chapter.~~

(2) The local government shall notify the department of its recommendations for approval by typing a certificate of plat approval, signing it, and mailing it to the department along with the completed application. The department shall have ten (10) days to take final action upon receipt of the certificate of plat approval.

(3) The department shall reimburse local governments for services rendered in accordance with sub-chapter 8 of this chapter.

AUTHORITY: Sec. 76-4-104 MCA
IMPLEMENTING: Sec. 76-4-104, 76-4-125 MCA

16.16.110 CERTIFICATION OF APPROVAL (1) A certificate of plat approval will be issued when an approval statement from the local health officer or his designated representative has been received, the requirements of the Montana Environmental Policy Act have been met and the department is satisfied that the following conditions ~~have been fulfilled:~~ will be met:

(a) Sewage ~~treatment system~~ will not pollute water or endanger public health;

(b) The water supply ~~is~~ will be adequate~~,~~ ;

(c) ~~solid~~ Solid waste disposal ~~is~~ will be in accordance with applicable state laws and rules~~,~~ ; and ~~the requirements of the Montana Environmental Policy Act have been met.~~

(d) Storm drainage will have proper drainage ways and the drainage will not pollute state waters.

AUTHORITY: Sec. 76-4-104 MCA
IMPLEMENTING: Sec. 76-4-104, 76-4-125 MCA

RULE I MOBILE HOMES AND RECREATIONAL VEHICLES (1) In addition to the requirements of this chapter, trailer courts and campgrounds as defined in 50-52-101 MCA are subject to ARM 16.10.701 et seq.

(2) In addition to the requirements of this chapter, subdivisions designed specifically for the placement of mobile homes or recreational vehicles, but which are not trailer courts or campgrounds as defined in 50-52-101 MCA are subject to the design standards for water service laterals and risers contained in ARM 16.L0.706(3) and (4) and the design standards for sewer service laterals and risers contained in 16.10.707

(5) and (6).
AUTHORITY: Sec. 76-4-104 MCA
IMPLEMENTING: Sec. 76-4-104, 76-4-125 MCA

16.16.301 LOT SIZES (1) Where individual water and sewage treatment systems are to be utilized, the minimum lot size shall generally be one acre of ~~usable~~ area. Smaller lot sizes will only be considered if the ~~developer~~ applicant or his representative provides information from ~~engineers, soils scientists, or hydrologists~~ qualified professional consultants indicating no sanitary problems will occur. Each lot will be considered separately. ~~In no case shall smaller lot sizes be considered where there is a possibility of the water table being within twenty feet of the surface of the ground.~~

(2) Where either an individual water supply system or an individual ~~sewerage~~ sewage system is ~~provided~~ proposed and the other service is proposed to be provided by a an approved public or multiple family water or ~~sewerage~~ sewage system, the minimum lot size shall generally be 20,000 square feet of ~~usable~~ area, unless a smaller lot size can be justified.

(3) ~~Larger lot~~ Lot sizes larger than set forth in subsections (1) and (2) above may be required where individual sewage treatment systems are proposed and the concentration of living units may cause pollution or contamination of ~~groundwater~~ state waters or ~~if~~ where an adequate water supply cannot be developed for the proposed number of ~~dwelling~~ living units.

(4) Mobile homes, trailer courts, campgrounds, multiple family dwellings, cluster-type development, and commercial or industrial development, must have suitable land area to provide an adequate system or systems of water supply and sewage treatment. ~~Special review shall be necessary when said type development is to be considered for any subdivision.~~
AUTHORITY: Sec. 76-4-104 MCA
IMPLEMENTING: Sec. 76-4-104 MCA

16.16.302 PUBLIC WATER AND SEWER (1) Where a major subdivision is contiguous to or within 500 feet of a department approved public water or ~~sewerage~~ sewage system, ~~(~~ and that system can handle the additional load, ~~)~~ or is located within an Environmental Protection Agency facility plan service area, the subdivision shall be connected to the public system, unless the local government body refuses ~~permission in writing to connect to this system.~~ to allow connection of the proposed subdivision. A waiver of this provision may be given by the department where connection to the existing system is physically or economically impractical.

(2) Where a public water supply or ~~sewerage~~ sewage system is to be utilized, plans and specifications and supporting documents shall be prepared ~~by an engineer. Plans and specifications shall be prepared~~ in accordance with the following:

(a) Section 75-6-112, MCA and ARM 16.20.401.

~~(b) "Recommended Standards for Water Works" and "Recommended Standards for Sewage Works" as prepared by the Great Lakes-Upper Mississippi River Board of State Sanitary Engineers (Ten State Standards).~~

~~(c) "Design of Small Water Systems" by Joseph A. Salvato, Jr.~~

~~(d) Where subsurface sewage treatment systems are utilized, publications such as "Manual of Septic Tank Practice" by U.S. Department of Health, Education and Welfare, "Treatment and Disposal of Waste Water from Homes by Soil Infiltration and Evapotranspiration" by Alfred P. Bernhart, or "Waste Water Treatment Systems for Rural Communities" by Goldstein and Moberg may be used as a guide for sizing drainfields.~~

~~(e)~~ (b) ARM Title 16, Chapter 20, Sub-chapter 6 2.

~~(f)~~ (c) ARM Title 16, Chapter 20, Sub-chapter 2 6.

~~(3) Two copies of the plans and specifications shall be provided the department. After the department has completed review and found the plans and specifications to be satisfactory, one copy will be returned to the developer or his representative if applicable.~~

~~(4) When a subdivision is to be served by municipal water or sewer, a representative of the local governing body (i.e., public works director, city engineer) must notify the department that the plans and specifications are acceptable and that the municipality will provide the required service.~~

~~(5) Upon completion of construction of the water or sewer system, the project engineer must certify, in writing, that the system was installed in accordance with the approved plans and specifications.~~

~~(6) When a subdivision will connect to the existing municipal water or sewer system of a class 1 or class 2 city (as defined by section 7-1-4111, MCA), final review of an application may be conducted upon submittal of preliminary plans and specifications as specified in subsection (3) of ARM 16.16.106. Final plans and specifications for the public extensions or new system must be submitted to the department before commencing construction of the facilities.~~

~~(7)~~ (3) Complete plans and specifications for new public ~~sewerage~~ sewage or water supply systems or extensions to existing systems must be reviewed by the department as required by section 75-6-112, MCA, prior to construction of the system. No construction can begin on dwellings or structures that will utilize the systems until the subdivision is clear of sanitary restrictions.

~~(8)~~ (4) In order for the department to approve a subdivision that will connect to an existing public water or sewer system, the following conditions must be satisfied:

(a) The existing public system, or if the additional hookups will create a public system, must be approved by the department under the provisions of Title 75, Chapter 6, Part 1, MCA.

(b) The water or sewer district or managing entity of the supplier must inform the department that the hookups are authorized.

~~(9)~~ (5) When a new public water supply or sewer system is created by a proposed subdivision, the means of providing adequate maintenance and operation shall be reported to the department. ~~Federal Housing Administration pamphlet FHA No. 1300, "Ownership and Organization of Central Water and Sewerage Systems" should be followed in establishing provisions for providing maintenance, operation and perpetuation of the water or sewerage facilities.~~ A homeowner's association or other equivalent mechanism shall be established to assure the maintenance, operation and perpetuation of the water supply or sewage systems.

~~(a)~~ (6) The person assigned to operate the system shall be certified in accordance with Title 37, Chapter 42, Part 3, MCA.

(7) The department hereby adopts and incorporates by reference:

(a) ARM 16.20.401, which sets forth minimum standards for the preparation of plans and specifications for public water and wastewater systems, and

(b) ARM Title 16, Chapter 20, sub-chapters 2 and 6, which set forth, respectively, maximum contaminant levels allowed in public drinking water supplies and water quality standards applicable to state surface waters.

(c) Copies of ARM 16.20.401 and ARM Title 16, Chapter 20, sub-chapters 2 and 6 may be obtained from the Subdivision Section, Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

AUTHORITY: Sec. 76-4-104 MCA
IMPLEMENTING: Sec. 76-4-104, 76-4-125 MCA

16.16.303 INDIVIDUAL WATER SUPPLY SYSTEMS (1) The proposed location of the individual water supply sources shall be shown on a copy of the plat or map with minimum distances referenced to any proposed sewage treatment devices including existing systems in the area.

(2) A report shall be submitted giving the following information:

(a) ~~Chemical quality~~ Quality of water obtained from test wells within the proposed subdivision, which shall include the concentration of ~~calcium, magnesium, sodium, bicarbonate, chloride, sulfate, nitrate, hardness, and iron. This information should be obtained from a test well in the proposed subdivision except as allowed under subsection (2)(b),~~

nitrates and total dissolved solids or conductivity. Additional testing may be required for other parameters where the department believes they may be present in harmful quantities. The above information may be waived by the department where information submitted from existing nearby water sources and/or geological reports confirm that the quality of the water supply in the proposed subdivision will be adequate for potable water.

~~(b) Chemical quality of water need not be obtained from test wells in the proposed subdivision if the department receives confirmation that the water quality meets existing standards. Confirmation shall include hydrologist reports concerning chemical quality in existing wells in the area and the reasons why the quality should be considered typical of well water to be developed on the land under review.~~

~~(c)~~ (b) Where individual sewage systems are utilized in addition to an individual water supply, the department may require a report discussing the possible effect of the sewage disposal system on water quality. References utilized for the prediction and discussion shall be provided.

(3) When wells are utilized for individual water supply systems, the construction of the systems shall be in accordance with ~~the latest edition of department circular no. 12.~~ Department Circular 12 (Feb. 1984, rev. ed.).

(4) A minimum well depth of 25 feet shall be required unless geological information provided by the applicant or his representative demonstrates that a lesser depth will assure both adequate water quality and protection of the supply from contamination. A greater depth may be required if water of better chemical quality or better sanitary quality can be obtained with a deeper well.

(5) An individual water system shall provide a sustained yield of at least ~~8~~ eight gallons per minute over a ~~2~~ two hour period or five gallons per minute over a four hour period. A lesser flow may be approved by the department if it can be shown to the department that the water supply system is adequate to meet demands.

~~(6) Acceptable tests shall be conducted to determine yield and maximum drawdown of the well. If acceptable tests cannot be conducted a hydrogeological report prepared by a hydrogeologist or engineer with a hydrology background, which substantiates that there is an adequate quantity and quality of water for the type of subdivision proposed shall be conducted. A description of the soils penetrated shall be provided as part of the report.~~

(6) A person proposing an individual water supply shall submit information which verifies or estimates the flows which will be present from the proposed supply. This information shall be provided through one or more of the following:

(a) Test wells within the proposed subdivision,

(b) Well logs and testing of nearby wells, and

(c) Hydrogeological reports.

~~(7) A waiver of requirements of subsection (2)(a) and subsection (6) may be requested for subdivisions containing five lots or less, where the information required by these subsections is available from existing wells. Well logs of existing wells located immediately adjacent to the subdivision and other substantiated geological information shall be provided if this waiver is requested.~~

~~(8)~~ (7) The minimum safe distances shown in Table 1 (subsection (17) of ARM 16.16.304) shall be maintained.

~~(9)~~ (8) An alternate water source may be developed where it is shown to be not economically ~~unfeasible~~ feasible to develop a well or where well water is unacceptable in terms of quantity or quality. Evidence that the alternate water supply is adequate ~~will~~ shall be provided to the department.

(a) When ~~Springs when~~ developed as an alternate water system, springs shall be constructed in accordance with ~~the latest~~ Department Circular 11 (March, 1972 ed.) ~~Disinfection shall be provided for all spring water.~~

(b) When ~~Surface water when~~ developed as an alternate water system, surface water shall receive a minimum treatment of filtration and disinfection. Additional treatment may be required to insure that the water does not exceed the maximum contaminant levels established in ARM Title 16, Chapter 20, sub-chapter 2.

(c) Cisterns may be utilized where an acceptable source of groundwater is not available if:

(i) A potable water source is available for hauling within a reasonable distance.

(ii) A sanitary means of hauling is available.

(iii) All hauled water is disinfected in accordance with Department Circular 17, (May, 1972 ed.)

(iv) The cistern is constructed and installed in accordance with Department Circular 17, (May, 1972 ed.) or an equivalent storage facility approved by the department is provided.

(9) Where an existing system is present in a proposed subdivision, the evaluation of the existing system by the department may be based on information submitted by the applicant on the adequacy to the existing or prior user of the system and the capability of the system to provide an adequate water supply.

(10) Disinfection may be required by the department of water supply systems that appear to be inadequate to meet bacteriological standards. If disinfection is required, adequate chlorination along with a minimum retention time of two hours for surface waters and one half hour for other waters must be provided. Other methods of disinfection acceptable to the department may be approved.

(11) The department hereby adopts and incorporates by reference:

(a) Septic Tank Bulletin 332 (Mar. 1984, rev. ed.), which is a joint publication of the department and the Cooperative Extension Service of Montana State University, setting forth minimum requirements for the location and construction of septic tanks and drainfields;

(b) Department Circular 12 (Mar. 1984, rev. ed.), which sets forth minimum specifications for the location, construction, and operation of individual water supply systems;

(c) Department Circular 17 (May, 1972 ed.), which sets forth minimum specifications for the construction and installation of water cisterns, and

(d) ARM Title 16, Chapter 20, sub-chapter 2, which sets forth maximum levels of organic and inorganic substances allowed in public drinking water supplies.

(e) Copies of these circulars, bulletins and rules may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

AUTHORITY: Sec. 76-4-104 MCA
IMPLEMENTING: Sec. 76-4-104, 76-4-125 MCA

16.16.304 INDIVIDUAL SEWAGE TREATMENT SYSTEMS (1) A ~~groundwater depth at any time of six feet or less from the natural ground surface shall preclude the use of individual subsurface sewage treatment systems.~~ When the groundwater at a site proposed for subsurface sewage treatment at any time reaches six feet or less, the use of a conventional subsurface sewage treatment systems is precluded. A groundwater depth of more than six feet from the natural ground surface may be required when necessary to avoid subsurface water contamination. There shall be a minimum separation of at least four feet between the bottom of the subsurface ~~sewerage~~ sewage treatment system and the ~~maximum~~ seasonal high groundwater elevation.

~~(2) The depth to groundwater shall be determined by excavating or boring a hole at least 7 feet in depth and waiting a minimum of one hour to establish equilibrium conditions before measuring the depth from ground surface to the water level.~~

~~(3)~~ (2) Natural slopes greater than 15 percent shall preclude the use of subsurface ~~sewerage~~ sewage treatment systems unless evidence is submitted substantiating that soil and groundwater conditions are such that there will be no visible outflow of liquid downslope from the installation of the subsurface ~~sewerage~~ sewage treatment system. The department will not consider use of subsurface sewage treatment systems on natural slopes that exceed 25 percent.

~~(4)~~ (3) The subsurface sewage treatment area must include area for 100% replacement of the system.

~~(5)~~ (4) The department may require detailed lot layouts to be shown on the contour map if there is a question about suitability of the lot(s). A detailed lot layout includes water supply and ~~sewerage~~ sewage systems, building locations, driveways, watercourses or other items that may influence the suitability of the lot for development.

~~(6)~~ (5) The department may require the ~~developer~~ applicant to physically identify drainfield location on the site by staking or other acceptable means of identification.

~~(7)~~ (6) Where septic tanks and conventional subsurface sewage treatment systems are proposed, they shall be designed and installed in accordance with ~~the latest edition of~~ Septic Tank Bulletin 332 (Mar. 1984, rev. ed.) ~~as published by the department and the Cooperative Extension Service, Montana State University.~~

~~(8)~~ (7) The following information shall be provided on a copy of the plat or map:

(a) Location and dimension of an area including 100% replacement for the subsurface sewage treatment system on each lot.

(b) When individual wells are proposed, the location of each well on the lot and its minimum distance from the septic tank area, subsurface sewage treatment system area, and any proposed or existing sewer line or ~~sewerage~~ sewage treatment system in the subdivision or in the vicinity of the subdivision.

~~(e)~~ (8) Percolation tests in accordance with Septic Tank Bulletin 332 (Mar. 1984, rev. ed.) shall be performed on each lot in the area of the proposed subsurface sewage treatment system by a ~~soils scientist, geologist, engineer, registered sanitarian or other persons with soils~~ person with soil science qualifications acceptable to the department. Percolation tests shall be keyed by a number on the plat to the results in the report form.

~~(d)~~ (9) ~~If groundwater is within 6 feet of the surface or if there is~~ If the applicant or the department has reason to believe groundwater will be within 6 feet of the surface at any time of the year, groundwater monitoring holes shall be provided to a depth of at least 10 feet to determine seasonal high groundwater level. ~~during its period of occurrence.~~

~~(e)~~ (10) When detailed soil descriptions for the area are not available, soil descriptions for the subdivision shall be obtained from test holes at least 7 feet in depth. The number of test holes will depend upon the variability of the soils. The descriptions shall be determined by someone knowledgeable in the field of ~~soils~~ soil science~~, such as a soils scientist, geologist, or an engineer.~~ The U. S. Department of Agriculture's "Soils Classification System" ~~or "Unified Soil Classification System"~~ shall be used in said descriptions in order to determine soil texture. Information on the internal and surface drainage characteristics should be

included. Additional information, such as exchange capacity or other chemical or physical characteristics, may be requested where deemed pertinent.

~~(f)~~ (11) If ~~there is~~ the applicant or the department has reason to believe that bedrock or other impervious material is within 6 feet of the ground surface at the site of proposed subsurface sewage treatment systems, test holes or the results of hammer siesmic tests shall be provided. The nature of the formation should be described in detail by a scientist knowledgeable in geology. At least a four-foot separation must be maintained between the bottom of a subsurface sewage disposal system and the bedrock or other impervious material. A greater separation may be required when warranted by soil conditions.

~~(g)~~ (12) Each soil boring shall be keyed by a number on a copy of the plat or map with the information provided in the report.

~~(h)~~ (13) Location of streams, lakes, ponds or irrigation ditches including the 100 year floodplain on or near the proposed subdivision.

~~(9)~~ (14) ~~Other individual~~ Individual sewage treatment systems other than conventional systems may be approved if they are designed in accordance with ~~the guidelines~~ Department Circular 84-12 (April, 1984 ed.) and a waiver has been provided by the department.

~~(i0)~~ (15) No individual sewage treatment system shall be located within 100 feet horizontal distance from the ~~maximum high water level of a~~ 100-year flood level of any river, lake, stream, pond or watercourse and from any swamp or seep unless a waiver has been provided by the department. A waiver may only be provided if:

(a) The watercourse is an irrigation ditch and the groundwater flow at the drainfield site will not enter the irrigation ditch, or

(b) The river or stream average yearly highwater mark is a minimum of 100 feet from the drainfield and the bottom of the drainfield will be at least four feet above the 100 year flood elevation.

(16) More than 100 feet from the maximum high water level may be required when soil conditions indicate a need for the greater distance.

~~(11)~~ (17) Other minimum safe distances shown in Table I shall be maintained.

TABLE I

From	Septic Tank	Sewage Treatment Field/Bed
Well	50 feet	100 feet
Property line	10 feet	10 feet
Foundation wall	~~5~~ 10 feet	~~5~~ 10 feet
Water line	10 feet	10 feet
Cistern	25 feet	50 feet

(18) Where an existing system is present in a proposed subdivision, the evaluation of the existing system by the department shall be based on information submitted by the applicant on the adequacy to the prior user of the system and the capability of the system to operate without risk to public health and without pollution of state waters.

(19) The department hereby adopts and incorporates by reference:

(a) Septic tank bulletin 332 (Mar. 1984, rev. ed.), which is a joint publication of the department and the Cooperative Extension Service of Montana State University, setting forth minimum requirements for the location and construction of septic tanks and drainfields;

(b) The U.S. Department of Agriculture's Soil Classification System which is a recognized set of methods for identifying the nature and characteristics of soils and is contained in a series of documents published by the U.S.D.A. Soils Conservation Service; and

(c) Department Circular 84-12, which sets forth minimum specifications for the siting, design, construction, and operation of individual on-site alternate sewage disposal systems.

(d) Copies of these documents may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

AUTHORITY: Sec. 76-4-104 MCA
IMPLEMENTING: Sec. 76-4-104, 76-4-125 MCA

16.16.305 MULTIPLE FAMILY SYSTEMS (1) Multiple family water supply systems ~~should~~ shall be designed in accordance with Department Circular 84-11 ~~"The Design of Small Water Systems" by Joseph A. Salvato, Jr. and "The Recommended Standards for Water Works" by the Great Lakes-Upper Mississippi River Board of State Sanitary Engineers.~~

(2) Multiple family ~~subsurface~~ sewage ~~treatment~~ systems shall be designed in accordance with Department Circular 84-10 and ARM 16.16.304 except subsections (6) and (7)(c). ~~subsection (2)(d) of ARM 16.16.302.~~

~~(3) When it is evident from available data that a multiple family water or sewerage system will become part of a municipal or other community system within a 10-year period, the water or sewage of the multiple family system must conform with the standards of the municipality or community.~~

(3) Multiple family systems shall be designed in accordance with ARM Title 16, chapter 20, sub-chapter 2 and ARM Title 16, chapter 20, sub-chapter 6.

~~(4) Multiple family systems must meet the standards established for public systems in ARM 16.16.302 before any reduction in lot size will be allowed.~~

(4) Multiple family systems for six or more living units shall be designed by an engineer. Smaller systems which are complex (i.e., a water supply system with substantial pressure differences through the distribution system or a sewage system requiring the pumping of sewage) may also be required by the department to be designed by an engineer.

(5) When more than one multiple family water system or sewer system is provided within a subdivision, they should be tied together when the department deems it necessary to provide greater system reliability.

(6) When a new multiple family water supply or sewage system is created by a proposed subdivision, the means of providing adequate maintenance and operation of such system shall be reported to the department. A non-profit homeowner's association or other equivalent mechanism shall be established to assure the maintenance, operation and perpetuation of the water supply or sewage systems.

(7) The department hereby adopts and incorporates by reference:

(a) ARM Title 16, Chapter 20, sub-chapters 2 and 6, which set forth, respectively, maximum contaminant levels allowed in public water supply systems and water quality standards for state surface waters, and

(b) Department Circular 84-10 which sets forth minimum specifications for the design, construction, and operation of sewers and septic treatment and disposal systems for multi-family and non-residential buildings.

(c) Copies of Department Circular 84-10 and ARM Title 16, Chapter 20, sub-chapters 2 and 6, may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

AUTHORITY: Sec. 76-4-104 MCA
IMPLEMENTING: Sec. 76-4-104, 76-4-125 MCA

16.16.309 SOLID WASTES (1) Solid wastes ~~shall be disposed of in accordance with Title 75, Chapter 10, Part 2, MCA, and ARM Title 16, Chapter 14, Subchapter 5.~~ stored within the subdivision shall be placed in adequate containers and removed at a frequency to prevent a nuisance. When removed from the subdivision, the solid wastes shall be disposed of at a department licensed or conditionally licensed site.

~~(2) Developers shall use an existing approved solid waste disposal site in their district or county. Completion of the solid waste approval form by an approved refuse hauler and agent for the solid waste disposal site shall be submitted to the department except when the subdivision is within an approved solid waste district.~~

~~(3)~~ (2) A landowner may dispose of solid waste on his property when the parcel is over five (5) acres in size and a plan for the disposition of the solid waste is included.

The plan shall include:

(a) An analysis of soils and hydrology indicating the water pollution potential of the proposed site. The analysis shall be prepared by a professional engineer, ~~soils~~ soil scientist, or hydrogeologist.

(b) Tests or information indicating the seasonal high groundwater depth at the proposed site.

(c) Availability of equipment to operate and maintain the proposed site.

(d) The proposed method of operation and maintenance of the site.

AUTHORITY: Sec. 76-4-104 MCA
IMPLEMENTING: Sec. 76-4-104 MCA

16.16.310 STORM DRAINAGE (1) The department must receive a contour map showing the lots, and the drainages and drainage structures to serve the proposed subdivision. The map shall conform to preliminary plat requirements of local subdivision regulations if subject to local review; if the subdivision is not subject to local review a 7 1/2 minute or 15 minute U.S.G.S topographic quad map, or a contour map with contours no greater than 20 feet will be accepted.

(2) Drainage structures including size shall be shown on the plan.

(a) In subdivisions with six or more lots, the ~~The~~ carrying capacity of the drainageway between the subdivision and point of disposal should be presented in the plan. Where large amounts of runoff are probable from subdivisons with five or fewer lots, this requirement will also apply.

(b) ~~Plan shall include steps to prevent erosion during and after subdivision construction.~~ Where erosion has been determined to be a problem unless precautionary measures are taken during construction or following construction, information on measures to control erosion shall be provided.

(3) Storm water that reaches state surface waters must be treated prior to discharge when the department determines that untreated storm water is likely to degrade the receiving waters.

(a) Minimum treatment of stormwater consists of removal of settleable solids and floatable material. The department may require more extensive treatment if deemed necessary to protect state waters from degradation.

(b) Plans for the treatment facility must be approved by the department.

AUTHORITY: Sec. 76-4-104 MCA
IMPLEMENTING: Sec. 76-4-104, 76-4-125 MCA

RULE II SUBDIVISIONS ADJACENT TO STATE WATERS (1) Where the department has determined that the disposal of sewage from a proposed subdivision may adversely affect the quality of a

lake or other state waters, the department may require additional information and data concerning such possible effects. Upon review of such information, the department may impose specific requirements for sewage treatment and disposal as are necessary and appropriate to assure compliance with the water quality act, Title 75, Chapter 5, MCA, and water quality standards, ARM Title 16, Chapter 20, sub-chapter 6.

(2) The department hereby adopts and incorporates by reference ARM Title 16, chapter 20, sub-chapter 6, which sets forth water quality standards for state surface waters. Copies of ARM Title 16, chapter 20, sub-chapter 6, may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

AUTHORITY: Sec. 76-4-104 MCA
IMPLEMENTING: Sec. 76-4-104, 76-4-125 MCA

RULE III CONDOMINIUM CONVERSIONS (1) Except as provided in subsections (2) and (3), condominiums, including those to be constructed on parcels of land that are exempted from review under the provisions of Title 76, Chapter 3, MCA, and including conversion of existing structures into condominiums, are subject to review under the requirements of this chapter.

(2) Conversions of existing structures into condominiums are not subject to this chapter where the converted units are to be served by existing municipal water and sewer facilities in a Class I or II city as defined in section 7-1-4111, MCA.

(3) Where the water or sewage disposal system in an existing building to be converted into condominiums has already been approved under either department requirements or has been approved by the local health department under local requirements, such water or sewage disposal system is not subject to review under this chapter.

AUTHORITY: Sec. 76-4-104 MCA
IMPLEMENTING: Sec. 76-4-111, 76-4-125 MCA

16.16.603 SUBDIVISIONS IN MASTER PLANNED AREA (1) A subdivision is excluded from sub-chapters 1 and 3 of this chapter, is not subject to sanitary restrictions, and can be filed with the county clerk and recorder without department review when all of the following conditions are met:

(a) The subdivision is located totally within a master planned area adopted pursuant to Title 76, Chapter 1, MCA.

(b) The local governing body has certified to the department that municipal services for water supply, sewage and solid waste disposal shall be provided within one year after notice of certification is issued.

(c) Notice of certification shall be forwarded to the department by the local governing body within 20 days after ~~receiving~~ the local governing body receives an application under the provisions of the Subdivision and Platting Act.

(d) The notice of certification shall include:

(i) Name and address of the applicant.

(ii) A copy of the preliminary plat or final plat where a preliminary plat is not necessary.

(iii) The number of proposed parcels in the subdivision.

(iv) A copy of ~~an~~ any applicable zoning ordinance ~~in effect~~.

(v) How construction of the water supply and sewage disposal systems or extensions will be financed.

(vi) A copy of the master plan if one has not yet been submitted to the department.

(vii) Relative location of the subdivision to the city or town.

(viii) Certification that adequate municipal facilities for the supply of water and disposal of sewage and solid waste are available or will be provided within one year.

(e) The required lot fees as determined in sub-chapter 8 of this chapter have been submitted to the department.

AUTHORITY: Sec. 76-4-104 MCA
IMPLEMENTING: Sec. 76-4-125 MCA

16.16.605 EXCLUSIONS (1) ~~The exemptions stated in~~ The following subdivisions exempted from review under sections 76-3-207(1)(c), ~~76-3-207(2)(b),~~ 76-3-201, and 76-3-204, MCA, also are not subject to the provisions of this chapter:

(a) Divisions created by order of any court of record in this state or by operation of law, or divisions which, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain (Title 70, Chapter 30, Parts 1, 2 and 3, MCA);

(b) Divisions created to provide security for construction mortage, liens or trust indentures;

(c) Divisions which create an interest in oil, gas, minerals, or water which is now or hereafter severed from the surface ownership of real property;

(d) Divisions which create cemetery lots;

(e) Divisions created by the reservation of a life estate;

(f) Divisions created by lease or rental for farming and agricultural purposes;

(g) Sale, rent, lease or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land. (This exemption does not apply to condominiums prior to their construction.)

(h) Divisions made for agricultural or pasture use when no structures requiring water and/or sewage facilities have been or are to be erected or utilized, provided the parties to the transaction enter into a covenant running with the land and revocable only by the governing body and the property owner. Any change in land use subjects the division to the

provisions of Title 76, Chapter 4, Part 1, MCA and this chapter.

(2) The following divisions of land are also exempt from this chapter and must bear on the survey document the acknowledged certificate of the property owner stating that the division of land in question is exempt from review and quoting in its entirety the wording of the applicable exemption.

(a) Divisions for the purpose of acquiring additional land to become part of a parcel that does not have sanitary restrictions imposed provided that no dwelling or structure requiring water or sewage be erected on the additional acquired parcel.

(b) Divisions made to correct errors in construction where building or shrubs may encroach upon the neighboring property.

(c) Divisions made for convenience when highway relocation divorces a portion of the land from the original tract making it more desirable for the property to be sold to become part of a contiguous tract or if sufficiently large as an individual tract.

~~(d) Divisions made for agricultural or pasture use when no structures requiring water and sewage facilities are to be erected or utilized, provided the parties to the transaction enter into a covenant running with the land and revocable only by the governing body and the property owner. Any change in land use subjects the division to the provisions of Title 76, Chapter 4, Part 1, MCA and this chapter.~~

~~(e)~~ (d) Boundary changes for the purpose of aggregating lots (five or fewer) in a platted subdivision when the lots are presently served by public water and sewer.

~~(f)~~ (e) Parcels used for utility sitings, easements, parking lots, parks, gravel pits and ski lifts provided no structure requiring water or ~~sewerage~~ sewage disposal be erected on the parcel. Any change in land use subjects the division to the provisions of Title 76, Chapter 4, Part 1, MCA, and this chapter.

AUTHORITY: Sec. 76-4-104 MCA
IMPLEMENTING: Sec. 76-4-125 MCA

16.16.606 EXCLUSIONS -- COMPLIANCE WITH PUBLIC WATER SUPPLY ACT (1) Exclusions of a subdivision from the requirements of this chapter shall not relieve the party responsible for construction of municipal water supply and sewer systems from the duty to comply with the requirements of the Public Water Supply Act, Title 75, Chapter 6, Part 1, MCA.

AUTHORITY: Sec. 76-4-104 MCA
IMPLEMENTING: Sec. 76-4-125 MCA

16.16.803 FEE SCHEDULES (1) The fees described below pertain only to review of subdivisions as mandated by Title 76,

Chapter 4, Part 1, MCA. An additional fee may be requested pursuant to the Montana Environmental Policy Act (Section 75-1-101, et seq., MCA) for the preparation of an environmental impact statement.

(a) The fees in Schedule I shall be charged:

(i) Per parcel when land is divided into one or more parcels.

(ii) Per condominium living unit except, where municipal or county district water and sewer are available, the fees shall be charged per sewer hookup to the municipal or county sewer, plus $10 for each unit in excess of one which is included on a single hookup.

SCHEDULE I

Fee schedule for division of land into one or more parcels, condominiums, mobile home/trailer courts, recreational camping ~~vehicles~~ vehicle spaces and tourist campgrounds.

	Sewage disposal provided by individual, multiple family, or public systems which are not connected to municipal or county sewer district systems	Extension of municipal or county sewer district systems requiring department approval	Existing municipal or county sewer district sewers, previously approved (no extension required)
Water supply provided by individual, multiple family, or public systems which are not connected to municipal or county water district systems	$48	$45	$40
Extension of municipal or county water district supply systems requiring review and approval	$45	$40	$30
Existing municipal or county water district system, previously approved (no extension required)	$40	$30	$20

(b) The fee shall be $5 per vehicle parcel for recreational camping vehicles and tourist campgrounds where no water or sewer hookups are provided.

(c) Fee payment should be by check or money order made payable to Department of Health and Environmental Sciences.

AUTHORITY: Sec. 76-4-105 MCA
IMPLEMENTING: Sec. 76-4-105, 76-4-128 MCA

16.16.804 DISPOSITION OF FEES (1) The department shall reimburse local governing bodies under department contract to review subdivisions as follows:

~~(a) Ten dollars ($10) per parcel for subdivisions containing over 5 parcels with individual sewage treatment systems.~~

~~(b) Fifteen dollars ($15) per parcel for subdivisions containing 5 or fewer parcels with public sewer.~~

~~(c) Twenty dollars ($20) per parcel for subdivisions with 3 to 5 parcels on individual sewage treatment systems.~~

~~(d) Twenty-five dollars ($25) per parcel for divisions of 2 parcels or less on individual sewage treatment systems.~~

~~(e) Fifteen dollars ($15) per mobile home or trailer parcel in courts or parks containing 5 or fewer parcels installing individual or multiple family sewage treatment systems.~~

~~(f) Fifteen dollars ($15) per mobile home or trailer parcel in courts or parks containing over 5 parcels installing individual or multiple sewage treatment systems.~~

~~(g) Fifteen dollars ($15) per condominium living unit unless municipal sewer is utilized, then fifteen dollars ($15) per sewer hookup.~~

(a) For subdivisions containing over 5 parcels with individual sewage treatment systems, ten dollars ($10) per parcel.

(b) For subdivisions containing 5 or fewer parcels with individual sewage treatment systems, the department will retain thirteen dollars ($13) per parcel of the review fee collected under ARM 16.16.803 and will reimburse the balance to the local governing body.

(2) The department may reimburse counties ~~who~~ which have not been delegated review authority of subdivisions containing 5 or fewer parcels but ~~who~~ which perform review services, including but not limited to on-site inspection of proposed and approved facilities and ~~aiding of~~ assistance to persons in the application procedure, as follows:

(a) ~~Two dollars ($2)~~ Five dollars ($5) per parcel for subdivisions containing over 5 parcels with individual sewage treatment systems. A site evaluation must accompany the submittal.

(b) ~~Five dollars ($5)~~ Ten dollars ($10) per parcel for subdivisions containing 5 or fewer parcels with individual sewage treatment systems. A site evaluation must accompany the submittal.

(3) The department will reimburse the local governing bodies ~~of first class cities~~ fifteen dollars ($15) per parcel for review of a subdivision coming under the master plan exclusion.

~~(4) The department will reimburse the local governing bodies of second and third class cities $10 per parcel for a subdivision coming under the master plan exclusion.~~

~~(5)~~ (4) Funds will be reimbursed to the local governing bodies quarterly, based upon the fiscal year starting on July 1 and ending on June 30 of each year.

~~(6) Fee payment should be by check or money order made payable to the Department of Health and Environmental Sciences.~~

AUTHORITY: Sec. 76-4-105 MCA
IMPLEMENTING: Sec. 76-4-105, 76-4-128 MCA

16.16.805 CHANGES IN SUBDIVISION (1) ~~When a subdivision is changed by the developer during the review process or as a resubmittal, the subdivision~~ When the water supply, sewage or solid waste disposal or storm drainage aspects of a subdivision are changed by the applicant (or where such changes are necessitated by a department determination that proposed plans are inadequate), either during or after the review process, such changes shall be submitted to the department for review and approval and shall be subject to additional review fees not to exceed the amounts listed in ARM 16.16.803. The exact amount of the additional fee shall be determined by the department and will be based on the scope of the change(s) and how much additional review time the change(s) will require.

AUTHORITY: Sec. 76-4-105 MCA
IMPLEMENTING: Sec. 76-4-105 MCA

4. The Department is proposing these amendments as one of its periodic updatings on the rules and also in response to House Joint Resolution No. 20 of the 1983 Legislature, which requested the Department to review and revise the rules to improve the promptness, efficiency, and cost-effectiveness of the subdivision review program.

5. Interested persons may present their data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, Montana, no later than June 28, 1984.

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

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State May 7, 1984

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the amendment of Rules 20.11.108, 20.11.109, 20.11.112-115, and 20.11.118 concerning reimbursement policies.	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULES 20.11.108, 20.11.109, 20.11.112-115, and 20.11.118.
	)	Reimbursement Policies

TO: All Interested Persons.

1. On Friday, June 8, 1984, at 10:00 a.m. a public hearing will be held in room 315/317 of the Department of Institution's building, at Helena, Montana, to consider the amendment of rules 20.11.108, 20.11.109, 20.11.112-115, and 20.11.118 concerning the reimbursement policies.

2. The proposed amendments bring uniform equity to the ability to pay criterion as well as clarify all attendant processes therein.

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

20.11.108 DEFINITIONS ~~(1)--"Basic needs" means food, clothing, shelter, medical care, transportation and items necessary for the production of income.~~

~~(2)~~ (1) "Personal needs" means toiletries, newspaper, tobacco, or other personal comfort items not normally supplied by the institution.

~~(3)~~ (2) "Income" means ~~money,~~ wages, salary, net income from self-employment, social security, veterans pensions, railroad pensions, dividends, interest (on savings or bonds), income from estates or trusts, inheritances, net rental income or royalties, pensions or annuities, unemployment compensation, alimony and child support.

~~(4)~~ (3) "Liquid assets" means stocks, bonds, certificate of deposit, etc., which can be easily converted to cash.

~~(5)~~ (4) "Fixed expenses" means those expenses over which an individual or a family has little or no control, ~~such as rent or mortgage payments, basic utilities, medical expenses, mandatory payroll deductions, and contracted debts.~~ limited to the following:

(a) housing
(i) rent payment
(ii) lease payment
(iii) mortgage
(iv) property taxes
(v) property insurance
(vi) mortgage insurance
(vii) heat
(viii) electricity

(ix) water and sewer
(x) waste disposal
(xi) phone
(xii) SID's
(b) transportation
(i) vehicle payment
(ii) vehicle lease
(iii) vehicle insurance
(iv) license
(v) vehicle maintenance
(vi) gasoline, diesel fuel
(vii) public transportation
(c) medical
(i) actual medically related cost less insurance reimbursement
(ii) medical insurance premiums
(d) food
(e) clothing
(f) union dues
(g) lodge dues which include life insurance
(h) court ordered debt or payment
(i) taxes
(i) federal
(ii) state
(iii) social security
(j) mandatory retirement
(k) voluntary retirement up to SS contribution
(l) life insurance

~~(6) "Primary controllable expenses" means expenditures for basic needs.~~

~~(7)~~ (5) "Discretionary income" is determined by subtracting fixed expenses from the total income ~~of the resident or responsible person(s).~~ and/or adjusted gross income from the most recent IRS tax return plus depreciation and voluntary retirement plans which are deducted from the gross income on the tax return.

~~(8)~~ (6) "Responsible person" means a spouse of resident, the natural or adoptive, parents of a resident under 18 years of age, or a guardian or conservator to the extent of the guardian's or conservator's responsibility for the financial affairs of the person who is a resident under applicable Montana law establishing the duties and limitations of guardianship or conservatorships.

(7) "Director" means the director of the department of institutions.

(8) "Department" means the department of institutions.

AUTH: Sec. 53-1-403 MCA IMP: Sec. 53-1-401 MCA

20.11.109 PROCEDURE TO OBTAIN FINANCIAL INFORMATION

(1) Upon admission or commitment to one of the

institutions listed in Section 53-1-402 MCA, a representative of the department shall contact the resident or his next of kin or responsible person(s) to obtain a financial statement. Thise statement form will be ~~on-a-form~~ approved by the department ~~of-institutions~~.

(2) The financial ~~information-form~~ statement may not be required when the following conditions can be documented:

(a) The resident is a recipient of SSI benefits.

(b) The resident is currently eligible for medicaid.

(3) If the resident or financially responsible person(s) fails to give adequate financial information within 30 days, the department shall assess the full cost of care, and shall use the following procedure to obtain the financial information:

(a) A personal representative of the department will contact the resident or responsible person(s) and will explain what information is needed and why it is necessary.

(b) If the financial information is still not received, the department will send a letter to the resident or responsible person(s) requesting the needed information. ~~The-letter-will-explain-that-this-information-must-be submitted-to-the-department~~ within 10 working days.

(c) If after 10 working days, the above information still has not been received, ~~and-at-the-department's-option either~~ a demand letter may be made on the resident or responsible person(s) by the department's legal counsel requesting the information and explaining that if the information is not ~~forthcoming~~ received within 15 working days, a subpoena will be issued by the department, or as provided for in 20.11.118, the account will be referred to the department of revenue for collection.

(d) If after 15 working days, the legal counsel has not received the necessary information as provided for within (c) above, he will request that the director issue a subpoena. If it appears to the satisfaction of the director that there is reasonable cause for the subpoena to be issued, he shall issue the subpoena under his signature and with the seal of the department through the sheriff of the county where the resident or responsible person(s) resides at the time the subpoena is issued. The subpoena shall direct the individual who is named on it to appear at a designated place and time with the necessary documents, papers, records, etc., as listed on the subpoena.

(i) The director shall appoint a person to act as a hearings officer to appear at the time set forth on the subpoena for appearance. Thise hearings officer shall be empowered to administer an oath, take testimony which shall be transcribed; ask questions; examine documents; and request copies of any documents.

(ii) If the patient or responsible person refuses to appear pursuant to the subpoena, or refuses at the hearing

to cooperate with the hearings officer, the hearings officer shall submit a written report to the director ~~of the department~~.

(iii) Within five working days after receipt of the report, the director ~~of the department~~ may petition the district court to order a hearing to show cause why the subpoena was not obeyed.

AUTH: Sec 53-1-403 MCA IMP: Sec. 53-1-106 MCA

20.11.112 ABILITY TO PAY (1) Upon receipt of the requested information, the department shall determine fixed ~~and primary controllable~~ expenses of the resident or responsible person as defined in 20.11.108 (4). The following shall apply to food, clothing and travel.

~~(2) The department shall evaluate the fixed expenses and primary expenses as follows:~~

~~(a) fixed expenses for debts contracted prior to the resident's admission to the institution shall be allowed in full;~~

~~(b) fixed expenses for debts contracted after admission will be disregarded, unless the debt was incurred to obtain basic needs as defined in 20.11.108(1);~~

~~(3) The department shall evaluate primary controllable expenses as follows:~~

(a) allowances for food and clothing needs shall be published by the department based on estimates provided by the U.S.D.A. for a ~~moderate~~ liberal family budget.

(b) transportation expenses shall be the costs of operating one vehicle per family, unless a second vehicle is essential to the production of income. If no vehicle is owned, the actual cost of public transportation shall be allowed.

~~(4)~~ (2) Ability to pay shall be determined by using the method below: ~~which results in a lesser ability to pay:~~

(a) discretionary income as defined in 20.11.108~~(7)~~(5) shall be divided by the number of persons dependent upon that income, including the resident. The quotient shall be the resident's share of discretionary income or the ability to pay.

~~(b) the primary controllable expenses shall be subtracted from discretionary income to determine the balance of income available after basic needs as defined in 20.11.108(1) are met. The ability to pay shall be calculated as a monthly amount:~~

~~(5)~~(3) The ability to pay as determined by ~~(4)~~(2) (a) ~~or (b)~~ shall be reduced by a monthly personal needs allowance for the resident as determined by the department. If the department learns that the personal needs allowance is not being used for the resident's benefit, the allowance may be discontinued.

~~(6)~~(4) Excess liquid assets evaluation.

(a) long-term residents' liquid assets which exceed eligibility standards for medicaid shall be viewed as available to meet maintenance costs, and shall be added to the ability to pay unless protected as follows:

(i) as protected by law or an order of the court.

(ii) as may be protected in full or in part by a written agreement approved by the department upon presentation in writing by the resident or responsible person(s) of any specific and viable future plans or uses for which the excess liquid assets are intended. Such documentation shall include the extent to which the funds need to be protected for purposes of preventing further dependency of the resident or responsible person(s) upon the public and/or of enhancing development of the resident into a normal and self-supporting member of society.

(b) short-term residents' liquid assets in excess of levels as published by the department shall be added to the ability to pay, unless protected as provided for in 20.11.112 ~~(6)(a)~~(4), above.

~~(7)~~(5) The department shall review its determination of ability to pay for each long-term resident or responsible person(s) at least once each year.

AUTH: Sec. 53-1-403, 405 MCA IMP: Sec. 53-1-405 MCA

20.11.113 THIRD PARTY RESOURCES (1) Applicable medicare, medicaid, or private insurance will be considered as a resource of the resident. When the insurance company, as third party payer, makes direct payment to the insured resident or their responsible party, such payment will be payable to the state of Montana up to the amount actually billed by the ~~reimbursement section~~ department.

AUTH: Sec. 53-1-403 MCA IMP: Sec. 53-1-405 MCA

20.11.114 ACCEPTANCE OF REDUCED PAYMENT (1) The department may, by written agreement with the resident or responsible person(s), accept a minimum monthly payment which is less than the assessed charge, with the balance accumulating as a liability of the resident or responsible person(s), in the following circumstances:

(a) when the ability to pay ~~has been adjusted on the basis of excess assets, as provided in~~ as calculated in 20.11.112 ~~(6)~~(2) ~~and the department has determined that it is in the best interest of both the resident or responsible person(s) and the state not to eliminate these assets in the near future,~~ would place a hardship on the resident or responsible persons.

(b) ~~for residents whose care treatment plans provide for discharge and economic independence within one year, and additional funds are needed for:~~ when the ability to pay has been adjusted on the basis of excess assets, as provided in 20.11.112 (4) and the department has determined that it is

in the best interest of both the resident or responsible persons(s) and the state not to eliminate those assets in the near future.

(c) when residents whose care-treatment plans provide for discharge and economic independence within one year, and additional funds are needed for:

(i) savings to furnish and initiate an independent living arrangement for the resident upon release from the facility. Under this provision, funds will not be conserved beyond the point that the client would no longer meet the asset eligibility limits for SSI or medicaid, if the resident would otherwise be eligible.

(ii) purchase of clothing and other reasonable personal expenses the client will need to enter an independent living arrangement.

AUTH: Sec. 53-1-403 MCA IMP: Sec. 53-1-405, 408 MCA

20.11.115 APPEALS PROCEDURE (1) If the resident or responsible person(s) disagrees with the department's determination of ability to pay, that person may at any time request a redetermination of the ability to pay. The request shall be in writing, and shall state the reasons for disagreement as well as any additional facts relevant to the request. The department may~~,-in-its-discretion,~~ request a conference with the resident or responsible person(s). Within 30 days of receiving the request for redetermination, or within 30 days of the conference, if a conference is held, the department shall submit its written redetermination to the resident or responsible person(s).

(2) If the resident or responsible person(s) is dissatisfied with the department's redetermination, he may appeal to the director ~~of-the-department-of-institutions~~, 1539 11th Avenue, Helena, Montana 59620. This appeal must be in writing, and be filed within 30 days after the aggrieved party has received the department's written redetermination. At the time the appeal is filed, the aggrieved party must state in writing his reasons for the appeal and the intended relief that he wishes to receive. At any time during these procedures, the aggrieved party may be represented by counsel at his own expense. Any appeal should be based solely upon the existing record. If a resident or responsible person desires to introduce new evidence, the appeal would return to the "redetermination" stage.

(3) Upon receipt of the notice of appeal, the director ~~of-the-department-of-institutions~~ will ask the person responsible for the redetermination and the aggrieved party if they wish to ~~have-any~~ request discovery ~~proceess~~. If either party requests discovery, the director will designate a period of time in which discovery is to ~~take place-and~~ be completed. By dDiscovery ~~it-is~~ means the use

of written interrogatories and/or depositions, production of documents, etc. All means of discovery, if agreed to by the parties to the appeal, will be pursuant to the Montana Rules of Civil Procedure concerning discovery. At the conclusion of discovery, the matter will be deemed at issue and the director will decide whether a hearings examiner will be appointed. ~~When it is decided by~~ If the director ~~to~~ appoints a hearings examiner, ~~the director will then set~~ a date will be set for the hearing and if need be name a hearings examiner from the attorney general's legal assistance staff. At the time set for the hearing, the hearings examiner will conduct the hearing in accordance with the Montana Rules of Evidence, if agreed to by the parties to the appeal. The hearing will be adequately transcribed. At the conclusion of the hearing, the director ~~of the department of institutions~~ or the hearings examiner may request proposed findings of fact and conclusions of law and supporting briefs from the parties. The time for submission of these proposed findings of fact and conclusions of law and supporting memorandums will be set by the hearings examiner. When all matters have been submitted to the hearings examiner, he will write his proposed findings of fact and conclusions of law and submit them to the director ~~of the department of institutions~~ for adoption, or the director may proceed to hear and decide the matter on its own merits. If an appeal results in the reduction of the assessment, a retroactive adjustment shall be made no further than 30 days prior to the filing of the appeal.
AUTH: Sec 53-1-403 MCA IMP: Sec. 53-1-407, 408 MCA

20.11.118 PROCEDURE FOR FAILURE TO PAY (1) Accounts which are delinquent will be identified by the department at 60, 90 and 120 day intervals. At 90 days, letters may be prepared which state the intent to use the department of revenue for debt collection unless payment is received in 30 days. If no response or payment is received at 120 days, another letter will be sent stating that action has been taken, and requesting that all correspondence and/or payment be directed to the department of revenue.
AUTH: Sec. 53-1-403 MCA IMP: Sec. 53-1-411 MCA

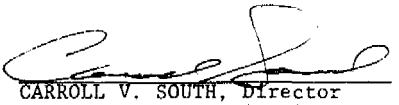
4. The Department is proposing these amendments to provide a more equitable method to determine a resident's or financially responsible person's ability to pay.

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 Nick A. Rotering, Legal Counsel, Department of Institutions, 1539 11th Avenue, Helena, MT 59620, no later than June 8, 1984.

6. Nick A. Rotering, Legal Counsel, Department of

Institutions has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed amendments is based on Section 53-1-403,405 MCA, and the rules implement Sections 53-1-106, 53-1-401,405,407, 408 MCA.



CARROLL V. SOUTH, Director
Department of Institutions

Certified to the Secretary of State May 7th, 1984.

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

In the matter of the adoption of rules pertaining to the participation of rural hospitals in the medicaid program as swing-bed facilities.	)))))	NOTICE OF PUBLIC HEARING ON THE ADOPTION OF RULES PERTAINING TO THE PARTICIPATION OF RURAL HOSPITALS IN THE MEDICAID PROGRAM AS SWING-BED FACILITIES

TO: All Interested Persons

1. On June 13, 1984, at 1:00 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the adoption of rules relating to the participation of hospitals in rural areas as swing-bed facilities.

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

RULE I SWING-BED HOSPITALS, DEFINITION (1) A swing-bed hospital is a hospital which has been certified to use medicaid patient beds interchangeably as either hospital beds or skilled or intermediate nursing care beds and which meets the requirements of Rule II.

AUTH: Sec. 53-6-113 and 53-2-201(h), MCA
IMP: Sec. 53-6-111, 53-6-141 and 53-2-201(a), MCA

RULE II SWING-BED HOSPITALS, REQUIREMENTS (1) A hospital which desires to participate as a swing-bed hospital in the Montana medicaid program must meet the following requirements:

(a) The hospital must be certified by the federal health care financing administration and the state department of health and environmental sciences to provide extended care services for skilled and intermediate care patients as described in 42 CFR 405.125. The department hereby adopts and incorporates herein by reference 42 CFR 405.125, which is a federal regulation defining extended care services, copies of which may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604.

(b) The hospital must have fewer than fifty (50) hospital beds, excluding beds for newborns and beds for intensive care patients.

(c) The hospital must be located in an area of the state which is not designated as "urbanized" by the most recent official census. A copy of the bureau of the census listing of urbanized areas is available upon request from the Medicaid Financing Bureau, Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604.

(d) The hospital must meet the safety and health conditions for skilled and intermediate care nursing homes, as stated in 42 CFR, part 405, subpart K and 42 CFR, part 442, subpart F. The department hereby adopts and incorporates herein by reference 42 CFR 405, subpart K and 42 CFR, part 442, subpart F, which are the federal medicare conditions of participation for skilled nursing facilities and the federal medicaid standards for intermediate care facilities other than facilities for the mentally retarded, respectively. Copies of these federal regulations may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604.

(e) The hospital must be granted a certificate of need from the state department of health and environmental sciences to provide long-term care swing-bed services and also be certified by the medicare program to provide such services.

(f) The hospital shall not have in effect a twenty-four (24) hour nursing waiver grant as defined in 42 CFR 405.1910(c), which is a federal regulation which the department hereby adopts and incorporates by reference. The incorporated regulation allows for a waiver of the requirement of 24-hour nursing service; copies of the regulation may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604.

(g) The hospital shall not have terminated providing swing-bed services within two (2) years prior to the application for a certificate of need to provide swing-bed services.

(h) The hospital shall be in substantial compliance with the requirements for skilled nursing facilities with respect to patient's rights, specialized rehabilitation services, dental services, social services, patient activities and discharge planning as required in 42 CFR 405, subpart K, which federal regulation has been incorporated herein by reference at Rule II(1)(d).

AUTH: Sec. 53-6-113 and 53-2-201(h), MCA
IMP: Sec. 53-6-111, 53-6-141 and 53-2-201(a), MCA

RULE III SWING-BED HOSPITALS, PROCEDURES (1) The swing-bed hospital will have the responsibility of determining whether a skilled or intermediate nursing care bed is available to the medicaid patient within a one hundred (100) mile radius of the hospital before admitting a medicaid patient to a swing bed. The hospital will be required to maintain written documentation consisting of written inquiries to nursing homes inquiring as to the present and future availability of a nursing home bed and indicating that if a bed is not available, the hospital will provide swing-bed services to the patient.

(2) A medicaid patient admitted to a swing-bed must be discharged to an appropriate nursing home bed within a one

hundred (100) mile radius of the swing-bed hospital within 72 hours of an appropriate nursing home bed becoming available.

(3) The department may retrospectively review the use of swing-bed services provided to medicaid patients and may deny payments when it is determined that a nursing home bed was available within one hundred (100) miles of the hospital that provided the swing-bed service.

AUTH: Sec. 53-6-113 and 53-2-201(h), MCA
IMP: Sec. 53-6-111, 53-6-141 and 53-2-201(a), MCA

RULE IV SWING-BED HOSPITALS, REIMBURSEMENT (1) Reimbursement for hospitals that provide swing-bed services will be based on the current medicare swing-bed rate or, for combined facilities, at the facility's current medicaid rate for nursing care, whichever rate is lower.

(2) Reimbursement to swing-bed hospitals will only be made for medicaid patients when appropriate skilled or intermediate nursing care is not available within a one hundred (100) mile radius of the hospital from which the patient is discharged.

(3) Reimbursement for swing-bed services will only be granted for eligible medicaid recipients occupying beds certified for swing-bed use through the certificate of need process by the Montana department of health and environmental sciences.

(4) Costs associated with swing-beds shall be allocated on the medicare "carve out" method in which the revenues from swing-beds will be subtracted from the cost of routine hospital care in accordance with part 1, section 2230.4 of the health insurance manual HIM-15, which is a manual published by the United States department of health and human services, social security administration, which provides guidelines and policies for determining the reasonable cost of provider services furnished under the Health Insurance for the Aged Act of 1965 as amended. A copy of HIM-15, Part 1, §2230.4 may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604.

(5) Reimbursement for ancillary services provided to medicaid patients in swing-beds will be based on direct costs incurred by the hospital to provide these services with no additional indirect costs added on. Ancillary services shall be those services defined in ARM 46.12.1205(2)(a) and routine services shall be those services defined in ARM 46.12.1202(2)(a).

AUTH: Sec. 53-6-113 and 53-2-201(h), MCA
IMP: Sec. 53-6-111, 53-6-141 and 53-2-201(a), MCA

3. These rules allow for small rural hospitals to supply skilled and intermediate nursing care services. Since

rural hospitals historically run at a low occupancy, the need for skilled and intermediate nursing care beds in a rural area could be filled by converting the unused acute care beds to nursing care beds on an "as needed" basis. This conversion allows for this need to be met by providing additional beds without new construction. Medicaid reimbursement is determined by the type of care given.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than June 15, 1984.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 7, 1984.

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

In the matter of the adoption of rules and the amendment of Rules 46.25.712, 46.25.720, 46.25.721, 46.25.723, 46.25.732, 46.25.738 and 46.25.739 pertaining to state general relief assistance.	)))))))	NOTICE OF PUBLIC HEARING ON THE ADOPTION OF RULES AND THE AMENDMENT OF RULES 46.25.712, 46.25.720, 46.25.721, 46.25.723, 46.25.732, 46.25.738 AND 46.25.739 PERTAINING TO STATE GENERAL RELIEF ASSISTANCE

TO: All Interested Persons

1. On June 6, 1984, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the adoption of rules and the amendment of Rules 46.25.712, 46.25.720, 46.25.721, 46.25.723, 46.25.732, 46.25.738 and 46.25.739 pertaining to state general relief assistance.

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

RULE I GENERAL RELIEF, PURPOSE (1) The purpose of the state general relief program is to provide the minimum necessary assistance, including medical care, for the emergent needs of those inhabitants who have the temporary need for the aid of society, as defined by the rules in this subchapter.

(2) When receipt of general relief results in automatic qualification to receive other benefits, there is a presumption that the benefits will be received and general relief shall not be paid to duplicate such benefits. These other benefits include but are not limited to:

(a) low income energy assistance;
(b) housing subsidies;
(c) food stamps.

AUTH: Sec. 53-2-812, MCA
IMP: Sec. 17-8-103, 53-2-803, 53-3-204, MCA

RULE II GRANDFATHER PROVISION (1) Recipients of general relief eligible for benefits will receive the higher of the benefits provided in chapter 25, sub-chapter 7 or the amount they actually received during the month or 30 day benefit period immediately prior to April 1, 1984, less any subsequent increases due to appeals or other later adjustments, and subject to the other deductions and eligibility criteria provided in this sub-chapter including documentation of actual need.

(2) The higher grandfather payment in subsection (1) shall continue only if the recipients in the assistance unit maintain eligibility on a continuous basis.

AUTH: Sec. 53-2-812, MCA
IMP: Sec. 17-8-103, 53-2-803, 53-3-204, MCA

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

46.25.712 STANDARDS OF ASSISTANCE (1) ~~Assistance will be granted to individuals who have a demonstrated need in the areas of shelter, utilities, food, transportation and personal needs.~~ Individuals who have an established need, in excess of their income, in the areas of shelter, utilities and personal needs are eligible for assistance pursuant to this sub-chapter. The assistance shall not exceed the applicable AFDC benefit standards for household size as found in ARM 46.10.403.

(a) Shelter and personal needs will be paid at a level not to exceed these ~~AFDC~~ categorical standards:

TABLES OF ASSISTANCE STANDARDS

Shelter and Personal Needs

No. of Recipients in Household	Personal Needs	Shelter Cascade County	Shelter Deer Lodge County	Shelter Flathead County
1	$25	$135	$100	$130
2	30	135	120	160
3	35	250	160	225
4	40	250	190	250
5	45	270	220	250
6 or more	50	300	250	250

No. of Recipients in Household	Personal Needs	Shelter Lake County	Shelter Lewis & Clark County	Shelter Lincoln County
1	$25	$150	$155	$150
2	30	150	175	150
3	35	200	225	200
4	40	200	245	225
5	45	220	255	225
6 or more	50	225	275	225

No. of Recipients in Household	Personal Needs	Shelter Mineral County	Shelter Missoula County	Shelter Park County
1	$25	$120	$150	$140
2	30	120	190	150
3	35	160	200	175
4	40	190	225	200
5	45	220	225	225
6 or more	50	250	225	250

No. of Recipients in Household	Personal Needs	Shelter Powell County	Shelter Ravalli County	Shelter Silver Bow County
1	$25	$105	$150	$ 80.00
2	30	105	150	115.00
3	35	120	175	135.00
4	40	150	200	175.00
5	45	180	225	205.00
6 or more	50	215	250	230.00

~~TABLE OF ASSISTANCE STANDARDS~~

~~No. of Persons in Household~~	~~Shelter~~	~~Utilities~~	~~Food~~	~~Trans-portation~~	~~Maximum Standard~~
~~1~~	~~$120~~	~~$ 75~~	~~$ 75~~	~~$ 50~~	~~$ 212~~
~~2~~	~~160~~	~~98~~	~~139~~	~~67~~	~~279~~
~~3~~	~~190~~	~~116~~	~~199~~	~~80~~	~~332~~
~~4~~	~~242~~	~~149~~	~~253~~	~~102~~	~~425~~
~~5~~	~~285~~	~~175~~	~~300~~	~~120~~	~~501~~
~~6~~	~~321~~	~~197~~	~~360~~	~~135~~	~~564~~
~~7~~	~~355~~	~~218~~	~~398~~	~~150~~	~~624~~
~~8~~	~~390~~	~~240~~	~~455~~	~~165~~	~~685~~
~~9~~	~~407~~	~~250~~	~~512~~	~~171~~	~~744~~
~~10~~	~~458~~	~~281~~	~~569~~	~~193~~	~~804~~
~~11~~	~~492~~	~~302~~	~~626~~	~~207~~	~~864~~
~~12~~	~~526~~	~~323~~	~~683~~	~~222~~	~~923~~
~~13~~	~~560~~	~~344~~	~~740~~	~~236~~	~~983~~
~~14~~	~~594~~	~~365~~	~~797~~	~~250~~	~~1,042~~
~~15~~	~~628~~	~~386~~	~~854~~	~~264~~	~~1,102~~
~~16~~	~~662~~	~~407~~	~~911~~	~~279~~	~~1,162~~

(b) Recipients of general relief may be eligible for utility assistance up to the established standard providing the utility need is documented. The standards include heating, cooking, water heating, water, sewer, and trash collection.

(i) Maximum standard for heating needs during the months of May through September will be computed from the applicable matrix amount of the low income energy assistance (LIEAP) program which can be found at ARM 46.13.401. The following percentages of the corresponding matrix amount for type and size of residence, fuel type, fuel cost, and LIEAP district will be used to determine maximum standard per month:

May - 4%
June - 2%
July - 0%
August - 0%
September - 4%.

(ii) General relief will not cover any heating costs during the months of October through April.

(iii) Nonheating energy costs which include cooking, other electrical costs, and water heating and other utilities which include water, sewer, and trash collection will be paid to recipients who have a documented need not to exceed this standard:

No. of Recipients in Household	Non-Heating Utility Standard
1	$ 35
2	40
3	45
4	50
5	55
6 or more	60

(vi) Assistance for telephone expenses will be granted up to an eight dollar ($8) maximum standard only for these recipients for which a phone is essential for an indicated medical necessity and a member of the assistance unit's continued employment requires them to be on call.

(ac) An ~~applicant or~~ recipient of general relief may be eligible for an amount greater than specified in the ~~plan for~~ table of shelter standards if ~~and~~ utilities are included in the shelter obligation and ~~if the need is documented and~~ the total payment does not exceed the ~~maximum standard~~ combined applicable shelter and utility standards. The only utility expense covered in a hotel, motel, boarding house, multi-family dwelling of 5 or more units, or similar type shelter is the heating expense found at ARM 46.25.712(1)(b)(i). If a household consists of individuals who are not considered a part of the assistance unit as defined in ARM 46.25.723(1)(c), the shelter obligation shall be prorated evenly among the household members.

(d) The categorical standard designated as personal needs will be used to cover items needed for personal hygiene,

gas, clothing, laundry, and housecleaning supplies. Recipients of general relief will be granted the maximum amount shown in the personal needs categorical standard for the household size without showing a documented need.

(e) An eligible household may be eligible for up to $15 per month to cover the cost of additional personal needs if need is documented. Additional personal needs will be limited to supplemental food for special diets, nonprescription drugs, optometric supplies and medical supplies. These additional personal needs must be determined as medically necessary by a physician and indicated in writing. Optometric supplies needed for employment, employment training or schooling may also be covered.

(f) A recipient who has a documented food need and who is ineligible for food stamps, or who is not receiving maximum amount of thrifty food plan for household size, except in cases of fraud or instances where a recoupment is required, may receive an amount not to exceed the thrifty food plan which is found at 7 CFR 273.10(1)(2) providing the total general relief payment to the household does not exceed the AFDC benefit standard for household size, which is found at ARM 46.10.403. General relief will not be available to meet any food need which exceeds the thrifty food plan except as provided for in ARM 46.25.712(1)(e). The department of social and rehabilitation services has adopted and incorporated by reference 7 CFR 273.10 at ARM 46.11.101. 7 CFR 273.10, a food stamp regulation adopted by the food and nutrition services, United States department of agriculture, sets forth the household eligibility and benefit levels. A copy of 7 CFR 273.10 may be obtained from the Department of Social and Rehabilitation Services, Economic Assistance Division, 111 Sanders, P.O. Box 4210, Helena, Montana 59604.

(g) A household may be eligible for an additional $10 per month to contribute to the costs of transportation needs if the need is documented. Transportation is a need only for the physically disabled and those that live more than three miles, taking the shortest practical route, from the workfare worksite, local office of human services or medical facility. Costs of conducting other business and personal matters is considered to be included in the personal need standard. Transportation contribution will be $.06 per mile or the recognized local cost for public transportation for prior approved necessary travel.

(2) Monthly income is to be compared to the **~~maximum standard~~** established need. ~~**in the above table for the size of the assistance unit.**~~ If the monthly income exceeds the **~~maximum standard~~** established need, the assistance unit is not eligible. If the assistance unit has income less than the **~~maximum standard~~** established need, the amount of the grant will be the difference between available income and the **~~maximum standards if a need exists~~** established need.

AUTH: Sec. 53-2-803, MCA
IMP: Sec. 53-2-602 and 53-2-803, MCA

46.25.720 APPLICATION FOR GENERAL RELIEF Subsections (1) through (4) remain the same.

(5) When an applicant or recipient of general relief has made application for supplemental security income (SSI), the applicant or recipient shall sign an interim assistance agreement wherein general relief will be paid subject to recoupment when a supplemental security income retroactive eligibility determination is made.

AUTH: Sec. 53-2-803, MCA
IMP: Sec. 53-2-201, 53-3-301 and 53-2-803, MCA

46.25.721 PROCEDURES FOLLOWED IN PROCESSING APPLICATIONS Subsections (1) through (2) remain the same.

(3) Eligibility for general relief and payment amount will be redetermined monthly.

~~(3)~~ (4) General relief payments shall be in the form of warrant, check, or vendor payment directly to the client or vendor.

AUTH: Sec. 53-2-803, MCA
IMP: Sec. 53-2-201, 53-3-301 and 53-2-803, MCA

46.25.723 DETERMINATION OF INCOME (1) "Income" means all earned or unearned income currently or potentially available to the assistance unit to meet ~~documented~~ established needs.

(a) "Currently available" income includes all income available to the applicant during the calendar month of application. Gross earned income less applicable deductions of federal, state, FICA taxes, and other nonvoluntary payroll deductions will be considered as available income to the applicant.

~~(a)~~ (b) "Potentially available" includes income reasonably anticipated based on an assessment of the individual's actual employment history, ~~and~~ future earning potential, income that would have been available had the applicant or recipient not been fired without good cause, quit his job, or refused a bona fide offer of employment within the prior two (2) months and ~~as well as~~ assured receipt of unearned income.

~~(b)~~ (c) "Assistance unit" includes any group of persons who share a common living arrangement and who by choice or legal relationship are mutually dependent.

(2) There is no exclusion for income available to the assistance unit and all income and other liquid assets must be used to meet needs before general relief will be made available.

~~(3)--General-relief-may-not-be-used-to-duplicate-benefits received--by-a--household--through--any-other--publicly-funded benefit-program-including-but-not-limited-to:~~

~~(a)--low-income-energy-assistance;~~

~~(b)--housing-subsidies;~~

~~(c)--food-stamps.~~

~~(4)--When-receipt--of-general-relief-results-in-automatic qualification-to-receive-the-aforementioned-benefits,-there-is a-presumption--that-the-benefits-will-be--received-and-general relief-may-not-be-paid-to-meet-such-needs.~~

AUTH: Sec. 53-2-803, MCA
IMP: Sec. 53-3-102, 53-3-204 and 53-2-803, MCA

46.25.732 WORK PROGRAM Subsections (1) through (2)(f) remain the same.

(3) Work program participants are required to register for employment with the local job service and explore job possibilities at least weekly with the local job service.

(4) Work program participants may also be required to participate in general relief job search.

(a) While a recipient is participating in general relief job search, they will be required to submit up to two applications for employment per day on days, excluding weekends, the recipient is not in workfare status. Verification of job applications must be submitted weekly.

~~(3)~~ (5) Any recipient who refuses to participate in the work program or general relief job search will ~~lose-eligibility-for-general-relief--for-one--(1)-week~~ have their monthly general relief benefit amount decreased by one-fourth for each refusal.

AUTH: Sec. 53-2-803, MCA
IMP: Sec. 53-3-305, 53-3-504 and 53-2-822, MCA

46.25.738 STATE MEDICAL ASSISTANCE Subsections (1) through (3) remain the same.

(4) Providers of state medical assistance may be sanctioned pursuant to the rules set forth in ARM 46.12.401 through ARM 46.12.408.

AUTH: Sec. 53-2-803, MCA
IMP: Sec. 53-3-103 and 53-2-803, MCA

46.25.739 ELIGIBILITY DETERMINATION FOR STATE MEDICAL ASSISTANCE Subsections (1) through (2) remain the same.

(a) Countable income is determined prospectively beginning with date of covered service for a six month period using gross income less the appropriate deductions of applicable federal, state and FICA taxes. Income is defined in ARM 46.25.723.

(b) An individual or household with countable income equal to or less than the applicable AFDC benefit standards as found in ARM 46.10.403 will be income eligible for state medical assistance.

~~(b)~~ (c) An individual or household with countable income between the ~~general-relief~~ AFDC benefit standards and the medically needy income levels must incur medical obligations equal to the difference between ~~the-two~~ income and the AFDC benefit standards during the six month prospective period prior to becoming eligible for the medical program (e.g., income multiplied by 6 less applicable ~~general-assistance~~ AFDC benefit standard multiplied by 6 equals incurment). For applicants with income greater than the ~~general-relief~~ AFDC benefit standard but less than medically needy standard the department will pay the medical obligation less the amount of incurment.

~~(c)~~ (d) Payment under the medical program will be made only for those services recognized by the Montana medicaid program ~~and will not exceed the medicaid reimbursement rate~~ which are medically necessary to relieve pain and suffering or to alleviate life threatening situations.

(e) Pre-natal services are covered if medically indicated.

~~(d)~~ (f) Except for emergency services, all other medical care must receive prior authorization. on an individual visit basis.

(3) Services under this rule will be provided only after all other available resources have been identified and used. Such resources include, but are not limited to health and accident insurance; veteran's administration and hospital; industrial accident benefits; Montana medicaid program; and other liable third parties.

AUTH: Sec. 53-2-803, MCA
IMP: Sec. 53-3-103 and 53-2-803, MCA

4. On July 1, 1983, the Department assumed the county public assistance programs of eleven counties. The authority and appropriation for that assumption was granted in HB 798. The appropriation was based on the historical costs of the county public assistance programs of certain counties considered to be likely candidates for assumption by the state. The rules initially promulgated for the new state general assistance program assumed each county would pay at previously authorized levels provided they did not exceed the overall limits imposed by the state. Subsequently, administrative and judicial challenges were made to payment levels in certain counties that were less than the state limits.

If these challenges are ultimately successful, the state potential liability would exceed its appropriation by 1.7 million dollars annually.

These proposed rule adoptions and amendments serve to clarify the original intent of the previous rules to continue benefit levels in place prior to state assumption where those levels are consonant with demonstrated defined need and to assure that no recipients would have their benefits reduced.

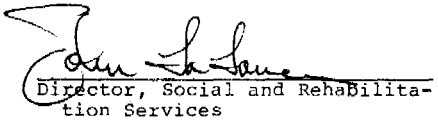
Unless these rules are promulgated, the Department would be faced with a budget shortfall of 1.7 million dollars annually for the general relief assistance portion of state assumption. This shortfall in lawfully appropriated funds will cause the state assumed general relief assistance program to run out of money well before the end of the biennium.

Article VIII, Section 14 of the Montana Constitution prohibits the expenditure of funds that have not been lawfully appropriated. The implementing statute, 17-8-103, MCA, prohibits even the incurment of any obligation in excess of the legislative appropriation. There are severe civil penalties found in 17-8-104, MCA should incurments or expenditures exceed the legislative appropriation. Unless the existing rules are clarified, it is evident that an emergency of major proportions will exist in this program in the eleven state assumed counties which include most of our major cities and consequently most of the state's general relief assistance eligibles.

The Department has been forced to propose the adoption and amendment of these rules to avoid exceeding expenditure limits. The proposed rules maintain the program within the limits required by Article XII, Section 3, (3) of the Montana Constitution and its implementing statutes.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than June 14, 1984.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State May 7, 1984.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 2.31.101 adopting the American National Standard Safety Requirements for Aerial Passenger Tramways.	)))))	NOTICE OF THE AMENDMENT OF RULE 2.31.101

TO: All Interested Persons.

1. On March 15, 1984, the Department of Administration published notice of a proposed amendment to rule 2.31.101 concerning adoption of the American National Standard Safety Requirements for Aerial Passenger Tramways at page 409 of the 1984 Montana Administrative Register, issue number 5.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received at the hearing on the proposed amendment.

4. The authority of the department to make the proposed amendment is based on section 23-2-721, MCA, and the rule implements section 23-2-721, MCA.

Morris L. Brusett, Director
Department of Administration

Certified to the Secretary of State April 25, 1984

BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

IN THE MATTER OF The Repeal Of ARM 4.10.901 (Sale and Use) of Endrin) and the Adoption of a New Replacement Rule Restricting the Sale and Use of Endrin, ARM 4.10.903	NOTICE OF REPEAL AND ADOPTION (Restricting Sale and Use of Endrin)

TO: All Interested Persons:

1. On March 29, 1984 the Department of Agriculture proposed the repeal of ARM 4.10.901 (sale and Use of Endrin) and the adoption of a new replacement rule restricting the sale and use of Endrin, at p. 468 of the Montana Administrative Register, Issue No. 6, 1984.

2. No written comments or testimony were received.

3. The Department has repealed the old rule and adopted a replacement rule as proposed.

Keith Kelly, Director
Department of Agriculture

Certified to the Secretary of State, May 7, 1984.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF BARBERS

In the matter of the amendments of rules 8.10.405 concerning the fee schedule, 8.10.601 concerning qualifications, 8.10.1002 concerning teaching staff, 8.10.1003 concerning curriculum, 8.10.1004 concerning part-time curriculum, and adoption of new rules concerning public participation and qualifications for examinations for out-of-state applicants	NOTICE OF AMENDMENTS OF ARM 8.10.405 FEE SCHEDULE, 8.10.601 QUALIFICATIONS, 8.10.1002 TEACHING STAFF, 8.10.1003 CURRICULUM, 8.10.1004 PART TIME CURRICULUM, and ADOPTION OF NEW RULES, 8.10.202 PUBLIC PARTICIPATION, and 8.10.406 QUALIFICATION FOR OUT-OF-STATE APPLICANTS

TO: All Interested Persons:

1. On March 29, 1984, the Board of Barbers published a notice of amendments and adoptions of the above-stated rules at pages 471 through 476, 1984 Montana Administrative Register, issue number 6.

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

3. No comments or testimony were received.

DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF HORSE RACING

In the matter of the amendments of 8.22.502 concerning hiring of a veterinary surgeon and 8.22.612 concerning veterinarians.	NOTICE OF AMENDMENTS OF ARM 8.22.502 LICENSES ISSUED FOR CONDUCTING PARI-MUTUAL WAGERING ON HORSE RACE MEETINGS and 8.22.612 VETERINARIAN: OFFICIAL OR TRACK

TO: All Interested Persons:

1. On February 16, 1984, the Board of Horse Racing published a notice of public hearing on the amendments of the above-stated rules at pages 287 through 289, 1984 Montana Administrative Register, issue number 3.

2. The hearing was held at 9:00 a.m. in the downstairs conference room of the Department of Commerce, 1424 9th avenue, Helena, Montana. In addition to board members and staff, seven persons appeared. The Northwest Montana Fair and the Western Montana Fair proposed to amend the existing rules 8.22.502 and 8.22.612. Their proposal asks that the state Board of Horse Racing assume the responsibility of hiring and paying for a veterinarian and call him the State veterinarian. The fair boards felt that the integrity of the performance was

better preserved by a direct employer-employee relationship between State and veterinarian. They argued also that the tracks could not bear the cost.

Mr. Meloy, executive secretary for the board was the only opponent to this proposal simply stated that the boards budget could no longer bear the entire cost for the veterinarians, a practice started by his predecessor without benefit of a permitting rule.

Mr. Meloy then spoke in support of his proposal. He stated that the idea of tracks sharing in the cost of personnel was consistent with most racing jurisdictions. In the spirit of cooperation, Mr. Meloy suggested a compromise whereas the tracks and the state would share in the cost and the state would be the employer with complete supervision over the vet. There appeared to be no opposition to this idea, as long as the financial burden was not substantial on the tracks or the state.

No written comments or testimony were received.

3. The board has amended rule 8.22.502 exactly as proposed and amended rule 8.22.612 with the following changes: (taken from proposal on page 287, 1984 Montana Administrative Register, (paragraph 4.) issue number 3. (new matter underlined, deleted matter interlined)

"8.22.612 VETERINARIAN: OFFICIAL OR TRACK (1) The board shall contract with or hire persons licensed as veterinarians pursuant to section 8.22.502 to perform the duties of veterinarians at horse racing meets. Representatives of the affected racing associations shall be entitled to participate in negotiations ~~of contracts~~ for the selection of veterinarians. Contracts (or hires) shall be upon such terms as the board and the veterinarians may mutually agree and may contain differing rates of compensation based upon the experience of the veterinarian.

(2) The board shall assess each racing association as part of its annual fee prior to the start of any race meet for an amount equal to ~~the total compensation to be paid to the veterinarians assigned by the board to the race meet~~ $100 per race day requested. The funds shall be paid to the board by the associations in equal installments at the end of each week, or partial week of racing. ~~The board shall maintain these funds in a separate trust account in the state treasury. The board may withdraw advances from the trust account which are sufficient to meet the requirements of the veterinarians' compensation program, but never in amounts which exceed the total of funds assessed for the program.~~ The board may spend these advances as necessary only to meet the requirements of the veterinarians compensation program. The only expenses allowable from these advances are to meet the requirements of the veterinarian compensation program.

(3) The board shall establish a committee of at least two board members to meet at least quarterly with

representatives of the track veterinarians, and discuss recommendations from the veterinarians. Such meetings may be scheduled the same day as regular board meetings or at the convenience of the board.

~~(2)~~ (4) ..."

DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF MORTICIANS

In the matter of the amendments of ARM 8.30.402 subsection (1) concerning application fees and 8.37.407 concerning the fee schedule	))))	NOTICE OF AMENDMENTS OF ARM 8.30.402 (1) APPLICATIONS and 8.30.407 FEE SCHEDULE

TO: All Interested Persons:

1. On March 29, 1984, the Board of Morticians published a notice of amendments of the above-stated rules at pages 477 and 478, 1984 Montana Administrative Register, issue number 6.

2. The hearing was held on April 19, 1984 in the Department of Commerce, 1424 9th Avenue, Helena, Montana. There were no persons in attendance to staff and board members. No written data, views or arguments were submitted at the hearing or to the board office during the period for comments.

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

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

In the matter of the adoption of a rule concerning insurance requirements.	)))	NOTICE OF ADOPTION OF 8.50.431 INSURANCE REQUIREMENTS

TO: All Interested Persons:

1. On December 29, 1983, the Board of Private Security Patrolmen and Investigators published a notice of amendments, repeals, and adoptions of the above-stated rule and others at pages 1862 through 1879, 1983 Montana Administrative Register, issue number 24.

2. The board has previously amended, repealed, and adopted those rules with changes at pages 589 through 598, 1984 Montana Administrative Register, issue number 7. The insurance requirement rule was delayed for further

consideration of the testimony offered at the hearing on January 20, 1984.

3. The board is now adopting the rule with the following changes: (new matter underlined, deleted matter interlined)

"8.50.431 INSURANCE REQUIREMENTS (1) All licensees regulated by Title 37, Chapter 60, MCA, except private investigators, shall file with the board, a certificate of insurance evidencing a comprehensive general liability coverage for both licensees and employees for bodily injury, and property damage; the broad form comprehensive general liability endorsement which includes the following: personal injury and property damage with endorsement for assault and battery and personal injury, including false arrest, ~~libel, slander,~~ false imprisonment, malicious prosecution, invasion of privacy, wrongful eviction or wrongful entry, mental anguish, ~~shock,~~ defamation ~~of character~~ and discrimination. The minimum amount of coverage of $300,000 for bodily or personal injury and $100,000 for property damage. Licensees should also file endorsements for the loss, destruction or damage to property in their care, custody and control and for losses from errors, omissions or acts of the licensees or their employees.

(2) All persons who function solely as a private investigator must carry coverage for omission and errors; destruction, damage or loss of property entrusted to their custody, care and control; as well as coverage for defamation, malicious prosecution and invasion of privacy.

~~(2)~~ (3) All licensees must be insured by a carrier licensed in the state in which the insurance has been purchased or in this state.

(4) Each licensee shall sign a release allowing their insurance carrier to inform the board in the event coverage is cancelled or allowed to lapse."

DEPARTMENT OF COMMERCE

BY: _____
GARY BUCHANAN, DIRECTOR

Certified to the Secretary of State, May 7, 1984.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the adoption of rule 10.16.1110 outlining state special education complaint procedures	))))	NOTICE OF THE ADOPTION OF RULE 10.16.1110

To: All Interested Persons

1. On March 29, 1984, the superintendent published notice of a proposed adoption of rule 10.16.1110 outlining state special education complaint procedures at page 479 of the 1984 Montana Administrative Register, issue no. 2.

2. The superintendent has adopted the above-numbered rule as proposed.

3. No comments or testimony were received.

ED ARGENBRIGHT
SUPERINTENDENT OF PUBLIC
INSTRUCTION

Certified to the Secretary of State May 7, 1984.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of amending rules within Chapter 41, Vocational Education, Chapter 43, Postsecondary Vocational Education and Chapter 44, Vocational Education in Secondary Schools	)	NOTICE OF THE ADOPTION OF AMENDMENTS TO CHAPTER 41, 43 AND 44 PERTAINING TO VOCATIONAL EDUCATION GENERAL RULES, POST-SECONDARY VOCATIONAL EDUCATION AND VOCATIONAL EDUCATION IN SECONDARY SCHOOLS

TO: All Interested Persons

1. On January 16, 1984, the Office of Public Instruction published notice in Issue No. 2 of the 1984 Montana Administrative Register at page 135, of a public hearing on proposed amendments to Chapters 41, 43 and 44 pertaining to vocational education found on pages 10-543 to 10-564; 10-581 to 10-585; and 10-593 to 10-606 respectively of the Administrative Rules of Montana.

2. Proposed amendments of Rules in Chapter 41 have been adopted except as follows:

10.41.101 DEFINITIONS.

(1) through (8) Remain the same.

(9) Capital Expenditure. Expenditures for the acquisition of fixed assets or addition to fixed assets (real and personal property). Real property expenditures for land, land improvements, buildings, builiding remodeling, building additions, building construction and personal expenditures for machinery, equipment, furniture, fixtures, vehicles and tools, which exceed ~~$300~~ $200 in value.

(10) through (56) Remain the same.

(57) ~~State Director of Vocational Education~~ The State Director of Vocational Education shall be known as the Assistant Superintendent for Vocational Education Services.

Hereinafter, wherever reference is made to the state director or assistant superintendent, the full title of assistant superintendent for vocational education services shall be substituted in (67); 10.41.102(1); 10.41.106(1), (2); 10.41.108(1)(2)(3); 10.41.114(1); 10.41.120 and (1)(2); 10.41.122 (1)(2); 10.41.124(1)(2)(3); 10.41.127(1); 10.41.128 and (1)(4); 10.41.120; 10.41.131.

(58) through (66) Remain the same.

(67) Revised by note of (57).

(68) through (77) Remain the same.

10.41.107 MONTANA ADVISORY COUNCIL. Rule amendments and deletions remain for (1), (2) and (3). Substitute the following:

(1) The assistant superintendent for vocational education services shall provide the Montana advisory council for vocational education with information and reports concerning vocational education to assist the council in performing its duties.

(2) Requests for information and reports shall be directed to the state superintendent as sole agent for coordination purposes. (Auth. Sec. 20-7-301, MCA; IMP, Sec. 20-7-302.1(16) MCA.)

10.41.118 LOCAL ADVISORY COUNCILS.

(3) Remains the same.

(a) LEA's have three (3) or fewer program offerings and where representation on the council is composed of representative members from the areas of ~~training~~ vocational instruction consistent with 10.,41.118(1)(2).

(Auth. Sec. 20-7-301, MCA; IMP, Sec. 20-7-302(1)(h), MCA.)

10.41.121 OCCUPATIONAL INFORMATION, GUIDANCE AND PLACEMENT SERVICES IN POSTSECONDARY INSTITUTIONS. Postsecondary institutions offering vocational education programs and/or courses shall provide occupational information, guidance and placement services for their students regardless of the student's race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap.

(1) through (4) Remain the same.

3. The Office of Public Instruction has thoroughly considered all verbal and written commentary received on Chapter 41.

COMMENT: Add to 10.41.107 language to replace repealed (1) (2) (3) that requires the assistant superintendent for vocational education services to provide the state advisory council with information, facts, figures and reports needed by the council to perform its duties.

RESPONSE: The Office of Public Instruction concurs. Adopted rules substitute language in subsection (1) and (2).

COMMENT: Chapter 41, 10.41.117 should include an additional section that defines a vocational program as more than one course.

RESPONSE: The Office of Public Instruction notes that 10.41.101 DEFINITIONS renumbered (71) specifies a program. No change is recommended for an additional section in 10.41.117.

COMMENT: 10.41.118(3)(a) Change the term "training" to "vocational instruction."

RESPONSE: The Office of Public Instruction concurs and recommends the revision to adopted rule 10.41.118(a).

COMMENT: 10.41.117(4) Insure nondiscrimination statement is the same throughout the rules.

RESPONSE: The Office of Public Instruction concurs. The classes referred to in 10.41.117(4) will be used in 10.41.121 and 10.44.201(14) to include classes found in 10.41.117(4).

COMMENT: 10.41.101(21) Renumber (20) Full-time Equivalent. Change from 860 hours of contact time to 1,068 hours of student contact time. And, at least in some cases, that will be a change of the present practice. All of the centers, apparently, are not operating on the basis of 1,068 hours of contact time. For instance, in Missoula, the average instructor there teaches five hours a day, 180 days a year, which is 900 hours, and possibly for one quarter, an instructor may teach 6 periods which would amount to 1,080 hours for one quarter out of the year. So we feel this is an escalation of the present practice and feel that it is probably not proper as such.

RESPONSE: The Office of Public Instruction does not concur. The intent of this definition is to provide a constant from which to determine FTE staff for legislative purposes as requested by the Legislative Fiscal Analyst and Interim Study Committee on Vocational Education circa 1982. The definition is not intended to be used other than for legislative purposes to determine a constant measure to be applied for consistency in determining FTE staff. It is not intended to infringe upon negotiated contracts. No change is proposed.

4. Proposed amendments of Rules in Chapter 43 have been adopted except as follows:

10.43.101 DEFINITIONS.

(1) through (5) Remain the same.

(6) Postsecondary Student Activity Fee. ~~A fee~~ An approved fee established by student election to provide funds for student activities at the postsecondary center and which is not part of the center's operational budget and shall be accounted for locally.

(7) through (9) Remain the same.

10.43.201 STUDENT FEES.

(1) through (5) Remain the same.

(6) through (14) Set out in 10.43.202, 10.43.203 and 10.43.204.

(Auth. Sec. 20-7-333 MCA; IMP 20-7-301 (12) MCA.)

~~10.43.201~~ 10.43.202 TUITION FOR POSTSECONDARY VOCATIONAL-TECHNICAL EDUCATION CENTERS.

(1) Tuition is set by the superintendent of public instruction ~~and~~ to be collected on a quarterly basis at the local level and transmitted to the state treasurer.

~~(7)~~ (2) Language remains the same.
~~(8)~~ (3) Language remains the same.
~~(9)~~ (4) Language remains the same.
~~(10)~~ (5) Language remains the same.
~~(11)~~ (6) Part-time enrollment ~~fees are~~ tuition is determined by the superintendent of public instruction.
(Auth. Sec. 20-7-301 MCA; IMP, Sec. 20-7-301(12) MCA.)

~~10.43.201~~ 10.43.203 REFUNDING OF TUITION.
~~(12)~~ (1) Refunding of ~~out-of-state~~ tuition shall be at rates established by the superintendent of public instruction.
~~(13)~~ (2) Language remains the same.
(Auth. Sec. 20-7-301 MCA; IMP, Sec. 20-7-301(12) MCA.)

10.43.204 REVIEW OF FEES, TUITION AND CHARGES.
~~(14)~~ (1) Language remains the same.

10.43.301 UNIFORM GOVERNANCE AND ADMINISTRATIVE SYSTEM FOR POSTSECONDARY CENTERS.
(1) The superintendent of public instruction, assistant superintendent for vocational education services, district board of trustees ~~(administrative board)~~ or designee, and district superintendent shall ~~meet annually~~ meet at least twice yearly to review, evaluate and adjust, when necessary the governing policies for the operations of the five postsecondary centers.

(2) The superintendent of public instruction, district boards of trustees ~~(administrative board)~~ and district superintendent shall standardize the postsecondary system which will include, but is not limited to, the following: budgeting and accounting, staffing patterns, calendar and catalog, programs and curriculum offerings.
(3) through (6) Remain the same.

~~10.43.301~~ 10.43.302 LOCAL ADMINISTRATION.
~~(7)~~ (1) Language remains the same.
~~(8)~~ (2) Language remains the same.
~~(9)~~ (3) Language remains the same.
~~(10)~~ (4) Language remains the same.
~~(11)~~ (5) Language remains the same.

10.43.401 INSTRUCTOR AND DIRECTOR QUALIFICATIONS. Establishment of instructor and director qualifications is based in 20-7-301(5), (6) and reinforced in precedence by 20-7-304, which places controlling authority in Title 20, Chapter 7, Sections 301-333.
(1) Instructional staff shall be determined qualified in accordance with the board of public education certification standards.
(2) Center directors shall be deemed qualified in accordance with the board of public education certification

standards.

(3) Vocational-technical center instructors and directors shall meet the minimum qualifications defined as certification standards under MCA 20-4 Parts 1, 2, and 3, or as may be determined by the board of public education policy. (Auth. Sec. 20-7-301 MCA; IMP Sec. 20-7-301 (5)(6) MCA.)

NOTE: Substitute language noted above replaces entire proposed (1) through (3).

~~10.43.402 SUPPLEMENT TO QUALIFICATIONS~~ and ~~10.43.403 OFFICE OF PUBLIC INSTRUCTION POLICY ON UPGRADING, STRENGTHENING AND ENHANCING PROFESSIONAL EXCELLENCE~~ are deleted in entirety as proposed.

5. The Office of Public Instruction has thoroughly considered all verbal and written commentary received on Chapter 43.

COMMENT: 10.43.401 proposed adoption; recommendation was made that the proposed changes should be carefully considered in that they might affect the same instructors at the postsecondary centers as do current certification standards.

RESPONSE: The rules have been adopted with substitute languge developed on 10.43.401(1)(2)(3) that addresses the commentary concern. Qualifications required by 20-7-301 (5)(6) are deemed to be as required through Board of Public Education certification requirements. Proposed rules 10.43.402 and 10.43.403 have been deleted.

COMMENT: 10.43.401(2) of proposed rules for adoption; a specific recommendation from the Missoula school, trades and industry department noted that instead of providing for two years of verifiable occupational experience, it should be five years as it relates to trade and industry.

RESPONSE: The Office of Public Instruction adopts the rules on instructor and director qualifications in 10.43.401 but substitutes language in (1)(2)(3) to respond to the comment. The rule now defines qualifications as the requirements for certification under the Board of Public Education established in MCA 20.4 Parts 1, 2 and 3 or as may be determined by the Board of Public Education.

6. Proposed amendments of rules in Chapter 44 have been adopted except as follows:

10.44.106 ACCOUNTING. A school district receiving funds from the appropriation shall account for such funds in a subfund of the miscellaneous program fund established by 20-9-506, MCA. These funds shall be expended within the fiscal year. Excess funds received by formula application for a vocational program must be expended in that approved vocational program.

10.44.201 GENERAL REQUIREMENTS

(1) through (9)(d) Remain the same.

~~(i) 15 quarter (10 semester) credits of college work in general background courses as required by the Board of Public Education.~~

~~(A) Collegiate preparatory in home economics shall include eighty percent of required courses shall be distributed equally among the following:~~

~~(1) Child development~~

~~(2) Family life~~

~~(3) Resource management~~

~~(4) Consumer education~~

~~(5) Clothing and textiles~~

~~(6) Food and nutrition~~

~~(7) Housing and furnishing and equipment.~~

~~(B) Twenty percent of the required credits shall be related to the strategies and techniques of teaching home economics. Courses included in this area may be adult educa- tion, curriculum, seminars, etc.~~

~~(C)~~ (i) Language remains the same.

~~(D)~~ (ii) Language remains the same.

(10) through (11) Remain the same.

(12) The maximum number of students per class shall be determined by the work being done, equipment being used, ease of supervision, safety factors, space and resources available and the need for individual student instruction. ~~Class size maximums are given for each program under its specific requirements. Approval for the larger class must be obtained in advance and will be granted only when evidence that adequate provisions have been made to ensure that the larger number will not hinder the success of the program. Deficiencies in some cases may dictate a smaller number of students per class.~~

10.44.203 BUSINESS AND OFFICE EDUCATION PROGRAMS.

(2) (a) Remain the same.

~~(b) Vocational business and office classes shall be scheduled/designed to accommodate a maximum of 20 students.~~

10.44.204 DISTRIBUTIVE EDUCATION PROGRAMS.

~~(10) The marketing/distributive education classes shall not exceed thrity (30) students.~~

~~(B)~~ (10) Language remains the same.

10.44.206 TRADE AND INDUSTRIAL EDUCATION PROGRAMS.

(2) (a)(b) Remain the same.

~~(c) Maximum class size for specific programs ranges from 18 to 22.~~

~~(d)~~ (c) Language remains the same.

10.44.207 HOME ECONOMICS WAGE EARNING PROGRAMS.

~~(3) Maximum class size shall be 25 students per instructor in wage earning classes.~~

~~(4)~~ (3) Language remains the same.

10.44.208 VOCATIONAL COMPREHENSIVE CONSUMER AND HOME-MAKING EDUCATION PROGRAMS.

~~(5) Each laboratory class--(Foods and Nutrition, Clothing and Textiles, and Child Development)--should be limited to 20 students per instructor and in no case should exceed 25. The following number of students per lab station is stipulated:~~

		~~Ideal~~	Maximum
~~(a)~~	~~Per foods lab unit~~	~~1~~	5
~~(b)~~	~~Per sewing machine~~	~~1~~	2

~~(4)~~ (3) Language remains the same.

10.44.209 INDUSTRIAL ARTS PROGRAMS.

~~(3) Maximum class size shall be 20 students or as safety and other consideration dictate in lower numbers.~~

~~(4)~~ (3) Language remains the same.

~~(5)~~ (4) Each of the four major clusters -- Communications, Construction, Materials and Energy -- as outlined in the Montana Industrial Arts Curriculum Guide, must be included in the course of instruction for occupationally oriented industrial arts. ~~A minimum of nine weeks in each area is required.~~

~~(6)~~ (5) Language remains the same.
~~(7)~~ (6) Language remains the same.
~~(8)~~ (7) Language remains the same.
~~(9)~~ (8) Language remains the same.
~~(10)~~ (9) Language remains the same.

10.44.210 COOPERATIVE VOCATIONAL EDUCATION PROGRAMS.

(5) A signed training agreement must be entered into by the participating employer, educational agency, parent or legal guardian and training with a copy of each submitted to the Office of Public Instruction c/o distributive education/cooperative education specialist.

7. The Office of Public Instruction has thoroughly considered all verbal and written commentary received on Chapter 44.

COMMENT: Recommendation was made that vocational programs are clearly the recipients of the excess costs money as noted in 10.44.106 ACCOUNTING.

COMMENT: A request to retain current language in 10.44.106 ACCOUNTING was made.

RESPONSE: The Office of Public Instruction has revised proposed language to address the concerns of the two comments. Language to insure that excess funds are allocated to the approved program generating the revenue and expended within the fiscal year has been included.

COMMENT: A recommendation was made respective to 10.44.201 GENERAL REQUIREMENTS (6) that student organizations be highly recommended.

RESPONSE: The Office of Public Instruction has not found a legal basis for recommendations in current statutes. The recommendation may be more appropriately stated in the Guidelines for Secondary Vocational Education.

COMMENT: General Requirements in 10.44.201(9) should be compared to the Board of Public Education requirements to make sure that all is consistent.

RESPONSE: The certification requirements of 10.44.201 (9) have been extracted from the current certification standards of the Board of Public Education. No change excepting (9)(d)(i, A, 1, 2, 3, 4, 5, 6, 7; B) is proposed.

COMMENT: The inclusion of college preparatory credits as a portion of General Requirements 10.44.201(9)(d) (i, A, 1, 2, 3, 4, 5, 6, 7,; B) are not appropriate for this section and should be deleted.

RESPONSE: The Office of Public Instruction concurs and has stricken the proposed language. Teacher Education Standards are appropriately addressed in Chapter 58.

COMMENT: Trades and Industrial Education rules of 10.44.206(2)(c) provide for a range of class size that should be clarified.

RESPONSE: The Office of Public Instruction concurs with the observation and comment and notes that 10.44.201(12) more appropriately addresses the local administrative decision relating to class size. Language has been removed from 10.44.206(2)(c).

COMMENT: Class size specified in program areas does not provide for revisions to instructional methods and/or facilities. Language should be developed to allow schools to accommodate as many students as stations allow.

RESPONSE: The Office of Public Instruction partially concurs. Language under 10.44.201 General Requirements (12) addresses factors inclusive of available equipment, ease of supervision, safety factors space and resources available and the need for individual student instruction.

It is determined that such factors as noted in (12) are necessary for the establishment of acceptable educational efforts without constraints that may be artificial given adequate facilities and changing instructional design.

Restrictive language has been stricken.

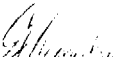
COMMENT: The requirement of nine specific weeks in each of the industrial arts areas listed in 10.44.209 Industrial Arts Programs (5) is too specific.

RESPONSE: The Office of Public Instruction concurs. Language in 10.44.209(5) has been stricken.

COMMENT: The subsection (5) of 10.44.210 Cooperative Vocational Education should include legal guardian in addi-

tion or parents.

RESPONSE: The Office of Public Instruction concurs. The words "legal guardian" have been inserted following parent in 10.44.210(5).

BY 
Ed Argenbright
State Superintendent

Certified to the Secretary of State, May 7, 1984.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of rules governing accreditation standards of the Board of Public Education	))))	NOTICE OF ADOPTION OF AMENDMENTS OF ACCREDITATION RULES 10.55.101, 10.55.202, 10.55.204, 10.55.207, 10.55.302, 10.55.402, 10.55.404, 10.55.502, 10.55.503, 10.55.504.

TO: All Interested Persons

1. On January 12, 1984, the Board published notice of the amendment of rules concerning accreditation. The notice was published on page 5 of the Montana Administrative Register, Issue number 1.

2. The Board adopted the amendments as proposed.

3. No comments or testimony were received.

4. The authority of the board to make the proposed changes is based on section 20-2-121(7) and section 20-7-101, MCA, and the rule implements section 20-7-101, MCA.

Ted Hazelbaker

TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

By: Ronald Van Dyn

Certified to the Secretary of State April 23, 1984

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of ARM 10.57.405, Class V Provisional Certificate and 10.55.302 Certificates.	)))	NOTICE OF THE AMENDMENT OF RULES 10.57.405 AND 10.55.302 CLASS V. PROVISIONAL CERTIFICATE

TO: All Interested Persons

1. On January 26, 1984 the Board of Public Education published notice of a proposed amendment of rules 10.57.405 and 10.55.302 relating to the Class V Provisional Certificate, at page 174 of the 1984 Montana Administrative Register, Issue Number 2.

2. The board adopted the rules with the following changes:

10.57.405 CLASS 5 PROVISIONAL CERTIFICATE (1) through (5) Same as proposed.

(6) Provisional elementary endorsement: Elementary endorsement is granted to applicants who submit acceptable evidence of a partially completed elementary education program, or a completed non-approved program, provided the following minimum requirements have been met and the individual is not already a regular certified employee of a district where he has been under a contract as a certified teacher during the last academic year. This provision does not apply to a teacher who is selected for promotion ~~upward to administration~~ within the district at the elementary level or to an administrative position.

(6)(a) through (c) remain the same.

(7) Provisional secondary endorsement: Secondary endorsement is granted to applicants who submit acceptable evidence of a partially completed secondary education program, provided the following minimum requirements have been met and the individual is not already a regular certified employee of a district where he has been under contract as a certified teacher during the last academic year. This provision does not apply to a teacher who is selected for promotion ~~upward to administration~~ within the district at the secondary level or to an administrative position.

(7)(a) through (11) same as proposed.

AUTH: Section 20-2-121(1) IMP: Section 20-4-106(1)(e)

10.55.302 CERTIFICATES (1) through (6) Same as proposed rule.

AUTH: Section 20-2-121 IMP: Section 20-4-106(1)(e)

3. At the public hearing which was held February 27, 1984, at the Board of Regents Conference Room, 33 South Last Chance Gulch, Helena, Montana, two persons testified on the

proposed rule. Their testimony covered several items each of which the Board of Public Education specifically addresses as follows:

(a) There was concern that the AFT was not notified of the impending decision of the Board at its meeting of December 13. The Board responds that there is no violation because due process for the adoption of rules occurs when the Administrative Procedures Act has been complied with. The Board did comply by noticing the rule for a public hearing.

(b) There was concern that the rule negates the negotiated agreement between the Anaconda School District No. 10 Trustees and the Anaconda Teachers Union. The Board responds by pointing out that its responsibility is to set policy for the proper issuance of class V certificates and that the proposed amendment does not affect class V certificates hitherto issued. The rule is prospective, not retroactive and consequently affects only agreements entered into in the future.

(c) There was concern that the restriction of the class V certificate to those within a district was unjust because it ignores contributions to education made elsewhere. The Board responds by pointing out that allowing a fully qualified person to leave his position for another position for which he is less qualified constitutes a violation of the intent of the statute. Vacancies must be filled with the most qualified person; the long term contribution is recognized by the retention of a person in the position for which he is most qualified.

(d) There was concern that the phrase "promotion upward to administration" is exclusionary because it does not take into account promotion of teachers into positions other than teaching. The Board agrees and has amended the rule so as to make it possible for teachers to be promoted to areas other than teaching.

(e) There was concern that no evidence had been provided demonstrating the need for amending the existing rule and that the amendment has no application other than in Anaconda. The Board disagrees by pointing out that while it heard testimony from school board members of the Anaconda school district, the focus of its attention was not on the practice of that particular district but on the general practice of replacing fully qualified teachers with less qualified teachers through the use of the class V certificate. The Board considers such practice a violation of the intent of the class V certificate option and wishes to correct it wherever it occurs.

(f) Finally, there was concern that the persons who had discussed the class V certificate with the Board, in doing so, were violating their collective bargaining agreement. The Board responds by pointing out that this concern lies outside its powers. The Board provides an opportunity to be heard to all those who wish to express a concern about practices resulting from policies for which the Board has a statutory responsibility.

Ted Hazelbaker

TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

By: Madalon D. Jm

Certified to the Secretary of State April 30, 1984

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of rules found in Chapter 58, Standards for State Approval of Teacher Education Programs leading to Interstate Reciprocity of Teacher Certification; and proposed repeal of 10.58.105	NOTICE OF ADOPTION OF AMENDMENT OF RULES FOUND IN CHAPTER 58, STANDARDS FOR STATE APPROVAL OF TEACHER EDUCATION PROGRAMS LEADING TO INTERSTATE RECIPROCITY OF TEACHER CERTIFICATION

TO: All Interested Persons

1. On January 26, 1984, the board of public education published notice of proposed amendment of rules found in Chapter 58, Standards for State Approval of Teacher Education Programs Leading to Interstate Reciprocity of teacher certification at page 176 of the Montana Administrative Register, issue number 2.

2. The board adopted the amendments and repeal as proposed.

3. No comments or testimony were received.

4. The authority of the board to make the proposed changes is based on section 20-2-121(1), MCA, and the rule implements section 20-4-121, MCA.

Ted Hazelbaker

TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

By: Theodora Dym

Certified to the Secretary of State April 23, 1984

VOLUME NO. 40 OPINION NO. 47

BOARD OF LAND COMMISSIONERS - Authority under Opencut Mining Act;
MINES - Authority of Board of Land Commissioners under Opencut Mining Act;
STATUTES - Construction and application of policy or purpose provision in Opencut Mining Act;
MONTANA CODE ANNOTATED - Sections 2-4-704, 82-4-401 to 82-4-441;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 164 (1978).

HELD: Section 82-4-434(2), MCA, contains those matters which must be addressed in any reclamation contract entered into by the State Board of Land Commissioners under the Opencut Mining Act. The Board has the discretion to include other requirements in the reclamation contract which reasonably relate to the general purpose of the Act as set forth in section 82-4-402, MCA.

18 April 1984

Dennis Hemmer, Commissioner
Department of State Lands
1625 Eleventh Avenue
Helena MT 59620

Dear Mr. Hemmer:

You have requested my opinion concerning a question which I have phrased as follows:

> To what extent must the State Board of Land Commissioners consider the purposes of the Opencut Mining Act stated in section 82-4-402, MCA, in determining whether to enter into a reclamation contract under section 82-4-423, MCA?

Your question must be answered with reference to the provisions of the Opencut Mining Act (Act), §§ 82-4-401

to 441, MCA, general rules of statutory construction and accepted principles of administrative law.

Section 82-4-402, MCA, of the Act provides for the comprehensive "reclamation and conservation of land subjected to opencut bentonite, clay, scoria, phosphate rock, sand, or gravel mining" and sets forth as its general purpose

> [t]o preserve natural resources, to aid in the protection of wildlife and aquatic resources, to safeguard and reclaim through effective means and methods all agricultural, recreational, home, and industrial sites subjected to or which may be affected by opencut bentonite, clay, scoria, phosphate rock, sand, or gravel mining to protect and perpetuate the taxable value of property, to protect scenic, scientific, historic, or other unique areas, and to promote the health, safety, and general welfare of the people of this state.

See generally 37 Op. Att'y Gen. No. 164 (1978). To achieve this purpose, the Act prohibits opencut mining operations which will result in the removal of 10,000 cubic yards or more of products or overburden, unless the operator has entered into a contract for reclamation with the State Board of Land Commissioners. § 82-4-431, MCA. The Board has extensive authority with respect to the terms of such contracts, for monitoring contractual compliance by opencut mining operators and for reclaiming land when an operator has forfeited upon the performance bond required to be posted as part of any application for a reclamation contract. §§ 82-4-422 to 423, MCA.

Section 82-4-422(1), MCA, is significant presently and provides that the Board may "enter into contracts where it is found on the basis of the information set forth in the application and an evaluation of the operation by the board that the requirements of the part or rules will be observed and that the operation and the reclamation of the affected area can be carried out consistently with the purpose of the part." (Emphasis added.) Section 82-4-434(2), MCA, however, does outline certain provisions mandatorily included in any reclamation contract, all of which emphasize the Act's

objective of ensuring land use conservation both through controls during the actual opencut mining operations and through remedial measures after the operations have concluded. Finally, the Montana Administrative Procedure Act, §§ 2-4-101 to 711, MCA, applies to hearings before the Board and to judicial review of its decisions. § 82-4-427(2), MCA.

"In place of a preamble it has become common...to include a policy section which states the general objectives of the act in order that administrators and courts may know its purposes...." 1A Sutherland Statutory Construction § 20.12 (4th ed. 1972). A policy section is, moreover, not only relevant to the question of legislative intent concerning a statute's overall purpose but also to the scope of administrative agency authority under the Act. "[T]he grant of authority to an agency carries with it the power to do what is reasonably necessary to perform the powers and duties specifically conferred.... In determining the scope of the grant of authority, the purpose of the legislation must be considered...." Eastman Kodak Co. v. Fair Employment Practices Commission, 83 Ill. App. 3d 215, 38 Ill. Dec. 620, 403 N.E.2d 1224, 1227 (1980) (citations omitted). See also Lehigh & New England Railway Co. v. ICC, 540 F.2d 71, 79 (3d Cir. 1976), cert. denied, 429 U.S. 1061 (1977); Atlantis I Condominium Association v. Bryson, 403 A.2d 711, 713 (Del. 1979). The policy or purpose provision in section 82-4-402, MCA, is thus properly considered in determining the extent of the Board of Land Commissioners' authority under the Act to require reclamation contract commitments in addition to those mandated under section 82-4-434(2), MCA. Cf. Wyse v. District Court, 195 Mont. 434, 437, 636 P.2d 865, 866 (1981) ("[a] statute derives its meaning from the entire body of words taken together"); Vita-Rich Dairy v. Department of Business Regulation, 170 Mont. 341, 348, 553 P.2d 980, 984 (1976) ("[i]n construing legislative intent statutes must be read and considered in their entirety and legislative intent may not be gained from the wording of any particular section or sentence, but only from consideration as a whole").

Consequently, the Board is vested with administrative discretion to determine whether a particular matter should be included as part of a reclamation plan even though not required under section 82-4-434(2), MCA. See Levy v. Board of Registration and Discipline In

Medicine, 378 Mass. 519, 392 N.E.2d 1036, 1040 (1979) ("[w]hen the Legislature delegates to an administrative agency a broad grant of authority to implement a program of reform or social welfare, the administrative agency generally has a wide range of discretion in establishing the parameters of its authority pursuant to the enabling legislation"). Such discretion is, nonetheless, not limitless but must be exercised consistently with the basic purpose of the Act--the conservation and reclamation of land affected by opencut mining operations. See, e.g., Schultz v. State, 417 N.E.2d 1127, 1136 (Ind. Ct. App. 1981) ("[a]ny discretion vested in an administrative agency must be delimited by statutory authority delegating that discretion to it"). Implicit in the existence of administrative discretion is the Board's right to "choose which of several permissive courses will be followed. In exercising that discretion, the factors to be taken into consideration 'are not mechanical or self-defining standards' and, thus, wide areas of judgment are implied.... Such discretion is the 'lifeblood' of the administrative process...." Riley v. State Employees' Retirement Commission, 178 Conn. 438, 423 A.2d 87, 89 (1979) (citations omitted). The Board's decision, if later judicially challenged, should "'be sustained so long as it is reasonably related to the purposes of the enabling legislation'". Levy v. Board of Registration and Discipline In Medicine, 392 N.E.2d at 1039. See generally § 2-4-704, MCA; Western Bank of Billings v. Montana State Banking Board, 174 Mont. 331, 340, 570 P.2d 1115, 1120 (1977); State ex rel. Montana Wilderness Association v. Board of Natural Resources and Conservation, 39 St. Rptr. 1238, 1242-43, 1251, 648 P.2d 734, 740-41, 746 (1982).

THEREFORE, IT IS MY OPINION:

> Section 82-4-434(2), MCA, contains those matters which must be addressed in any reclamation contract entered into by the State Board of Land Commissioners under the Opencut Mining Act. The Board has the discretion to include other requirements in the reclamation contract which reasonably relate to the general purpose of the Act as set forth in section 82-4-402, MCA.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 40 OPINION NO. 48

ALCOHOLIC BEVERAGES - Authority of local governments to require beer distributors to keep records of the sales or distribution of beer kegs;
BEER - Distributors, registration of beer kegs;
CITIES - Authority to require beer distributors to keep records of the sales or distribution of beer kegs;
COUNTIES - Authority to require beer distributors to keep records of the sales or distribution of beer kegs;
LOCAL GOVERNMENT - Authority to require beer distributors to keep records of the sales or distribution of beer kegs;
MONTANA CODE ANNOTATED - Section 16-1-102.

HELD: In Montana, neither cities nor counties have authority to enact ordinances requiring wholesale and retail distributors of keg beer to keep and maintain records of the sales or distribution of all beer kegs within the city or county.

19 April 1984

W. G. Gilbert, III, Esq.
Beaverhead County Attorney
Beaverhead County Courthouse
Dillon MT 59725

Dear Mr. Gilbert:

You have asked my opinion on the following question:

> Whether the City of Dillon and/or Beaverhead County have authority to enact ordinances requiring wholesale and retail distributors of keg beer to keep and maintain records of the sales or distribution of all beer kegs within the city or county and imposing criminal penalties for the failure to do so.

Section 16-1-102, MCA, says in pertinent part:

> It is hereby declared to be the policy of the state of Montana that the manufacture,

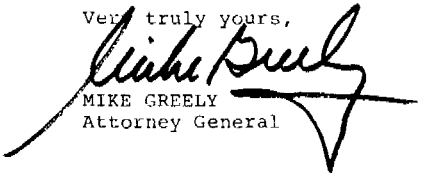
> transportation, distribution, sale, and possession of "beer", as that term is defined in this code and which contains not more that 7% of alcohol by weight, shall be controlled and regulated as provided under this code.

Your question is on all points analogous to the question addressed by the Montana Supreme Court in State ex rel. City of Libby v. Haswell, 147 Mont. 492, 414 P.2d 652 (1966). In that case, the City of Libby sought to regulate by local ordinance the sale of beer to minors. However, the Supreme Court ruled that by enacting what is now section 16-1-102, MCA, the Legislature had reserved to the State the entire control of the manufacture, sale, and distribution of beer. Since local governments have only those powers granted by the Legislature, in passing Montana's alcoholic beverage control laws, the Legislature has not given local governments power in the area of regulation of alcoholic beverages. "The legislature thus has made it clear that the state has preempted the field with respect to the control of the sale of beer and liquor." 147 Mont. at 496. The Supreme Court continued: "We hold, then, that the cities do not have authority or jurisdiction to enact ordinances dealing with control of sales of liquor, and that Judge Haswell was correct in his ruling on the demurrer." 147 Mont. at 498. The type of regulation being considered by the City of Dillon and Beaverhead County is the same as the regulation enacted by the City of Libby in that neither action is authorized by statute. The Montana statute has reserved to the State the sole control of beer distribution; the only way this situation could be changed is by legislative enactment.

THEREFORE, IT IS MY OPINION:

> In Montana, neither cities nor counties have authority to enact ordinances requiring wholesale and retail distributors of keg beer to keep and maintain records of the sales or distribution of all beer kegs within the city or county.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 40 OPINION NO. 49

COUNTY GOVERNMENT - County park board funding and administration of finances;
PARKS - Funding from county general fund;
PARKS - Separation of restricted and unrestricted county park revenues;
PUBLIC FUNDS - Interest credited to county general fund;
PUBLIC FUNDS - Separation of restricted and unrestricted county park revenues;
TAXATION AND REVENUE - Authority to levy special tax for county park fund;
MONTANA CODE ANNOTATED - Sections 7-6-204, 7-6-2311 to 7-6-2321, 7-6-2501, 7-6-2511, 7-6-2512, 7-16-2102, 7-16-2108, 7-16-2205, 7-16-2301, 7-16-2302, 7-16-2321, 7-16-2324, 7-16-2327, 7-16-2328, 7-16-2329, 76-3-606.

HELD: 1. A county park board does not have the authority to levy a special tax for park purposes.

2. The funding for the county park board's obligations is derived from the county general fund as well as from other specific sources as enumerated by sections 7-16-2328, 7-16-2324 and 76-3-606, MCA.

3. Revenues from sale of lands and cash donations are restricted in use and should be separated from unrestricted revenues within the park fund through acceptable accounting procedures.

4. Interest earned from the deposit or investment of the park fund must be credited to the county general fund.

25 April 1984

Harold F. Hanser, Esq.
Yellowstone County Attorney
Yellowstone County Courthouse
Billings MT 59101

Dear Mr. Hanser:

You have requested my opinion on several questions relating to the funding and management of finances of county park boards, as follows:

1. Is a county park board, formed pursuant to Title 7, chapter 16, part 23, MCA, limited in its spending authority to the proceeds arising from "the sale of hay, trees, or plants or from the use of or leasing of lands and facilities," or may such board submit an annual budget request in excess of such nontax revenues, funding the excess with a special ad valorem tax mill levy? If a mill levy is authorized, is there any limit to the number of mills which may be levied for park purposes?

2. Are the general fund and park board fund methods of funding county park operations mutually exclusive, or may they be utilized in combination?

3. In order to effectively administer the mandates of sections 76-3-606(2) and 7-16-2324(4), MCA, may either a board of county commissioners or a county park board create a separate fund apart from the park board operating fund, to account for revenues whose use is restricted to "the purchase of additional lands or for the initial development of parks and playgrounds"?

4. Assuming that the restricted cash in lieu of dedication and land sale revenue can be invested, must the interest earned be used only for the purchase or initial development of parks, or could the interest be used to fund the park board's operations?

A county park board created pursuant to Title 7, chapter 16, part 23, MCA, is a department of county government with powers specifically provided by statute. § 7-16-2301, MCA. The park board consists of the county

commissioners and six other persons. § 7-16-2302, MCA. The park board is authorized to pay all obligations arising from the performance of its statutory duties and may also incur an indebtedness on behalf of the county. §§ 7-16-2321, 7-16-2327, MCA.

You wish to know whether the county park board is authorized to levy a separate tax to finance its obligations. The relevant statutes provide:

> All money raised by tax for park purposes or received by the board of park commissioners from the sale of hay, trees, or plants or from the use of or leasing of lands and facilities shall be paid into the county treasury. The county treasurer shall keep all such money in a separate fund to be known as the park fund. [§ 7-16-2328, MCA.]
>
> The board of park commissioners shall have no power to incur liability on behalf of the county in excess of money on hand in or taxes actually levied for said park fund. [§ 7-16-2329, MCA.]

(Emphasis added.)

Before a governing body may impose a tax, it must have clear and specific authority providing for the imposition of that tax. Burlington Northern v. Flathead County, 176 Mont. 9, 575 P.2d 912 (1978). Tax statutes are strictly construed against the taxing authorities and in favor of the taxpayer. Id. Usually the Legislature expressly and specifically gives authority for special tax levies and sets specific mill limits on such special taxes. See, e.g., §§ 7-6-2511, 7-6-2512, 7-16-2102, 7-16-2108, 7-16-2205, MCA. While the Legislature need not use the words "authorized to levy a tax," it must do more than merely refer to a special fund. Burlington Northern v. Flathead County, supra. In Burlington Northern, the Montana Supreme Court held that a special tax was authorized by statutes which directed the county superintendent to determine the retirement fund levy requirement and to "fix and set" the retirement fund levy. The park board law does not meet the degree of specificity required by Montana law to authorize the imposition of a separate tax. The

statutes in question merely allow the county treasurer to establish a separate fund for park purposes.

While a separate tax for park purposes has not been authorized by the Legislature, it is clear that the Legislature did not intend to limit the park fund to the money raised by sale of hay, trees or plants or by lease of lands and facilities. Such a construction would render meaningless the references in sections 7-16-2328 to 2329, MCA, to moneys raised by tax for park purposes. It is presumed that the Legislature does not pass meaningless legislation, and statutes relating to the same subject are to be harmonized, giving effect to each. Crist v. Segna, 38 St. Rptr. 150, 622 P.2d 1028 (1981). The park board law must be read together with the county budget law, Title 7, chapter 6, part 23, MCA. As a department of county government, the county park board must file estimates of probable revenues from sources other than taxation and of all expenditures required for the next fiscal year. § 7-6-2311, MCA. Based upon this information from all departments, the county commissioners prepare the budget, determine the amount to be raised by tax for each fund, and fix the general tax levy. §§ 7-6-2311 to 2321, MCA. Since a specific separate tax levy is not authorized for the park fund, additional money must be appropriated from the county general fund authorized by section 7-6-2501, MCA, if the revenue from sources other than taxation is insufficient to meet the necessary expenditures.

Your third and fourth questions concern the administration of certain restricted revenues raised from sale of park lands and from cash donations in lieu of dedication of land for park purposes pursuant to sections 7-16-2324 and 76-3-606, MCA. Revenues from these sources are restricted in use to the sole purpose of the purchase of additional lands or the initial development of parks and playgrounds. §§ 7-16-2324(4) and 76-3-606(2), MCA. While these revenues are a part of the park fund, they should be separated from unrestricted park fund revenues, either through separate bank accounts or through acceptable accounting procedures, so that the restricted revenues are used solely for the authorized purpose. The interest earned from the deposit or investment of the restricted and unrestricted portions of the park fund must be credited to the general county fund in accordance with section 7-6-204(1), MCA.

THEREFORE, IT IS MY OPINION:

1. A county park board does not have the authority to levy a special tax for park purposes.

2. The funding for the county park board's obligations is derived from the county general fund as well as from other specific sources as enumerated by sections 7-16-2328, 7-16-2324 and 76-3-606, MCA.

3. Revenues from sale of lands and cash donations are restricted in use and should be separated from unrestricted revenues within the park fund through acceptable accounting procedures.

4. Interest earned from the deposit or investment of the park fund must be credited to the county general fund.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 40 OPINION NO. 50

ADMINISTRATIVE LAW - Validity of rules;
LICENSES, OCCUPATIONAL AND PROFESSIONAL - Validity of rules;
RULES AND REGULATIONS - Validity of rules;
ADMINISTRATIVE RULES OF MONTANA - Sections 8.56.402(3), 8.56.405, 8.56.406, 8.56.412(1)(c);
MONTANA CODE ANNOTATED - Sections 2-4-305(6), 37-14-102, 37-14-202, 37-14-303, 37-14-305, 37-14-306.

HELD: Rules promulgated by the Board of Radiologic Technologists which require applicants for permits under section 37-14-306, MCA, to take a 24-hour course, to be employed, to have six months' experience and to pass a permit examination are void and unenforceable.

3 May 1984

Geoffrey L. Brazier, Esq.
Board of Radiologic Technologists
Department of Commerce
1424 Ninth Avenue
Helena MT 59620

Dear Mr. Brazier:

You have requested my opinion on the validity of certain rules adopted by the Board of Radiologic Technologists. The rules in question concern the standards to be met by persons applying for temporary permits pursuant to section 37-14-306, MCA. In particular, the rules require an applicant for a permit to prove that he has taken a 24-hour x-ray course approved by the board, that he is employed and that he has at least six months' practical experience in the x-ray profession. Further, the board rules require the applicant for a permit to pay a $65 examination fee and to pass a permit examination covering basic procedures and radiation protection. ARM §§ 8.56.402(3), 8.56.405, 8.56.406. In cases of regional hardship or emergency, an applicant may be granted a permit if he shows good cause why he is unable to take the permit examination. ARM § 8.56.412(1)(c).

The board is authorized by section 37-14-202, MCA, to promulgate rules necessary to carry out the provisions of Title 37, chapter 14, MCA. However, no rule adopted is valid unless it is consistent and not in conflict with the enabling legislation, and unless it is reasonably necessary to effectuate the purpose of the statute. § 2-4-305(6), MCA. The Montana Supreme Court has held that rules are not reasonably necessary and are therefore invalid if the rules "engraft additional, noncontradictory requirements on the statute which were not envisioned by the legislature," even though the rules may appear to be consistent with the purposes of the enabling act. Board of Barbers v. Big Sky College, 38 St. Rptr. 621, 626 P.2d 1269 (1981); Bell v. Department of Licensing, 182 Mont. 21, 594 P.2d 331 (1979). The rules and statutes must be examined according to the foregoing principles.

A permit is defined as "an authorization which may be granted by the board to apply x-ray radiation to persons when the applicant's qualifications do not meet standards required for the issuance of a license." § 37-14-102(5), MCA. An applicant for a permit must submit a nonrefundable license fee. § 37-14-305, MCA. The statute defines three separate classes of applicants for permits. The first class consists of applicants who do not qualify for the issuance of a license, but who have demonstrated to the satisfaction of a physician specializing in radiology and approved by the board that they are capable of performing high quality x-ray examinations without endangering the public health and safety. § 37-14-306(1), MCA. The second class of applicants consists of persons who meet the minimum qualifications for a license, but who have not yet taken the license examination. § 37-14-306(2), MCA. The third class consists of persons who have not been licensed, but who can present adequate evidence that a permit is necessary because of regional hardship or emergency and that such persons are capable of performing x-ray examinations without endangering public health and safety. § 37-14-306(3), MCA. All three classes of permits are temporary in nature.

The board's rules do not distinguish among the three classes of permit applicants, but rather require all applicants to complete the 24-hour course, to be employed, to have six months' experience, and to pass the permit examination. None of these additional

requirements were envisioned by the Legislature for permit applicants. The statutes do not refer to a permit examination. The sole reference to an examination is contained in section 37-14-303, MCA, which deals exclusively with examination for licensure as a radiologic technologist. The additional training and experience are not required by section 37-14-306, MCA, nor by any other portion of the enabling act. Class one applicants need only show that a physician approved by the board has been satisfied with their performance. Class two applicants have already successfully completed two years of training and are otherwise qualified for licensure, but are awaiting the next license examination. Class three applicants must show the existence of a regional hardship or emergency and must present "adequate evidence" that they are capable of performing x-ray examinations without endangering public health and safety. The term "adequate evidence" indicates that the board must evaluate class three applicants on a case-by-case basis. Had the Legislature intended these applicants to meet specific training and experience requirements and to pass an examination, it would have so stated.

THEREFORE, IT IS MY OPINION:

Rules promulgated by the Board of Radiologic Technologists which require applicants for permits under section 37-14-306, MCA, to take a 24-hour course, to be employed, to have six months' experience and to pass a permit examination are void and unenforceable.

Very truly yours,

MIKE GREELY
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter	1. Consult ARM topical index, volume 16. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.
Statute Number and Department	2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 1983. This table includes those rules adopted during the period October 1, 1983 through December 31, 1983, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 1983, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1983 and 1984 Montana Administrative Registers.

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