MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 17

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

In the matter of the proposed amendments of 8.30.402 concerning applications, 8.30.405 concerning internship, 8.30.406 concerning examinations 8.30.408 concerning inspections, proposed repeal of 8.30.403 concerning morticians qualifications, and proposed adoption of a new rule under sub-chapter 5 concerning conditional permission to practice while on inactive status	)	NOTICE OF PROPOSED AMENDMENTS OF 8.30.402 APPLICATIONS, 8.30.405 INTERNSHIP, 8.30.406 EXAMINATIONS, 8.30.408 INSPECTIONS, PROPOSED REPEAL 8.30.403 MORTICIANS QUALIFICATIONS, and PROPOSED ADOPTION OF A NEW RULE UNDER SUB-CHAPTER 5, CONTINUING EDUCATION, CONDITIONAL PERMISSION TO PRACTICE WHILE ON INACTIVE STATUS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On October 12, 1985, the Board of Morticians proposes to amend, repeal, and adopt the above-stated rules.

2. The proposed amendment to 8.30.402 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-927, Administrative Rules of Montana)

"8.30.402 APPLICATIONS (1) All applicants for examinations must be in the hands of the department at least 30 days prior to the date set for the examination ~~and accompanied by the application fee~~.

(2) Any person applying to the board for permission to take the examination shall present to the board evidence in the form of:

(a) Certified copy of the transcript of his completion of 60 semester credit hours or 90 quarter credit hours with a "C" average from an accredited college or university.

~~(i) For those individuals who apply for equivalent experience in lieu of the above college requirement, 5 years accumulative active licensed practice will be considered equivalent to the 2 years of college.~~

~~(ii) Three years of accumulative active licensed practice will be considered equivalent to 1 year of college for those individuals who have completed 1 year of college with a "C" average.~~

(b) The application shall be accompanied with proofs of diploma or c~~C~~ertificate of graduation from an accredited college of mortuary science ~~approved by the board~~.

(c) Properly completed application form furnished by the board.

(d) Certification form verifying successful completion of National Board examination of the Conference of Funeral Service Examining Boards (Mandatory).

~~(3) For those individuals applying for equivalent experience in lieu of college, the individual must complete all of the additional requirements of this rule and section 37-19-302, MCA.~~" Auth: 37-19-202, MCA Auth. Extension Section 4, Chapter 510, Laws of 1985 Imp: 37-19-302, MCA

3. The rule amendment is proposed to comply with legislative changes in Chapter 510, Laws of 1985, which included the deletion of equivalent experience and allowed the board to set the examination form.

4. The proposed amendment of 8.30.405 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-928, Administrative Rules of Montana)

"8.30.405 INTERNSHIP (1) ...

(2) To qualify, an intern must be a full time employee at a licensed mortuary under the supervision of a licensed mortician and assist in the complete funeral (embalming, dressing, arrangement of funeral) of at least 25 bodies.

(a) At least 6 months of the internship period must be served under the supervision of the same licensed mortician.

(3) An intern may apply to the board for special consideration in cases involving closure of firm, hardship due to illness or death of supervising mortician, illness of intern, or such other emergency that may occur.

(4) Internship must be completed within 3 years of passing the examination.

(a) If after a 3 year period from passing the exam, the internship has not been completed, the intern may apply for re-examination of state law and rules, and upon passing begin his internship anew.

(b) No credit will be given for prior time served in an internship."

Auth: 37-19-202, MCA Imp: 37-19-304, MCA

5. The board is proposing the rule to set specific guidelines for interns. The amendments will help prevent an individual from serving a 10 year internship without having any additional training.

6. The proposed amendment to 8.30.406 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-928, Administrative Rules of Montana)

8.30.406 EXAMINATION ~~(1) A qualified person may write the examination prior to his eighteenth birthday.~~

(1) ~~(2)~~ ...

~~(4)~~ (3) A passing grade of ~~70%~~ 75% must be obtained for passing the examination ~~as a minimum in each of the subjects required for an examination.~~

~~(5)~~ (4) ..."
Auth: 37-19-202, MCA Imp: 37-19-302, MCA

7. The board is proposing the rule to increase the passing score on the exam, as the National Conference of Funeral Service Examining Boards has increased their passing score.

8. The proposed amendment to 8.30.408 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-929, Administrative Rules of Montana)

"8.30.408 INSPECTIONS (1) ...

(5) Inspections will be conducted by board members or by staff of the department of commerce trained and approved by the board."

Auth: 37-19-202, MCA Imp: 37-19-403, MCA

9. The board is proposing the amendment to allow staff to do an inspection, rather than limit the inspection to a board member. This amendment will help prevent a time lag in inspections.

10. The proposed repeal will repeal rule 8.30.403 in its entirety and is located at page 8-927, Administrative Rules of Montana.

11. The rule is proposed to be repealed as the information is contained in rule ARM 8.30.402 and the statutes.

12. The proposed adoption of the new rule under sub-chapter 5 will read as follows:

"I. CONDITIONAL PERMISSION TO PRACTICE WHILE ON INACTIVE STATUS (1) Conditional permission to practice while on 'inactive status' to assist in situations those licensed mortuaries where the licensed mortician is called away by illness or other emergency.

(2) Conditional permission will be granted for a specific period of time, but no more than 60 days.

(3) Practicing beyond 60 days will be considered as an active practitioner and must meet the continuing education requirements as other licensed practitioners as described in ARM 8.30.502."

Auth: 37-19-202, MCA Imp: 37-19-316, MCA

13. The board is proposing the adoption of the new rule to allow conditional practice for inactive morticians in emergency conditions. These morticians may only work for a period of two weeks per year to fill in for an emergency and not again the rest of the year. The continuing education costs would be greater than the income derived from the work performed. The board feels a need to provide some leeway in

the continuing education requirements for the above individuals. To prevent a misuse of the rule, the time limits on practice have been set.

14. Interested persons may submit their data, views or arguments concerning the proposed amendments, repeal, and adoption in writing to the Board of Morticians, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than October 10, 1985.

15. If a person who is directly affected by the proposed amendments, repeal, 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 Morticians, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than October 10, 1985.

16. If the board receives requests for a public hearing on the proposed amendments, repeal, and adoption from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, repeal, 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 37 based on the 374 licensees in Montana.

BOARD OF MORTICIANS
DENNIS DOLAN, CHAIRMAN

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 3, 1985.

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

In the matter of the proposed amendment of 8.50.437 concerning the fee schedule	)))	NOTICE OF PROPOSED AMENDMENT OF 8.50.437 FEE SCHEDULE NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On October 12, 1985, the Board of Private Security Patrolmen and Investigators proposes to amend the above-stated rule.

2. The amendment as proposed will amend subsections (1)(e), (2)(d), and (3)(d) and will read as follows: (new matter underlined, deleted matter interlined) (full text of rule is located at page 8-1382, Administrative Rules of Montana)

8.50.437 FEE SCHEDULE

(1) License application fees

(a)...

(e) License renewals ~~50.00~~ 60.00

(f)...

(2) Employee registration application fees

(a)...

(d) Renewals ~~50.00~~ 60.00

(3) Employee Identification Application Fees

(a)...

(d) Renewals for unarmed contract and proprietary security employee ~~10.00~~ 20.00

(e)..."

Auth: 37-1-134, 37-60-202 (3), MCA Imp: 37-1-134, 37-60-301, 312, MCA

3. The board is proposing the fee change primarily to pay back a $10,000 loan advanced to the board. By assessing each licensee and employee an additional $10.00, the necessary $2500 yearly will be raised over a period of time. At the time the loan is repaid, the board will review the renewal fee to determine whether it should be lowered to the original $50.00 and $10.00 renewal fees.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Private Security Patrolmen and Investigators, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than October 10, 1985.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Private Security Patrolmen and Investigators, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than October 10, 1985.

6. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 30 based on the 300 licensees in Montana.

BOARD OF PRIVATE SECURITY
PATROLMEN & INVESTIGATORS
CLAYTON BAIN, CHAIRMAN

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 3, 1985.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF REALTY REGULATION

In the matter of the proposed amendment of 8.58.406 concerning general licensure requirements and 8.58.411 concerning the fee schedule	)))))	NOTICE OF PROPOSED AMENDMENT OF 8.58.406 GENERAL LICENSURE REQUIREMENTS and 8.58.411 FEE SCHEDULE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On October 12, 1985, the Board of Realty Regulation proposes to amend the above-stated rules.

2. The proposed amendment of 8.58.406 will read as follows: (new matter underlined, deleted matter interlined)

"8.58.406 GENERAL LICENSURE REQUIREMENTS (1) Every applicant who passes the Montana real estate broker's examination or the Montana real estate salesman's examination shall apply for licensure within ~~6~~ 12 months of the date of examination.

(2) Every applicant who, after passing the Montana real estate broker or salesman's examination, fails to apply for licensure, within ~~6~~ 12 months of the date of the examination, shall not be licensed without passing another examination of the same class as that previously taken."

Auth: 37-51-203, MCA Auth. Extension: Section 3, Chapter 269, Laws of 1985 Imp: 37-51-301, 302, MCA

3. The board is proposing the amendment to allow compliance with the legislative change which states 60 class room or equivalent hours of education must be required prior to licensure. The proposed change will allow additional time in which to obtain the education.

4. The proposed amendment of 8.58.411 will add a new fee as subsection (20) and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1605, Administrative Rules of Montana)

"8.58.411 FEE SCHEDULE (1) The following fees are required by the board for each of the licensing services listed below. All fees are subject to change by the board, within the limitations provided in section 37-51-311, MCA.

(2) No part of any fees paid in accordance with the provisions of this chapter is refundable. It is deemed earned by the board upon its receipt.

(3) ...

(20) For each original recovery fund assessment....$35.00

Auth: 37-51-203, MCA Auth. Extension Section 18, Chapter 688, Laws of 1985

5. Chapter 688, Laws of 1985 allows the board to charge a $35.00 fee for a real estate recovery fund. Even though the fee is set by statute, the board is proposing to add it to the fee schedule to avoid confusion. By specifying all fees in the fee schedule, the fees are contained all in one place.

6. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Realty Regulation, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than October 10, 1985.

7. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Realty Regulation, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than October 10, 1985.

8. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

BOARD OF REALTY REGULATION
GEORGE PIERCE, CHAIRMAN

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 3, 1985.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE HEALTH FACILITY AUTHORITY

In the matter of the proposed amendments of 8.120.201 concerning definitions, 8.120.206 concerning fees.	)))	NOTICE OF PROPOSED AMENDMENTS OF 8.120.201 DEFINITIONS and 8.120.206 FEES NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On October 12, 1985, the Health Facility Authority of the Department of Commerce proposes to amend the above-stated rules.

2. The proposed amendment of 8.120.201 will add a new subsection (f) and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-4404, Administrative Rules of Montana)

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

(a) ...

(f) 'Stand alone issue' means an issue of bonds or notes in a single series to provide financing for a single health institution."

Auth: 90-7-202, MCA Imp: 90-7-211, MCA

3. The authority is proposing the amendment to define the "stand-alone issue" to correspond with the fee structure changes.

4. The proposed amendment of 8.120.206 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-4407 and 8-4408, Administrative Rules of Montana)

8.120.206 FEES (1) The authority shall charge each health institution which receives financing from the authority an initial and annual planning service fee as follows:

(a) The initial planning service fee shall be a percentage of the principal amount of bonds or notes of the authority issued for the health institution calculated as follows:

(i) Stand-alone issues:

Principal Amount	Fee
Up to $1,000,000	.50% of the principal amount
$1,000,001 to $5,000,000	$5,000 + .25% of the principal amount in excess of $1,000,000
Greater than $5,000,000	$15,000 + .1% of the principal

	amount in excess of $5,000,000

(ii) Issues to provide financing for more than one health institution

Principal Amount	Fee
Up to $5,000,000	~~.50%~~ .625% of the principal amount
$5,000,001 to $10,000,000	~~$25,000~~ 31,250 + ~~.25%~~ .3125% of the principal amount in excess of $5,000,000
Greater than $10,000,000	~~$37,500 + .10%~~ $46,875 + .125% of the principal amount in excess of $10,000,000

Ten percent of the fee (based on the estimated principal amount of bonds or notes to be issued) shall be paid to the authority upon submission of an application for financing. The balance of the fee shall be paid to the authority at or prior to the issuance of the bonds or notes in one or more installments as determined by the authority upon approval of the application. If bonds or notes are to be issued in a single series to provide financing for more than one health institution, the initial planning service fee ~~otherwise payable hereunder shall be increased by 25% and the~~ fee shall be allocated among each participating health institution in proportion to its respective participation. The initial planning service fee, when paid, shall be non-refundable.

(b) The annual planning service fee shall be payable on the first and each succeeding anniversary date of the sale and issuance of the bonds or notes and shall be .15% of the principal amount of the bonds or notes outstanding on each such anniversary date. However, if the total outstanding principal amount of all of the Authority's stand-alone issues exceeds $55 million on January 1 of a calendar year, the annual planning service fee for that year for institutions financed under a stand-alone issue shall be .05% of the outstanding principal amount of that issue.

(2) ...

Auth: 90-7-202, MCA Imp: 90-7-211, MCA

5. The authority is proposing to modify its fee structure so that the fees it charges will more accurately reflect the costs it actually incurs in connection with

individual financings and to make its fees more competitive with those charged by counties and municipalities for financing health facility projects under tax exempt industrial revenue bonds.

6. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Health Facility Authority, 1424 9th Avenue, Helena, Montana, 59620, no later than October 10, 1985.

7. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Health Facility Authority, 1424 9th Avenue, Helena, Montana, 59620, no later than October 10, 1985.

6. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

HEALTH FACILITY AUTHORITY
MARY D. MUNGER, CHAIRMAN

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 3, 1985.

BEFORE THE MONTANA ARTS COUNCIL
OF THE STATE OF MONTANA

In the matter of the ADOPTION OF RULES specifying the criteria applied by the Cultural and Aesthetic Projects Advisory Committee in the evaluation of grant proposals	NOTICE OF PROPOSED ADOPTION OF RULES SPECIFYING CRITERIA FOR GRANTS EVALUATION NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On October 21, 1985, the Montana Arts Council proposes to adopt rules specifying the manner and procedure to be followed by the Cultural and Aesthetic Projects Advisory Committee in submission and recommendation of grant proposals to the state legislature from coal tax funds for cultural and aesthetic projects.

2. The proposed rules provide as follows:

Rule I ELIGIBLE APPLICANTS Any person, association, or representative of a governing unit may submit an application for funding of a cultural and aesthetic project from the income of the trust fund. The term "governing unit" includes state, regional, county, city, town, or Indian tribe. The governing unit may itself seek funds or sponsor the application of other persons, organizations, associations or coalitions of organizations.

AUTH: 22-2-303 MCA IMP: 22-2-301 MCA

RULE II APPLICATION FORM FOR GRANT PROPOSALS (1) The Committee shall have prepared a standard application form for grant proposals to the Committee and shall include requests for information from the applicant concerning the following:

(a) Sponsorship by the governing unit whereby the unit indicates the availability of accounting and financial services and responsibilities for the proposal, if funded;

(b) A narrative description of the project;

(c) A statement specifying the community, regional or statewide need addressed by the project;

(d) A statement of the purpose of the project which shall include objectives and a timeline for intended results;

(e) A statement addressing the means and methods for implementation of the project;

(f) A statement of the end result of the project as intended by the applicant, and a plan for evaluation upon termination of the project;

(g) A statement describing the audiences, area and popula-

tion to be served;

(h) A statement addressing project publicity and accessibility;

(i) Resumes or descriptions of related experience or expertise of staff or volunteers;

(j) A complete line item budget request to include planned expenditures of granted funds and a statement of available or supplementary source(s) of funding and in-kind or matching contributions;

(i) In-kind goods and services are contributions specifically identified with the project which are provided to the applicant by volunteers or their parties at no cash cost to the applicant. These may include but are not limited to donations of food and housing for guest artists and speakers, office space, facilities or equipment rental, and materials voluntarily contributed which otherwise would have been paid for. Volunteer time may be claimed as an in-kind contribution, but it must be calculated at a "fair market" price, that is, minimum wage that a person paid to do the same work would be paid. The in-kind contribution used as a match for a particular project may not be used as a match for any other project requesting cultural and aesthetic project grant assistance.

(ii) Matching funds are funds (other than any cultural and aesthetic grants) which are allocated or received by the grantee during the two fiscal years of the grant period and used exclusively for the project receiving cultural and aesthetic grant funds.

(iii) For all grants with the exception of challenge grants for permanent endowment development, documentation that matching funds are being committed by the grant recipient or will be available, must be received by the last day of the first fiscal year of the grant period.

(iv) For challenge grants for permanent endowment development, documentation of match must be received by the last day of the grant period.

(v) County or municipally owned cultural facilities must obtain financial and in-kind support from respective local governments.

(vi) Effective July 1, 1985 and pursuant to 22-2-308 MCA and these rules, private museums, art centers and cultural facilities may apply for and receive the first grant without local governmental funds, but are encouraged to seek mill levy, general fund or other local governmental support.

(A) For all subsequent grants, private museums, art centers or other cultural facilities must receive county or municipal financial or in-kind support.

(vii) A cultural facility is defined as a building or number of buildings operated significantly for the purpose of presenting one or more of the arts or humanities.

(A) The applicant must provide information regarding the ownership of the cultural facility, i.e private-profit making, private non-profit, city, county, state or federal.

(B) The applicant must provide documentation from the

local government sponsor regarding:

(I) The source of local governmental funds, i.e, city or county, and the type of local governmental funds, e.g., general funds, revenue sharing, community block grant, permissive mill levy, etc.

(II) The level of cash support. If mill levy funds have been appropriated, the sponsor should indicate the number of mills and the dollar amount this millage annually provides for the applicant's facility and the total mills and dollar amount this millage annually provides for all cultural facilities in the county.

(III) The value of in-kind support including what is being contributed and the source of the contribution.

(IV) If any indirect costs are included in the budget, the applicant must indicate if these costs are to be used as match or if they are intended to be paid from coal tax funds.

(k) Additional information may be required by the Committee of the applicant.

AUTH: 22-2-303 MCA IMP: 22-2-303 and 22-2-308 MCA

RULE III APPLICATION DEADLINE Applications must display a local postmark not later than September 1 of the year preceding the convening of a regular legislative session.

AUTH: 22-2-303 MCA IMP: 22-2-301 MCA

RULE IV ELIGIBLE PROJECTS (1) Grant proposals must be for the purpose of protecting works of art in the state capitol or other cultural and aesthetic projects, including but not limited to the visual, performing, literary and media arts, history, archaeolgy, folk-lore, archives, libraries, historical preservation and the renovation of cultural facilities. Applicants may apply for funds in one or more of the following categories:

(a) Special projects: Specific activities, services or events of limited duration and the expansion of on-going programs.

(i) Generally it is required that there be one dollar in matching cash or in-kind goods and services for each grant dollar.

(ii) Applicants will be required to submit a project budget and an organizational operations budget for the grant period.

(b) Operational support for cultural institutions that have been in existence for at least two years.

(i) It is not the intention for operational support grants to replace the applicant's fund raising efforts or to support program expansion.

(ii) In special circumstances, applications for operational support may be considered.

(iii) The applicant will be required to demonstrate a need which may include, but not be limited to:

(A) the development of emerging cultural institutions;

(B) organizations with unusually high expenses without available local funding sources;

(C) organizations which serve the entire state or a significant sub-state region;

(D) organizations in emergency situations, e.g. a reduction of substantial funding sources;

(E) organizations which are recognized as essential to Montana's cultural life because of their longevity of service to the state;

(F) organizations which provide a high ratio of cash match to grant request.

(i) Generally it is required that there be one dollar in matching cash or in-kind goods and services for each grant dollar.

(ii) Applicants will be required to submit financial statements for:

(A) the prior two fiscal years;

(B) actual and budgeted expenses and income for the current year and;

(C) budgets for the grant period.

(iii) An unaudited financial review signed by an independent accountant will be required to be submitted by an organization requesting $20,000 or more in operational support.

(A) A financial review consists principally of inquiries of organization personnel and analytic procedures applied to financial data. It is substantially less in scope than an audit and thereby no opinion is expressed.

(B) The accompanying report should state that the accountant is not aware of any material modifications that should be made to the financial statements in order for them to be in conformance with generally accepted principles, other than those modifications, if any, indicated in the report.

(c) Capital expenditure projects for additions to a collection or acquisition, construction or renovation of cultural facilities.

(i) Any applicant for funds which may in any way affect prehistoric or historic sites or historic buildings must cooperate with the State Historic Preservation Office in evaluating the possible impact on these sites or buildings and the appropriateness of plans for project activity.

(ii) A letter from the State Historic Preservation Office, stating their recommendations and any agreements reached with the applicant must accompany the application for funds. No funds will be released until such a letter is received by the Montana Arts Council.

(iii) Applicants will be required to provide three dollars in cash or in-kind donations of goods and services specifically for the capital expenditure project for each grant dollar.

(iv) Those applicants requesting funds for facility acquisition, construction or renovation will need to provide:

(A) a financial statement of the operational costs of the facility from the fiscal year prior to the date of application

deadline;

(B) operational budgets of the facility for the two fiscal years after the completion of the project;

(C) a budget of costs of renovation or construction;

(D) information about sources and amounts of funds already committed and anticipated to be received;

(E) plans for obtaining the balance of funds based on prior fund raising efforts;

(F) the expected duration of the facility renovation or construction;

(d) Challenge grants for permanent endowment development to benefit cultural nonprofit grant applicants may be recommended for funding.

AUTH: 22-2-303 MCA IMP: 22-2-301 and 22-2-308 MCA

RULE V CHALLENGE GRANTS FOR PERMANENT ENDOWMENT DEVELOPMENT (1) The Committee may recommend for funding those organizations which:

(a) have been in existence for five years or more;

(b) request a grant of at least $5,000;

(c) provide verification of the inviolability of the endowment funds;

(d) are able to document their ability to match the grant from private or other sources or have a reasonable chance of doing so within the grant period and

(e) demonstrate a significant need and purpose for the challenge grant.

(2) Applicants will need to provide three dollars in cash or irrevocable planned or deferred gifts for each grant dollar.

(a) For purposes of qualifying as match, a deferred or planned gift must be:

(i) specifically designated for the endowment or unrestricted purposes;

(ii) executed during the grant period and

(iii) not currently held in the endowment trust account.

(b) All forms of deferred or planned giving will be valued according to IRS practices and principles. Deferred and planned gifts will qualify as matching funds only to the extent that they are legally irrevocable on the date of their valuation for such matching purposes.

(c) Donations of irrevocable trusts (e.g., pooled life income funds, charitable gift annuity trusts, unitrusts, etc.) will be eligible as match to the extent that their value can be determined in accordance with generally accepted accounting principles. It will be necessary to provide the Montana Arts Council with copies of the trust agreements and documentation of the value of such gifts.

(i) Charitable lead trusts: The income from these trusts will be counted as match when placed in the permanent endowment account.

(ii) Gifts of marketable securities will be valued as of the date of transfer from the donors to the grant recipient.

(iii) Revocable planned gifts, e.g., codicils to wills, bequests, life insurance and retirement plans can be used to meet one-third of the total match requirement. Documentation of these gifts must be submitted to the Montana Arts Council and must:

(A) include the date of the gift;

(B) include the name of the person making the gift;

(C) include the amount or specific property and valuation of the gift;

(D) identify the beneficiary of the gift;

(E) state that the gift will be deposited directly in the trust account of the beneficiary;

(F) state that if the beneficiary no longer is in existence, the gift will go to an organization in the State of Montana which is organized and operated exclusively for charitable, educational, religious or scientific purposes which shall at the time qualify as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law and

(I) that the organization serves a similar purpose and geographic area as the original beneficiary;

(II) that if no organization meets V(2)(c)(iii)(F)(I), then an appropriate beneficiary is an organization which serves a purpose similar to the original beneficiary;

(III) If no organization meets V(2)(c)(iii)(F)(II), then an appropriate beneficiary is an organization which is organized and operated exclusively for arts or cultural purposes.

(iv) Gifts of real estate will be eligible as match when the property has been converted to cash and deposited in the grant recipient's permanent endowment trust account. Documentation of this deposit must be furnished to the Montana Arts Council.

(v) Income producing property: The annual average income from the five years preceding the date of the application may be used to estimate the match for the grant period.

(A) Documentation of transfer of title or the agreement to make such income available to the applicant and the annual revenue for the five years previous to the date of application must be submitted to the Montana Arts Council.

(3) Payment of challenge grants will be made upon the applicant meeting the specified match requirement. Organizations which fail to meet the total match requirement within the grant period, will be eligible to receive that portion of the grant that has been matched. The review committee will be apprised of their inability to meet the total matching requirements.

(a) Applicants establishing permanent endowments may use available cash to meet the matching requirement.

(b) Applicants which have an existing permanent endowment must use funds not currently held in these endowments to meet part or all of the matching requirement.

(c) Matching funds must be placed in the permanent endowment on or after July 1 of the first fiscal year of the grant period and on or before June 30 of the last fiscal year of the grant period.

(d) Funds raised to match the challenge grant must not reduce the funds raised annually by the applicant. Information establishing base annual contributions will be requested in the application. Applicants will be required to submit:

(i) financial statements from the prior two fiscal years;

(ii) actual and budgeted expenses and income for the current fiscal year;

(iii) budgets for the grant period and

(iv) information regarding their plans for raising the matching funds.

(e) Endowments are intended to be permanent, with only earnings from investment for use in operations and programs or to add to the principal of the endowment. Grants and matching funds must be invested in Montana financial institutions and the challenge grant must be invested in fully insured investment instruments.

(i) The principal of the endowment must be held inviolable by a trust agent which may be:

(A) the trust department of a bank;

(B) a trust company or;

(C) a public or community foundation.

(ii) Documentation of the trust agreement must be provided to the Montana Arts Council prior to release of grant funds which stipulates:

(A) that the trust is inviolable;

(B) the management fee to be charged;

(C) any agreement concerning access to interest income;

(D) that the grant will be invested in fully insured investment instruments;

(E) that in the event of the dissolution of the grant recipient, within 30 days of dissolution, the grant recipent will inform the Montana Arts Council as to that dissolution;

(F) that the Montana Arts Council will inform the trustee of the endowment account of the dissolution of the grantee;

(G) that the trustee will transfer an amount equal to the challenge grant and any undistributed interest income earned by that grant to the Montana Arts Council for reversion to the coal tax trust fund;

(H) that if the trustee of the endowment is a public or community foundation which maintains endowment accounts for cultural organizations as all or part of its services, the Montana Arts Council encourages the foundation to use the matching funds and undistributed interest income earned by those funds of the organization undergoing dissolution to create or add to a "field of interest" fund for Montana arts and cultural organizations;

(I) that if the trustee of endowment is a bank or trust company, the matching funds and undistributed interest income

earned by those funds of the grantee undergoing dissolution will be distributed to the beneficiary named in the trust agreement;

(J) that the beneficiary is an organization within the State of Montana organized and operated exclusively for charitable, educational, religious or scientific purposes which shall at the time qualify as an exempt organization(s) under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law);

(K) that the organization serves a similar purpose and geographic area as the organization undergoing dissolution;

(L) that if no organization meets V(3)(e)(ii)(K), then an appropriate beneficiary is an organization which serves a similar purpose as the organization undergoing dissolution.

(M) If no organization meets V(3)(e)(ii)(L), then an appropriate beneficiary is an organization which is organized and operated exclusively for arts or cultural purposes;

(N) If no beneficiary is named, the trustee and Board of the organization undergoing dissolution is required to contact the Montana Arts Council as to the distribution of these funds.

AUTH: 22-2-303 MCA IMP: 22-2-301 and 22-2-308 MCA

RULE VI EVALUATION CRITERIA (1) Recommendations for funding of individual applications must be based upon evaluation of the following considerations:

(a) Quality of the project-

(i) whether the technical, artistic and administrative abilities and experience of the applicant, its staff and/or volunteers makes probable the completion and implementation of the project within the grant period.

(ii) whether the project is creative or innovative, practical or beneficial, and whether the project may stimulate other projects.

(b) Cultural impact of the project-

(i) whether the project may contribute to or improve the cultural life or development of the community, county, region or state.

(ii) whether the project addresses an identified need within the proposed area, and establishes, maintains or augments an activity or service.

(iii) whether the project has stated goals that are within the resource capability of the applicant and whether there is a reasonable likelihood that the goals will be attained.

(iv) whether the project has benefit, availability and accessibility to the public.

(c) Cost factors of the project-

(i) The need for project, operational, capital or endowment development support.

(ii) The cost-effectiveness of the project.

(iii) The relative level of local support as demonstrated

by cash match from local sources or in-kind goods and services.

(iv) The level of cost-sharing as reflected in the mix of earned income, private contributions, governmental support and interest income.

(v) the potential of the project to stimulate other sources of funding or to become self-supporting.

(vi) the probability of accomplishing the project within budget and with available resources.

AUTH: 22-2-303 MCA IMP: 22-2-302 and 22-3-306 MCA

RULE VII CRITERIA FOR RECOMMENDATIONS (1) Committee recommendations to the legislature of those projects which meet the evaluation criteria to the extent possible also must address the following considerations:

(a) Geographical diversity - taken as a whole, grants should assist the entire state.

(b) Cultural Diversity - recognizing the special needs of access to cultural and aesthetic projects and services and the unique perspective, skills, talents and contributions of the wide variety of the people of Montana, the grants recommended, taken as a whole , should reflect and affirm that diversity, and as such, provide enrichment to the population at large. These projects should encourage the expansion of opportunities for all Montanans to create, participate in and appreciate the wide range of all cultural and aesthetic activities regardless of age, sex, race, ethnic origin, income, physical and mental ability or place of residence.

(c) Project Diversity - a variety of different interests and disciplines within the eligible projects should be served and which also may include but not be limited to the following:

(i) service to local communities or counties, multi-county regions and the state.

(ii) service to urban and rural populations.

(iii) special projects, operational support, capital expenditures and endowment development.

(iv) single sponsors and those representing coalitions of a number of organizations.

(d) Cost diversity - consideration will be given to projects requesting both large and small amounts of funding.

AUTH: 2-22-203 MCA IMP: 22-2-302 and 22-2-306 MCA

RULE VIII INCREMENTAL DISBURSEMENTS OF GRANTS (1) Grant funds will be disbursed as follows:

(a) Projects that are to receive more than $10,000 may receive an amount not exceeding 25% of the grant award in the first 6 months of the biennium, 50% in the first year of the biennium, 75% in the first 18 months of the biennium and the balance in the remainder of the biennium.

(b) Projects that are to receive $10,000 or less may receive the total grant in any fiscal quarter if the Montana Arts Council determines that the Cultural and Aesthetic project

account has funds available and that after an examination of the costs incurred by the project, total payment is appropriate.

(c) Proper allowable costs will be determined by the budget accompanying the application, contingencies specified by the legislature or the revised budget provided if the grant award was less than the request.

(d) Decisions on fund disbursements will be determined by the amount of unexpended prior grant balances and justification of future project costs.

(e) Five percent of the total grant award must be held pending receipt of final reports by the Montana Arts Council.

(f) For recipients of Challenge Grants, grant payments will be deposited directly in the grant recipient's endowment trust account as the matching requirements are met and in accordance with stipulations VIII(1)(a), VII(1)(b), VIII(1)(c), VIII(1)(d) and VIII(1)(e).

AUTH: 2-22-303 MCA IMP: 22-2-305 and 22-2-306 MCA

3. The rule is proposed for the purpose of providing notice to the public of objective criteria applied by the Cultural and Aesthetic Projects Advisory Commitee in making funding recommendations to the state legislature from coal tax funds.

4. Interested persons may present their data, views or arguments in writing to the Montana Arts Council, 35 South Last Chance Gulch, Helena, Montana, 59620, no later than October 12, 1985.

5. If a person who is directly affected by the proposed adoption 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 the Montana Arts Council, 35 South Last Chance Gulch, Helena, Montana 59620, no later than October 12, 1985.

6. 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 sub-division or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 100 governing units or associations of the 1000 governing units or associations which may be grant applicants.

MONTANA ARTS COUNCIL
35 South Last Chance Gulch
Helena, Montana 59620

BY: _____
DAVID E. NELSON
Executive Director

Certified to the Secretary of State September 3, 1985

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

In the matter of the adoption of Rules I through X, resource policy and regulations)	NOTICE OF PROPOSED ADOPTION OF NEW RULES FOR THE PRESERVATION OF CULTURAL RESOURCES ON LANDS CONTROLLED BY THE DEPARTMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 15, 1985, the Department of Fish, Wildlife, and Parks proposes to adopt new rules concerning the preservation of cultural resources on lands controlled by the department.

2. The rules to be adopted provide as follows:

RULE I POLICY It is the policy of the department of fish, wildlife and parks to consider heritage properties and paleontological remains systematically on lands owned or controlled by the department for the purpose of preserving the properties and to avoid, whenever feasible, department actions or department assisted or licensed actions that substantially alter heritage properties or paleontological remains on those lands.

AUTH: 22-3-424, IMP: 22-3-424, MCA

RULE II DEFINITIONS For purposes of this part:

(1) "Department" means the department of fish, wildlife and parks.

(2) "SHPO" means the State Historic Preservation Office of the Montana Historical Society.

(3) "Heritage property" means any district, site, building, structure or object located upon or beneath the earth or under water that is significant in American history, archaeology or culture.

(4) "Project" means any undertaking, including land disposal, which is likely to alter or affect the attributes of the heritage property which contribute to its heritage value.

(5) "Paleontological remains" means fossilized plants and animals of a geological nature found upon or beneath the earth or under water that are rare and critical to scientific research.

AUTH: 22-3-424, IMP: 22-3-424, MCA

RULE III TIME OF REVIEW (1) The department shall initiate the reviews and studies required by this part prior to initiating any undertaking which may result in changes to

the surface, structures, or other character of the land. The department shall complete its review early enough to be used in formulating the department's decision on the project. Completion of reviews and studies after the department has committed itself to the scope, format, and siting of project will not constitute adherence to these regulations.

(2) At specified stages within the following procedure, SHPO response to the Department is required. If the SHPO fails to respond in the times described in this rule, the department may assume that the SHPO agrees with the department position and the department may move forward with the project.
AUTH: 22-3-424, IMP: 22-3-424, MCA

RULE IV RESPONSIBILITY FOR COMPLIANCE (1) The Parks Division Administrator is Cultural Resources Coordinator and, subject to the director's approval, is responsible for coordinating department communication with the SHPO and for the satisfactory completion of the procedures required by this part.

(2) The administrator of each department division is responsible for assuring compliance with this part. Each division shall bear routine costs of administration related to compliance with this rule.
AUTH: 22-3-424, IMP: 22-3-424, MCA

RULE V IDENTIFICATION OF HERITAGE PROPERTIES The department shall identify all heritage properties that are located on department lands within the area affected by a proposed project. The department shall use the following procedure to determine what known historic, architectural, or prehistoric properties exist within a project area and how unknown or unevaluated resources should be discovered:

(1) If a project involves land on which no structures exist, the department shall provide the SHPO with information on legal location of the proposed project, the nature of previous land use, the slope and vegetation on the ground surface, and, briefly, the nature and scope of the proposed project. If a project would change or remove a building, the department shall provide the SHPO with information on legal location, a photograph of the building(s), a brief description of the proposed project, and when available, dates of building construction, information on building use and changes to the building over time. If a project would affect both vacant land and buildings, including construction of new buildings adjacent to old buildings, the department shall provide the SHPO with all of the information outlined above.

(2) If a project affects vacant land, the SHPO shall provide the department with information on known historic, architectural, and prehistoric resources in the area, the likelihood of unknown historic, architectural, and prehistoric resources in the area, and whether a previous cultural resource survey has occurred in the impact area. The SHPO

shall recommend as to the need for, kind of, and appropriate methods for survey. If a project involves a building, the SHPO shall inform the department about whether any building has been recorded previously or if its historic and architectural value has been assessed. If recordation and evaluation have not occurred, the SHPO shall recommend and describe the historical information, photographs, or description to be used to assess the building. The SHPO shall provide its recommendation to the department within ten working days of the SHPO's receipt of a request for it.

(3) Upon receipt of the information and recommendations from the SHPO, the department shall determine what additional action is necessary to fulfill its responsibility to identify Montana Heritage properties in the project's impact area.

(4) If the department does not follow the SHPO's recommendation, it shall document its decision and justification in the project file. A copy of the documentation will be forwarded to the SHPO.

AUTH: 22-3-424, IMP: 22-3-424, MCA

RULE VI EVALUATION OF HERITAGE PROPERTIES (1) In consultation with the SHPO, the department shall assure that any historic, prehistoric or architectural property identified in a project's area of potential impact has been professionally assessed to determine whether it is a heritage property. That assessment shall include the following:

(a) The department shall seek the SHPO's written assessment of whether the property qualifies as a heritage property.

(b) The SHPO shall provide the department with a written assessment of any site's value as a heritage property within ten working days of receipt of a request for the assessment.

(2) Any heritage properties identified on land owned or controlled by the department shall be considered for nomination to the National Register of Historic Places.

AUTH: 22-3-424, IMP: 22-3-424, MCA

RULE VII AVOIDANCE OR MITIGATION OF PROJECT IMPACTS (1) If no heritage property exists within project's area of potential impact, the department may proceed with the project. If, during the course of the project, historic or prehistoric properties are identified, the department shall notify the SHPO immediately, provide it with site information, and stop any project work that could harm the property until the SHPO assesses the site's value as a heritage property. The SHPO shall provide its assessment to the department within two working days after receipt of a request for comments. If the site is judged to be a heritage property, the department will follow the procedures identified in subsection (2) of this rule.

(2) If heritage properties exist within the project's area of potential impact, the department shall determine, in

writing, whether the project will alter or affect the attributes of the site which contribute to its heritage value and whether such alteration will be substantial. If the department determines that a project will substantially alter attributes of value to heritage properties, it shall prepare a written explanation of why one or more of the actions has been chosen and how it will be carried out:

(a) abandon the proposed project;

(b) modify or redesign the proposed project to avoid or lessen harmful impacts;

(c) mitigate harm or alteration through any method including recordation, excavation, other further documentation; or

(d) undertake the project with no avoidance or mitigation measures.

(3) Upon completion of its assessment of project impact and selection of the proposed action, the department will forward its determination to the SHPO for review and comment.

(4) The SHPO will review and comment on the department's assessment of project impacts and proposed actions within ten working days of receipt of a request for comment.

(5) If, the SHPO does not concur with the department's assessment and proposal the department and the SHPO will, attempt to resolve the difference. If the department and SHPO cannot agree on the SHPO recommendation the department shall decide how to proceed and shall document its decision in writing for the project file. The department shall provide the SHPO with a copy of its final decision.

AUTH: 22-3-424, IMP: 22-3-424, MCA

RULE VIII PALEONTOLOGICAL REMAINS The department shall follow the procedures described in Rules III through V in assessing the impacts of a project on paleontological remains.

AUTH: 22-3-424, IMP: 22-3-424, MCA

RULE IX MEMORANDUM OF AGREEMENT (1) For a specific project or for a specific type of project, the department may propose to the SHPO procedures different from those described in Rules III through V.

(2) The SHPO will respond to such request within ten working days of receipt of a request.

(3) Procedures agreed to by both the department and the SHPO for a specific project or specific types of projects may be incorporated into a memorandum of agreement, signed by both parties.

AUTH: 22-3-424, IMP: 22-3-424, MCA

RULE X ANTIQUITIES PERMITS The department will not permit anyone to survey, excavate, or remove any heritage property or paleontological remains on lands owned or controlled by the department until the person seeking to

survey, excavate or remove materials secures an antiquities permit from the SHPO and the department.

(1) The SHPO will provide the department with its recommendation on whether the permit should be granted based on the requirements of Section 22-3-432, MCA.

(2) The department shall review the permit based on its management constraints for the site. With the concurrence of the SHPO it will send the permittee an approved permit only if the proposed work will not interfere with department management.

AUTH: 22-3-424, IMP: 22-3-424, MCA

3. The Department is proposing to adopt new rules to carry out the intent of the legislature as expressed in 22-3-424, MCA. Section 22-3-424 requires the adoption of rules for the identification and preservation of heritage properties and paleotological remains on lands owned by the state.

4. Interested parties may present their data, views, or arguments concerning these proposed rules in writing no later than October 12, 1985, to Stan Bradshaw, Department of Fish, Wildlife, and Parks, 1420 East Sixth Avenue, Helena, MT 59620.

5. If a party who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit the request along with any written comments he has to Stan Bradshaw, Department of Fish, Wildlife and Parks, no later than October 12, 1985.

6. If the Department receives requests for a public hearing from 10% or 25, whichever is less, of the persons who will be directly affected by the proposed amendment, by a governmental subdivision or agency, by the administrative code committee or by an association having not fewer than 25 members who will be directly affected, a hearing will be schedules. Notice of the hearing will be published in the Montana Administrative Record.

7. The authority of the Department to adopt the proposed amendment is based on and implements Section 22-3-424, MCA.

James W. Flynn, Director
Department of Fish, Wildlife
and Parks

Certified to the Secretary of State September 3, 1985.

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

In the matter of the amendment of rule 12.6.902(2) relating to the use of boats and other craft on Castle Rock Reservoir.	)	NOTICE OF PROPOSED AMENDMENT RULE 12.6.902(2)
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All interested persons

1. On October 15, 1985 the Montana Fish and Game Commission proposes to amend rule 12.6.902(2) relating to the use of boats and other craft on Castle Rock Reservoir.

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

12.6.902 CASTLE ROCK RESERVOIR REGULATIONS Subsection (1) remains the same.

(2) The use of ~~motorboats of any type is prohibited~~ manually operated boats, sailboats and boats powered by electric motors is permitted on the reservoir, ~~except in case of use for~~ Boats powered by gasoline motors may be used only for official patrol, maintenance, search and rescue, or scientific purposes.

Subsections (3) through (6) remain the same.

AUTH: 87-1-303(2), MCA; IMP: 87-1-303(2), MCA

3. Rule 12.6.902(2) now prohibits the use of all motorboats on Castle Rock Reservoir except for official patrol, maintenance, search and rescue, or scientific purposes. The Department and Commission are proposing to allow boats powered by electric motors, as well as sailboats and manually operated boats. Use of boats powered by gasoline engines would continue to be restricted to official patrol, maintenance, search and rescue, or scientific purposes. This amendment is proposed to allow expanded recreational use of the reservoir consistent with use of other waters in the area. The amendment has been approved by the Montana Power Company and comports with safety and water quality requirements on the reservoir.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing no later than October 12, 1985, to Allen A. Elser, Department of Fish, Wildlife, and Parks, 1420 East Sixth Avenue, Helena, MT 59620.

5. If a party who is directly affected by the proposed amendment wishes to express data, views and arguments orally in writing at a public hearing, he must make a written request for a hearing and submit the request along with any written comments he has to Allen A. Elser, Department of Fish, Wildlife and Parks, no later than October 12, 1985.

6. If the Department receives requests for a public hearing from 10% or 25, whichever is less, of the persons who will be directly affected by the proposed amendment, by a governmental subdivision or agency, by the administrative code committee or by an association having not fewer than 25 members who will be directly affected, a hearing will be scheduled. Notice of the hearing will be published in the Montana Administrative Record.

7. The authority of the Department to adopt the proposed amendment is based on 87-1-303(b), MCA, and the amendment implements 87-1-303(b), MCA.

James W. Flynn

James W. Flynn, Director
Department of Fish, Wildlife and Parks

Certified to the Secretary of State September 3, 1985.

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

In the matter of the amendment of rules 16.24.201, 16.24.202, 16.24.205, 16.24.206, 16.24.207, 16.24.209, 16.24.211 and 16.24.213, setting requirements for testing of newborns for inborn errors of metabolism, and the adoption of RULE I, stating when a newborn needing an exchange transfusion must be tested.	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 16.24.201, 16.24.202, 16.24.205 - 16.24.207, 16.24.209, 16.24.211, AND 16.24.213, AND THE ADOPTION OF NEW RULE I (Infant Screening Tests -- Inborn Errors of Metabolism)

TO: All Interested Persons

1. On October 8, 1985, at 9:00 a.m., a public hearing will be held in Room C209 of the Cogswell Building, Helena, Montana, to consider the amendment of rules 16.24.201, containing definitions; 16.24.202, stating the responsibilities of hospital administrators and those who must register births concerning newborn screening tests; 16.24.205, concerning when to test premature infants; 16.24.206, concerning when to test non-premature infants; 16.24.207, prescribing when a specimen must be taken from an infant who is transferred into or between health care facilities; 16.24.209, stating when to test an infant born outside of a hospital; 16.24.211, prescribing procedure to follow whenever a test is positive or suspicious; and 16.24.213, stating what laboratory facilities are approved for doing the tests; and the adoption of a new rule stating when specimens must be taken in the event an infant must have an exchange transfusion.

2. The proposed amendments replace the present rules of the same numbers found in the Administrative Rules of Montana. The proposed amendments would clarify that tests for inborn metabolic errors will include a test for hypothyroidism; clarify that hospitals and other responsible parties are responsible for the taking of blood samples and submitting them to the department's laboratory, rather than for performing tests on the samples; eliminate the need for the attending physician to be informed of the results of the tests, unless the results are positive or suspicious; distinguish between the responsibilities of hospitals and those who deliver a baby outside of a hospital; slightly alter the times when samples should be taken from a premature infant and eliminate a prescribed treatment for prematures with certain blood levels of phenylalanine and tyrosine; make consistent the exceptions for medical contraindications; clarify the responsibility of a hospital receiving a newborn who has not been previously tested; and make the changes necessary to recognize that testing will be done solely by the department's laboratory, with the exception of special tests necessitated by positive or suspicious test results.

3. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rule would clarify when a specimen is to be taken from a baby needing an exchange transfusion.

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

16.24.201 ~~DEFINITION~~ DEFINITIONS (1) A ~~newborn is~~ "Newborn" means an infant ~~under~~ 28 days ~~of life~~ old or less.

(2) "Tests for inborn errors of metabolism" include laboratory tests for phenylketonuria, detection of other aminoacidopathies, and thyroxine level for hypothyroidism.

AUTHORITY: Sec. 50-19-202 MCA
IMPLEMENTING: Sec. 50-19-203 MCA

16.24.202 RESPONSIBILITIES OF REGISTRAR OF BIRTH -- ADMINISTRATOR OF HOSPITAL -- ~~TYPES OF TESTS~~ (1) Each person ~~Persons~~ in charge of any facility ~~caring for~~ in which a newborn ~~infants and persons responsible for the registration of births shall ensure that each infant has tests for inborn errors of metabolism. These shall include a test for phenylketonuria and tests for detection of other aminoacidopathies.~~ is cared for must:

(a) Ensure that a blood specimen is taken from each infant cared for by the facility, on the schedule noted in the rules in this sub-chapter, for the purpose of performing tests for inborn errors of metabolism.

~~(2) The administrator of the responsible hospital or institution and the person required to register the birth of a child shall:~~

~~(a)~~ (b) Be certain, prior to the discharge of an the infant, that the ~~specimens~~ specimen to be forwarded to the laboratory are is adequate for testing purposes.

~~(b)~~ (c) Within 24 hours after the taking of the specimen, cause such specimen to be forwarded to the ~~designated~~ department's laboratory by first class mail or its equivalent.

~~(c)~~ (d) ~~Cause to be recorded~~ Record on the infant's chart the date of taking of the test specimen and the results of the tests performed when reported by the department.

~~(d) Cause the result of the tests, prescribed by the department, to be recorded on the infant's hospital chart and reported to the attending physician.~~

(2) Each person who is responsible, pursuant to section 50-15-201, MCA, for registering the birth of a newborn must ensure that:

(a) A blood specimen is taken from the infant for which that person is responsible, on the schedule noted in the rules in this sub-chapter.

(b) Ensure that the specimen is adequate for testing for inborn errors of metabolism.

(c) Ensure that the specimen is forwarded to the department's laboratory, by first class mail or its equivalent, within 24 hours after the specimen is taken.

(d) Record on the newborn's chart, if any, the date the test specimen was taken and the results of the tests performed when reported by the department.

AUTHORITY: Sec. 50-19-202 MCA, IMP.: Sec. 50-19-203 MCA

16.24.205 PREMATURE INFANTS -- IN-HOSPITAL ~~(1)~~ If a newborn is premature, A a sample ~~of its blood at one to two weeks or discharge, whichever is earlier, shall be taken,~~ must be taken for testing no later than the fifth day of life and again when the infant reaches 5½ pounds in weight, unless medically contraindicated, in which case each sample must be taken as soon after the relevant date as the infant's medical condition permits. ~~If under 5½ pounds at two weeks and initial sample is negative, repeat once more at discharge.~~

~~(2) Prematures with phenylalanine levels of 20 mg. percent or higher, if found to have a high blood level of phenylalanine without elevation of the serum tyrosine levels, may be given a provisional low protein diet which restricts phenylalanine intake somewhat but meets the requirements of the infant. These patients shall be challenged with phenylalanine intake while carefully monitoring their phenylalanine levels when they are about 5½ pounds in order to establish a discarded diagnosis.~~

AUTHORITY: Sec. 50-19-202 MCA
IMPLEMENTING: Sec. 50-19-203 MCA

16.24.206 NON-PREMATURE INFANTS -- IN-HOSPITAL (1) ~~Required specimens for testing shall be taken by~~ the The hospital or institution wherein newborn care was rendered must take the required specimen on the third day of life of each newborn or 48 hours following its first ingestion of milk , but not later than the 14th day of life.

(2) In the event the newborn is discharged from the ~~hospital~~ facility prior to the third day of life, the ~~tests shall not be performed~~ blood specimen must be taken immediately before discharge and, in addition, if the newborn is discharged before it is 24 hours old:

(a) another specimen must be taken and submitted to the department's laboratory between the fourth and 14th day of the newborn's life; and

(b) ~~In this case, it shall be the duty of~~ the administrative officer or other person in charge of ~~each~~ the hospital or institution caring for newborn infants ~~to make provision at the time of discharge for the proper testing of the newborn and to~~ must:

(i) explain the reasons why it is of utmost importance to return for these tests; ; and

(ii) ensure that ~~The~~ the parent or legal guardian of the newborn ~~shall also be required to sign~~ signs a statement

assuming responsibility to cause ~~the tests to be administered~~ a specimen to again be taken between the ~~third~~ fourth and 14th day of life of the newborn and to submit it to the department for testing.

(3) If taking a specimen on any of the dates cited in subsections (1) and (2) of this rule is medically contraindicated, the specimen must be taken as soon as possible thereafter as the medical condition of the infant permits.

AUTHORITY: Sec. 50-19-202 MCA
IMPLEMENTING: Sec. 50-19-203 MCA

16.24.207 TRANSFER OF NEWBORN INFANT (1) In the event of transfer of a newborn infant to another hospital or other institution, the ~~tests shall be performed~~ specimen must be taken and submitted by:

(a) the transferring hospital or other institution if transfer occurs on or after the third day of life ; ~~and by~~ or

(b) the receiving hospital or other institution if the transfer occurs before the third day of life.

(2) A hospital or other institution which receives a newborn who has not been previously tested must take a specimen for testing and submit it to the department's laboratory between the fourth and 14th day of the newborn's life, unless taking a specimen is medically contraindicated, in which case the specimen must be taken as soon as the medical condition of the infant permits.

AUTHORITY: Sec. 50-19-202 MCA
IMPLEMENTING: Sec. 50-19-203 MCA

16.24.209 INFANT BORN OUTSIDE HOSPITAL OR INSTITUTION (1) When an infant has been born outside of a hospital or other institution and has not subsequently been admitted to ~~an institution~~ such a facility for initial newborn care, it shall be the duty of the person required in section 50-15-201, MCA, to register the birth of a that child ~~to assume responsibility~~ to cause the ~~tests to be administered~~ blood specimen to be taken not later than the 14th day of the child's life, unless medically contraindicated, in which case ~~they~~ it shall be ~~performed~~ taken as soon as the medical condition of the infant permits.

AUTHORITY: Sec. 50-19-202 MCA
IMPLEMENTING: Sec. 50-19-203 MCA

16.24.211 POSITIVE OR SUSPICIOUS TEST (1) If the initial test results on ~~An~~ an ~~infant~~ infant's ~~who has~~ a serum specimen are positive or suspicious :

(a) the department will immediately report that fact to the attending physician or midwife, or, if there is none or the physician or midwife is unknown, to the person who registered the infant's birth;

(b) the individual to whom the above report is made must ensure that ~~initial test shall immediately have~~ a second specimen is immediately taken and submitted to the department for a second test ~~performed~~.

(2) If the second test is positive or suspicious~~,~~ :

(a) the department will immediately provide the test results to the same person to whom the initial results were reported;

(b) that person must ensure that a ~~blood~~ serum specimen from the infant ~~will be~~ is immediately sent either to the department or to a another approved laboratory qualified to perform quantitative analysis for the substance in question~~.~~ ;

(c) if the specimen is sent to a laboratory other than the department's, the person who submits it must send the department a copy of the analysis report for the specimen within 24 hours after receiving the report.

~~(2)~~ (3) ~~A laboratory shall report all positive or suspicious test results to the department within 48 hours after drawing the blood and performing the test.~~ An approved laboratory includes any state or territorial health department laboratory and any laboratory within their jurisdictions which is approved by them, a U.S. Public Health Service laboratory, a laboratory operated by the U.S. armed forces or Veteran's Administration, a Canadian provincial public health laboratory, and any laboratory licensed under the provisions of the Clinical Laboratories Improvement Act of 1967, as amended.

AUTHORITY: Sec. 50-19-202 MCA
IMPLEMENTING: Sec. 50-19-203 MCA

16.24.213 STATE LABORATORY -- ~~APPROVAL OF FACILITIES AND~~ RESPONSIBILITY FOR TESTS (1) ~~A laboratory must be approved by the department in order to comply with the provisions of this sub-chapter.~~

~~(2)~~ Only those laboratory tests for inborn errors of metabolism which are ~~approved~~ performed by the department ~~shall comply with the provisions~~ laboratory or, in the case described in ARM 16.24.211, a laboratory approved by the department, will meet the requirements of sections 50-19-201 through 50-19-204, MCA.

AUTHORITY: Sec. 50-19-202 MCA
IMPLEMENTING: Sec. 50-19-203 MCA

RULE I EXCHANGE TRANSFUSION; WHEN SPECIMEN TAKEN If a newborn needs an exchange transfusion, blood specimens for the tests required by this sub-chapter must be taken before the transfusion takes place.

AUTHORITY: Sec. 50-19-202 MCA
IMPLEMENTING: Sec. 50-19-203 MCA

6. The department is proposing these amendments to the rules, and adoption of a new rule, because they are needed to edit the existing rules to eliminate potentially confusing language, to reflect the fact that the initial specimens will -- after September 30, 1985 -- be tested by the department's laboratory rather than any other laboratory, to indicate when a specimen should be taken in the cases where a newborn needed an exchange transfusion, and to eliminate a provision specifying subsequent medical treatment which was inappropriate and outside the department's rulemaking authority.

7. 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 October 15, 1985.

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

9. The authority of the Department to make the proposed amendments and new rule is based on section 50-19-202, MCA, and the rules implement section 50-19-203, MCA.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State September 3, 1985

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the adoption of rules pertaining to the procedure for determining wage rates to be paid to laborers on public works projects and to specific obligations of contractors and agencies entering into contracts for public works.	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF RULES I THROUGH VI

TO: All Interested Persons:

1. A separate public hearing to consider the adoption of proposed rules set forth in paragraph 3 below will be held at each of the four times and locations, as follows:

(a) October 7, 1985, Billings, Montana, 7:00 p.m., Eastern Montana College, Liberal Arts Library Building, Library 152.

(b) October 8, 1985, Great Falls, Montana, 7:00 p.m., Great Falls Civic Center, Gallery Room.

(c) October 9, 1985, Missoula, Montana, 7:00 p.m., University of Montana, University Center, Montana Rooms.

(d) October 10, 1985, Helena, Montana, 7:00 p.m., SRS Auditorium.

(2) The proposed rules are a new sub-chapter of Title 24, Chapter 16 of the Administrative Rules of Montana and do not replace or modify any currently published section or rule.

(3) The proposed rules in this sub-chapter are set forth in their entirety below:

RULE I PURPOSE AND SCOPE (1) These rules are adopted pursuant to 18-2-409, MCA, giving the commissioner rulemaking authority to implement the Montana Prevailing Wage law, commonly known as Montana's "Little Davis-Bacon" Act. (18-2-401, et seq., MCA). The purpose of the above referenced statutes and these rules is to protect local labor markets and maintain the general welfare of Montana workers on public works projects by eliminating wage cutting as a method of competing for public contracts, to maintain wages and rates paid on public works at a level sufficient to attract highly skilled laborers performing quality workmanship, and to prevent the rate of wages from adversely

affecting the equal opportunity of Montana contractors to bid on public works.

(2) In 1931, the legislature enacted the Montana "Little Davis-Bacon" Act. The Act requires a hiring preference for Montana workers in all contracts let for public works, and empowers the Commissioner of the Department of Labor and Industry to determine the minimum wage rates to be paid to all workers on public work contracts.

AUTH: 2-4-201, 18-2-409, 18-2-402 and 18-2-403 MCA
IMP: 18-2-402, 18-2-403 MCA

RULE II DEFINITIONS As used in these rules, the following definitions apply: (1) "Act" means Section 18-2-401 through 408 MCA.

(2) "Apprentice" means a worker employed to learn a skilled trade under a written apprenticeship agreement registered with the departments' Apprenticeship Bureau or complying with the provisions of ARM 24.21.401.

(3) "Bona fide resident of Montana" is defined at Section 18-2-401(4), MCA.

(4) "Commissioner" means the Commissioner of Labor and Industry.

(5) "County or locality" means an area determined by the commissioner comprised of a single county, or a group of continuous counties within which there exists a competitive labor market with sufficient numbers of contractors and competent skilled workers of a particular craft, classification, or type such that a wage rate for the craft, classification or type of work may reasonably be determined to prevail.

(6) "Department" means the Department of Labor and Industry.

(7) "Labor" is defined at 18-2-401, MCA.

(8) "Public contracting agency" includes:

(a) the State of Montana or any political subdivision thereof;

(b) the Montana University System;

(c) any local government or political subdivision thereof;

(d) school districts, irrigation districts, or other public authority organized under the laws of the state of Montana; or,

(e) any other public body acting as or on behalf of a public agency.

(9) "Public contractor" means a contractor holding a valid public contractors license issued by the Montana Department of Commerce as provided for in Section 37-71-201, et seq., MCA, or having entered into a contract for the performance of construction, services, repair, or

maintenance work with the federal government or a public contracting agency.

(10) "Public works" means construction, repair and maintenance performed for a public contracting agency paid for wholly or in part by the funds of any public agency.

(11) "Standard prevailing rate of wages" means those wages determined by the commissioner to be the common or predominate rate of wages paid by contractors for work on projects of a similar character in the county or locality where a contract for public works is performed. It does not mean the average or mean wage paid.

A standard prevailing rate of wages determined according to these rules is not a prescribed wage rate, but rather, it is a minimum below which an individual performing labor on a public work project shall not be compensated.

AUTH: 18-2-409 MCA
IMP: 18-2-409 MCA

RULE III ESTABLISHING THE STANDARD PREVAILING RATE OF WAGES (1) When deemed necessary, but no more frequent than once a year, the commissioner will establish standard rates and delineate the county or locality where the standard applies for each craft, classification or type of worker traditionally needed to complete a public works project.

(2) The commissioner will compile wage rate information that reflects wage rates actually paid to workers on various types of construction state wide.

(a) In setting a prevailing rate of wages for a craft classification or type of worker in a county or locality, the commissioner shall consider:

(i) the established and special project rates of the previous year,

(ii) valid collective bargaining agreements,

(iii) wage rates determined by the federal government under the Davis-Bacon Act and the Federal Service Contract Act,

(iv) wage rate information compiled on a regular basis by the department,

(v) appropriate information from such wage surveys as may be conducted by the department,

(vi) other pertinent information.

(b) The commissioner may also consider wage information reflecting wages paid on projects ongoing or completed within a year prior to its consideration. This information must be supported by adequate documentation and also include the following information:

(i) the project name or identification, location and a brief description of the type of construction performed,

(ii) the date construction began and the completion date, if any,

(iii) the approximate cost of the project,

(iv) the names and addresses for the contractor, all subcontractors and the contracting authority or principal,

(v) a statement of whether wages were subject to federal prevailing wage laws, Montana prevailing wage laws, a negotiated collective bargaining agreement, or otherwise removed from the immediate and unilateral control of the employer, and

(vi) the number of workers employed to perform labor on the project, how they were classified and the rate of wages paid each worker or classification of worker.

(c) The commissioner may request clarification, additional information or independent verification of information submitted pursuant to this rule.

(d) The commissioner may conduct a survey of wage rates paid to workers on construction projects in one or more counties.

(e) It is the obligation of any person having possession or knowledge of wage rate information, including collective bargaining agreements that the commissioner should consider, or it is desired that he consider, to timely deliver such information to the commissioner.

(3) After the deadline for submission of wage information has passed, the commissioner will review each craft, classification or type of work by a county or locality and establish standard prevailing rates of wages.

(a) The boundaries of each county or locality will approximate as closely as practical, a unique labor market for a particular craft, classification, or type of worker.

(b) Within each county or locality delineated, the commissioner will consider current wage rate information on file and set the standard prevailing rate of wages for each craft, classification or type of worker for each county or locality.

AUTH: 2-4-201, 18-2-402, 18-2-409 MCA
IMP: 18-2-402 MCA

RULE IV DEPARTMENT ASSISTANCE AND SPECIAL PROJECT RATES (1) At least thirty (30) days prior to advertising for bids or letting a contract for a public works project, a public contracting agency may request that a special job classification and commensurate rate of wages be established for a particular craft, classification or type of worker needed for that particular project. The commissioner will establish a standard prevailing rate of wages for any craft, classification or type of worker for which a rate has not been set.

(2) A request for a special project job classification and commensurate rate of wages does not relieve a contractor from the obligation to classify and pay workers in accordance with annually established standard prevailing wage rates pending the establishment of a special project rate.

(3) A request for a special project job classification and rate of wage shall include:

(a) identification of the project by name, number or description and location,

(b) the name and address of the public contracting agency and the successful public contractor if a contract for work on the project has been awarded,

(c) the name, address and signature of the requesting party, or the name and address of the requesting party and the name, address and signature of the requesting party's representative,

(d) each proposed job classification and rate of wages requested,

(e) a brief description of the project and the character of the work to be performed,

(f) a detailed description of the job requirements, work to be performed and skills involved in each proposed job classification,

(g) an explanation as to why none of the classifications established for the standard prevailing rate of wages is applicable,

(h) any written items of information or documents the requesting party desires to be considered,

(i) the names and addresses of all parties entitled to notice and a signed and dated certificate showing that a copy of the request was mailed to each.

(4) A request for a special project job classification and rate of wages must establish:

(a) that the project is of such an unusual character that its performance requires unique skills not traditionally performed by any craft classification or type of worker for which there has been established a standard prevailing rate of wages,

(b) that there exists a classification of workers who commonly perform work involving such unique skills at the proposed rate of wages.

AUTH: 2-4-201, 18-2-402 and 18-2-409 MCA
IMP: 18-2-402 MCA

RULE V OBLIGATIONS OF PUBLIC CONTRACTING AGENCIES (1) A public contracting agency will include in the bid specifications and contract for any public work contract the following:

(a) Except where federal law requires otherwise the contract shall include the following statement: "It is agreed that the contractor shall give preference in hiring of bona fide Montana residents and that at least fifty percent (50%) of the work under the contract will be performed by such Montana residents, and furthermore, the contractor guarantees that all subcontractors performing work under the contract will comply with this provision."

(b) The contract shall set forth the actual rate of wages including fringe benefits for health and welfare and pension contributions and travel allowance to be paid for each craft, classification or type of worker needed to complete the project. The rates set forth shall not be less than the standard prevailing rate of wages.

(c) The contract provisions must clearly require that the contractor agree that it and its subcontractors will pay wages at the rates set forth.

(2) If a contract for public work is to be performed in more than one county where a different standard prevailing rate of wages is established for a particular craft, classification or type of worker, the highest rate is the rate to be included in the bid specifications and contract provision.

(3) Whenever a public works project, where the public contractor is required to be licensed pursuant to Section 37-71-201, et seq., MCA, is accepted by a public contracting agency, the agency shall promptly send to the department a notice of acceptance and the completion date of the project. This notice is required in all such instances, including those where the project cost is less than $50,000. (See Section 18-2-421, MCA).

AUTH: 18-2-409 MCA
IMP: 18-2-403, 18-2-422 MCA

RULE VI OBLIGATIONS OF PUBLIC CONTRACTORS AND SUBCONTRACTORS (1) All public contractors and subcontractors shall give preference in hiring to bona fide Montana residents.

(a) Such contractors must ensure that at least fifty percent (50%) of all labor performed under a contract for public works is performed by bona fide Montana residents.

(b) For good cause, a contractor may in writing request that the commissioner modify residency requirements on a particular public works project. The commissioner may modify or waive residency requirements by written agreement

with a contractor that the contractor will hire bona fide Montana residents at standard prevailing rate of wages to perform a like amount of work on another project as would have been required had the commissioner not agreed to modify or waive compliance on the particular project.

(2) All public contractors and subcontractors shall classify each worker who performs labor on a public works project according to the applicable standard prevailing rate of wages for such craft, classification or type of worker established by the commissioner, and shall pay each such worker a rate of wages not less than the standard prevailing rate.

(3) A public contractor or subcontractor shall require its subcontractors to comply with the law for contractor's bonds for wages and benefits prescribed by Sections 39-3-701, et seq., MCA unless excepted under Section 39-3-704, MCA. A contractor is jointly responsible for its subcontractor's failure to comply with classification and wage payment provisions of state law and department rules, including penalties assessed thereon.

(4) Any public contractor or subcontractor shall generally keep clear and legible records for each employee who performs labor on a public works project that show:

(a) the place where the employee was contacted for hiring.

(b) the state of permanent residence claimed by the employee.

(c) the craft, classification or type of work performed by the employee in conformity with the applicable standard prevailing rate of wages.

(d) the date, the time worked, on an hourly basis and the identification of the project for each day the employee performed work on a public works project.

(e) the hourly rate of wages, including fringe benefits for health and welfare and pension contributions, travel allowance and other terms by which the employee was compensated for such work.

AUTH: 18-2-409 MCA
IMP: 18-2-403, 18-2-404 MCA

(4) The proposed rules in this sub-chapter are the exercise of original rulemaking authority granted the commissioner and are necessary to remove legal impediments by giving the force of law to the commissioner's determination pursuant to Section 18-2-402, MCA of the minimum wage rates paid laborers on public works and enforcement of Montana resident hiring preferences.

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

Written data, views or arguments may also be submitted to the Commissioner, Department of Labor and Industry, State Capitol, Helena, Montana 59620, no later than October 18, 1985.

(6) One of the attorneys employed by the Department of Labor and Industry will be appointed to preside over and conduct the hearings. Inquiries may be addressed to the Commissioner, Department of Labor and Industry, State Capitol, Helena, Montana 59620.

(7) The authority of the department to make these rules is granted by Sections 2-4-201 and 18-2-409, MCA, and the rules implement provisions of the Montana prevailing wage law at Part 4, Chapter 2, Title 18, MCA.

Commissioner of Labor and Industry

By _____
DAVID E. WANZENRIED
Commissioner

Certified to the Secretary of State this 3rd day of September, 1985.

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

IN THE MATTER of Proposed amendment of rules regarding Public Service Commission requirement that Interstate Carriers file evidence of Insurance.	)))))	NOTICE OF PROPOSED AMENDMENT OF RULES 38.3.201(f), 38.3.202(d), 38.3.701(1)(2), 38.3.702(1), 38.3.705 NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 15, 1985 the Montana Public Service Commission proposes to amend the rules pertaining to the filing of evidence of insurance by Interstate Carriers.

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

38.3.201 INTRASTATE CARRIERS (1), (a), (b), (c), (d), (e) No change.

(f) compliance with Commission rules and regulations required ~~(69-12-402~~ 69-12-401, MCA);

(g), (h), (i), (j), (k), (l), (m), (n) No change

AUTH: 69-12-201, IMP: 69-12-401

38.3.202 INTERSTATE AND FOREIGN CARRIERS (1), (a), (b), (c) No change

(d) compliance with rules and regulations ~~(69-12-402~~ 69-12-401, MCA);

(e), (f), (g) No change

AUTH: 69-12-201, IMP: 69-12-401

38.3.701 EVIDENCE OF INSURANCE REQUIRED (1) Pursuant to the requirements of statute concerning insurance coverage (69-12-402, MCA), every intrastate motor carrier regulated by the Montana Motor Carrier Act must file with this Commission evidence of insurance prior to any intrastate motor carrier operations upon the public highways of this state.

(2) Failure to so file the appropriate insurance will prohibit any intrastate carrier from conducting a transportation movement on the highways of this state.

AUTH: 69-12-201, MCA, IMP: 69-12-402, MCA

38.3.702 PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE (1) Every Class A, Class B, Class C or Class D intrastate carrier~~, or any interstate or foreign commerce carrier~~ must file with this Commission evidence of complying with the mirimum insurance requirements of this Commission as applicable to public liability, and property damage.

AUTH: 69-12-201, MCA, IMP: 69-12-402, MCA

38.3.705 FORMS FOR CERTIFICATE OF INSURANCE ~~(1) Certificate of Insurance fillings must be submitted only on the following forms:~~

~~(a) Intrastate Public Liability, Property Damage From 2;~~

~~(b) Intrastate Cargo Insurance Form 1;~~

~~(c) Interstate Public Liability Property Damage Form 2 or 5;~~

(1) The following forms shall be utilized by the Department and may be obtained from State Publishing Company, P.O. Box 4999, Helena, Montana 59604.

1. Form 1. CLASS A AND B MOTOR CARRIER MERCHANDISE OR COMMODITY (CARGO) LIABILITY CERTIFICATE OF INSURANCE, Stock Form No. 126.

2. Form 2. COMMON AND CONTRACT MOTOR CARRIER AUTOMOBILE BODILY INJURY LIABILITY AND PROPERTY DAMAGE LIABILITY CERTIFICATE OF INSURANCE, Stock Form No. 125.

AUTH: 69-12-201, MCA, IMP: 69-12-402, MCA

3. RATIONALE: Carriers holding authority from the Interstate Commerce Commission to operate in Interstate or Foreign commerce in and through Montana must maintain evidence of Insurance with the Interstate Commerce Commission. Since interstate carriers are closely regulated by the Interstate Commerce Commission in regard to insurance, and the minimum level of coverage required of Interstate carriers is in excess of that required by Montana Law, it does not further the public interest to duplicate this effort at the state level.

4. Interested parties may submit their data, views or arguments concerning the proposed adoption in writing to Timothy R. Baker, 2701 Prospect Avenue, Helena, Montana 59620, no later than October 11, 1985.

5. If a person who is directly affected by the proposed adoption and 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 Timothy R. Baker, 2701 Prospect Avenue, Helena, Montana 59620, no later than October 11, 1985.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental sub-division or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 700 persons based on the fact there are approximately 7000 interstate carriers registered to operate in and through Montana.

7. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana 59620 (Telephone 444-2771) is available and may be contacted to represent consumer interests in this matter.

CLYDE JARVIS, CHAIRMAN

CERTIFIED TO THE SECRETARY OF STATE SEPTEMBER 3, 1985.

MAR Notice No. 38-2-75 17-9/12/85

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) of New Rule I relating to) disability income exclusion.)	NOTICE OF THE PROPOSED ADOPTION of New Rule I relating to disability income exclusion.
	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 1, 1985, the Department proposes to adopt new Rule I relating to disability income exclusion.

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

RULE I DISABILITY INCOME EXCLUSION (1) A taxpayer who is a resident of Montana qualifies for the disability income exclusion if he or she:

(a) is under age 65;

(b) retired on disability;

(c) was permanently and totally disabled when he retired; and

(d) has not chosen to treat his disability income as a pension or annuity.

(2) The adjusted gross income used in the computation of the exclusion is the taxpayer's Montana adjusted gross income.

(3) If the qualified taxpayer is married and filing separate returns, both the taxpayer and the spouse's Montana adjusted gross income are to be combined to compute the exclusion.

(4) The department reserves the right to ask for proof of disability issued by a governmental unit such as the social security administration certifying the taxpayer's permanent and total disability. If such certification is not available, the department may require such other verification as is necessary. AUTH: 15-30-305 MCA, and Ch. 364, L. 1985; IMP: 15-30-111 MCA.

3. The Department proposes to adopt new rule I because Chapter 364, Laws 1985, amended § 15-30-111, MCA. A rule is needed to state that taxpayers who are married and filing separate returns are required to include both of their incomes when calculating the exclusion amount, and that Montana adjusted gross income, not federally adjusted gross income, is to be used in the computation of the disability income exclusion. Further, this rule is needed to specify that proof of permanent and total disability may be required by the Department, and to clarify that the disability income exclusion can be taken only if the taxpayer has not chosen to treat his disability income as a pension or annuity.

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

Dawn Sliva
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than October 11, 1985.

5. If a person who is directly affected by the proposed adoption 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 Dawn Sliva at the above address no later than October 11, 1985.

6. 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 no 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.

7. The authority of the Department to make the proposed adoption is based on § 15-30-305, MCA, and Chapter 364, L. 1985, and the rule implements § 15-30-111, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 9/3/85

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) of New Rule I relating to) SRS inspection of income tax) returns.)	NOTICE OF THE PROPOSED ADOPTION of New Rule I relating to SRS inspection of income tax returns.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 1, 1985, the Department proposes to adopt new Rule I relating to SRS inspection of income tax returns.

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

RULE I INSPECTION OF INFORMATION RETURNS (1) This rule is intended to aid in the prevention and detection of fraud and abuse by applicants for public assistance.

(2) Information returns not available on magnetic tapes (paper documents) will be held for inspection on the department of revenue premises and arrangements for inspection and copying of returns will be made between designated representatives of the departments at mutually convenient times. The date and time arranged should not unduly interfere with the normal flow of returns processing or interrupt investigative or administrative processes involving use of returns.

(3) A list of names of the individuals designated by the department of social and rehabilitation services to inspect and receive information confidential in nature shall be provided by the department's director or his designated representative to the income tax division. Such list of names shall be kept current.

(4) The information returns will be released to the department of social and rehabilitation services upon notification to the department of revenue that the required notice to the applicant has been provided. The required notice to the applicant must include the following statement: "Information furnished by third parties to the department of revenue for income tax administration will be used by the department of social and rehabilitation services to verify statements made by you".

(5) The department of social and rehabilitation services is to supply its own tape reels for reproducing and processing magnetic tape files. The tapes are available during the last quarter of the calendar year for the preceding year.

AUTH: 15-30-305 MCA and Ch. 131, L. 1985; IMP: 15-30-303 MCA.

3. The Department proposes to adopt new rule I because Chapter 131, Laws 1985, amended § 15-30-303, MCA. A rule is needed to specify how and when certain third party information would be exchanged since the law provides only general requirements, provide language for the notice to all applicants for

public assistance of the use of tax information to verify applications, and clarify which agency is responsible for reproducing and processing of information returns available on magnetic tapes. Therefore, the Department proposes to adopt these rules to implement the statute.

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

Dawn Sliva
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than October 11, 1985.

5. If a person who is directly affected by the proposed adoption 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 Dawn Sliva at the above address no later than October 11, 1985.

6. 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 no 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.

7. The authority of the Department to make the proposed adoption is based on § 15-30-305, MCA, and Chapter 131, L. 1985, and the rule implements § 15-30-303, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 9/3/85

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) of New Rule I relating to) Montana adjusted gross income) and New Rule II relating to) Subchapter "S" shareholder's) income.)	NOTICE OF PUBLIC HEARING on the PROPOSED ADOPTION of New Rule I relating to Montana adjusted gross income and New Rule II relating to Subchapter "S" shareholder's income.

TO: All Interested Persons:

1. On October 2, 1985, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Fifth & Roberts Streets, at Helena, Montana, to consider the adoption of new rule I relating to Montana adjusted gross income and new rule II relating to Subchapter "S" shareholder's income.

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

3. The new rules as proposed to be adopted provide as follows:

RULE I MONTANA ADJUSTED GROSS INCOME Montana adjusted gross income is the adjusted gross income as defined by 15-30-111, MCA.

AUTH: 15-30-305 MCA; IMP: 15-30-111 MCA.

RULE II SUBCHAPTER "S" ADDITION TO MONTANA ADJUSTED GROSS INCOME A Subchapter "S" shareholder's income is that income included in federal adjusted gross income plus:

(1) An amount equal to the federal tax on capital gains and the minimum tax paid by the corporation times the shareholder's percentage of ownership; and

(2) An amount equal to the excess net passive federal income tax paid by the corporation times the shareholder's percentage of ownership; and

(3) All other amounts equal to federal taxes paid by the corporation that reduce the shareholder's distribution of the net sub "S" income.

AUTH: 15-30-305 MCA; IMP: 15-30-111 MCA.

4. The Department is proposing new rule I because the term Montana adjusted gross income is used in the administrative rules and has not been defined. This rule will provide the definition. The Department is proposing new rule II because Chapter 198, Laws 1985, amended § 15-30-111, MCA, and the rule is necessary to specify what federal taxes paid by a Subchapter "S" corporation currently affect shareholder's distributive share of income and must be added back to Montana adjusted gross income.

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:

Dawn Sliva
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than October 11, 1985.

6. Allen Chronister, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed adoptions is based on § 15-30-305, MCA, and the rules implement § 15-30-111, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 9/3/85

BEFORE THE STATE AUDITOR
AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the adoption of rules pertaining to Montana's Comprehensive Health Care Association and Plan	))))	NOTICE OF ADOPTION OF RULES IMPLEMENTING THE MONTANA COMPREHENSIVE HEALTH ASSOCIATION AND PLAN--6.6.1901 through 6.6.1905

TO: All Interested Persons

1. On May 30, 1985, the Commissioner of Insurance published notice of the proposed adoption of Rules I through V (Sub-Chapter 19, Comprehensive Health Care Association and Plan, 6.6.1901 through 6.6.1905), relating to the Montana Comprehensive Health Association and Plan at pages 531 through 535 of the 1985 Montana Administrative Register, Issue No. 10.

2. The Insurance Commissioner has adopted the rules with the following change:

6.6.1905 ASSESSMENTS - ASSOCIATION AND BOARD EXPENSES

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

(4) ~~The commissioner's office may bill staff time and expenses to the Association.~~

(5) now becomes (4)

(6) now becomes (5)

(7) now becomes (6)

3. The Insurance Commissioner received one written comment on the proposed rule from John Alke, attorney for Montana Physicians' Service. The comment was an objection to Rule V(4). The objection was accepted and the changes made as set forth above.

4. The authority for the Insurance Commissioner to adopt the rules is Section 33-22-1501(2), MCA and the rules implement Sections 33-22-1502, 33-22-1503 and 33-22-1504, MCA.

Andrea "Andy" Bennett
State Auditor and
Commissioner of Insurance

Certified to the Secretary of State August 2, 1985.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF DENTISTRY

In the matter of the amendments of 8.16.405 concerning dentists fee schedule, 8.16.602 concerning allowable functions for dental auxiliaries, 8.16.605 concerning examination, 8.16.606 concerning the fee schedule for dental auxiliaries, and adoption of new rules concerning identification of dentures, application to convert inactive status license to an active status license for dentists and dental hygienists	)	NOTICE OF AMENDMENTS OF 8.16.405 FEE SCHEDULE, 8.16.602 ALLOWABLE FUNCTIONS FOR DENTAL AUXILIARIES, 8.16.605 EXAMINATION, 8.16.606 FEE SCHEDULE, and ADOPTION OF NEW RULES 8.16.407 IDENTIFICATION OF DENTURES, 8.16.408 APPLICATION TO CONVERT AN INACTIVE STATUS LICENSE TO AN ACTIVE STATUS LICENSE, 8.16.607 APPLICATION TO CONVERT AN INACTIVE STATUS LICENSE TO AN ACTIVE STATUS LICENSE

TO: All Interested Persons:

1. On June 27, 1985, the Board of Dentistry published a notice of amendments and adoptions of the above-stated rules at pages 715 through 720, 1985 Montana Administrative Register, issue number 12.

2. Written comments were received from three dental practitioners and the Montana Dental Hygienists' Association objecting to the proposed fee increases. The Board took the comments under consideration at its Board Meeting on August 5, 1985. The Board ruled that the fee increases will remain as proposed based on the statute requiring that fees be set commensurate with program area costs.

One written comment and two telephone calls from dental practitioners were received objecting to the procedures for converting inactive status licensure to active status licensure. The Board took the comments under consideration at its Board meeting August 5, 1985. The Board proposes amendments to sections II (Dentists Sub-Chapter 4 (1)(b)) and III (Dental hygiene - Sub-Chapter 6 (1)(b)) to clarify that there are three alternate qualifying standards for reactivating a license. The intent is that the licensee meet only one of the three standards stated under (1)(b).

Based on the comments received, the Board is amending and adopting the rules as proposed with the following exceptions: (new matter underlined, deleted matter interlined)

"8.16.408 APPLICATION TO CONVERT AN INACTIVE STATUS LICENSE TO AN ACTIVE STATUS LICENSE (1) An inactive status license does not entitle the holder to practice dentistry in the state of Montana. Upon application and payment of the appropriate fee, the board may reactivate an inactive license if the applicant does each of the following:

(a) signifies to the board in writing that, upon issuance of the active license, he or she intends to be an active practitioner in the state of Montana; and

(b) ...

(i) evidence that the applicant has actively and competently practiced in another jurisdiction during the year immediately prior to the application, or

(ii) Evidence that the applicant has not been out of active practice for more than four years; and that, during the immediately previous three years, the applicant has attended 20 hours of clinical continuing education that contributes directly to the applicant's basic clinical skills in the practice of dentistry. Such continuing education should not be limited in scope, but should reflect an attempt to retain competency throughout the entire field of dentistry; or

(iii) ...

(c) Any applicant for active license status who proves operative competence under this rule must also agree that the Board may conduct an on-site practice review during the first two years following their re-entering practice.

~~(c)~~ (d) ...

(vi) or any other disease or condition that impairs ability to practice in an efficient and competent manner.

~~(e)~~ (f) ..."

"8.16.607 APPLICATION TO CONVERT AN INACTIVE STATUS LICENSE TO AN ACTIVE STATUS LICENSE

(1) An inactive status license does not entitle the holder to practice dental hygiene in the state of Montana. Upon application and payment of the appropriate fee, the board may reactivate an inactive license if the applicant does each of the following:

(a) signifies to the board in writing that, upon issuance of the active license, he or she intends to be an active practitioner in the state of Montana; and

(b) ...

(i) evidence that the applicant has actively and competently practiced in another jurisdiction during the year immediately prior to the application, or

(ii) Evidence that the applicant has not been out of active practice for more than four years; and that, during the immediately previous three years, the applicant has attended 20 hours of clinical continuing education that contributes directly to the applicant's basic clinical skills in the practice of dental hygiene. Such continuing education should not be limited in scope, but should reflect an attempt to retain competency throughout the entire field of dental hygiene; or

(iii) ...

(c) Any applicant for active license status who proves operative competence under this rule must also agree that the

Board may conduct an on-site practice review during the first two years following their re-entering practice.

~~(e)~~ (d) ...

(vi) or any other disease or condition that impairs ability to practice in an efficient and competent manner.

~~(e)~~ (f) ..."

3. No other comments or testimony were received.

BOARD OF DENTISTRY
JAMES OLSON, D.D.S.
PRESIDENT

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR

Certified to the Secretary of State, September 3, 1985.

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

In the matter of the amendment of rules 16.8.701 (definitions); 16.8.707 (circumvention); 16.8.921 (definitions: PSD); 16.8.1101, 16.8.1102, 16.8.1107, and 16.8.1109 (permits); 16.8.1423 (NSPS); 16.8.1424 (hazardous air pollutants); and the adoption of new RULES I through VIII (visibility protection)	NOTICE OF AMENDMENT AND ADOPTION OF RULES (Air Quality)

TO: All Interested Persons

1. On April 11, 1985, the Board published notice of proposed amendment of rules and proposed adoption of new rules at page 330 of the 1985 Montana Administrative Register, issue number 7.

2. A public hearing was held on May 17, 1985, and the Board deferred action until the Department had time to consider several comments on the proposed rules. At the Board's regular meeting on July 19, 1985, the Department presented its recommendation and the Board then took final action.

3. The Board has amended the rules as proposed with the following exceptions:

16.8.701 DEFINITIONS Same as proposed.

16.8.707 CIRCUMVENTION Same as proposed.

16.8.921 DEFINITIONS Same as proposed.

16.8.1101 DEFINITIONS Same as proposed.

16.8.1102 WHEN PERMIT REQUIRED -- EXCLUSIONS

(1)(a) - (k) Same as existing rule.

(l) All other sources and stacks not specifically excluded which do not have the potential to emit ~~less~~ more than ~~25~~ ≯ 25 tons per year of any pollutant, other than lead, for which a rule has been adopted in this chapter;

(m) and (n) Same as existing rule.

(o) ASPHALT CONCRETE PLANTS AND MINERAL CRUSHERS WHICH DO NOT HAVE THE POTENTIAL TO EMIT MORE THAN 5 TONS OF ANY POLLUTANT, OTHER THAN LEAD, FOR WHICH A RULE HAS BEEN ADOPTED IN THIS CHAPTER.

16.8.1107 PUBLIC REVIEW OF PERMIT APPLICATIONS Same as proposed.

16.8.1109 CONDITIONS FOR ISSUANCE OF PERMIT

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

(6) Any owner or operator of a new or altered source or stack proposing construction or alteration within any area designated as non-attainment in 40 CFR 81.327 for any air contaminant must demonstrate that all major stationary sources, as defined in ~~ARM 16.8.901(14),~~ ARM 16.8.921(22), owned or operated by such persons, or by an entity controlling, controlled by, or under common control with such ~~person,~~ persons, are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable air quality emission limitations and standards contained in this chapter.

(7) Same as existing rule.

(8) The ~~Board~~ board hereby adopts and incorporates by reference 40 CFR Part 52, Subpart BB, which ~~describes~~ IS A FEDERAL AGENCY REGULATION DESCRIBING Montana's state implementation plan for control of air pollution in Montana; 40 CFR 81.327, which IS A FEDERAL AGENCY REGULATION SETTING ~~sets~~ forth air quality attainment status designations for the state of Montana; and ~~ARM 16.8.901(14)~~ ARM 16.8.921(22), which defines "major stationary source". Copies of 40 CFR Part 52, Subpart BB, 40 CFR 81.327, and ~~ARM 16.8.901(14)~~ ARM 16.8.921(22) may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

16.8.1423 STANDARD OF PERFORMANCE FOR NEW STATIONARY SOURCES Same as proposed.

16.8.1424 EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS Same as proposed.

4. The new rules are proposed to be codified in a new sub-chapter 10, entitled "Visibility Impact Assessment". The Board has adopted the new rules as proposed, with the following changes (new material is underlined, matter to be stricken is interlined):

RULE I (to be codified 16.8.1001) APPLICABILITY -- VISIBILITY REQUIREMENTS APPLICABILITY Same as proposed.

RULE II (to be codified 16.8.1002) DEFINITIONS For the purposes of this sub-chapter:

(1) "~~Mandatory~~ "Federal Class I area" means those areas listed in ARM 16.8.923(2) and any other federal land that is classified or reclassified as Class I.

(2) "~~Significant impairment~~" "Adverse impact on visibility" means visibility impairment which the department determines does or is likely to interfere with the management, protection, preservation, or enjoyment of the visual experience of visitors within a ~~mandatory~~ federal Class I area. The

determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairment, and how these factors correlate with times of visitor use of the ~~mandatory~~ federal Class I area, and the frequency and occurrence of natural conditions that reduce visibility.

(3) "Visibility impairment" means any humanly perceptible change in visual range, contrast or coloration from that which would have existed under natural conditions. Natural conditions include fog, clouds, windblown dust from natural sources, rain, naturally ignited wildfires, and natural aerosols.

RULE III (to be codified 16.8.1003) VISIBILITY IMPACT ANALYSIS (1) The owner or operator of a major stationary source or modification as described in RULE I (16.8.1001) shall demonstrate that the actual emissions [as defined by ARM 16.8.921(2)] from the major source or modification (including fugitive emissions) shall not cause or contribute to adverse impact on ~~significant impairment of~~ visibility within any ~~mandatory~~ federal Class I area or the department shall not issue a permit.

(2) The owner or operator of a proposed major stationary source or major modification shall submit all information necessary to support any analysis or demonstration required by these rules pursuant to ARM 16.8.1105.

RULE IV (to be codified 16.8.1004) VISIBILITY MODELS Same as proposed.

RULE V (to be codified 16.8.1005) NOTIFICATION OF PERMIT APPLICATION (1) Where a proposed major stationary source or major modification will impact or may impact visibility within a ~~mandatory~~ federal Class I area, the department shall provide written notice to the Environmental Protection Agency and to the appropriate federal land managers. Notification shall be in writing, include all information relevant to the permit application including an analysis of the anticipated impacts on visibility in any federal Class I area, and be within 30 days of the receipt of the application.

(2) Where the department receives advance notification of a permit application of a source that may affect ~~mandatory~~ federal Class I area visibility, the department will notify all affected federal land managers within 30 days of such advance notice.

RULE VI (to be codified 16.8.1006) ~~SIGNIFICANT IMPAIRMENT~~ ADVERSE IMPACT AND FEDERAL LAND MANAGER Federal land managers may present to the department, after the preliminary determination required under ARM 16.8.1107(2), a demonstration that the emissions from the proposed source or modification may cause or contribute to adverse impact on visibility ~~significant~~

~~impairment~~ in any ~~mandatory~~ federal Class I area, notwithstanding that the air quality change resulting from the emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increment defined in ARM 16.8.925 (PSD) for a ~~mandatory~~ federal Class I area. The department will consider the comments of the federal land manager in its determination of whether adverse impact on visibility ~~significant impairment~~ may result. Should the department determine that such impairment may result, a permit for the proposed source will not be granted. Where the department finds such an analysis does not demonstrate to the satisfaction of the department that an adverse impact on visibility will result, the department will provide written notification to the affected federal land manager within 5 days of the department's final decision on the permit. The notification will include an explanation of the department's decision or give notice as to where the explanation can be obtained.

RULE VII (to be codified 16.8.1007) VISIBILITY MONITORING

(1) The owner or operator of a proposed major stationary source or major modification ~~whose actual emissions exceed 250 tons per year of TSP, SO2, volatile organic compounds, or NOx~~ shall submit with the application an analysis of existing visibility in or immediately adjacent to the ~~mandatory~~ federal Class I area potentially impacted by the proposed project. The validity of the analysis shall be determined by the department.

(2) As necessary to establish visibility conditions within the mandatory Class I area prior to construction and operation of the source or modification, the analysis shall include a collection of continuous visibility monitoring data ~~for all pollutants to be emitted by the source that could potentially impact mandatory Class I area visibility~~. Such data shall relate to and shall have been gathered over the year preceding receipt of the complete application, except that if the department determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year, the data that is required must have been gathered over at least that shorter period. Where applicable, the owner or operator may demonstrate that existing visibility monitoring data may be sufficient.

(3) Pursuant to the requirements of this sub-chapter, the owner or operator of the source shall submit a preconstruction visibility monitoring plan prior to the filing of a permit application. Within 30 days, the department must , after consultation with the affected federal land manager, review and either approve the monitoring program or specify the changes necessary for approval. If the department fails to act within the 30 days, the monitoring program shall be deemed approved.

(4) The owner or operator of a proposed major stationary source or major modification, after construction has been completed, shall conduct such visibility monitoring as the department may require as a permit condition to establish the effect the source has on visibility conditions within the mandatory Class I area being impacted.

(5) The department may waive the requirements of ARM 16.8.1007(1) , (2) and (3) if the value of "V" in the equation below is less than 0.50 or, if for any other reason which can be demonstrated to the satisfaction of the department, an analysis of visibility is not necessary.

$$V = (\text{Emissions})^{\frac{1}{2}}/\text{Distance}$$

Where: Emissions = emissions from the major stationary source or modification of nitrogen oxides, particulates, or sulfur dioxide, whichever is highest, in tons per year.

Distance = distance, in kilometers, from the proposed major stationary source or major modification to each ~~mandatory~~ federal Class I area.

RULE VIII (to be codified 16.8.1008) ADDITIONAL IMPACT ANALYSIS Same as proposed.

5. The several comments which were received and the Board's responses are set forth as follows:

Comment: In 16.8.1102, rather than use a "catch-all" reduction in tonnage from 25 to 5 tons, why not simply add a new section on asphalt plants and mineral crushers which is the principal aim of the change proposed.

Response: The Board agrees and has adopted such a new section.

Comment: Section 16.8.1109(8) should be further clarified and made to be consistent with the rule format of other rules.

Response: The Board agrees and has made minor technical changes to amendment proposed.

Comment: The National Park Service and U.S. EPA offered the following several comments:

The term "significant impairment" should be changed to "adverse impact on visibility" for consistency with federal terminology.

Visibility protection under new source review applies to all federal Class I areas, not just mandatory Class I areas.

Notifications to the federal land manager (FLM) should provide appropriate information, should state the basis for the Department's disagreement, if any, with the FLM's finding of adverse impact, and should seek the FLM's advice on visibility monitoring plans.

Response: The Board acknowledges the merit of such comments and has modified its proposals accordingly.

JOHN F. McGREGOR, M.D., Chairman,
Board of Health and Environmental Sciences

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

Certified to the Secretary of State September 3, 1985

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

In the matter of the adoption of Rules I through IV (16.25.101 through 16.25.104) establishing a protocol for probation and termination of local family planning programs	NOTICE OF THE ADOPTION OF RULES 16.25.101 THROUGH 16.25.104 (Family Planning)

To: All Interested Persons

1. On July 25, 1985, the department published notice of a proposed adoption of rules I through IV (16.25.101 through 16.25.104) concerning the establishment of a protocol for probation and termination of local family planning programs at page 998 of the 1985 Montana Administrative Register.

2. The department has adopted the rules as proposed.

3. The department received a letter voicing complete support for the new rules from David Vickery, representing the Montana Right to Life Association. In addition, Brenda Desmond, counsel to the Administrative Code Committee, raised the question whether due process required the hearing referred to in Rule IV (16.25.104) to meet the standards of the Montana Administrative Procedure Act (MAPA), contrary to the provision in that rule's subsection (2) excepting such a hearing from the contested case procedures of MAPA. Since there is no law requiring a hearing to terminate a family planning program to be held according to MAPA, and because the four rules composing the protocol together appear to provide any family planning program with adequate due process, the provision was retained.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State September 3, 1985

BEFORE THE DEPARTMENT
OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of adoption of amendments to 24.11.303 hearing procedure-benefit determinations and the adoption of rules governing: hearing procedure-tax appeal determinations; and disqualification due to 1) misconduct 2) voluntary leaving attributable to employment and 3) strike	))))))))	NOTICE OF ADOPTION OF AMENDMENTS TO 24.11.303 HEARING PROCEDURE-BENEFIT DETERMINATIONS AND THE ADOPTION OF RULES COVERNING: HEARING PROCEDURE-TAX APPEAL DETERMINATIONS; AND DISQUALIFICATION DUE TO MISCONDUCT, LEAVING WORK WITHOUT GOOD CAUSE ATTRIBUTABLE TO EMPLOYMENT, AND STRIKE

TO: All Interested Persons.

1. On June 27, 1985, the Department of Labor and Industry published Notice of Proposed Amendments to 24.11.303 and proposed adoption of rules I through XX concerning unemployment insurance benefits and contributions appeals procedures. At page 736 of 1985 Montana Administrative Register issue number 12.

2. The Department of Labor and Industry has adopted Rule I -- 24.11.311 as proposed, except strike ~~Scope~~ and it will be renumbered. Strike the word Scope or General in any Rule where they might appear.

3. The Department of Labor and Industry has adopted the rules with the following changes:

24.11.303 HEARING PROCEDURE -- BENEFIT DETERMINATIONS This rule implements 39-51-2407 MCA by setting forth procedural steps that shall be followed in contested matters involving unemployment insurance benefit determinations.

Contents of rule remain the same.

Auth & IMP: Sec. 39-51-2407 MCA.

RULE II -- 24.11.418 DISQUALIFICATION FOR MISCONDUCT~~:~~ -- ~~GENERAL~~ Same as proposed except it will be numbered, and:

Note: The definition of misconduct and elements of proof contained herein apply to ~~subsection (a) through (m) and should be considered in determining whether misconduct exists.~~ all rules concerning disqualification due to misconduct.

AUTH: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.

IMP: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.

RULE III -- 24.11.419 MISCONDUCT IN CONNECTION WITH CLAIMANT'S WORK OR AFFECTING HIS EMPLOYMENT (off-duty conduct) Same as proposed except:

NOTE: The definition of misconduct and ~~accompanying elements apply to the foregoing subsection of new Rule II,~~ elements found in ARM 24.11.418 apply to this rule.

AUTH: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.
IMP: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.

RULE IV -- 24.11.420 DISHONESTY Same as proposed except:

NOTE: The definition of misconduct and ~~accompanying elements apply to the foregoing subsection of new Rule II,~~ elements found in ARM 24.11.418 apply to this rule.

AUTH: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.
IMP: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.

RULE V -- 24.11.421 DUTY TO EMPLOYER Same as proposed except it will be numbered, and :

Add (following the second paragraph):

NOTE: It is not the intent of this rule to abridge any constitutionally protected activities.

NOTE: The definition of misconduct and ~~accompanying elements apply to the foregoing subsection of new Rule II,~~ elements found in ARM 24.11.418 apply to this rule.

AUTH: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.
IMP: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.

RULE VI -- 24.11.422 EXCESSIVE ABSENTEEISM Same as proposed except it will be numbered, and:

NOTE: The definition of misconduct and ~~accompanying elements apply to the foregoing subsection of new Rule II,~~ elements found in ARM 24.11.418 apply to this rule.

AUTH: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.
IMP: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.

RULE VII -- 24.11.423 INSUBORDINATION Same as proposed except:

NOTE: The definition of misconduct and ~~accompanying elements apply to the foregoing subsection of new Rule II,~~ elements found in ARM 24.11.418 apply to this rule.

AUTH: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.
IMP: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.

RULE VIII -- 24.11.424 INTOXICATION AND USE OF INTOXICANTS Same as proposed except it will be numbered, and:

If the employer can demonstrate that such reasonable accommodations would constitute undue hardship on the business, the department will deem the employee to have left work for ~~personal~~ good cause attributable to employment if the employee provides a medical affidavit stating that his health would be jeopardized if he remained in the workplace untreated for the drug or alcohol dependency.

NOTE: The definition of misconduct and ~~accompanying elements apply to the foregoing subsection of new Rule II,~~ elements found in ARM 24.11.418 apply to this rule.

AUTH: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.
IMP: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.

RULE IX -- 24.11.425 LEAVING IN ANTICIPATION OF DISCHARGE Same as proposed except:

NOTE: The definition of misconduct and ~~accompanying elements apply to the foregoing subsection of new Rule II,~~ elements found in ARM 24.11.418 apply to this rule.

AUTH: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.
IMP: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.

RULE X -- 24.11.426 RELATIONS WITH FELLOW EMPLOYEES Same as proposed except:

NOTE: The definition of misconduct and ~~accompanying elements apply to the foregoing subsection of new Rule II,~~ elements found in ARM 24.11.418 apply to this rule.

AUTH: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.
IMP: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.

RULE XI -- 24.11.427 TARDINESS Same as proposed except:

NOTE: The definition of misconduct and ~~accompanying elements apply to the foregoing subsection of new Rule II,~~ elements found in ARM 24.11.418 apply to this rule.

AUTH: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.
IMP: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.

RULE XII -- 24.11.428 UNION RELATIONS Same as proposed except:

NOTE: The definition of misconduct and ~~accompanying elements apply to the foregoing subsection of new Rule II,~~ elements found in ARM 24.11.418 apply to this rule.

AUTH: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.
IMP: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.

RULE XIII -- 24.11.429 VIOLATION OF COMPANY RULE Same as proposed except:
Add:

5. Was the rule consistently applied to all employees.

NOTE: The definition of misconduct and ~~accompanying elements apply to the foregoing subsection of new Rule II,~~ elements found in ARM 24.11.418 apply to this rule.
AUTH: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.
IMP: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.

RULE XIV -- 24.11.430 VIOLATION OF LAW Same as proposed except:
NOTE: The definition of misconduct and ~~accompanying elements apply to the foregoing subsection of new Rule II,~~ elements found in ARM 24.11.418 apply to this rule.
AUTH: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.
IMP: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.

RULE XV -- 24.11.431 WORK PERFORMED IN GROSSLY NEGLIGENT MANNER Same as proposed except:
NOTE: The definition of misconduct and ~~accompanying elements apply to the foregoing subsection of new Rule II,~~ elements found in ARM 24.11.418 apply to this rule.
AUTH: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.
IMP: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.

RULE XVI -- 24.11.432 DISQUALIFICATION FOR LEAVING WORK WITHOUT GOOD CAUSE ATTRIBUTABLE TO THE EMPLOYMENT ~~GENERAL PRINCIPLES:~~ Same as proposed except it will be renumbered, and:
NOTE: The definition of misconduct and ~~accompanying elements apply to the foregoing subsection of new Rule II,~~ elements found in ARM 24.11.418 apply to this rule.
AUTH: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.
IMP: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.

RULE XVII -- 24.11.433 HEALTH, SAFETY, MORALS ~~GENERAL PRINCIPLES:~~ Same as proposed except:
NOTE: The definition of misconduct and ~~accompanying elements apply to the foregoing subsection of new Rule II,~~ elements found in ARM 24.11.418 apply to this rule.
AUTH: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.
IMP: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.

RULE XVIII -- 24.11.434 HOURS, WAGES AND WORKING CONDITIONS
~~GENERAL PRINCIPLES:~~ Same as proposed except:
NOTE: The definition of misconduct and ~~accompanying elements apply to the foregoing subsection of new Rule II,~~ elements found in ARM 24.11.418 apply to this rule.

AUTH: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.
IMP: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.

RULE XIX -- 24.11.435 EMPLOYER HARASSMENT

~~GENERAL PRINCIPLES:~~ Same as proposed except:

NOTE: The definition of misconduct and ~~accompanying elements apply to the foregoing subsection of new Rule II.~~ elements found in ARM 24.11.418 apply to this rule.

AUTH: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.
IMP: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.

RULE XX -- 24.11.436 DISQUALIFICATION WHEN UNEMPLOYMENT DUE TO STRIKE

~~GENERAL PRINCIPLES:~~ Same as proposed except it will be renumbered, and:

"Strike" defined: A strike is a concerted cessation of work by employees of an establishment ~~in an effort to obtain desirable terms from an employer.~~ contesting some action or inaction of an employer.

~~General: The department is required by law to disqualify any individual who participates in a strike unless the department determines that the cause of the labor dispute which resulted in a strike is due to the employer's failure or refusal to conform to any state or federal law pertaining to collective bargaining matters or wage and hour laws or laws relating to conditions of work.~~ The intent of the legislature concerning benefits to striking employees is to deny benefits unless the employee shows the employer's violation of law caused the strike.

This exception to the general rule of denying benefits to strikers requires the claimant to prove that:

(1) a law violation occurred

(2) the law violation was the cause ir fact and proximate cause of the strike.

The alleged law violation does not need to be the sole reason for the strike. However, it must be a factor in the claimant's decision to participate in the strike. Eg., employer refused to grant: 1) 3 percent increase in wages, 2) an additional paid holiday, 3) additionally the employer refused to hire any women or men over the age of 40. In this example the first two actions by the employer may arguably not be violations of the law. However the third reason concerns a potential Montana human rights violation and EEOC violation. If the employees can show that the employer's refusal to hire persons over 40 occurred and that his refusal was a factor in their decision to strike, benefits would be awarded.

AUTH: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.
IMP: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.

4. At the public hearing a representative of the Deaconess Hospital and a representative of Washington State employers testified that the proposed rules were fair.

Written statements requesting modifications to the proposed rules governing misconduct, and disqualification due to strike were received from the Montana AFL-CIO, The International Union of Operating Engineers, Emilie Loring, Attorney at Law and Representative Norm Wallin.

In general the negative comments concerning disqualification due to misconduct were aimed at narrowing the scope of a finding involving misconduct. The department for the most part respectfully disagrees with the criticisms because the proposed rules are premised on Montana case law and comparable states' case law.

As a result of criticisms made by the AFL-CIO and International Union of Operating Engineers, the department modified or clarified the following proposed rules.

RULE V -- 24.11.421 DUTY TO EMPLOYER Same as proposed except it will be numbered, and:
Add (following the second paragraph):

NOTE: It is not the intent of this rule to abridge any constitutionally protected activities.

AUTH: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.
IMP: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.

RULE VIII -- 24.11.424 INTOXICATION AND USE OF INTOXICANTS Same as proposed except it will be numbered, and:

If the employer can demonstrate that such reasonable accommodations would constitute undue hardship on the business, the department will deem the employee to have left work for ~~personal~~ good cause attributable to employment if the employee provides a medical affidavit stating that his health would be jeopardized if he remained in the workplace untreated for the drug or alcohol dependency.

NOTE: The definition of misconduct and ~~accompanying elements apply to the foregoing subsection of new Rule II.~~ elements found in ARM 24.11.416 apply to this rule.

AUTH: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.
IMP: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.

RULE XIII -- 24.11.429 VIOLATION OF COMPANY RULE Same as proposed except:
Add:

5. Was the rule consistently applied to all employees.

NOTE: The definition of misconduct and ~~accompanying elements apply to the foregoing subsection of new Rule II,~~ elements found in ARM 24.11.418 apply to this rule.

AUTH: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.
IMP: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.

RULE XX -- 24.11.436 DISQUALIFICATION WHEN UNEMPLOYMENT DUE TO STRIKE Same as proposed except it will be renumbered, and:

"Strike" defined: A strike is a concerted cessation of work by employees of an establishment ~~in an effort to obtain desirable terms from an employer;~~ contesting some action or inaction of an employer.

~~General: The department is required by law to disqualify any individual who participates in a strike unless the department determines that the cause of the labor dispute which resulted in a strike is due to the employer's failure or refusal to conform to any state or federal law pertaining to collective bargaining matters or wage and hour laws or laws relating to conditions of work;~~ The intent of the legislature concerning benefits to striking employees is to deny benefits unless the employee shows the employer's violation of law caused the strike.

This exception to the general rule of denying benefits to strikers requires the claimant to prove that:

(1) a law violation occurred

(2) the law violation was the cause in fact and proximate cause of the strike.

The alleged law violation does not need to be the sole reason for the strike. However, it must be a factor in the claimant's decision to participate in the strike. Eg., employer refused to grant: 1) 3 percent increase in wages, 2) an additional paid holiday, 3) additionally the employer refused to hire any women or men over the age of 40. In this example the first two actions by the employer may arguably not be violations of the law. However the third reason concerns a potential Montana human rights violation and EEOC violation. If the employees can show that the employer's refusal to hire persons over 40 occurred and that his refusal was a factor in their decision to strike, benefits would be awarded.

AUTH: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.
IMP: Sec. 39-51-2303, 39-51-301, 39-51-302 MCA.

DAVID E. WANZENRIED
Commissioner of Labor and Industry

Certified to the Secretary of State this 3rd day of September, 1985.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rule I (42.12.115) relating to the waiver of assessment of late payment penalty fees for liquor license renewals.	NOTICE OF THE ADOPTION of Rule I (42.12.115) relating to the waiver of assessment of late payment penalty fees for liquor license renewals.

TO: All Interested Persons:

1. On July 25, 1985, the Department published notice of the proposed adoption of Rule I (42.12.115) relating to the waiver of assessment of late payment penalty fees for liquor license renewals at pages 1006 and 1007 of the 1985 Montana Administrative Register, issue no. 14.

2. The Department has adopted Rule I (42.12.115) as proposed.

3. A public hearing was held on August 14, 1985, to consider the proposed adoption of this rule. No persons appeared to oppose the proposed adoption. Diana Koon, Chief of the Licensing Bureau of the Liquor Division, appeared on behalf of the Department. The Department received a letter on behalf of the Montana Tavern Association stating they had no objection to the adoption of the rule. No other comments or testimony were received, therefore, the Hearing Examiner deemed the rule changes "submitted as drafted".

4. The authority for the rule is § 16-1-303, MCA, and implements § 16-4-501, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 9/3/85

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) of Rule I relating to gasohol) blenders.)	NOTICE OF THE ADOPTION of New Rule I relating to gasohol blenders. (42.27.111)

TO: All Interested Persons:

PLEASE NOTE: The Department of Revenue's adoption notice published at page 1245, 1985 Montana Administrative Register, issue number 16, adopted a new rule. This rule was numbered 42.27.108. It should have been numbered 42.27.111.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 9/3/85

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

In the matter of the amendment of ARM 46.10.403 pertaining to AFDC lump sum payment penalties.	)))))	NOTICE OF THE AMENDMENT OF ARM 46.10.403 PERTAINING TO AFDC LUMP SUM PAYMENT PENALTIES.

TO: All Interested Persons

1. On July 25, 1985, the Department of Social and Rehabilitation Services, published notice of the proposed amendment of Rule 46.10.403 pertaining to AFDC lump sum payment penalties at page 1012 of the 1985 Montana Administrative Register, issue number 14.

2. The Department has amended Rule 46.10.403 as proposed.

3. No written comments or testimony were received.

Director, Social and Rehabilitation Services

Certified to the Secretary of State September 3, 1985.

VOLUME NO. 40 OPINION NO. 24

ARREST - Application of Uniform Criminal Extradition Act, rather than Interstate Compact on Juveniles, to nondelinquent youth charged with crime in another state;
CORRECTIONAL FACILITIES - Application of Uniform Criminal Extradition Act, rather than Interstate Compact on Juveniles, to nondelinquent youth charged with crime in another state;
DEPARTMENT OF INSTITUTIONS - Application of Uniform Criminal Extradition Act, rather than Interstate Compact on Juveniles, to nondelinquent youth charged with crime in another state;
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES - Application of Uniform Criminal Extradition Act, rather than Interstate Compact on Juveniles, to nondelinquent youth charged with crime in another state;
FELONS - Application of Uniform Criminal Extradition Act, rather than Interstate Compact on Juveniles, to nondelinquent youth charged with crime in another state;
INTERGOVERNMENTAL COOPERATION - Application of Uniform Criminal Extradition Act, rather than Interstate Compact on Juveniles, to nondelinquent youth charged with crime in another state;
JUVENILE DELINQUENCY - Application of Uniform Criminal Extradition Act, rather than Interstate Compact on Juveniles, to nondelinquent youth charged with crime in another state;
JUVENILES - Application of Uniform Criminal Extradition Act, rather than Interstate Compact on Juveniles, to nondelinquent youth charged with crime in another state;
MONTANA CODE ANNOTATED - Title 41, chapter 6; Title 46, chapter 30;
UNITED STATES CONSTITUTION - Article IV, section 2, clause 2.

HELD: 1. The Interstate Compact on Juveniles, as currently adopted in Montana at Title 41, chapter 6, MCA, does not apply to youths who have not been adjudged delinquent and have not run away, but who are charged with a felony offense in another state.

2. Juveniles residing in Montana, and charged with a crime in another state, may be extradited under the Uniform Criminal Extradition Act, tit. 46, ch. 30, MCA.

26 August 1985

Robert B. Brown
Ravalli County Attorney
Ravalli County Courthouse
Hamilton MT 59840

Dear Mr. Brown:

You have requested my opinion on the following two questions:

1. Does the Interstate Compact on Juveniles, tit. 41, ch. 6, MCA, apply to youths who have not been adjudged delinquent and are not runaways, but who have been charged with a felony offense in another state?

2. If the Interstate Compact on Juveniles does not apply in this case, may a youth be extradited under the Uniform Criminal Extradition Act, tit. 46, ch. 30, MCA?

As you know, the Montana Supreme Court has not addressed either question. But your first question can be answered by examining other states' interpretations of the Interstate Compact on Juveniles.

In Commonwealth ex rel. Reyes v. Aytch, 369 A.2d 1325, 1328 (Pa. Super. Ct. 1976), a 17-year-old youth was charged with murder in New Jersey. New Jersey petitioned Pennsylvania for his return under the Interstate Compact on Juveniles, but the Pennsylvania court held that since the youth had not run away from home, escaped from an institution, or been adjudged delinquent, the Interstate Compact on Juveniles did not apply. See also Matter of Brenda Lee G., 388 N.Y.S.2d 229, 230 (N.Y. Fam. Ct. 1976) (Interstate Compact on Juveniles does not apply to current resident charged with a crime in another state, but who has not been adjudged delinquent or run away); State in re Schreuder, 649 P.2d 19, 21-22 (Utah 1982) (Interstate Compact on Juveniles provides only for transfer of juveniles who are runaways or who have been adjudged delinquent).

In both Reyes v. Aytch and Brenda Lee G. the court decisions turned on the fact that the home state or "sending state" had not adopted article XVIII of the Interstate Compact on Juveniles, which provides that "[t]he interstate compact on juveniles shall be construed to apply to any juvenile charged with being delinquent by reason of a violation of any criminal law." Montana has not adopted this amendment either. Thus, any youth who has not run away, escaped, or been adjudged delinquent is outside the scope of the Interstate Compact on Juveniles in Montana.

Since the Interstate Compact on Juveniles does not apply to your case, I turn to your second question of whether a youth may be extradited under the Uniform Criminal Extradition Act, tit. 46, ch. 30, MCA.

Extradition is mandated by the United States Constitution:

> A person charged in any state with treason, felony or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

U.S. Const. art. IV, § 2, cl. 2.

The Uniform Criminal Extradition Act is ancillary to, and in aid of, the constitutional requirements of the United States Constitution. In re Robert, 406 A.2d 266, 268 (R.I. 1979).

The United States Supreme Court has interpreted the Uniform Criminal Extradition Act to limit judicial review of extraditions to four specific questions: (1) whether the extradition documents on their face are in order; (2) whether the petitioner has been charged with a crime in the demanding state; (3) whether the petitioner is the person named in the request for extradition; and (4) whether the petitioner is a fugitive. Michigan v. Doran, 439 U.S. 282, 288 (1978). Under Doran an individual's status as a juvenile is irrelevant. In re Robert, 406 A.2d at 268.

Consequently, most jurisdictions allow extradition of juveniles if they are charged with a crime in the demanding state. See Snyder v. State, 516 P.2d 700, 701 (Idaho 1973); Ex parte Jetter, 495 S.W.2d 925, 926-27 (Tex. Crim. App. 1973); see also Batton v. Griffin, 246 S.E.2d 667 (Ga. 1978); People v. Pardo, 265 N.E.2d 656 (Ill. 1979); People ex rel. Butts v. Morehead, 18 N.Y.S.2d 696 (N.Y. App. Div. 1940); Commonwealth ex rel. Reyes v. Aytch, 369 A.2d 1325 (Pa. Super. Ct. 1976); Burnham v. Hayward, 663 P.2d 65 (Utah 1983).

Other courts have held that a youth charged with juvenile delinquency is not charged with a crime, and thus cannot be extradited. People v. Smith, 440 N.Y.S.2d 837 (N.Y. Crim. Ct. 1981); People v. Butts, 14 N.Y.S.2d 881 (N.Y. App. Div. 1939); State in re Schreuder, 649 P.2d 19 (Utah 1982). Any questions concerning whether an adult court or a juvenile court has jurisdiction should be resolved in the demanding state, and not the sanctuary state. Ex parte Jetter, 495 S.W.2d 925 (Tex. Crim. App. 1973); Batton v. Griffin, 246 S.E.2d 667 (Ga. 1978). Thus, the soundest policy is to extradite any juvenile charged with a crime in another state, regardless of whether a juvenile court or an adult court has final jurisdiction.

THEREFORE, IT IS MY OPINION:

1. The Interstate Compact on Juveniles, as currently adopted in Montana at Title 41, chapter 6, MCA, does not apply to youths who have not been adjudged delinquent and have not run away, but who are charged with a felony offense in another state.

2. Juveniles residing in Montana, and charged with a crime in another state, may be extradited under the Uniform Criminal Extradition Act, tit. 46, ch. 30, MCA.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 41 OPINION NO. 25

CITIES AND TOWNS - Sharing of penalties collected on late taxes by government entities that levy taxes;
COUNTIES - Sharing of penalties collected on late taxes by government entities that levy taxes;
DEPARTMENT OF REVENUE - Sharing of penalties collected on late taxes by government entities that levy taxes;
FINES - Sharing of penalties collected on late taxes by government entities that levy taxes;
LOCAL GOVERNMENT - Sharing of penalties collected on late taxes by government entities that levy taxes;
MUNICIPAL GOVERNMENT - Sharing of penalties collected on late taxes by government entities that levy taxes;
PROPERTY, REAL - Sharing of penalties collected on late taxes by government entities that levy taxes;
SCHOOL DISTRICTS - Sharing of penalties collected on late taxes by government entities that levy taxes;
TAXATION AND REVENUE - Sharing of penalties collected on late taxes by government entities that levy taxes.

HELD: School districts, cities, and other government entities authorized to levy taxes are entitled to a pro rata share of the penalties collected on delinquent property taxes by the county treasurer.

27 August 1985

Patrick L. Paul
Cascade County Attorney
Cascade County Courthouse
Great Falls MT 59401

Dear Mr. Paul:

Your predecessor requested my opinion on the following question:

> Should "penalty funds" collected on delinquent property taxes be distributed to school districts, cities, and other government entities authorized to levy taxes, or should

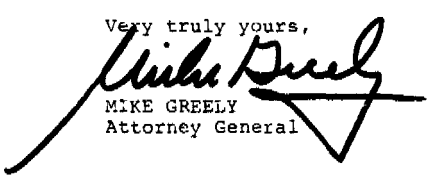
the "penalty funds" be retained by the county treasurer?

The Montana Supreme Court resolved a question similar to this in School District No. 12 v. Pondera County, 89 Mont. 342, 297 P. 498 (1931). In Pondera, the county collected large sums of money in interest and penalties, but deposited it all in the county general fund. A school district sued, arguing that it deserved a pro rata share of the revenue. The Montana Supreme Court held that unless statute provides otherwise, interest, penalties, and costs collected on delinquent taxes follow the tax; therefore, the school district was entitled to a pro rata share of the revenue earned from penalties, interest, and costs. 89 Mont. at 347, 297 P. at 500. See also Misle v. Miller, 125 N.W.2d 512, 516 (Neb. 1963); Riverton Valley Drainage District v. Board of County Commissioners of Fremont County, 74 P.2d 871, 873 (Wyo. 1937); 16 McQuillin, Municipal Corporations § 44.130 (3d ed. 1984); 85 C.J.S. Taxation § 1064 (1954); cf. § 15-18-108, MCA (redemption proceeds are distributed to state, county, city, etc., in the ratio of their respective shares of the original tax).

THEREFORE, IT IS MY OPINION:

School districts, cities, and other government entities authorized to levy taxes are entitled to a pro rata share of the penalties collected on delinquent property taxes by the county treasurer.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 41 OPINION NO. 26

BANKS AND BANKING - Proper mill levy allocation of corporate license fees collected from banks and savings and loan associations;
COUNTIES - Proper mill levy allocation of corporate license fees collected from banks and savings and loan associations and of motor vehicle fees;
COUNTIES - Proper use of poor fund monies;
FEES - Proper mill levy allocation of corporate license fees collected from banks and savings and loan associations and of motor vehicle fees;
MOTOR VEHICLES - Proper mill levy allocation of motor vehicle fees;
PUBLIC FUNDS - Proper use of county poor fund monies;
TAXATION AND REVENUE - Proper mill levy allocation of corporate license fees collected from banks and savings and loan associations and of motor vehicle fees;
MONTANA CODE ANNOTATED - Sections 7-6-2201, 7-6-2321, 15-13-701(1), 15-16-114(1), 15-31-701, 15-31-702, 15-31-702(1)(b), 15-31-702(2), 53-2-322, 53-2-322(2), 53-2-322(7), 53-2-323(7), 53-2-811, 53-2-813, 53-2-813(1)(b), 61-3-509, 61-3-532, 61-3-536, 61-3-536(6);
OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 18 (1983), 40 Op. Att'y Gen. No. 29 (1983), 40 Op. Att'y Gen. No. 73 (1984).

HELD: 1. Corporate license fees received by county treasurers between July 1, 1983 and June 30, 1984, under section 15-31-702, MCA, are properly distributed pursuant to tax levies adopted by the board of county commissioners for fiscal year 1984, including any levy promulgated pursuant to section 53-2-813, MCA.

2. Motor vehicle fees subject to distribution under section 61-3-509, MCA, are properly allocated in the same manner as personal property taxes. Consequently, for fiscal year 1984 the state special revenue fund is entitled to receive under section 53-2-813, MCA, the appropriate proportional share of such monies collected between January 1, 1984 and December 31, 1984, from counties whose public assistance programs and protective services were assumed on July 1, 1983.

3. State aid received pursuant to section 61-3-536, MCA, during March 1984 is, as to any county whose public assistance programs and protective services were assumed on July 1, 1983, by the Department of Social and Rehabilitation Services, properly paid into the state special revenue fund under section 53-2-813, MCA, in such amount as determined by fiscal year 1984 mill levies.

4. Sections 53-2-322 and 53-2-323(7), MCA, govern the proper use of monies in a county's poor fund and must be applied on a case-by-case basis.

30 August 1985

David M. Lewis, Director
Department of Social and
Rehabilitation Services
111 North Sanders
Helena MT 59620

Dear Mr. Lewis:

You have requested my opinion concerning several questions which I have consolidated and phrased as follows:

1. In counties where the Department of Social and Rehabilitation Services assumed responsibility for public assistance programs and protective services under section 53-2-811, MCA, effective July 1, 1983, must the counties disburse to the state special revenue fund pursuant to section 53-2-813, MCA, monies received by them between July 1, 1983 and December 31, 1983, under sections 15-31-702 and 61-3-509, MCA, and otherwise allocable to their poor funds?

2. In a county where the Department of Social and Rehabilitation Services assumed responsibility for public assistance programs and protective services under section 53-2-811, MCA, effective July 1, 1983, must the county disburse to the state special revenue

fund, pursuant to section 53-2-813, MCA, monies received by it during March 1984 under section 61-3-536, MCA, on the basis of fiscal year 1984 mill levies?

3. If some or all of the monies received pursuant to sections 15-31-702, 61-3-509, and 61-3-536, MCA, during the period between July 1, 1983 and December 31, 1983, and otherwise allocable to the county poor fund were properly not tendered to the state special revenue fund by counties where state assumption of public assistance programs and protective services occurred under section 53-2-811, MCA, effective July 1, 1983, how may such monies be used?

Your questions derive from an audit completed in October 1984 and indicating that 11 counties, whose public assistance programs were assumed by the Department of Social and Rehabilitation Services under section 53-2-811, MCA, on July 1, 1983, had allegedly underpaid revenue due to the state special revenue fund under section 53-2-813, MCA, in the total amount of $226,230. A subsequent partial payment by one county reduced that amount to $196,685. The alleged underpayments resulted from (1) nine of the counties failing to tender to the state special revenue fund that proportion of proceeds from monies received under section 15-31-702, MCA, between July 1, 1983 and December 31, 1983, which was, based on fiscal year 1983 levies, attributable to the counties' poor funds; (2) all of the counties failing to tender to the special revenue fund that proportion of monies subject to distribution under section 61-3-509, MCA, and received between July 1, 1983 and December 31, 1983, which was, based on fiscal year 1983 levies, attributable to the counties' poor funds; and (3) one county failing to tender to the special revenue fund that proportion of monies received under section 61-3-536, MCA, during March 1984, which was, based on fiscal year 1984 tax levies, attributable to the special revenue fund. The counties contend that they were required to make payments to the special revenue fund for monies tendered pursuant to sections 15-31-702 and 61-3-509, MCA, only

as to those amounts received on or after January 1, 1984--the date on which their fiscal year 1984 levies were first applied for purposes of determining the proper allocation of monies paid under those sections. The one county's failure to tender to the special revenue fund this appropriate proportion of the March 1984 payment under section 61-3-536, MCA, is unexplained.

In 1983 the Legislature enacted sections 53-2-801 to 822, MCA, which provide for the Department of Social and Rehabilitation Services' assumption of public assistance programs and protective services for children and adults traditionally the responsibility of county departments of public welfare. See 40 Op. Att'y Gen. No. 73 (1984). Any such transfer by a county is voluntary and only upon the adoption of an authorizing resolution or ordinance by the involved board of county commissioners. § 53-2-811, MCA. While counties are permitted to transfer all or part of their public assistance and protective services functions, the 11 counties here opted for the transfer of all such responsibilities, and the transfer became effective at the beginning of fiscal year 1984--July 1, 1983.

Prior to the 1983 legislation, the cost of providing public assistance and protective services was borne by the county poor fund. See § 53-2-322, MCA; 40 Op. Att'y Gen. No. 29 (1983). Monies for the poor fund were derived from various taxing sources, such as bank and savings and loan association corporate license fees received under section 15-31-702, MCA, motor vehicle fees received under section 61-3-509, MCA, and state aid monies received under section 61-3-536, MCA; the precise amount of such monies payable to the poor fund was determined by multiplying the ratio of the poor fund mill levy to the total of all county mill levies within a particular taxing district against the proceeds from the taxing source. The fiscal year for county budget purposes begins on July 1, and a fiscal year's tax levies are established by a board of county commissioners on the second Monday in August of that fiscal year. §§ 7-6-2201, 7-6-2321, MCA; see 40 Op. Att'y Gen. No. 18 (1983). Under the 1983 legislation any county opting for full state assumption of public assistance programs and protective services as of July 1, 1983, was required to levy 12 mills for

payment during fiscal year 1984 to the state special revenue fund, unless, during fiscal year 1982, the county levied less than 12 mills for its poor fund, in which instance it was required to levy the fiscal year 1982 rate "plus 1.5 mills, not to exceed a total of 12 mills, less a mill levy equivalent to an amount the county can demonstrate was spent during fiscal year 1982 for the building or operation of a medical facility." § 53-2-813(1)(b), MCA. See 40 Op. Att'y Gen. No. 18 (1983). As of fiscal year 1985, however, all counties assigning full responsibility for public assistance programs and protective services to the State were obligated to levy 12 mills for payment to the special revenue fund.

Section 53-2-813(2), MCA, expressly states that the special revenue fund may receive only the proceeds of the mill levy established under subsection (1); by negative implication, therefore, the monies derived from prior fiscal year levies may not be deposited into the fund. Cf. 40 Op. Att'y Gen. No. 18 (payments to the special revenue fund under section 53-2-813, MCA, must include revenue from any source normally allocated among the various county funds). This interpretation makes practical sense because the Legislature, in mandating that certain mill levy rates be set for fiscal year 1984 and beyond in counties opting for state assumption, obviously concluded that those rates were necessary to support the Department of Social and Rehabilitation Services' provision of public assistance programs and protective services and viewed the special revenue fund payment as the quid pro quo for state assumption. The issue, consequently, is whether the counties involved here were required to distribute the disputed taxes received between July 1, 1983 and December 31, 1983, on the basis of the mill levy adopted in August 1983 pursuant to section 53-2-813, MCA, i.e., whether the fiscal year 1984 levies were applicable to monies distributable under sections 15-31-702, 61-3-509, and 61-3-536, MCA, during the last six months of 1983.

Corporate license fees paid by banks and savings and loan associations are collected by the Department of Revenue under section 15-31-701, MCA. The Department is required, within 30 days of receiving such payments, to transmit 80 percent thereof to the treasurer of the county in which the bank or savings and loan association

is located. §§ 15-31-701(1), 15-31-702(1)(b), MCA. The county treasurer must then allocate to each taxing jurisdiction within the county "the proportion that its mill levy for that fiscal year bears to the total mill levy of the taxing authorities of the district in which the bank or savings and loan association is located." § 15-31-702(2), MCA (emphasis added). While section 15-31-702(2), MCA, does not specify what event determines the applicable fiscal year, the most reasonable date is that on which the county treasurer receives the tax payment. This interpretation is consistent with general governmental accounting principles which consider license fee and tax income accrued when actually received. See Municipal Finance Officers Association, Governmental Accounting, Auditing, and Financial Reporting 13 (1980); W. Meigs, Modern Advanced Accounting 522-23 (1975). Consequently, any corporate license taxes from banks or savings and loan associations received on and after July 1, 1983, by the nine county treasurers involved here were subject to fiscal year 1984 mill levies including that required in section 53-2-813, MCA, and were payable, in proper proportion, to the state special revenue fund.

Section 61-3-509, MCA, governs distribution of various motor vehicle fees. In relevant part it provides that such money must be distributed "in the relative proportions required by the levies for state, county, school district and municipal purposes in the same manner as personal property taxes." Section 15-16-114(1), MCA, in turn states:

> All rates of tax levy set by the board of county commissioners on the second Monday in August of each year shall apply permanently to this class of personal property during the ensuing year, and the treasurer shall, upon collection of any such taxes, immediately distribute the money so collected to the various and proper funds in his charge.

Under section 15-16-114(1), MCA, therefore, proceeds from property taxes are distributed during the calendar year on the basis of tax levies adopted during August of the preceding year. The question becomes whether section 61-3-509, MCA, merely requires fees collected under the taxes described therein to be distributed proportionately like personal property taxes or whether

the same percentages must be utilized as in personal property tax disbursements. If the latter interpretation is accepted, the mill levies adopted in August 1983 for fiscal year 1984 would not be applied to the motor vehicle fees distributed under section 61-3-509, MCA, until January 1984, and only then would the state special revenue fund be entitled to receipt of its proportionate share of those fees under section 53-2-813, MCA.

I conclude that the most reasonable interpretation of section 61-3-509, MCA, requires county treasurers to distribute the described fees in the same percentages as property taxes. First, prior to the enactment of section 61-3-532, MCA, light vehicles, which are the principal source of the funds covered by section 61-3-509, MCA, were taxed as personal property, and pertinent legislative history reflects an intention not to modify the method of distributing the fees collected under the new statute. See April 9, 1981 Minutes of House Committee on Taxation (SB 355). Second, had the Legislature intended only that the license fees be allocated proportionately, it need not have specifically mandated distribution in the same manner as personal property taxes. In sum, section 61-3-509, MCA, requires the fees subject to its provisions be treated, for distribution purposes, identically to personal property taxes.

Section 61-3-536(6), MCA, states that monies received by counties under that section must be distributed "in the same manner as funds are distributed to the taxing jurisdictions as provided in section 61-3-509." In view of my interpretation of section 61-3-509, MCA, I conclude that allocation of such monies must be on a calendar-year basis and predicated upon those levies made during August of the previous year. Consequently, any payments received by counties during 1984 under section 61-3-536, MCA, must be distributed in proper proportion to the special revenue fund on the basis of fiscal year 1984 mill levies.

Permissible uses of county poor fund monies are governed by sections 53-2-322 and 53-2-323(7), MCA. Section 53-2-322(2), MCA, requires boards of county commissioners to:

> [b]udget and expend so much of the funds in the county poor fund for public assistance

> purposes as will enable the county welfare department to pay the general relief activities of the county and to reimburse the department of social and rehabilitation services for the county's proportionate share of the administrative costs of the county welfare department and of all public assistance and its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county.

Section 53-2-322(7), MCA, thereafter imposes the specific limitations on the use of such monies:

> No part of the county poor fund, irrespective of the source of any part thereof, may be used directly or indirectly for the erection or improvement of any county building so long as the fund is needed for general relief expenditures by the county or is needed for paying the county's proportionate share of public assistance or its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county. Expenditures for improvement of any county buildings used directly for care of the poor, except a county hospital or county nursing home, may be made out of any moneys in the county poor fund.... Such expenditure shall be authorized only when any county building used for the care of the poor must be improved in order to meet legal standards required for such buildings by the department of health and environmental sciences and when such expenditure has been approved by the department of social and rehabilitation services.

Section 53-2-323(7), MCA, further requires, as to any county which received an emergency grant-in-aid, that "[a]t the close of the county fiscal year, the county shall return to the department any amounts remaining in the county poor fund and the emergency fund account, but the remaining amount to be returned may not exceed the total amount of the emergency grant-in-aid for that fiscal year." Although section 53-2-323(7), MCA, refers

to amounts in the poor fund as of the close of the fiscal year, those amounts also include other monies, such as those received under section 61-3-509, MCA, received after the fiscal year's end but nonetheless placed into the poor fund on the basis of such fiscal year's mill levy. Thus, if the various requirements of section 53-2-322(7), MCA, conditioning use of poor fund monies other than for public assistance and protective services purposes are satisfied and the payments required by section 53-2-323(7), MCA, have been made, any remaining poor fund monies may be utilized to erect or improve any county building directly concerned with care of the poor, except improvements to a county hospital or nursing home. See 40 Op. Att'y Gen. No. 29.

THEREFORE, IT IS MY OPINION:

1. Corporate license fees received by county treasurers between July 1, 1983 and June 30, 1984, under section 15-31-702, MCA, are properly distributed pursuant to tax levies adopted by the board of county commissioners for fiscal year 1984, including any levy promulgated pursuant to section 53-2-813, MCA.

2. Motor vehicle fees subject to distribution under section 61-3-509, MCA, are properly allocated in the same manner as personal property taxes. Consequently, for fiscal year 1984 the state special revenue fund is entitled to receive under section 53-2-813, MCA, the appropriate proportional share of such monies collected between January 1, 1984 and December 31, 1984, from counties whose public assistance programs and protective services were assumed on July 1, 1983.

3. State aid received pursuant to section 61-3-536, MCA, during March 1984 is, as to any county whose public assistance programs and protective services were assumed on July 1, 1983, by the Department of Social and Rehabilitation Services, properly paid into the state special revenue fund under section 53-2-813, MCA, in such amount as determined by fiscal year 1984 mill levies.

4. Sections 53-2-322 and 53-2-323(7), MCA, govern the proper use of monies in a county's poor fund and must be applied on a case-by-case basis.

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 June 30, 1985. This table includes those rules adopted during the period July 1, 1985 through September 30, 1985, 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 June 30, 1985, 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 1985 Montana Administrative Register.

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