MONTANA ADMINISTRATIVE REGISTER

1986 ISSUE NO. 12
JUNE 26, 1986
PAGES 1052-1123

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 12

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

In the matter of the proposed amendment of 8.104.203 concerning the format of a plan, 8.104.207 concerning the contents of an objection to a plan, and 8.104.211 concerning implementation of an approved impact plan, and the proposed adoption of new rules concerning definitions, waiving impact plan requirements, modifying plans, financial guarantee of tax prepayments, evidence of the provision of services by local government units, and the contents of petitions for plan amendments	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF 8.104.203 FORMAT OF PLAN, 8.104.207 CONTENT OF OBJECTION TO PLAN, and 8.104.211 IMPLEMENTATION OF AN APPROVED PLAN, and ADOPTION OF NEW RULES ENTITLED DEFINITIONS, WAIVER OF IMPACT PLAN REQUIREMENT, MODIFICATION OF PLAN, FINANCIAL GUARANTEE OF TAX PREPAYMENTS, EVIDENCE OF THE PROVISION OF SERVICE OR FACILITY, and CONTENTS OF PETITION FOR PLAN AMENDMENT

TO: All Interested Persons.

1. On July 16, 1986, at 9:00 a.m., a public hearing will be held in Room C-209, Cogswell Building, Helena, Montana to consider the amendment and adoption of the above-stated rules.

2. The proposed amendment of 8.104.203 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-3706, Administrative Rules of Montana)

"8.104.203 FORMAT AND CONTENT OF PLAN (1) through (3) will remain the same.

(4) The impact plan shall contain, at a minimum, information specifically required by statute, information necessary to the implementation of statute, and information necessary to the review and implementation of the plan, including but not limited to:

(a) As required by 90-6-307(1), MCA, the plan shall contain the following information:

(i) a timetable for development, including the opening date of the development and the estimated closing date;

(ii) the estimated number of persons coming into the impacted area as a result of the development;

(iii) the increased capital and operating cost to local government units for providing services which can be expected as a result of the development;

(iv) the financial or other assistance the developer will give to local government units to meet the increased need for services.

(b) As required by 90-6-307(2), MCA, in the impact plan the developer shall commit itself to pay all of the increased capital and net operating cost to local government units that

will be a result of the development, as identified in the impact plan, either from tax prepayments, as provided in 90-6-309, MCA, special industrial educational impact bonds, as provided in 90-6-310, MCA, or other funds obtained from the developer, and shall provide a time schedule within which it will do so. The plan may provide for funding from other revenue sources or funding mechanisms if the developer guarantees that the amount to be provided from these sources will be paid.

(c) If the plan provides for the prepayment of property taxes, the plan shall specify the conditions under and method by which prepaid taxes are to be credited, as provided by 90-6-309(5), MCA.

(d) If the plan identifies a jurisdictional revenue disparity as provided for by 90-6-403(1), MCA, the plan shall project the place of residence of employees and the district of enrollment of students as required for 90-6-405(2), MCA.

(e) The plan shall define the following terms in a manner consistent with common usage and appropriate to the specific large-scale mineral development:

(i) if property taxes are to be prepaid, 'start of production', as required for 90-6-309(4), MCA;

(ii) if property taxes are to be prepaid, 'commencement of mining', as required for 90-6-309(5), MCA;

(iii) 'commercial production', as required for 90-6-311, MCA.

(f) In the plan the developer shall commit to notify the board and the affected local government units within 30 days of each applicable date identified in (e) of this subsection."

Auth: 90-6-305, MCA AUTH Extension, Sec. 10, Ch. 582, L. 1985 Imp: 90-6-307, MCA

3. The reason for the proposed amendment is to compile in a single rule the various explicit and implicit requirements for the content of an impact plan which are now scattered within Parts 3 and 4 of Title 90, Chapter 6, MCA and which are necessary to the preparation and implementation of the plan.

4. The proposed amendment of 8.104.207 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-3707, Administrative Rules of Montana)

"8.104.207 CONTENTS OF OBJECTION TO PLAN (1) will remain the same.

(2) A form outlining the contents required by this rule is available from the board's offices."

Auth: 90-6-305, MCA Imp: 90-6-307, MCA

5. The reason for the proposed amendment is to notify the affected public that a form is available from the board

outlining the information required by the existing rule on filing an objection.

6. The proposed amendment of 8.104.211 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-3708, Administrative Rules of Montana)

"8.104.211 IMPLEMENTATION OF APPROVED IMPACT PLAN (1) The hard-rock mining impact account may receive direct industry monies in compliance with the commitment made by the developer in an approved impact plan, to enable the board to transmit payments as provided by the schedule specified in the approved impact plan. The board will distribute these monies to the appropriate affected local government units in accordance with the law and the approved impact plan.

(2) The board will ~~periodically~~ notify the department of state lands ~~of~~ if the mineral ~~developer's compliance or noncompliance~~ developer fails to comply with the terms of the approved impact plan.

(3) In implementing an approved impact plan, the affected local government units and the mineral developer shall establish procedures acceptable to the board for transmitting payments and providing information required by statute or rule, including the following:

(a) Each local government unit entitled to receive grants or tax prepayments from a mineral developer as provided by an approved impact plan shall establish an impact fund within its budget. The impact fund budget must reflect tax prepayments, grants or other impact revenues to be received from the developer and expenditures contemplated by the approved impact plan.

(b) The governing body shall provide the board with a copy of the adopted budget, any budget amendment related to the impact plan and impact fund, the year-end budget report and a copy of the resolution by which the governing body adopted the budget or budget amendment.

(c) The affected local governing body may request that the developer make such payments as are provided for in the approved impact plan and as are consistent with the adopted budget or budget amendment of the local government unit. The governing body shall send to the board a copy of each such payment request. Each request must identify the name of the local government unit making the request; the date of the request; the name of the mineral developer responsible for making the payment; the amount of the requested payment; whether the request is for a tax prepayment, grant, or other funds; the purpose of the payment as specified in the approved impact plan; and the sub-account within the impact fund for which the payment is intended. The request must refer to those pages in the approved impact plan on which the purpose of the expenditure and the financial commitment are specified.

The request must bear the signatures of the governing body of the affected local government unit.

(d) If payment is to be made through the board, the board will deposit monies received from the developer into the hard-rock mining impact account to the credit of the affected local government unit. The board will transmit such payments upon written request from the governing body of the affected local government unit and upon receipt of that documentation specified in (c) above and in ARM [rule V].

(e) If payment is made by the developer directly to the affected local government unit, the developer shall notify the board when the payment is made and the local government shall notify the board when the payment is received. Each notice must contain or reference that information required in (c) of this rule. Forms for requesting, making or acknowledging receipt of payment are available from the board's offices.

(f) The mineral developer and the governing body of the affected local government unit shall provide the board with a copy of any education impact bond agreement or other bond agreement entered into as a result of an approved impact plan within 15 days of their executing such an agreement. This agreement becomes part of the approved impact plan."

Auth: 90-6-305, MCA AUTH Extension, Sec. 10, Ch. 582, L. 1985 Imp: 90-6-307, MCA

7. The reasons for the proposed amendments are to bring the rule into compliance with changes made to the statute in 1985 and to clarify what information is necessary to the transmittal of payments provided for in an approved impact plan.

8. Proposed new rule I will read as follows:

"I. DEFINITIONS For purposes of these rules, the following definitions apply:

(1) The 'estimated number of persons coming into the impacted area as a result of the development' means those who will be employed in the construction and operation of a large-scale mineral development and their families and other persons expected to move into the area as a result of the large-scale mineral development.

(2) The 'impacted area' means the jurisdictional area or areas of the affected local government units identified in an impact plan or in an amendment to an impact plan."

Auth: 90-6-305, MCA Imp: 90-6-307, MCA

9. The reason for proposing Rule I is to clarify terms used in the Hard-Rock Mining Impact Act in a manner that is in keeping with the purpose of the Act, its legislative history and common usage.

10. Proposed new rule II will read as follows:

"II. WAIVER OF IMPACT PLAN REQUIREMENT (1) The board will grant a waiver or a conditional waiver of the impact plan requirement to large scale-mineral development permittees, as authorized by section 90-6-307(12), MCA, if:

(a) The permittee and the governing bodies of all potentially affected local government units, as identified by the board and the affected county or counties, notify the board in writing that:

(i) they do not anticipate a need to increase local government services and facilities as a result of the increase in employment identified in the permittee's annual report to the department of state lands; or

(ii) the anticipated increase in need for services and facilities is not expected to result in an increase in local government costs to the non-developer taxpayer, or that such costs will be paid by the developer under the terms of the conditional waiver;

(b) No potentially affected local government unit requests the board to deny the waiver or to require an impact plan; or

(c) Following a public hearing on the proposed waiver, or notice and opportunity for a hearing, the board considers it unlikely that adverse fiscal impacts will affect any local government unit, either as a result of the increase in employment identified in the permittee's annual report, as required by 82-4-339, MCA, or as a result of the associated changes in the mining operation.

(2) Following its decision, the board will provide a copy of the waiver, conditional waiver or denial of waiver to the department of state lands, the permittee and the potentially affected local government units identified by the board and the affected county or counties for purposes of 90-6-307(12), MCA."

Auth: 90-6-305, 90-6-307, MCA AUTH Extension, Sec. 10, Ch. 582, L. 1985 Imp: 90-6-307, MCA

11. The reason for adopting proposed rule II is to meet the requirement of 90-6-307(12), MCA that the board adopt criteria under which a waiver may be granted.

12. Proposed new rule III will read as follows:

"III. MODIFICATION OF PLAN (1) An impact plan or a proposed amendment to an approved plan may be modified during the review period, the negotiation period, or an extension of either, by mutual consent of the developer and the local government units affected by the modification. Modifications must meet the following requirements:

(a) Modifications must be submitted in writing to the board and to all local government units that are party to the plan.

(b) The copy filed with the board must bear the signatures of the developer or its authorized representative and of the governing body of each local government unit that is a party to the modification.

(c) If there is a need to modify the format of the plan and if the modification of format does not affect the substantive provisions of the plan, the governing body of the county may act on behalf of all local government units within the county when it concurs with the modification to format.

(d) Any modification submitted less than 30 days prior to the end of the review period must carry with it a request from the local governing body for an extension which allows a 30-day review of the modification.

(e) All modifications must be incorporated into the plan before the board will approve the plan. The modified plan must comply with the form and content requirements for an impact plan as provided by Parts 3 and 4 of Title 90, Chapter 6 of the Montana Code Annotated and by the Administrative Rules adopted by the hard-rock mining impact board. In the modified plan the table of contents, summary, schedule of payment, and, if a part of the plan, the developer's statement of commitment, must accurately contain and reflect the modifications. Obsolete material must be deleted from the plan through the use of replacement pages that contain and reflect the modifications or, if the use of replacement pages is not feasible, obsolete material must be deleted by specific reference.

(f) The board may allow revisions to format following the review or negotiation period, or an extension of either, to the extent that such revisions are necessary to incorporate the modifications into the plan or an amendment to the plan in order to comply with ARM 8.104.203."

Auth: 90-6-305, MCA AUTH Extension, Sec. 10, Ch. 582, L. 1985 Imp: 90-6-307, MCA

13. The reason for adopting proposed rule III is to enable parties to a formally submitted impact plan to modify the plan by mutual consent during the formal review period and to establish sufficient safeguards to protect the public interest and to ensure that all such modifications are clearly incorporated into the impact plan prior to its approval by the board. The purpose of the requirement in (1)(d) is to allow for review of the modification by other local government units that are a party to the plan and to allow opportunity to bring the modified plan into compliance with requirements for form and content.

14. Proposed new rule IV will read as follows:

"IV. FINANCIAL GUARANTEE OF TAX PREPAYMENTS (1) The financial guarantee required of a developer by section 90-6-309(3), MCA, to assure that property tax prepayments will be paid as needed by local government units must meet the following requirements:

(a) The guarantee must cover the amount of money the developer has committed to prepay with provisions for any conditional payments provided for in the impact plan and for any prepayments for future fiscal years. Both the total amount covered by the guarantee and the specific purpose of each prepayment must be specified with sufficient clarity that it can be determined that the guarantee corresponds with and is sufficient to the prepayment commitments in the approved impact plan;

(b) The guarantee must make the money accessible to the board in the event of a default on the part of the developer or the need for the board to resolve a dispute between the developer and an affected local government unit; and

(c) The funds contained in the guarantee mechanism must be protected from all uses not specified in or provided for by an approved impact plan or an approved amendment to the plan.

(2) The financial guarantee must be submitted to the board in sufficient time that it may be approved by the board and be in place before mining activities under an operating permit issued by the department of state lands commence or prior to the time an affected local government unit must incur a financial obligation in implementation of the approved impact plan and in anticipation of revenues protected by the financial guarantee, whichever occurs first."

Auth: 90-6-305, MCA Imp: 90-6-309, MCA

15. The reasons for adopting proposed rule IV are to clarify those basic characteristics which define a financial guarantee to be approved by the board as required for 90-6-309, MCA, and to establish a time frame within which the guarantee must be in place.

16. Proposed new rule V will read as follows:

"V. EVIDENCE OF THE PROVISION OF SERVICE OR FACILITY (1) For purposes of section 90-6-307(10), MCA, the board will accept as evidence that an affected local government unit is providing or is preparing to provide an additional service or facility provided for in an approved plan a letter from the governing body certifying that it is providing or preparing to provide the service or facility and specifying the date on which it is anticipated that the service or facility will be made available. A copy of the local government unit's budget or budget amendment, reflecting the proposed expenditure for the service or facility must accompany or precede the letter."

Auth: 90-6-305, MCA Imp: 90-6-307, MCA

17. The reason for adopting proposed rule V is to clarify for the affected local government units what the board will accept as the evidence required by 90-6-307(10), MCA.

18. Proposed new rule VI will read as follows:

"VI. CONTENTS OF PETITION FOR PLAN AMENDMENT (1) Under certain circumstances the mineral developer or the governing body of an affected county (on its own behalf or on behalf of another affected government unit within the county) may petition the board to amend an approved impact plan. The requirements and procedures for petitioning to amend a plan are provided in section 90-6-311, MCA, and a petition for an amendment must contain, include or identify the following:

(a) When applicable, a copy of a resolution, dated and signed by the governing body of each local government unit that is requesting the amendment, authorizing the county to submit the petition for the amendment of the impact plan.

(b) Date of the petition;

(c) The name of the mineral developer;

(d) County in which mineral development is located;

(e) Name, address, phone number and signature(s) of each petitioner (county and/or mineral developer);

(f) The local government units believed by the petitioner to be affected by the proposed amendment;

(g) As required by section 90-6-311(2), MCA, an explanation of the need for an amendment, a statement of the facts and circumstances underlying the need for an amendment, and a description of the corrective measures proposed by the petitioner;

(h) The costs and commitments identified in the approved plan which will be changed as a result of the proposed amendment with page citations to the plan;

(i) Any other provisions of the approved plan which will be changed by the proposed amendment and the numbers of the pages on which these provisions are found in the plan;

(j) A statement as to which of the following is the legal basis for the petition:

(i) that the plan, itself, provides for amendment under certain conditions and that those conditions have been met. (The conditions must be specified, the pages of the plan on which they are established must be cited, and the petitioner must establish that the conditions have been met.);

(ii) that employment at the large-scale mineral development is forecast to increase or decrease by at least 75 persons, as determined under section 90-6-302(4), MCA, over or under the employment levels contemplated by the approved impact plan;

(iii) that the approved impact plan is materially inaccurate because of errors in assessment and that two years

have not elapsed since the date the facility began commercial production (The date the facility began commercial production must be indicated.); or

(iv) that the governing body of an affected county and the mineral developer are joining in the petition to amend the impact plan."

Auth: 90-6-305, MCA AUTH Extension, Sec. 10, Ch. 582, L. 1985 Imp: 90-6-311, MCA

19. The reason for adopting proposed rule VI is to specify what is required of a petition to amend an approved impact plan in keeping with the requirements and provisions of 90-6-311, MCA.

20. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views, and arguments may also be submitted to the Montana Hard-Rock Mining Impact Board, Local Government Assistance Division, Department of Commerce, Capitol Station, Helena, Montana 59620, no later than July 26, 1986.

21. Koehler Stout, Board Chairman, will preside over and conduct the hearing.

HARD-ROCK MINING IMPACT BOARD
KOEHLER STOUT, CHAIRMAN

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

Certified to the Secretary of State, June 16, 1986.

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

In the matter of the amendment of ARM 16.32.328 concerning retention of medical records by hospitals	)))))	NOTICE OF PROPOSED AMENDMENT OF A RULE (Minimum Standards for Hospitals) NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons

1. On August 4, 1986, the department proposes to amend rule 16.32.328 concerning the requirement for hospitals to retain medical records. The full text of the existing rule is located on page 16-1487 of the Administrative Rules of Montana.

2. The rule, as proposed to be amended, provides as follows (new matter underlined, deleted matter interlined):

16.32.328 MINIMUM STANDARDS FOR A HOSPITAL -- MEDICAL RECORDS Medical records shall comply with the following requirements:

(1) A patient's entire medical records, in either original or microfilmed form, must be maintained ~~no less than 25 years following the date of a patient's discharge or no less than 5 years following the date of a patient's death~~ for not less than 10 years following the date of a patient's discharge or death, or, in the case of patients who are minors, for not less than 10 years following the attainment of the age of majority.

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

(4) A patient's entire medical record may be abridged following the dates established in section (1) to form a core medical record of the patient's medical record. The core medical record or the microfilmed medical record should be maintained permanently but must be maintained not less than 10 years beyond the periods provided in section (1). A core record shall contain at a minimum the following information:

(a) identification of patient data which includes name, maiden name if relevant, address, date of birth, sex, and, if available, social security number;

(b) medical history;

(c) physical examination report;

(d) consultation reports;

(e) report of operation;

(f) pathology report;

(g) discharge summary, except that for newborns and others for whom no discharge summary is available, the final progress note must be retained;

(h) autopsy findings;

(i) for each maternity patient, the information required by section (2); and

(j) for each newborn, the information required by section (3).

(5) Nothing in this rule may be construed to prohibit retention of hospital medical records beyond the period described herein or to prohibit the retention of the entire medical record.

(6) Diagnostic imaging studies, electrodiagnostic studies, and their interpretations must be retained for the same periods required for the medical record in section (1), but need not be retained beyond those periods.

AUTHORIZING: 50-5-103, 50-5-404, MCA
IMPLEMENTING: 50-5-103, 50-5-106, 50-5-404, MCA

3. The proposed amendment allowing microfilming and abridgement will ease the record storage burden on smaller hospitals while preserving the medical records retrieval system.

4. Interested persons may present their data, views, or arguments concerning the proposed amendment, in writing, to Robert L. Solomon, Room B101, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than July 25, 1986.

5. If a person who is directly affected by the proposed amendment wishes to express his or her data, views, or arguments orally or in writing at a public hearing, such person must make written request for a hearing and submit this request along with any comments to Robert L. Solomon, Room B101, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than July 25, 1986.

6. If the department 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 fewer 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.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State June 16, 1986.

BEFORE THE BOARD OF OIL AND GAS CONSERVATION
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT OF 36.22.1242, A NEW SUBSECTION (3) WILL BE ADDED TO INCREASE THE PRIVILEGE AND LICENSE TAX ON THE PRODUCTION OF OIL AND NATURAL GAS WITHIN THE STATE OF MONTANA.	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF A RULE INCREASING THE OIL AND GAS PRIVILEGE AND LICENSE TAX.

TO: All Interested Persons:

1. The notice of proposed agency action published in the Montana Administrative Register at page 742, Issue #9, on May 15, 1986, is amended as follows because a public hearing has been requested by the Montana Petroleum Association:

2. On July 24, 1986 at 9:00 a.m. in the Billings Petroleum Club, Sheraton Hotel, Billings, Montana, a public hearing will be held to consider the adoption of new subsection (3) increasing the privilege and license tax on the production of oil and natural gas within the state of Montana.

3. The proposed rule does not replace any section currently found in the Administrative Rules of Montana. However, because it pertains to the privilege and license tax report required by 36.22.1242(2), it will be numbered 36.22.1242(3). The proposed rule provides as follows:

36.22.1242 REPORTS BY PRODUCERS - TAX REPORT - TAX RATE

(1) and (2) remain the same.

(3) The privilege and license tax on each barrel of crude petroleum and each 10,000 cubic feet of natural gas produced, saved and marketed or stored within the state or exported therefrom shall be 2/10ths of 1% of the market value thereof. This rule is effective on all crude petroleum and natural gas produced on and after July 1, 1986.

AUTH: 82-11-111, MCA IMP. 82-11-131, MCA

4. By enacting Chapter 93 of the Laws of 1983, the Legislature amended Section 82-11-131, MCA to require the Board to fix the amount of the assessment of the privilege and license tax by rules adopted pursuant to the Montana Administrative Procedure Act. This is the first change in said tax since the adoption of that amendment and therefor the tax will exist in the rules for the first time although the tax itself has been levied since the establishment of the Board. The Board is proposing this increase in the privilege and license tax on petroleum and natural gas because, as a result of the recent decline in the price of those commodities, the present rate of tax is insufficient to finance the operations of the Board and its staff, even though the Board has curtailed its expenditures and will continue to do so.

5. Interested parties may submit their data, views or arguments concerning the proposed rule either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dee Rickman, 1520 East Sixth Avenue, Helena, Montana 59620 no later than July 24, 1986.

BOARD OF OIL AND GAS CONSERVATION
RICHARD A. CAMPBELL, CHAIRMAN

BY: Dee Rickman
DEE RICKMAN
ASSISTANT ADMINISTRATOR
OIL AND GAS CONSERVATION DIVISION

Certified to the Secretary of State June 16, 1986.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE PROPOSED ADOPTION of New Rules I through IX relating to the disclosure of child support information.	NOTICE OF THE PROPOSED ADOPTION of New Rules I through IX relating to the disclosure of child support information.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 26, 1986, the Department of Revenue proposes to adopt new rules I through IX, relating to the disclosure of child support information.

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

RULE I DEFINITIONS For Rules I through IX:

(1) "Department" means the department of revenue. It includes the investigations and enforcement division, child support enforcement program, or any agency with which the department has contracted to carry out the enforcement of any of the department's child support responsibilities.

(2) "Credit agency" means any person or business entity which:

(a) reports to a third party for monetary fees, dues, or on a cooperative nonprofit basis, and

(b) which uses any means (or facility) of interstate commerce to prepare or furnish consumer credit reports.

(3) "Individual" means any person who must pay or provide support. The obligation may have come from a decree, judgment, or order of a court (of competent jurisdiction). The obligation may also come from an order of the department, or a child support agency of another state. Support may be for any minor child or children and (if applicable) for a spouse. (Support must be subject to enforcement under Title 40, ch. 5, part 2, MCA.)

(4) "Child support debt" means any support overdue. The debt must be from an order of a court (of competent jurisdiction) or an order by the department (or a child support agency of another state).

(5) "Days" means calendar days.

AUTH: 40-5-202 and 31-3-127(5), MCA, and Ch. 543, L. 1985; IMP: 31-3-127 and 53-2-504, MCA.

RULE II RELEASING INFORMATION ABOUT AN INDIVIDUAL'S CHILD SUPPORT DEBT (1) A credit agency may request and receive information concerning an individual's overdue child support debt by presenting a request to the department. (Request procedure - see rule VII.)

(2) Requests may not be submitted until 30 days after

notifying the individual. (Notifying procedure - see rule III.)

(3) After being notified, the individual may inspect the department's records for accuracy (inspection procedure - see rule IV), and may request a hearing on the information (hearing procedure - see rule V).

(4) The individual has 30 days to request an inspection of the information (and to contest the accuracy of the information).

(5) The individual may waive rights and authorize release of the information (waiver procedure - see rule VI).

(6) After receiving a credit agency request (30-120 days after notifying the individual, or upon a waiver of rights) and if the accuracy of the information is not contested, the department:

(a) must report child support debts of $1,000 or greater; and

(b) will not report child support debts under $1,000 (department procedures - see rule VIII).

AUTH: 40-5-202 and 31-3-127(5), MCA, and Ch. 543, L. 1985; IMP: 31-3-127 and 53-2-504, MCA.

RULE III NOTICE OF CREDIT AGENCY'S INTENT TO REQUEST INFORMATION (1) Before requesting information concerning an individual's child support debt, the credit agency must notify the individual, either in person or by certified mail (except when a waiver has been signed by the individual).

(2) The notice must state:

(a) what information is to be requested from the department;

(b) the name and address of the department;

(c) a statement explaining how the individual may inspect the department's records; (a request for inspection form should be included); and

(d) a statement explaining:

(i) that the individual has 30 days to respond (inspect records or ask for a hearing); and

(ii) that after 30 days the department will forward the requested information to the credit agency (if steps have not been taken to contest the information).

(3) A form for use as a notice of a credit agency's intent to request information will be made available by the department.

AUTH: 40-5-202 and 31-3-127(5), MCA, and Ch. 543, L. 1985; IMP: 31-3-127 and 53-2-504, MCA.

RULE IV INDIVIDUAL'S REQUEST FOR INSPECTION (1) Upon being notified, an individual may ask to inspect the information contained in the department's records for accuracy. The request must be made in writing.

(2) A written request must contain:

(a) the individual's name, address, social security number;

(b) what information is to be requested by the credit agency; and

(c) the individual's signature.

(3) The request must be accompanied by a copy of the notice from the credit agency.

(4) The request must be made within 30 days after the notice is received.

(5) A form for use as a request for inspection will be made available by the department.

(6) All requests must be mailed to Child Support Enforcement Program, P. O. Box 5955, Helena, Montana 59604.

AUTH: 40-5-202 and 31-3-127(5), MCA, and Ch. 543, L. 1985; IMP: 31-3-127 and 53-2-504, MCA.

RULE V HEARING ON ACCURACY OF INFORMATION IN DEPARTMENT'S RECORDS (1) In order to dispute the information in the department's records, the individual should immediately contact the department.

(2) If the dispute cannot be resolved informally, the individual may request an administrative hearing on the accuracy of the information.

(3) The request must be made within 30 days of receiving the notice from the credit agency.

(4) The request must be in writing and include:

(a) the individual's name, address, and social security number;

(b) issues to be raised;

(c) whether the individual will be represented or accompanied by an attorney or other person (if so, that person's name, address, and telephone number); and

(d) the individual's signature.

(5) All requests for hearing must be mailed to Child Support Enforcement Program, P. O. Box 5955, Helena, Montana 59604.

(6) After receiving such a request, the department shall schedule an administrative hearing, no sooner than ten days, and shall notify the individual.

(7) Hearings will be conducted by telephone unless the hearing officer determines circumstances require the involved parties to be personally present.

(8) The final result of the hearing shall be subject to judicial review.

AUTH: 2-4-6, 2-4-9, 40-5-202, and 31-3-127(5), MCA, and Ch. 543, L. 1985; IMP: 31-3-127 and 53-2-504, MCA.

RULE VI WAIVER OF RIGHTS FOR THE RELEASE OF INFORMATION (1) An individual may waive rights (to notice, to inspection, and to hearing) and may authorize the release of child support debt information.

(2) The waiver must include:

(a) a one-time waiver of the individual's right to be notified by the credit agency before information is requested and released;

(b) a one-time waiver of the individual's right to inspect information (in the department's records) before its release;

(c) a one-time waiver of the individual's right to hearing on the accuracy of such information (including but not limited to waiver of the right to have the accuracy of such information proved by a preponderance of the evidence);

(d) a waiver of the right to call witnesses and to introduce evidence;

(e) a waiver of the right to cross-examine;

(f) a waiver of the right to object to the introduction of exhibits;

(g) a waiver of the right to consult with and be represented by an attorney; and

(h) a specific date for the waiver to expire.

(3) The waiver must be sworn and notarized. By signing such a waiver, an individual does not give up his right to dispute the accuracy of the information (in the file maintained by the credit agency, or in the files of the department) at a later date.

(4) Within 30 days (after disclosure of the information contained in the department's records), the individual may request a hearing on the accuracy of such information. (Hearing procedure - see rule V.)

(5) A form for use as a waiver of rights (to notice, to inspection, and to hearing) and authorization for the release of information will be made available by the department.

AUTH: 40-5-202 and 31-3-127(5), MCA, and Ch. 543, L. 1985; IMP: 31-3-127 and 53-2-504, MCA.

RULE VII CREDIT AGENCY'S REQUEST FOR INFORMATION (1) A credit agency may submit a request for information concerning the individual's child support debt in writing.

(2) Such request may be no sooner than 30 and no later than 120 days after a notice has been given to (or served upon) the individual, or when a waiver has been signed by the individual.

(3) The request shall state:

(a) the name, address, and social security number of the individual;

(b) that the request is made by an eligible credit agency;

(c) that the person signing the request is an authorized representative of such credit agency; and

(d) what information is being requested.

(4) The request shall be signed and notarized (the person so signing shall be subject to penalties for false swearing under Montana law).

(5) The request shall be accompanied by a copy of the notice given to (or served upon) the individual and proof that it was given (or served).

(6) A form for use as a credit agency's request for information will be made available by the department.

AUTH: 40-5-202 and 31-3-127(5), MCA, and Ch. 543, L. 1985; IMP: 31-3-127 and 53-2-504, MCA.

RULE VIII RESPONSE TO CREDIT AGENCY'S REQUEST FOR INFORMATION (1) After receiving a request from a credit agency, the department shall consult its records.

(2) The Department shall provide a response when:

(a) the credit agency's request is accompanied by a waiver signed by the individual;

(b) no steps have begun to contest the accuracy of the information; or

(c) all issues concerning the accuracy of the information on file with the department have been resolved.

(3) The department shall provide one of the following responses to the credit agency:

(a) The department has found no record positively matching the individual's identifying information provided by the credit agency;

(b) The department has a record positively matching the individual's identifying information provided by the credit agency, but such individual appears to owe no child support debt;

(c) The department has a record positively matching the individual's identifying information provided by the credit agency, but such individual appears to owe a debt of less than $1,000 and the department does not disclose amounts less than $1,000; or

(d) The department has a record positively matching the individual's identifying information provided by the credit agency, and stating the amount (if the debt is $1,000 or greater).

AUTH: 40-5-202 and 31-3-127(5), MCA, and Ch. 543, L. 1985; IMP: 31-3-127 and 53-2-504, MCA.

RULE IX FEES (1) The department shall charge all credit agencies five dollars for each request for information where the department maintains a record positively matching the individual's identifying information supplied by the credit agency.

AUTH: 40-5-202 and 31-3-127(5), MCA, and Ch. 543, L. 1985; IMP: 31-3-127 and 53-2-504, MCA.

3. The Department is proposing these rules in order to implement Chapter 543, 1985 Laws of Montana, Public Law 98-378, and 45 C.F.R. 303.105. The laws require the Department of Revenue to provide credit agencies with information regarding the amount of overdue support owed by individuals whose support obligations are being enforced by the Department. The rules are intended to assist both individuals and credit agencies by providing procedures which must be followed before information is released. The procedures were designed to assure that released information is correct, and that absent parents are afforded

procedural due process, while minimizing cost and delay to credit agencies.

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

Irene LaBare
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than July 24, 1986.

5. If a person who is directly affected by the proposed adoptions wishes to express his data, views, or arguments orally or in writing at a public hearing, he must make written request to Irene LaBare at the above address no later than July 24, 1986.

6. If the agency receives requests for a public hearing on the proposed adoptions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoptions; 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 adoptions is based on §§ 31-3-127(5) and 40-5-202, MCA, and Ch. 543, L. 1985, and the rules implement §§ 31-3-127 and 53-2-504, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 06/16/86

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 4.10.1501 concerning the definition of terms in the pesticide act	))))	NOTICE OF AMENDMENT OF RULE 4.10.1501 CONCERNING THE DEFINITION OF TERMS

TO: All Interested Persons.

1. On May 15, 1986 the Department of Agriculture published notice of the proposed adoption of amendments of ARM 4.10.1501 regarding the definition of terms relating to the pesticide act on pages 725 through 729 of 1986 Montana Administrative Register issue number 9.

2. The department has adopted the rule with the following changes: (text of the rule with matter stricken, interlined and new matter added, then capitalized).

4.10.1501 DEFINITION OF TERMS

(1) through (11) adopted as proposed.

(12) "Application form" means the form approved by the department which must be completed in its entirety by persons requesting a registration, license, ~~certification~~ CERTIFIED-license of permit.

(13) through (33) adopted as proposed.

(34) "Direct supervision" means the act or process whereby the use of a pesticide is made by a competent person acting under the verifiable instructions and supervision of a licensed or certified applicator,---~~Although not physically present, the applicator~~ WHO has provided detailed guidance to the competent person for proper use of the pesticide, ~~and~~ who the applicator has made provisions for contact in the event he is needed, AND WHO IS RESPONSIBLE FOR THE ACTIONS OF THAT PERSON.

(35) through (83) adopted as proposed.

(84) "Registered" means a product which is labeled as a pesticide or intended for use as a pesticide which has been approved by the department for sale, ~~offered for sale~~, exchanged, or ~~distributed~~DISTRIBUTION, for use or application in the state.

(84) through (107) adopted as proposed.

AUTH: 80-8-105, MCA IMP: 80-8-105, MCA

3. The department received several comments from Dave Cogley of the Legislative Council requesting editorial modification of the terms numbered (12), (34) and (84) in rule 4.10.1501.

Response: The department adopted the modifications as requested.

4. No other comments or testimony were received.

The authority of the department to adopt the proposed amendments to rule 4.10.1501 is based upon section 80-8-105, MCA and implements 80-8-105, MCA.

Keith Kelly
Director

Certified to the Secretary of State June 16, 1986

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

In the matter of the adoption and amendment of rules relating to the implementation of an EMT defibrillation training and certification program for EMT-Basic personnel	NOTICE OF AMENDMENT OF RULES 8.28.904 DEFINITIONS, 8.28.906 APPLICATION - PROGRAM APPROVAL, 8.28.907 CANDIDATES - CERTIFICATION, 8.28.908 RECIPROCITY, 8.28.909 SUSPENSION OR REVOCATION, 8.28.1011 EMT-BASIC: COURSE REQUIREMENTS AND ADOPTION OF NEW RULES 8.28.1120 EMT - DEFIBRILLATION: ACTS ALLOWED, 8.28.1121 EMT - DEFIBRILLATION: COURSE REQUIREMENTS, 8.28.1122 EMT - DEFIBRILLATION: STUDENT ELIGIBILITY, 8.28.1123 EMT-DEFIBRILLATION: CERTIFICATION, 8.28.1124 EMT-DEFIBRILLATION: SERVICE APPROVAL

TO: All Interested Persons:

1. On April 24, 1986, the Board of Medical Examiners published a notice of amendments and adoption of the above-stated rules at page 626, 1986 Montana Administrative Register, issue number 8.

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

3. No comments or testimony were received.

BOARD OF MEDICAL EXAMINERS
MAURICE P. HAMILL, D.P.M.,
PRESIDENT

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

Certified to the Secretary of State, June 16, 1986.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE MONTANA ECONOMIC DEVELOPMENT BOARD

In the matter of the amendment of 8.97.404 concerning permissible investments and deposits	))))	NOTICE OF AMENDMENT OF PERMISSIBLE INVESTMENT RULE 8.97.404

TO: All Interested Persons:

1. On April 24, 1986, the Montana Economic Development Board published a notice of amendment of the above-stated rule at page 636, 1986 Montana Administrative Register, issue number 8.

2. The board has amended the rule as proposed with the following comment.

In response to a request for clarification from the Administrative Code Committee, it is noted that one of the reasons for the amendment of the rule is that the Board inadvertantly omitted the references to other rules when the initial adoption of the rule occurred.

4. No other comments or testimony were received.

MONTANA ECONOMIC DEVELOPMENT BOARD
D. PATRICK McKITTRICK, CHAIRMAN

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

Certified to the Secretary of State, June 16, 1986.

BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of Rule 10.55.202, Board of Trustees	)))	AMENDED NOTICE OF ADOPTION OF RULE 10.55.202, BOARD OF TRUSTEES

TO: All Interested Persons

1. On June 12, 1986, the Board of Public Education published notice of adoption of amendment of a rule concerning board of trustees on page 1019 of the 1986 Montana Administrative Register, issue number 11.

2. In the adoption notice cited above, the following change should have been made:

10.55.202 BOARD OF TRUSTEES (1) same as proposed.

(2) Each school district shall formulate a written comprehensive philosophy of education which reflects the ~~special~~ SPECIFIC instructional needs of students at the elementary, middle/junior high school and high school levels, and a statement of goals which describes the district's particular philosophy. The school district shall publicize the availability of such statements so that persons so wishing may secure a copy, and such statement shall be reviewed annually by each school district and revised as deemed necessary.

(3) through (8) remain the same.

AUTH: Sec. 20-7-101 MCA
IMP: Sec. 20-1-301 and 20-1-303 MCA

3. This change was made as a result of comments received at the public hearing which was held March 20, 1986.

Ted Hazelbaker

Ted Hazelbaker, Chairman
Board of Public Education

BY: Ursula Van D. Jr.

Certified to the Secretary of State June 12, 1986

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

In the matter of the amendment of food service establishment rules 16.10.207, 16.10.213, 16.10.219, 16.10.220, 16.10.221, 16.10.229, 16.10.231, 16.10.233, and 16.10.234	)	NOTICE OF AMENDMENT OF RULES (Food Service Establishments)

To: All Interested Persons

1. On April 10, 1986, the department published notice of proposed amendments of the above-stated rules concerning regulation of food service establishments at page 501 of the 1986 Montana Administrative Register, issue number 7. As stated in one of the responses in paragraph 3 of this notice, the location of one of the proposed restrictions (rule 16.10.221(6)) has been relocated to rule 16.10.227, section (3), which was not otherwise amended.

2. The department has amended rules 16.10.207, 16.10.213, 16.10.219, 16.10.220, 16.10.229, 16.10.233, and 16.10.234 as proposed. Rules 16.10.221 and 16.10.231 have been amended with the following changes (text of rule with matter stricken is interlined, new matter is capitalized):

16.10.221 LAVATORY FACILITIES (1)-(5) Same as proposed.

(6) ~~Sinks used for food preparation or for equipment or utensil washing shall not be used for hand washing.~~ SINKS USED FOR FOOD PREPARATION OR FOR EQUIPMENT OR UTENSIL WASHING SHALL NOT BE USED FOR HAND WASHING. ~~When utility sinks are used as a lavatory, such sinks shall be located to prevent potential contamination of food or food contact surfaces of equipment and utensils by splash from hand washing procedures and the operation and maintenance of cleaning equipment.~~

(7)-(10) Same as proposed.

16.10.227 CLEANING PHYSICAL FACILITIES (1)-(2) Same as existing rule.

(3) When utility sinks are used as a lavatory, such sinks shall be located to prevent potential contamination of food or food contact surfaces of equipment and utensils.

16.10.231 TOXIC MATERIALS (1)-(3) Same as proposed.

(4) Each of the two categories set forth in subsection (3) ABOVE shall be stored and physically located separate from each other. All poisonous or toxic materials shall be stored in cabinets or in a similar physically separate place used for no other purpose. To preclude contamination, poisonous or toxic materials shall not be stored above food, food equipment, utensils or single-service articles, except that this requirement does not prohibit the convenient availability of detergents or sanitizers at utensil or dishwashing stations.

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

3. The comments received, together with the department's responses, are set forth as follows:

Comment: For clarity in rule 16.10.231 (Toxic Materials) the word "above" should be inserted between the words "forth" and "shall" in the first sentence of section (4).

Response: The word has been inserted as requested.

Comment: The department should not delete the references to the state building code concerning hoods [ARM 16.10.213(15)], but should simply insert a requirement that a building inspector approval is necessary so that the sanitarian may approve it.

Response: The suggestion to require a state building inspector approval prior to local inspection does not appear to present a workable collaboration. If state and local health officials maintain contact with appropriate building code inspectors, there should be little need to make provision for state involvement in the department's rules.

Comment: Section 16.10.220(1) (Toilets) should be retained since hand washing before meals is a common means of preventing infection.

Response: Customer facilities are still required under the state building code, and, in fact, there are few if any food service establishments which do not provide customer facilities.

Comment: In rule 16.10.221 (Lavatory Facilities) is it advisable to delete the ban on handwashing in food preparation sinks?

Response: Upon reflection, the department has determined not to delete this prohibition. In addition, for the sake of clarity, the sentence proposed for addition to section (6) of rule 16.10.221 has been shortened and relocated to the end [section (3)] of rule 16.10.227.

Comment: In rule 16.10.219, grease traps should be required, especially where facilities use on-site sewage treatment and disposal systems.

Response: While grease traps add another measure of protection for on-site sewage systems, it is proper maintenance of the septic system itself which is the primary method of assuring sanitary and ongoing functioning of such systems.

Comment: Local jurisdictions should be allowed to develop "experimental" or "innovative" food service programs.

Response: The department is receptive to worthwhile suggestions for such a program and would consider incorporating such a program into its rules in the future.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State June 16, 1986.

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

In the matter of the adoption of a rule and the amendment of ARM 16.18.201(1), requiring water & wastewater treatment operators to earn continuing education credits	NOTICE OF AMENDMENT AND ADOPTION OF RULES (Water and Wastewater Treatment Operators)

To: All Interested Persons

1. On April 10, 1986 the department published notice of proposed amendments of rule 16.18.201(1) and the proposed adoption of a new rule (to be codified as ARM 16.18.208), concerning continuing education credits for water and wastewater treatment operators, at page 498 of the 1986 Montana Administrative Register, issue number 7.

2. The department has amended rule 16.18.201(1) as proposed.

3. The department has adopted the new rule with the following changes (matter stricken is interlined, and new matter is underlined):

16.18.208 CONTINUING EDUCATION REQUIREMENTS (1) A continuing education credit or portion thereof must be earned by all class I, II, III, and IV fully certified operators during a two-year period commencing on July 1, 1986, and July 1 of even-numbered years thereafter. One continuing education credit per water distribution and/or water plant certificate ~~(namely, ten contact hours or ten classroom hours or their equivalent)~~ and one continuing education credit per wastewater certificate must be earned by a class I certified operator during each two-year period. A one-half (1/2) continuing education credit per water distribution and/or water plant certificate and one-half (1/2) continuing education credit per wastewater certificate must be earned by a ~~c~~class II, III, and IV certified operator~~s must earn one-half (1/2) credit percertificate (namely, five contact hours or five classroom hours or their equivalent) during each two-year period~~. A credit consists of ten (10) contact hours, and one-half credit consists of five (5) contact hours. A contact hour is defined as a sixty-minute participation in an approved classroom program or sixty-minute participation in an approved program not requiring classroom participation. On and after July 1, 1992, the credit requirements shall double for each classification.

(2)-(7) Same as proposed.

4. Comments made on the rules, and the department's responses, follow:

Comment: Objection was made to the requirements for one continuing education credit for each class I certificate and for one-half credit for each class II, III, and IV certificate.

Response: These requirements were modified to one credit for each class I certificate held in water distribution and/or water plant, and one credit for each class I certificate in wastewater, with a corresponding change for classes II, III, and IV.

Comment: Objections were raised to the doubling of credit requirements on July 1, 1992.

Response: The above-described modification already reduces the biennial requirement, and a further reduction would not be consistent with legislative policy to require more fully trained water and wastewater operators.

Comment: It was suggested that contact hours be defined.

Response: This suggestion was adopted.

Comment: Requests were made for course availability in sufficient quantity and locations.

Response: The department feels this is a reasonable request. Courses will be more fully identified and described in the department publication, and will list a broad range of approved training programs including in-house training, correspondence courses, and open-book study courses.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State June 16, 1986.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) of Rules 42.22.1102 and) 42.22.1119 relating to net) proceeds reclamation costs.)	NOTICE OF THE AMENDMENT of Rules 42.22.1102 and 42.22.1119 relating to net proceeds reclamation costs.

TO: All Interested Persons:

1. On January 16, 1986, the Department of Revenue published notice of the proposed amendment of rules 42.22.1102 and 42.22.1119 relating to net proceeds reclamation costs at page 30 of the 1986 Montana Administrative Register, issue no. 1.

2. The Department has amended rule 42.22.1102 as proposed and rule 42.22.1119 with the following changes:

42.22.1119 DEDUCTIONS FOR INSURANCE, WELFARE, RETIREMENT, MINERAL TESTING, SECURITY, AND ENGINEERING (1) through (6) remain the same.

(7) The cost of labor, supplies, and equipment used to reclaim the mine site are deductible. If during the process of reclamation, other costs are incurred that result in an improvement or betterment in and about the working of the mine, those costs will be amortized over a 10-year period. The deductions provided in this paragraph are allowable beginning in the ~~1986~~ 1985 production year.

AUTH: 15-23-108 MCA; IMP: 15-23-502 and 15-23-503 MCA.

3. Representative of the Montana Mining Association and W. R. Grace & Co., were present at the hearing and both individuals commented on the effective date of the rule by stating that it should become effective for the 1985 production year rather than the 1986 production year. The Department is in agreement with that comment and has made that change to the rule.

The Montana Mining Association and W. R. Grace & Co. both submitted comments that House Bill No. 652 passed by the 1985 Legislature specifically allowed all reclamation costs incurred to be deductible in the year incurred under the net proceeds of mines tax. Therefore, the rule as proposed by the Department was in error due to the fact that it restricted the deduction for the cost of reclamation.

It appears as though the comments received regarding the reclamation cost deduction are based upon House Bill No. 652 as originally introduced. The bill originally created § 15-23-503(1)(i), MCA, which allowed a deduction for all reclamation costs in the year incurred. However, the bill was amended to delete § 15-23-502(1)(i), MCA, and changed § 15-23-503(1)(h), MCA, to add a reference to reclamation costs. Therefore, House Bill No. 652 was amended to read: "all moneys expended for necessary labor, equipment, and supplies. . . for the cost of reclamation at the site of the mine". (Emphasis

supplied.) The Department feels the statute is perfectly clear in allowing all reclamation costs that fall within the category of either labor, equipment, or supplies to be fully deductible in the year incurred. These costs are deductible regardless of whether or not they resulted in a betterment to the mine. In addition, any other reclamation costs incurred that result in an improvement or betterment to the mine may be amortized over a 10-year period as provided under § 15-23-503(2), MCA.

In order to fully clarify this position, the Department has inserted the word "other" in the second sentence of ARM 42.22.1119(7) between "reclamation" and "costs". The Department had proposed to add a definition of "reclamation costs" to the rule. However, based upon the comments received from W. R. Grace & Co., the definition did not appear to add any clarification to the rule.

At the request of the Hearing Officer, the Department has reconsidered all comments received and has determined that the proposed rule, with amendments, is sufficiently clear for all affected parties.

No other comments or testimony were received.

4. The authority of the Department to make the proposed amendments is based on § 15-23-108, MCA, and implement §§ 15-23-502 and 15-23-503, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 06/16/86

STATE OF MONTANA

SECRETARY OF STATE

In the matter of the adoption of rules pertaining to fees for Clerks and Recorders for filing certified copies of agricultural liens and continuations	NOTICE OF THE ADOPTION OF 44.6.106 FEES FOR FILING NEW UNIFORM COMMERCIAL CODE SECURED TRANSACTIONS DOCUMENTS COVERING AGRICULTURAL PROPERTY TO BE PAID TO CLERKS AND RECORDERS

TO: All Interested Persons:

1. On May 15, 1986, Secretary of State published a notice of proposed rule - Fees for Clerks and Recorders for filing certified copies of agricultural liens and continuations and prescribing a method of payment, at page 744 of the Montana Administrative Register, Issue Number 9.

2. The Secretary of State has adopted this rule exactly as proposed.

3. Two comments were received: (1) protesting that the fee is not adequate; and (2) protesting that this procedure is not necessary.

The Secretary of State has determined that the fee is adequate, and that the procedure is required by law.

SECRETARY OF STATE

Jim Waltermire

Dated this 16th day of June, 1986.

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

In the matter of the amendment of Rules 46.8.701 and 46.8.704 pertaining to certification of developmental disabilities professional persons and repeal of Rule 46.8.108 pertaining to service program funding	))))))	NOTICE OF THE AMENDMENT OF RULES 46.8.701 AND 46.8.704 PERTAINING TO CERTIFICATION OF DEVELOPMENTAL DISABILITIES PROFESSIONAL PERSONS AND REPEAL OF RULE 46.8.108 PERTAINING TO SERVICE PROGRAM FUNDING

TO: All Interested Persons

1. On May 15, 1986, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.8.701 and 46.8.704 pertaining to certification of developmental disabilities professional persons and repeal of Rule 46.8.108 pertaining to service program funding at page 752 of the 1986 Montana Administrative Register, issue number 9.

2. The Department has amended Rules 46.8.701 and 46.8.704 as proposed.

3. The Department has repealed Rule 46.8.108 as proposed.

4. No written comments or testimony were received.

5. These amendments eliminate a conflict with rules of the Department of Institutions governing the certification of developmental disabilities professional persons. The repeal of ARM 46.8.108 eliminates an unnecessary duplication of contracting procedures in this agency's rules.

Dave Lewis
Director, Social and Rehabilitation Services

Certified to the Secretary of State June 16, 1986.

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

In the matter of the adoption of rules and the amendment of Rules 46.25.101 and 46.25.732 pertaining to the structured job search and training program and workfare	)))))))	NOTICE OF THE ADOPTION OF RULES (I) 46.25.731 AND (II) 46.25.733 AND THE AMENDMENT OF RULES 46.25.101 AND 46.25.732 PERTAINING TO THE STRUCTURED JOB SEARCH AND TRAINING PROGRAM AND WORKFARE

TO: All Interested Persons

1. On May 15, 1986, the Department of Social and Rehabilitation Services published notice of the proposed adoption of rules and amendment of Rules 46.25.101 and 46.25.732 pertaining to the structured job search and training program and workfare at page 746 of the 1986 Montana Administrative Register, issue number 9.

2. The Department has adopted Rule 46.25.733, PENALTY, as proposed. However, the correct citation of authorities for this rule is:

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA; AUTH Extension, Sec. 3, Ch. 10, L. 1986 Sp. Sess.
IMP: Sec. 53-2-822, 53-3-304 and 53-3-305 MCA

3. The Department has adopted Rule 46.25.731 as proposed with the following changes:

46.25.731 STRUCTURED JOB SEARCH AND TRAINING PROGRAM

Subsections (1) through (6)(b)(i) remain as proposed.

(ii) use of private transportation will be reimbursed at the rate of 21 cents per mile up to a maximum of $25.00 per month, FOR EACH RECIPIENT PARTICIPATING IN THE STRUCTURED JOB SEARCH TRAINING AND WORK PROGRAM.

(c) Work clothing:

(i) if unavailable from another source, up to ~~$50.00~~75.00 per recipient worth of work clothing may be purchased by the department;

(ii) will be provided only one time to each recipient.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA; AUTH Extension, Sec. 3, Ch. 10, L. 1986 Sp. Sess.
IMP: Sec. 53-2-822, 53-3-304 and 53-3-305 MCA

4. The Department has amended the following rules as proposed with the following changes:

46.25.101 DEFINITIONS For purposes of this chapter, the following definitions apply:

Subsection (1) remains as proposed.

(2) "Assessment" means the determination of ~~whether~~ WHAT SERVICES AND ACTIVITIES the structured job search and training program can offer ~~services or activities which will~~ TO enable a participant to obtain employment.

Subsections (3) through (14)(b) remain as proposed.

(c) an unanticipated emergency; AS DETERMINED BY THE COUNTY DIRECTOR.

Subsections (15) through (33) remain as proposed.

(34) "Workfare" means the performance of work as directed by the ~~department~~ COUNTY OFFICE OF HUMAN SERVICES OR COUNTY DEPARTMENT OF PUBLIC WELFARE OR THEIR DESIGNEE in lieu of welfare at a public agency or a private nonprofit agency.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA; AUTH Extension, Sec. 3, Ch. 10, L. 1986 Sp. Sess.
IMP: Sec. 53-2-201, 53-2-301, 53-2-802, 53-3-109, 53-3-304 and 53-3-305 MCA

46.25.732 WORKFARE ~~PROGRAM~~

(1) All recipients of general relief assistance, unless ~~excluded~~ exempted elsewhere in this rule, ~~are~~ MAY BE required to participate in a workfare ~~program to be reimbursed at the prevailing rate of pay for similar work in the county~~. for as long as they receive assistance. The work, as assigned by the ~~department~~, COUNTY OFFICE OF HUMAN SERVICES OR COUNTY DEPARTMENT OF PUBLIC WELFARE OR THEIR DESIGNEE, shall be with a public agency or private nonprofit agency. The household shall be required to work the number of hours equal to the quotient found by dividing their general relief assistance grant amount by the prevailing rate paid in that county by that agency for similar work, but not lower than the federal minimum wage.

Subsections (2) through (2)(f) remain as proposed.

(g) recipients participating in the extended job search component described in rule I, unless otherwise specified in the employability plan;

(H) ANY PERSON WHO IS ENROLLED FULL-TIME IN A SPECIAL SHORT TERM JOB TRAINING PARTNERSHIP ACT (JTPA) FUNDED OR OTHER JOB TRAINING PROGRAM CERTIFIED BY THE DEPARTMENT OF LABOR AND INDUSTRY;

(I) A PERSON WHO HAS BEEN IDENTIFIED IN THE EMPLOYABILITY PLAN AS HAVING A SERIOUS BARRIER TO EMPLOYMENT WHICH CANNOT BE REMEDIED BY AVAILABLE SUPPORTIVE SERVICES.

Subsections (3) and (4) remain as proposed.

AUTH: Sec. 53-2-803, 53-2-201 and 53-3-114 MCA; AUTH Extension, Sec. 3, Ch. 10, L. 1986 Sp. Sess.

IMP: Sec. 53-2-822, 53-3-304 and 53-3-305 MCA

5. The Department has thoroughly considered all commentary received:

COMMENT: If upon entering the program, a recipient feels that no additional testing or training is needed, they should be allowed to forego those requirements of the program. Options should be left to the client with the job market determining employability. Emphasis should be on job placement.

RESPONSE: House Bill 12 (HB 12) requires able bodied recipients of General Relief Assistance to participate in the structured job search, training, and work program. The components consist of assessment and testing, job readiness, and extended job search. Upon completion of one component, the recipient must proceed to the next component. HB 12 allows no flexibility for omitting components or requirements. This program is designed to assist those recipients in obtaining employment with emphasis on motivation and self esteem.

COMMENT: Rule 1, Subsection (4), states that a recipient must participate in the extended job search for six (6) consecutive months. A number of individuals commented that they felt the six (6) months should be accumulative rather than consecutive.

RESPONSE: This program proposes to provide assistance and training to help recipients obtain employment. The program goal is to obtain employment and terminate public assistance. Phase 3 is a vital step to this process. It provides for training if needed, counseling, experience on a work site, and assistance and guidance with job search skills. The requirement is positive and integral to the recipient seeking employment.

COMMENT: Several people testified that they felt it would be more acceptable for a person who has left the program to re-enter at the place where they left rather than at the beginning of the first unfinished component.

RESPONSE: This approach would be followed during phase 1. For example, if a recipient has recently taken the General Aptitude Test Battery (GATB) assessment, they would not be required to re-take that particular test. However, in phase 2, each of the programs are designed to follow a set curriculum and sequence. To interrupt this sequence would be less than beneficial to the individual recipient, other participants, and the service provider. It would be administratively burdensome to do otherwise. In phase 3, the provider is directly and individually assisting the participant in obtaining employment. The department sees this as a positive step

in the process which must be of a sufficient length to be beneficial.

COMMENT: Supportive services that are offered are too restrictive. The recommendation is to allow the same services as are allowed with JTPA.

RESPONSE: Budgetary limitations do not allow for supportive services at the JTPA level. HB 12 does not have an appropriation separate from the General Relief appropriation. Consequently, expenditures under this program reduce dollar for dollar the funds that were appropriated for General Relief Assistance benefits.

COMMENT: If transportation is necessary and is not reasonably available to participants, they should not be required to participate.

RESPONSE: The department has re-evaluated this issue. If a participant lives in excess of three miles from the service site and transportation is not available, the recipient shall be excused from participation for as long as transportation continues to be a barrier to their participation. The rule has been changed to allow flexibility where an individual's employability plan identifies serious barriers to employment which cannot be corrected by available supportive services.

COMMENT: Will participants be required to car pool or hitch hike to the service unit if no other transportation is available?

RESPONSE: No, the department is not requiring this.

COMMENT: Supportive services should include health care and medical services, assistance in securing bonds, child care, transportation, temporary shelter/residential support, family planning services, legal services and financial counseling.

RESPONSE: These rules do provide child care and transportation. Health care and medical services are provided through the State Medical Program. Family planning services and legal services are available through other agencies in each of the counties. Temporary shelter/residential support, assistance in securing bonds, and financial counseling is beyond the scope of this program.

COMMENT: The rules should clarify that supportive services must be requested and approved in advance, not be available from any other funding source, necessary to overcome a barrier to training or employment, and purchased according to state purchasing procedures.

RESPONSE: The department acknowledges the comment. These issues will be addressed in the eligibility policy manual.

COMMENT: The rules should specify supportive services cannot exceed the constraints specified unless a waiver is granted by the Job Service and Training Division.

RESPONSE: The department does not anticipate granting a waiver for anyone to exceed the limits placed upon supportive services.

COMMENT: The term "supportive services" should specifically define "health care and medical services" as services of a one-time nature and limited to $150 per participant. The term "supportive services" should specifically define "temporary shelter" to be paid at a maximum of $7 per day in a case where a participant must leave his residence to participate in a job training program where the training site is not within commuting distance.

RESPONSE: The department does not anticipate allowing these expenses as a supportive service.

COMMENT: The term "supportive service" should specifically define "legal services" as services to assist the participant with legal problems when they interfere with the participant's ability to hold employment or attend training.

RESPONSE: The department does not anticipate including legal expenses as an expenditure for this program.

COMMENT: The term "supportive services" should specifically allow "tools" to be purchased for participants if they are required for employment. The tools may become the property of the participant if he remains in an unsubsidized job for which the tools are needed for a period of six months.

RESPONSE: The department does not anticipate allowing the expenditure for tools as a supportive service. Adequate funding is not available to allow for this provision.

COMMENT: The term "supportive services" should specifically define other supportive services as goods and services reasonable and necessary for the participant to remain in training or obtain or retain employment.

RESPONSE: The department does not plan to allow this as an expenditure under this program.

COMMENT: Any supportive service expenditure should not be deducted from a recipient's grant.

RESPONSE: All expenditures for supportive services shall be made directly to the provider of service. They will not affect the amount of a recipient's grant.

COMMENT: Concern was expressed that the child care provisions were inadequate.

RESPONSE: The rule mirrors the amount allowed under the Federal Work Incentive (WIN) Program and Child Welfare Services (CWS) Program. The department feels that these provisions are adequate.

COMMENT: In rule I, subsection (6)(b), the maximum allowance for transportation should be increased upward from $25 per month.

RESPONSE: The department acknowledges the concern but thinks that $25 per month per recipient is adequate. The department has added wording to the rule to clarify its position.

COMMENT: Rule I should be amended to state all miles traveled over 10 miles per day may be reimbursed at the rate of 18 cents per mile, not to exceed $50 per month as authorized by the provider.

RESPONSE: The department acknowledges the comment but thinks the provisions in the proposed rule are adequate.

COMMENT: In rule I, subsection (6)(c), the clothing allowance is inadequate and should allow for the purchase of clothing to wear to the job interview.

RESPONSE: The department acknowledges the need to increase the clothing allowance. Consequently, the allowance has been increased from $50 to $75 per recipient. This clothing may be purchased for attending job interviews or for actual work. These purchases would be made by a vendor payment.

COMMENT: Rule II, subsection (1)(a)(iv), requires that a recipient accept available employment. Concern was expressed that accepting temporary employment or employment at a low rate of pay might interfere with the applicant's ongoing eligibility. A young single mother with two children would be required to earn $6.51 per hour to maintain the same level of economic survival provided by full assistance.

RESPONSE: The Legislative "intention of House Bill 12 is to enable able-bodied recipients of General Relief, in counties with state-assumed welfare services, to obtain permanent employment at a liveable wage with at least minimum health benefits". While "Statements of Intent" are only advisory in

nature, we do have a goal of finding permanent employment at a liveable wage and with minimum health benefits. By having recipients participate in this program, the department feels that we are in fact enabling them to achieve this goal.

Concurrently, Montana Code Annotated 53-3-303 requires a recipient to "accept available employment within his or her ability". The department intends this to mean a recipient must accept any employment offered at or above the federal minimum wage regardless of the expected length of employment or hours to be worked each week. The purpose of HB 12 is to assist recipients in obtaining employment. An individual is in a better position to seek employment if he is presently employed. For example, if two equally qualified individuals apply for a position and one applicant is presently employed and one is unemployed, we think that the currently employed applicant is more likely to receive the job. The reasoning is that the individual has recently demonstrated job skills and responsibility. Consequently, the acceptance of a job offer, even at minimum wage, can do nothing but better that individual's odds at obtaining a better paying position.

For General Relief Assistance, benefit budgeting is done on a prospective basis. What this means is that a person's benefits for the month are based upon what the department anticipates that individual will receive in the month that they are requesting assistance. Usually this is done by referring to the income for the past month. However, if there is reason to believe that a recipient's income will vary from the previous month, the benefit is calculated based upon the best estimate of what that individual's income is likely to be. Consequently, the fear that acceptance of a temporary job will adversely affect the following month's grant is unfounded.

General Relief Medical eligibility is determined by evaluating the household's income prospectively over the next twelve months. If a recipient accepts a low paying, short term job, their medical coverage could continue as long as their projected income for the next twelve months remains below the standard for their household size.

The comment about the single mother with children is misleading. First, approximately 75% of the General Relief caseload consists of single individuals with no dependents. The family General Relief households with a single parent and preschool children would be exempt from participation in the program. The figure of $6.51 per hour is incorrect for General Relief recipients. That figure was compiled for the AFDC Program. The benefits for AFDC are calculated differently than the benefits for General Relief Assistance. The AFDC Program has a number of earned income disregards which the General Relief Program does not allow. As explained above, General Relief Medical coverage can continue when a recipient

obtains employment that is either short term or at a relatively low level of pay.

COMMENT: "Available employment" should be defined to allow uniform application as: (1) full time permanent employment at a wage with at least minimal health benefits which releases the state from responsibility for providing any assistance for the person; or (2) employment at an hourly rate at least equal to the federal minimum wage and for a minimum duration of four days.

RESPONSE: See response to immediately preceding comment.

COMMENT: If an individual accepts employment, the only benefit that they should give up is their general relief assistance benefit.

RESPONSE: The Food Stamp, AFDC, and Medicaid Programs each have their own eligibility guidelines and requirements that are established by the appropriate federal agency. Provisions are made in them for earned income and subsequent expenses.

COMMENT: Workfare should be extended to be a work experience program with upgraded positions accompanied by more hours and more pay.

RESPONSE: Efforts are being expended to upgrade the present workfare sites so that they can provide more valuable experience for the participant. However, the statute does not allow for increasing the amount of assistance that an individual may receive. Increasing the hours of participation could only be accomplished by reducing the hourly rate upon which the individual's work requirement is based. Consideration is being given to allowing voluntary participation in excess of the required workfare hours to allow for more experience during phase 3.

COMMENT: A percentage of the state's economic development funds should be targeted to low income residents in the state.

RESPONSE: The comment is beyond the scope of these rules.

COMMENT: Efforts should be made to repeal the federal Gramm-Rudman Act.

RESPONSE: The comment is beyond the scope of these rules.

COMMENT: Governor Schwinden should be encouraged to talk with other state governors to pursue full employment programs.

RESPONSE: The comment is beyond the scope of these rules.

COMMENT: A federal comprehensive health care program should be pursued.

RESPONSE: The comment is beyond the scope of these rules.

COMMENT: This program involves a hidden harassment of recipients. In many communities, there are no jobs and these requirements are consequently a harassment.

RESPONSE: The program is a positive program to provide the training and direction to assist an individual in obtaining employment. We have evaluated similar programs in other states. Similar concerns were initially expressed. The programs have been very successful. For example, Nebraska operates a very similar program for the AFDC recipients. Even with a poor economy, the average monthly job placement rate is in excess of 50%. We believe that the State of Montana can achieve those same results.

COMMENT: How much input does the participant have in the development of the employability plan?

RESPONSE: The employability plan will be developed by the provider of service in each community with the assistance of the participant. The final document is the responsibility of the service provider and will include the input of the recipient. The department thinks recipient participation in the employability plan is essential if the plan is to be successful.

COMMENT: If a recipient disagrees with the contents of the employability plan, what appeal rights does the individual have?

RESPONSE: The recipient would have the right to appeal any requirements of the program through the standard SRS appeal process as described elsewhere.

COMMENT: The definition of workfare should be adjusted to allow referrals from the County Office of Human Services or the County Welfare Department, or their designee.

RESPONSE: The comment has been noted and the suggested change has been made.

COMMENT: Several commenters noted that provision should be made to allow for the exemption from participation of all recipients that are participating in training and other

educational activities provided by other agencies and organizations.

RESPONSE: The department has allowed an exemption for those participating full time in a special short term Job Training Partnership Act (JTPA) funded program or other job training programs certified by the Department of Labor and Industry. No provision has been made to exempt participants involved in programs other than these. Students involved in long term training as might be obtained at a university or vocational technical school would not be exempt. It is the view of the department that these individuals have removed themselves from the job market for an extended period of time. To be eligible for General Relief Assistance, they would be required to participate in the program. A short term training or educational program identified in the employability plan to provide job skills training would not be precluded by these rules.

COMMENT: Good cause determinations by the County Director are subjective. What rights do I have if I disagree with the determination?

RESPONSE: Any time a determination is made by the County Office of Human Services or the County Welfare Department that adversely affects a recipient or applicant, the individual must be notified in writing of the adverse action and be provided with a written statement of the right to ask for a fair hearing. In the above situation, if the applicant is unable to comply with a requirement placed upon them by the department and adverse action occurs, the recipient could request a fair hearing.

COMMENT: Two individuals are each receiving General Assistance in the amount of $212 per month. One individual is required to perform 53 hours of work on a job site and the other individual at another job site is required to participate a total 47 hours. Isn't there a question of equal protection?

RESPONSE: The department does not think there is a question of equal protection.

COMMENT: The proposed rules require that an individual register every other month at the local Job Service. What is this requirement based upon?

RESPONSE: Montana Code Annotated 53-3-303 requires that a recipient of General Relief Assistance "register for employment with the Department of Labor and Industry". When individuals register at the Local Job Service Office, their applications are kept on file for 60 days from the last date

of activity. If there are no services provided or requested, the applications would no longer be active after 60 days. Therefore, it is necessary to re-active the referral every 60 days.

COMMENT: The proposed rules do not address the following issues included in HB 12: no currently employed worker may be displaced by assigning a workfare person to do the duties of that person; a person serving in a workfare slot may not replace a person on lay off; labor unions must be given the opportunity to comment on proposed training; and the mandated concurrence of the labor organization and employer when work would be within a collective bargaining unit.

RESPONSE: The department agrees that these are very vital provisions of HB 12. However, the department feels that these concerns are clear in the statute and, therefore, do not need to be further addressed in the rules. The department is in the process of entering into an contract with the Montana AFL-CIO to fulfill these requirements.

COMMENT: What happens to individuals once they have completed all of the requirements of the program and they are still unemployed?

RESPONSE: Under HB 12, such individuals would continue to receive General Relief Assistance. They would be required to participate in workfare but they would not be required to start the structured job search, training and work program again.

COMMENT: Is the State Medical Program still in existence in Cascade County?

RESPONSE: Yes. However, the comment is beyond the scope of these Rules.

COMMENT: Is there planned evaluation of the success of the program?

RESPONSE: A computer tracking system is being developed to compile data on job placements, salaries of those placed, insurance benefits, and other demographic information. Each of the counties have developed differing plans. The department will be evaluating the success of these individual approaches and making recommendations to the other local programs.

COMMENT: If an individual that is involved in one of the components has expertise in the topic being discussed during a

given session, can that individual skip that session?

RESPONSE: No, the recipient will be required to participate in all three components of the program as scheduled by the service provider.

COMMENT: If a recipient requires day care services and none are available, would the recipient be terminated from the program for refusing to participate?

RESPONSE: Most participants will not be in this situation since recipients with preschool age children will be exempt from participation. However, if the situation should develop where needed day care was not available, the participant would be exempted for as long as the good cause for not cooperating existed. This again would be determined by the local County Welfare Director and would be subject to usual fair hearing rights.

COMMENT: I have been disqualified from the program because my mother made a check out to me rather than a convenience store that she was subsidizing the lease on. How can I address this issue?

RESPONSE: This comment is beyond the scope of this rule.

COMMENT: Are recipients and applicants told what rights they have?

RESPONSE: At the time of initial application for assistance, eligibility technicians are instructed to inform each applicant what their rights are.

COMMENT: Are recipients who are participating in the extended job search component exempt from participation in workfare under ARM 46.25.732(2)(g)?

RESPONSE: No. Each individual's employability plan will describe what is required in the job readiness and extended job search components. Unless job search, remedial education, counseling, and job skills training preclude it, workfare would be identified as a requirement in the employability plan.

COMMENT: The proposed requirement that a participant spend eight (8) hours per week in an effort to find employment over a six month period should be changed to allow this job search in those periods of the year when there are seasonable rises in numbers of jobs.

RESPONSE: HB 12 does not allow that option.

COMMENT: Supervised employment-seeking is a waste of money that could better go for welfare; it stirs up a lot of dust for nothing.

RESPONSE: The structured job search, training and work program will not preclude any otherwise eligible recipient from receiving their entitled benefits. However, experience in other states indicate that similar programs have been successful.

COMMENT: Is there any sort of a time limit after completion of phase 3 that participants would be required to re-enter the program or be reassessed?

RESPONSE: Neither the statute nor the rules allow for an individual to re-enter the program after completion of all of the components.

COMMENT: The testing component should be revised to account for learning disabled individuals. Present Job Service testing is designed to assess present levels of functioning, but does not test for a learning disability or other mental handicap which may be the cause of the person's inability to secure and maintain employment.

RESPONSE: If an individual is determined to be learning disabled, or has other disabilities, appropriate assessment and testing for a determination of his or her job readiness will be conducted.

COMMENT: Who makes the determination of what constitutes an emergency and good cause?

RESPONSE: The County Welfare Director makes those determinations. Determinations are subject to appeal through the fair hearing process.

COMMENT: Legislative Council commented that the definition of "assessment" should be phrased in a more positive manner to assure that the program will do whatever is possible to help a person obtain employment.

RESPONSE: The department has noted the comment and the appropriate change has been made.

COMMENT: Since the majority of training/service providers who have submitted proposals to implement programs under HB 12 will be administering both JTPA and HB 12 funds, it would be appropriate to standardize policy when possible.

RESPONSE: The department concurs. Policy has been standardized where possible, taking into account budget and other limitations.

COMMENT: Subsidized employment should not be considered acceptable if the rules have to go to the extreme of reducing amounts paid to individuals with savings. Our all or nothing attitude may be self defeating.

RESPONSE: The department was unable to understand the issue raised. Subsidized employment is beyond the scope of these rules.

COMMENT: The Montana AFL-CIO cites 36,000 Montanans officially unemployed, 65,000 Montanans actually unemployed. The Montana Department of Labor projects 3,000 new jobs created each year through 1990, 90% of which are in the low paid sector. This means 22 Montanans line up for each new job created this year through 1990.

RESPONSE: The department cannot validate the figures given. However, it is our intent to provide the participants in the program with the basic skills needed to obtain employment so that they will be more competitive when seeking employment.

COMMENT: Let there be no misconception that General Relief recipients are leading, or ever have lead, an easy life or that the unemployed are not fighting for their very survival.

RESPONSE: This program will provide assistance that may allow an individual to overcome the barriers that have prevented employment in the past.

COMMENT: Workfare has potential to be expanded and is not a final solution; it lacks adequate funding and appears to be hastily conceived. We believe its impact will be limited.

RESPONSE: HB 12 has provided us with the means to initiate a job search, training, and work program. We intend to develop the best possible program for the participant given all of the possible limitations.

COMMENT: Legislative Council questioned whether ARM 46.25.732 was clear in requiring the "household" to work the required number of hours for workfare.

RESPONSE: The department thinks the wording is clear. The workfare requirement is found by dividing the general relief assistance grant amount by the prevailing rate paid in that county by that agency for similar work to arrive at a prescribed number of hours of participation. The total amount

of the workfare requirement must be met by one or more non-exempt recipients in the household.

COMMENT: Legislative Council commented that authority extension citations in the rule histories should omit references to Chapters 370 and 670 because those sections contain original grants of rulemaking authority and do not extend the department's already existing authority.

RESPONSE: The department has made the recommended changes.

COMMENT: Legislative Council commented that the department exceeds its authority under HB 12 by stating that recipients "are" required to participate in workfare rather than "may be" required to participate in workfare.

RESPONSE: The department agrees and has changed the rule accordingly.

5. These rules will be effective July 1, 1986.

Dave Lewis
Director, Social and Rehabilitation Services

Certified to the Secretary of State June 16, 1986.

VOLUME NO. 41 OPINION NO. 66

BANKS AND BANKING - Authority to compel disclosure by financial institution of financial information under Electronic Funds Transfer Act;
COUNTY ATTORNEYS - Authority to obtain investigative subpoena to compel disclosure by financial institution of customer information under Electronic Funds Transfer Act;
CRIMINAL LAW AND PROCEDURE - Use of investigative subpoena for legitimate criminal investigation;
CRIMINAL LAW AND PROCEDURE - Authority to compel disclosure by financial institution of customer information under Electronic Funds Transfer Act;
MONTANA CODE ANNOTATED - Sections 32-6-105(1), 46-4-301, 46-4-304(2), 46-11-317;
OPINIONS OF THE ATTORNEY GENERAL - 38 Op. Att'y Gen. No. 82 (1980);
UNITED STATES CODE - 12 U.S.C. § 3407, 15 U.S.C. § 1693.

HELD: Section 32-6-105(1), MCA, does not preclude the county attorney from compelling disclosure of customer information by a financial institution pursuant to an investigative subpoena.

4 June 1986

Harold F. Hanser
Yellowstone County Attorney
Yellowstone County Courthouse
Billings MT 59101

Dear Mr. Hanser:

You have requested an opinion concerning:

> Whether section 32-6-105(1), MCA, precludes a county attorney from obtaining an investigative subpoena compelling disclosure of a customer's financial records by a financial institution, under the Electronic Funds Transfer Act.

Section 32-6-105(1), MCA, states:

> (1) No information relating to any transaction by electronic funds transfer, or application therefor, between a financial institution and its customer or prospective customer may be disclosed by the financial institution to any person or government entity without consent of the customer or, if the customer refuses to so consent, under subpoena issued by a court of record.

Subsection (2) contains exceptions which do not apply here. The language of the statute is clear. Since an investigative subpoena is issued by a court of record (§ 46-4-301, MCA), this section permits issuance of an investigative subpoena regarding the release of electronic funds transfer information.

The section contains no language which limits issuance of subpoenas based on privacy considerations. When this section is read with other pertinent statutory provisions, it is clear that the Legislature intended financial information under the Electronic Funds Transfer Act to be subject to disclosure under investigative and other court subpoenas.

Section 46-4-301, MCA, authorizes the issuance of investigative subpoenas whenever the Attorney General or the county attorney has a duty to investigate alleged criminal activity and when necessary for the administration of justice. There are no other limitations. Moreover, since the investigative subpoena is the principal tool in Montana for investigation of alleged crime, interpreting section 32-6-105(1), MCA, to be an absolute privilege against disclosure would in effect insulate criminal offenders from any prosecution based upon an illicit financial transaction. No other financial information in this state is beyond the reach of legitimate criminal investigation. There is no basis for finding legislative intent to create this distinction for transactions under the Electronic Funds Transfer Act. The language of the act must therefore be interpreted to allow access to such information through subpoena issued by a court of record.

There is, of course, a degree of privacy accorded to examination and testimony obtained pursuant to investigative subpoenas. They are subject to the

secrecy and disclosure provisions for grand juries. §§ 46-4-304(2), 46-11-317, MCA.

Confidential information is generally subject to disclosure pursuant to investigative subpoenas or other court orders. For example, in 38 Op. Att'y Gen. No. 82 (1980) I held that a county attorney may, in the course of a criminal investigation, use an investigative subpoena to compel a health care provider to release confidential health care information.

Gaining access to electronic funds transfer customer information by issuing an investigative subpoena to the bank does not offend the customer's various constitutional rights. The customer's Fifth Amendment protection against compulsory self-incrimination is not in jeopardy. See In re Grand Jury Proceedings, 601 F.2d 162, 167 (5th Cir. 1979). There the Court held that because the privilege against self-incrimination protects only individuals, records maintained by a corporation, partnership, or collective group are not protected from compelled disclosure.

The customer does not have a legitimate expectation of privacy from legitimate governmental inspection of those records under the Fourth Amendment guarantee against unreasonable searches and seizures.

In United States v. Miller, 425 U.S. 435 (1976), the Supreme Court recognized that a bank's records of, and relating to, a customer's accounts are not the customer's private papers, but are the business records of the bank. Id. at 440. In rejecting any Fourth Amendment implications, the Court stated that the Fourth Amendment does not prohibit the bank from conveying information it receives to a government authority, because, in revealing his affairs to the bank, the customer takes the risk that the information will be conveyed to the government for legitimate purposes. Id. at 443.

In any event, the subpoena is valid within the Fourth Amendment context so long as it is reasonably definite in its request and relevant to the legitimate inquiry for which it is issued. See United States v. (Under Seal), 745 F.2d 834, 837 (4th Cir. 1984), cert. granted, U.S. v. Doe, 105 S. Ct. 954, vacated, 105 S. Ct. 1861, on remand, 763 F.2d 662 (1985).

Montana's constitutional right to privacy does not preclude use of an investigative subpoena. The county attorney's legitimate investigation of criminal activity and the use of investigative subpoenas, when necessary to the investigation, are essential to the enforcement of the criminal laws and thus to the preservation of a free, safe, and orderly society. Such subpoenas issue only when it appears upon affidavit of the county attorney or the Attorney General that the administration of justice requires issuance. § 46-4-301, MCA. The above constitutes a compelling state interest which is a legitimate basis for invasion of whatever privacy interest a person may have in his financial records. § 46-4-301, MCA; see State v. Coleman, ___ Mont. ___, 616 P.2d 1090, 1096 (1980). In Coleman, the Montana Supreme Court held that a compelling state interest exists when the state must enforce its criminal laws for the benefit and protection of other fundamental rights to its citizens.

In summary, while section 32-6-105, MCA, creates a privacy protection for a customer, it does not do so to the exclusion of an investigative subpoena.

My conclusion is consistent with federal law as well. Title 15 U.S.C. § 1693, contains the federal Electronic Funds Transfer Act, which is substantively similar to the Montana Act. Title 12 U.S.C. § 3407 authorizes the government to obtain financial records, including those under the Electronic Funds Transfer Act, by judicial subpoena for legitimate law enforcement inquiry.

THEREFORE, IT IS MY OPINION:

> Section 32-6-105(1), MCA, does not preclude the county attorney from compelling disclosure of customer information by a financial institution pursuant to an investigative subpoena.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 41 OPINION NO. 67

COUNTIES - Budget allocation of proceeds from settlement of mines net and gross proceeds taxes;
MINES AND MINING - County budget allocation of proceeds from settlement of mines net and gross proceeds taxes;
SCHOOL DISTRICTS - Lawful use of proceeds from county settlement of mines net and gross proceeds taxes;
TAXATION AND REVENUE - County budget allocation of proceeds from settlement of mines net and gross proceeds taxes;
MONTANA CODE ANNOTATED - Sections 7-6-2318(1), 15-8-601, 15-16-102, 15-23-106, 15-23-107, 15-23-501, 15-23-803, 15-23-804, 15-23-806, 20-9-502, 20-9-503, 20-9-508.

HELD: 1. Proceeds under the February 1986 Atlantic Richfield Company settlement agreement payable to Butte-Silver Bow County must be allocated to each taxing jurisdiction within the county proportionally to the mill levies of all such jurisdictions' funds in effect during the fiscal year when such proceeds are contractually required to be paid.

2. Proceeds under the February 1986 Atlantic Richfield Company settlement agreement may be allocated in proper portion to any appropriately established building reserve fund of school districts within Butte-Silver Bow County. Such proceeds may not be allocated to any building fund of those school districts.

16 June 1986

Robert M. McCarthy
Butte-Silver Bow County Attorney
Butte-Silver Bow County Courthouse
Butte MT 59701

Dear Mr. McCarthy:

You have requested my opinion concerning several questions which I have rephrased as follows:

1. How should payments to Butte-Silver Bow County under a settlement agreement compromising alleged tax obligations under the mines net proceeds and metal mines gross proceeds taxes be allocated for county budget purposes?

2. To the extent portions of such payments are properly apportioned to school district funds within Butte-Silver Bow County, under what conditions may they be allocated to a particular school district's building reserve fund or its building fund?

Your questions arise as a result of a February 1986 settlement between the Montana Department of Revenue, Butte-Silver Bow County, Anaconda-Deer Lodge County, and the Atlantic Richfield Company resolving a controversy over revised assessments affecting (1) the metalliferous mines license tax, §§ 15-37-101 to 117, MCA; (2) the resource indemnity trust tax, §§ 15-38-101 to 112, MCA; (3) the mines net proceeds tax, §§ 15-23-501 to 523, MCA; and (4) the metal mines gross proceeds tax, §§ 15-23-801 to 807, MCA. Butte-Silver Bow County receives revenue only under the last two taxes whose amounts are calculated in the same manner as personal property taxes, i.e., they are based upon application of a mill levy against a taxable assessed value. See §§ 15-23-106(1)(d), 15-23-501, 15-23-803, 15-23-806, MCA. The revised assessments as to those taxes were made in accordance with section 15-8-601, MCA.

Under section 15-8-601(1), MCA, the Department of Revenue is authorized to make revised assessments of taxable property which has escaped or been omitted from taxation or has been erroneously assessed. The Department thereafter issues a revised assessment to county officials for the involved tax year. §§ 15-8-601(5), 15-23-107, MCA. Appropriate revisions must then be entered into the county's assessment roll book, and the treasurer issues a tax notice for any additional amounts which, when collected, will be allocated to the various taxing jurisdictions within the county in the same proportion as such taxes would have been distributed had they been timely paid. However, an aggrieved taxpayer as to centrally assessed taxes, such as the mines net and gross proceeds taxes, may institute

proceedings before the state tax appeal board to challenge the revised assessment. § 15-8-601(3)(c), MCA. Atlantic Richfield initiated such an action, and the Department determined that issuance of the revised assessment to Butte-Silver Bow County should be delayed until its validity was established. Thus, in this matter no modifications were made in the County's roll book to reflect the revised assessments.

The subsequent settlement agreement with Atlantic Richfield established a payment procedure independent of the statutory scheme. It provided that $12,245,000 will be paid to Butte-Silver Bow County over a seven-year period, with the first annual payment due on the third to the last business day of June 1987. The payments in succeeding years must also be tendered by such day. Butte-Silver Bow County and Atlantic Richfield have the right to modify the time and amount of payments without consent of the other parties if the latter's payments will be unaffected. Should a required payment not be made by the last day of June, a 10 percent penalty and interest at 1 percent per month will be assessed. In return for such payments Atlantic Richfield received, inter alia, a full and complete liability release from the disputed taxes for all years to the date of settlement.

While the settlement proceeds are clearly derivative of alleged tax obligations, the agreement's provisions governing payment operate independently of relevant statutory provisions. Most importantly, (1) there are no entries in Butte-Silver Bow County's assessment book reflecting the disputed valuations; (2) the proceeds are not apportioned to previous tax years in which the Department's revised assessment determined taxes were owing; (3) the payment schedule differs from that applicable to mines net and gross proceeds taxes with respect to time of payment (§§ 15-16-102, 15-23-501, 15-23-804, MCA); (4) the agreement's penalty and interest provisions differ from relevant statutory provisions (§ 15-16-102, MCA); and (5) the County and Atlantic Richfield are given the discretion to modify the time and amount of payments. The settlement proceeds cannot, therefore, be characterized as payment of delinquent taxes which must be apportioned to earlier tax years on the basis of then-applicable mill levies.

Montana statutes are silent with respect to the proper allocation within the county budget of income like the present settlement proceeds. Nonetheless, because Butte-Silver Bow County's portion of the settlement derives from alleged liability under the mines net and gross proceeds taxes, such amounts should logically be allocated among the various county taxing jurisdictions proportionately on the basis of mill levies for the fiscal year during which they are payable under the agreement or any subsequent amendment thereto. This result comports with the County's presumed intent in resolving the disputed tax claims, which was to benefit each taxing jurisdiction through an expeditious and certain settlement.

Although the settlement proceeds must be allocated among Butte-Silver Bow County's taxing jurisdictions proportionally to their mill levies, such amounts clearly do not arise from "the taxation of property" for the purpose of calculating projected fund cash flow under section 7-6-2318(1), MCA. The term "taxation of property" has obvious reference to those revenues deriving from the property tax collection procedure specified under sections 15-16-101 to 704, MCA, and cannot be construed to include the settlement proceeds. Precise calculation of the amounts which should be allocated to the various taxing jurisdictions from the proceeds will, therefore, be difficult since the determination of the mill levies themselves should precede fixing the settlement proceeds' proper allocation. Nonetheless, reference to mill levies in the previous fiscal year and reasoned judgments as to the relative effect of the proposed budget on those levies should permit a substantially accurate approximation of the projected fund cash flow from the settlement proceeds.

Your second question is largely answered by the above analysis. School finance procedures are extremely detailed and specify the manner in which building reserve funds and building funds may be created and financed. Section 20-9-502, MCA, permits creation of a building reserve fund, which is financed through annual mill levies, and requires elector approval of the fund's establishment. Under section 20-9-503, MCA, trustees must include within the school district's budget the levy so authorized. Building funds are, in contrast, financed principally through issuance and sale of school

bonds and may not be financed through additional mill levies. See § 20-9-508, MCA. Consequently, proceeds from the settlement agreement may accrue to the benefit of a properly authorized building reserve fund but may not be placed into a building fund.

THEREFORE, IT IS MY OPINION:

1. Proceeds under the February 1986 Atlantic Richfield Company settlement agreement payable to Butte-Silver Bow County must be allocated to each taxing jurisdiction within the county proportionally to the mill levies of all such jurisdictions' funds in effect during the fiscal year when such proceeds are contractually required to be paid.

2. Proceeds under the February 1986 Atlantic Richfield Company settlement agreement may be allocated in proper portion to any appropriately established building reserve fund of school districts within Butte-Silver Bow County. Such proceeds may not be allocated to any building fund of those school districts.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 41 OPINION NO. 68

CITIES AND TOWNS - Protest areas in connection with municipal zoning amendments;
LOCAL GOVERNMENT - Protest areas in connection with municipal zoning amendments;
PROPERTY, REAL - Protest areas in connection with municipal zoning amendments;
MONTANA CODE ANNOTATED - Sections 7-5-4121(1), 76-2-301, 76-2-302(1), 76-2-305;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 58 (1977).

HELD: Section 76-2-305, MCA, applies to proposed zoning amendments affecting nonrectangular or nonsquare parcels of land. Identification of the statutorily-defined protest areas affected by the proposed amendments must be made with reference to the particular facts.

17 June 1986

Jim Nugent
City Attorney
201 West Spruce
Missoula MT 59802-4297

Dear Mr. Nugent:

You have requested my opinion concerning a question which I have phrased as follows:

> Do the protest provisions of section 76-2-305, MCA, apply to a rezoning request affecting a parcel of land whose configuration is neither rectangular nor square?

The land at issue is bounded on the east by Hillview Way; its remaining boundaries are unassociated with any public rights of way. The north and south boundaries of the parcel are generally parallel with each other, while the east and west boundaries are irregularly shaped. You anticipate that protests may be filed by individuals whose property abuts the northwest portion of the parcel.

Section 76-2-301, MCA, authorizes municipalities like Missoula to engage in zoning activities. Under section 76-2-302(1), MCA, the city council "may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of" its zoning authority. Amendments to zoning district classifications are permitted by section 76-2-305(1), MCA, but, when sufficient protests have been filed pursuant to section 76-2-305(2), MCA, must be adopted by a three-fourths vote of all council members rather than by a simple majority of a duly constituted quorum. See § 7-5-4121(1), MCA.

Section 76-2-305(2), MCA, states in full:

> In case, however, of a protest against such change signed by the owners of 20% or more either of the area of the lots included in such proposed change or of those immediately adjacent in the rear thereof extending 150 feet therefrom or of those adjacent on either side thereof within the same block or of those directly opposite thereof extending 150 feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the city or town council or legislative body of such municipality.

I have previously held that section 76-2-305(2), MCA, creates four separate protest areas:

> (a) the area of the lots included in the proposed change;
>
> (b) the area of the lots immediately adjacent in the rear of the lots included in the proposed change extending 150 feet from those lots;
>
> (c) the area of the lots adjacent on either side of the lots included in the proposed change within the same block;
>
> (d) the area of the lots directly opposite the area of the blocks included in the proposed

change extending 150 feet from the street frontage of such opposite lots.

37 Op. Att'y Gen. No. 58 at 226, 227-28 (1977). Determination of whether the requisite protests have been filed must be made with individual reference to each of the protest areas. Consequently, if owners of 20 percent or more of the land within any of those areas challenge the proposed zoning change, the three-fourths voting requirement applies. A fundamental purpose of section 76-2-305(2), MCA, is to give property owners adjacent to the parcel affected by the proposed zoning change an opportunity to participate in some protest group.

Section 76-2-305(2), MCA, is most easily applied to zoning changes affecting rectangular or square parcels of land. Nonetheless, in view of section 76-2-302(1), MCA, it also has application to amendments affecting irregularly-shaped parcels. The issue here is simply identifying the boundaries of the statutory protest areas. See Olson v. City Commission, 146 Mont. 386, 393-94, 407 P.2d 374, 378 (1965).

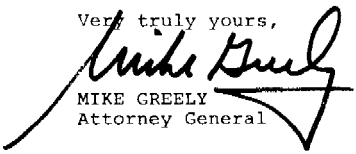
Three of the four statutorily-prescribed areas are involved in this matter. The first is the area composed of all lots, or land, within the parcel proposed to be rezoned and has been described generally above. The second is that property "directly opposite [the rezoned parcel] extending 150 feet from the street frontage of such opposite lots," i.e., the property abutting Hillview Way on the parcel's eastern boundary. In this regard it must be emphasized that the term "frontage" generally refers to "that part of the parcel sought to be rezoned that gives access frontage on a roadway, alley or other public way." Chapman v. County of Will, 55 Ill. 2d 524, 304 N.E.2d 287, 290 (1973). "Frontage" is modified, however, in section 76-2-305(2), MCA, by the word "street" to limit consideration to those portions of the parcel where a street, as opposed to a public right-of-way such as an alley, abuts. When a parcel is abutted by more than one street, determination of whether the requisite protests have been filed must be made in reference to all portions of the parcel so abutted. See Village of Bannockburn v. County of Lake, 17 Ill. 2d 155, 160 N.E.2d 773, 775 (1959). The third protest area is composed of "those [lots] immediately adjacent in the rear [of the rezoned area] extending 150

feet therefrom." This area encompasses all lands outside the parcel sought to be rezoned which, although abutting or within 150 feet of such parcel, (1) are not separated therefrom by a street or (2) are not on either side of the parcel within the same block. The term "rear" must therefore be construed, if a principal purpose of section 76-2-305(2), MCA, is to be implemented, as including all adjacent property which does not fall within the other statutorily-defined protest areas. Since the protest area associated with rezoning changes in a particular block is inapplicable presently, this final area encompasses all property which is within 150 feet of the rezoned parcel, excluding those "opposite lots" bordering or within 150 feet of Hillview Way. Determination of whether a sufficient number of owner signatures have been secured within any of these protest areas is, lastly, a factual inquiry best undertaken by appropriate city officials.

THEREFORE, IT IS MY OPINION:

Section 76-2-305, MCA, applies to proposed zoning amendments affecting nonrectangular or nonsquare parcels of land. Identification of the statutorily-defined protest areas affected by the proposed amendments must be made with reference to the particular facts.

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 the 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 statutes 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 list 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 March 31, 1986. This table includes those rules adopted during the period March 31, 1986 through June 30, 1986, 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 March 31, 1986, this table and the table of contents of this issue of the MAR.

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