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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 14

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the matter of the proposed new rules concerning Anhydrous Ammonia facilities	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF NEW RULES ESTABLISHING STANDARDS FOR ANHYDROUS AMMONIA FACILITIES

To All Interested Persons:

1. On August 27, 1986 at 10 a.m. in Room 225, Agriculture/Livestock Building, Sixth and Roberts, in Helena, Montana, a public hearing will be held to consider the adoption of proposed new rules concerning regulations for anhydrous ammonia facilities.

2. The proposed new rules read as follows:

RULE I SCOPE (1) These rules II through XLIII specifically are applicable to the design, construction, location, installation, and operation of anhydrous ammonia systems, including refrigerated ammonia storage systems from which the product is used for agricultural ammonia.

(2) These rules do not apply to:

(a) Anhydrous ammonia manufacturing plants,

(b) Air conditioning systems and refrigeration plants where anhydrous ammonia is used solely as a refrigerant. Such systems are covered in American National Standards Safety Code for Mechanical Refrigeration, B-9.1, and

(c) Anhydrous ammonia transportation pipelines.

(3) Rules IV through Rule XIX apply to stationary, non-refrigerated storage installations utilizing containers other than those constructed in accordance with regulations implementing Occupational Safety and Health Act (CFR 29(c)(3)(iii)).

(4) Rule XX applies to systems mounted on implements of husbandry for the transportation of anhydrous ammonia.

(5) Rule XXI applies to systems mounted on farm vehicles for the application of anhydrous ammonia.

(6) Rule XXII applies to systems utilizing containers for the storage of anhydrous ammonia under refrigeration conditions.

(7) Rules XXIII through XXXVII specifically apply to the design, location, construction, installation and operation of distribution systems utilizing nitrogen fertilizer solutions or aqua ammonia converters.

(8) Rule XXV through Rule XXXIV apply to all sections unless otherwise specified.

(a) Rule XXXV applies to storage installations for nitrogen fertilizer solutions.

(b) Rule XXXVI applies to systems mounted on vehicles and implements of husbandry for the transportation of nitrogen fertilizer solutions.

(c) Rule XXXVII applies to systems mounted on vehicles and implements of husbandry for the transportation of nitrogen fertilizer solutions.

(d) Rule XXXVIII applies to systems mounted on farm vehicles for the application of nitrogen fertilizer solutions.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE II DEFINITIONS (1) "Alteration" means a change in any item described in the original Manufacturer's Data Report which affects the pressure containing capability of the container. Rerating a container by increasing maximum allowable working pressure or temperature shall be considered an alteration.

(2) "Anhydrous ammonia" means a compound formed by the combination of the two gaseous elements, nitrogen and hydrogen, in the proportion of one part of nitrogen to three parts hydrogen by volume. Anhydrous ammonia is ammonia gas in compressed and liquefied form. Anhydrous ammonia is not aqueous ammonia which is a solution of ammonia gas in water.

(3) "ANSI" refers to American National Standards Institute, 1430 Broadway, N.Y., N.Y. and their publication "Safety Requirements for the Storage and Handling of Anhydrous Ammonia" (as adopted this 1st day of January, 1982).

(4) "Approved" means tested and recommended by manufacturer as suitable for use with anhydrous ammonia and product so marked, or inspected by the department and found to be in compliance with these rules.

(5) "Appurtenances" means all devices, such as, system devices, liquid level gauging devices, valves, pressure gauges, fittings, metering or dispensing devices.

(6) "ASME" refers to the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, New York 10017 (as adopted this 1st day of January, 1982).

(7) "ASTM" refers to the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pa. 19103 (as adopted this 1st day of January, 1982).

(8) "Capacity" means the total volumetric measure.

(9) "Closed system" refers to a transfer system which will return displaced vapor to the tank from which the liquid is being discharged.

(10) "Container" means a vessel, such as, a tank or cylinder used for the storage and handling of anhydrous ammonia.

(11) "Department" means the Montana Department of Agriculture, Agriculture/Livestock Building, Helena, Montana 59620, (406) 444-3730.

(12) "Design pressure" means the maximum allowable working pressure.

(13) "Filling density" means the percent ratio of the weight of the gas in a container to the weight of water at 60 degrees Fahrenheit (F) that the container will hold. One pound H20=27.737 cubic inches at 60 degrees F. For determining the water capacity of the tank in pounds, the weight of a gallon (231 cubic inches) of water at 60 degrees F in air shall be 8.32828 pounds.

(14) "Filling volume" is defined as the percent ratio of the liquid in a container to the volume of the container.

(15) "Free vented" as used means the system is permanently open to the atmosphere. No shutoff or check valve is allowed in such opening.

(16) "Gas" means anhydrous ammonia in either the gaseous or liquefied state.

(17) "Gas mask" means a gas mask approved by the Bureau of Mines (30CFR Part II, Section 14-f).

(18) "Hold-down devices" refers to chains or metal straps or cables.

(19) "Hold to a minimum" means the product should be loaded in anticipation of sale into the nurse tanks and delivered to the consumer for use without being stored in nurse tanks waiting for a consumer order.

(20) "Hydrostatic relief valve" refers to an automatic pressure activated valve for liquid service characterized by throttle or slow weep opening (non-pop off action).

(21) "Implement of husbandry" means a farm wagon-type tank vehicle of not over 2000 gallons capacity, used as a field storage nurse tank supplying the anhydrous ammonia to a field applicator, and moved on highways only for transporting anhydrous ammonia from a local source of supply to farms or fields or from one farm or field to another.

(22) "Institutional occupancy" is a location where people may be unable to vacate voluntarily and shall be deemed to include nursing homes, hospitals, jails, and schools.

(23) "Material suitable for use" includes iron, steel and certain non-ferrous alloys which are compatible for use in anhydrous ammonia service. Copper, brass, zinc and certain alloys, especially those containing copper, are not suitable for anhydrous ammonia service.

(24) "Nitrogen fertilizer solutions" refers to compounds (ammonium nitrate, urea, sodium nitrate, and other nitrogen carriers) formed by the combination of free ammonia and water with or without other nitrogen salts. Nitrogen fertilizer solutions includes all liquid containing more than 2 percent free ammonia and/or having 5 psig. It does not include material containing over 1 percent of phosphorous and/or potassium which is used as plant food. The term "nitrogen fertilizer solution" should be substituted in lieu of the term "anhydrous ammonia" where it appears in these definitions for references made in rules

specified in Rule I for rules specifically pertaining to nitorgen fertilizer solutions.

(25) "Pressure vented" is a system equipped with a pressure relief valve or a combination pressure-vacuum relief valve.

(26) "Private assembly" is a location where people gather together but is not generally open to the public.

(27) "Psig" and "Psia" means pounds per square inch gauge and pounds per square inch absolute, respectively.

(28) "Public assembly" is a location that is generally open to the public and where people gather together, including but not limited to, churches, public halls, libraries, clubs and businesses.

(29) "Qualified attendant" means a person who has a knowledge of the characteristics of anhydrous ammonia, its safe handling, safety rules for transfer and application, and has completed an anhydrous ammonia training program conducted by the department or an equivalent training program approved by the department.

(30) "Repair" refers to the work necessary to restore a container or system to a safe and satisfactory operating condition provided that in all cases the container or system design shall continue to comply with the requirements of this standard, or the standard in effect at the time of installation, that special service requirements do not restrict such work and the basic design concept of the system is not altered.

(31) "Safety relief valve" or "pop off valve" is an automatic pressure activated valve for vapor service characterized by pop action upon opening.

(32) "Secured valve" is a valve which is locked, plugged or capped.

(33) "Semi-trailer" refers to a vehicle designed for carrying anhydrous ammonia, which is drawn by a motor vehicle, and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

(34) "System" refers to an assembly of equipment consisting essentially of the container(s), appurtenances, pumps, compressors, and interconnecting piping.

(35) "Tank" means a vessel designed and constructed for the storage and handling of anhydrous ammonia.

(36) "Tank motor vehicle" means any motor vehicle designed or used for the transportation of anhydrous ammonia in any tank designed to be permanently attached to any motor vehicle or any container not permanently attached to any motor vehicle which by reason of its size, construction or attachment to any motor vehicle must be loaded or unloaded without being removed from the motor vehicle.

(37) "The Code" refers to the Unfired Pressure Vessel Code of the American Society of Mechanical Engineers (Sec. VIII of the ASME Boiler Construction Code), including editions through 1981 or the Joint Code of the American Petroleum Institute and the American Society of Mechanical

Engineers (API-ASME Code) including editions through 1981 (adopted this 1st day of January, 1982).

(38) "Vacuum" refers to ounces per square inch of pressure below atmospheric pressure.

(39) "Vapor pressure" unless otherwise specified, shall refer to the pressure developed by the solution at temperature specified.

(40) "Wet hose" is an anhydrous hose with shut-off valves at each end and is capable of containing liquid product at all times.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE III DISPOSAL (1) To dispose of anhydrous ammonia, it shall be injected into sufficient water as near as the bottom of the vessel as practical. Sufficient water shall be at least ten parts of water per one part anhydrous ammonia.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE IV REQUIREMENTS OF CONSTRUCTION AND ORIGINAL TEST OF CONTAINERS, OTHER THAN REFRIGERATED STORAGE TANKS (1) Containers used with systems covered in Rule XIX shall be constructed, installed, and tested as follows:

(a) The Unfired Pressure Vessel Code of ASME, except that construction under Paragraph UW 9 at a basic joint efficiency of under eighty percent is not authorized, and compliance with Paragraphs UG 132 and UG 133 shall not be required, or

(b) The 1951 edition of the Joint Code of the American Petroleum Institute and the American Society of Mechanical Engineers (API-ASME), except that a basic joint efficiency of under eighty percent is not authorized, and compliance with Paragraph W 601 through W 609 and ASME's Table A shall not be required.

(2) Containers exceeding 36 inches in diameter or 250 gallon capacity shall be constructed to comply with one or more of the following requirements in addition to Rule IV (1):

(a) Containers shall be stress-relieved after fabrication in accordance with the Code, or

(b) Cold formed heads when used shall be stress-relieved, or

(c) Hot formed heads shall be used.

(3) Non-Code welding shall be made only on saddles or brackets originally welded to the container by the manufacturer. Non-Code welding directly to the container or any part subject to pressure is not authorized.

(4) All containers, except refrigerated storage tanks, with a design pressure of less than 15 psig shall be inspected by a person having a current certificate of competency from the National Board of Broiler and Pressure Vessel Inspectors.

(5) The provisions of Rule IV(1) shall not be construed as prohibiting the continued use or re-installation of containers constructed and maintained prior to the effective date of these rules.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE V MANUFACTURER'S MARKING REQUIREMENTS ON CONTAINERS AND SYSTEMS (1) Each container or system covered in Rule XIX, Rule XX, Rule XXI, Rule XXII, shall be marked as follows:

(a) With a mark identifying compliance with and other markings required by the rules of The Code under which the container is constructed, with the capacity of the container in pounds or gallons (U.S. Standards), with the working pressure in psig for which the container is designed, and with the thickness of the shell and heads. This information shall appear:

(i) On the container and system nameplate on underground installations.

(ii) On the container on aboveground installations.

(b) With the name, address and phone number of the supplier of the system and the date of manufacture. This information shall appear on the system nameplate for both underground and aboveground containers.

(c) With markings indicating the maximum level to which the container may be filled with liquid at temperatures between 20 degrees Fahrenheit (F) and 100 degrees F, except on containers provided with fixed maximum level indicators or which are filled by weighing. Markings shall be in increments of not more than 20 degrees F and shall appear on the system nameplate or on the liquid level gauging device on both underground and aboveground containers. Refrigerated storage tanks shall be exempt from these requirements but shall be marked to show the maximum permissible liquid level, see Rule XII(3).

(d) With the overall length and outside diameter of the container. This information shall appear:

(i) On the system nameplate on underground containers.

(ii) On the container on aboveground containers.

(2) All main operating valves on permanently installed storage containers having a capacity of over 2000 water gallons shall be identified to show whether the valve is in liquid or vapor service. The method of identification shall be by label or color code as follows:

(a) Label: The label LIQUID (or LIQUID VALVE) or VAPOR (or VAPOR VALVE), as appropriate, shall be placed on or within twelve inches of the valve by means of a stencil tag or decal, or

(b) Color Code: Liquid valves shall be painted orange and vapor valves shall be painted yellow. The legend ORANGE-LIQUID or YELLOW-VAPOR shall be displayed in at least one conspicuous place at each permanent storage location.

The legend shall have letters at least two inches high and shall be placed against a contrasting background.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE VI LOCATION OF STORAGE TANKS (1) Tanks shall be located outside of buildings unless the building is especially constructed for the safe handling and storage of anhydrous ammonia. Permanent storage shall be located outside of densely populated areas and subject to the approval of the department as follows if located within the corporate limits of a village, town, or city, written approval of the municipality's governing body or a county zoning permit shall be submitted to the department before tentative approval to begin construction of a permanent storage facility will be given. The intended storage must be completed and approved by the department within one year from the date written tentative approval was given. Final approval will be given if the facility and equipment complies with the Department's rules.

(2) Containers shall be located at least 50 feet from a dug well or other source of potable water.

(3) Container locations shall comply with the following distance requirements:

Minimum Distances (feet) from Container to:

Nominal Capacity of Container(s) (Gallons)	Property Line, Road Right-of-Way and Railroad Mainline-feet	Place of Private or Public Assembly-feet	Institutional Occupancy-feet
001 to 2,000	50	150	750
Over 2,001	50	400	1,000

(4) The department may permit replacement storage tanks to be installed. Replacement tanks must meet all requirements of these rules. The provisions concerning replacement of tanks applies specifically to installations installed prior to the effective date of these rules.

(5) A nurse tank of not more than 2,000 gallons or less than 1,000 gallons water capacity may be used as temporary storage in instances where anhydrous ammonia is used in the manufacturing of liquid or suspension fertilizers provided that written approval of the municipality's governing board or a county zoning permit shall be submitted to the department before site approval will be given. Approval will be given based upon compliance with the requirements of this paragraph. The distance of the temporary storage nurse tank shall not be less than 50 feet from the property line or source of drinking water, not

less than 150 feet from existing places of private or public assembly, or not less than 750 feet from any place of institutional occupancy. The draw bar must be securely fastened to an anchoring device so as to render the nurse tank immovable while being used in the manufacturing of fertilizer. During the time the place is unattended, all liquid and vapor valves must be secured.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE VII CONTAINER APPURTENANCES (1) All appurtenances shall be designed for not less than the maximum working pressure of that portion of the system on which they are installed. All appurtenances shall be fabricated from materials suitable for use in anhydrous ammonia service.

(2) All connections to containers, except safety relief connections and gauging devices, shall have shutoff valves located as close to the container as practicable.

(3) Liquid level gauging devices, which are so constructed that outward flow of container content shall not exceed that passed by a No. 54 drill size opening, need not be equipped with excess flow valves.

(4) Container openings or through fittings (directly on container and used for pressure gauge connections) need not be equipped with excess flow valves if such openings are protected by a vent hole not larger than a No. 54 drill size hole.

(5) All excess flow valves shall be clearly and permanently marked with the name or trademark of the manufacturer, the catalog number, and the rated capacity.

(6) Excess flow valves shall close automatically at the vapor or liquid rated flows as specified by the manufacturer. The connections and line, including appurtenances being protected by an excess flow valve, shall have a greater capacity than the rated flow of the excess flow valve so the valve will close in case of failure at any point in the line or fittings.

(7) Excess flow and back pressure check valves shall be located inside the container or at a point outside where the line enters the container. In the latter case, installation shall be made in such a manner that any undue strain, beyond the excess flow or back pressure check valve, will not cause breakage between the container and the excess flow valve.

(8) Excess flow valves shall be designed with a by-pass, not to exceed a No. 60 drill size opening, to allow equalization of pressure.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE VIII PIPING, TUBING AND FITTINGS (1) All piping, tubing and fittings shall be made of material suitable for use in anhydrous ammonia service.

(2) All piping, tubing, and fittings shall be designed for a pressure not less than the maximum pressure to which they may be subjected in service.

(3) All piping shall be supported to prevent damage to the pipes. Provisions shall be made for expansion, contraction, jarring, vibration, and for settling. All refrigeration system piping shall conform to the Refrigeration Piping Code (ANSI B31.5) as it applies to anhydrous ammonia.

(4) Piping used on non-refrigerated systems shall be at least ASTM A-53 Grade B Electric Resistance Welded and Electric Flash Welded Pipe or equivalent. Such pipe shall be at least Schedule 40 when joints are welded, or welded and flanged. Such pipe shall be at least Schedule 80 when joints are threaded.

(5) Metal, flexible connections may be used to provide for expansion, contraction, jarring, vibrating, and for settling. In no case shall the angle of the connection exceed 15 degrees. All such connections shall comply with the standards set forth in ANSI K 61.1, Section 2.7.5.

(6) Cast iron fittings shall not be used, but this rule shall not prohibit the use of fittings made especially for anhydrous ammonia service of malleable or nodular iron, such as, Specification ASTM A 47 or ASTM A 395.

(7) Provisions shall be made to protect all exposed piping from physical damage that might result from moving machinery, the presence of automobiles or trucks, or any other undue strain that may be placed upon the piping.

(8) Joint compounds shall be compatible with anhydrous ammonia.

(9) After assembly, all piping and tubing shall be tested and proven free of leaks at a pressure not less than the normal operating pressure of the system.

(10) Connecting more than one storage tank to a single manifold line is prohibited unless the combined rated flow of the excess flow valves in all connected tanks does not exceed the maximum capacity of the main manifold line. Should the capacity of the line be reduced, excess flow valves of equal to or smaller capacity than the maximum capacity of the line are to be installed at the point of reduction.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE IX HOSE SPECIFICATION (1) Hoses used in anhydrous ammonia service and subject to container pressure shall conform to the joint Rubber Manufacturers Association's and the Fertilizer Institute's "Hose Specifications for Anhydrous Ammonia" (Table B of the Joint Association's booklet).

(2) Hoses subject to container pressure shall be designed for a minimum working pressure of 350 psig and a minimum burst pressure of 1750 psig. Hose assemblies shall be capable of withstanding a test pressure of 500 psig.

(3) Hoses, from date of manufacture shall be changed:
(a) Every two years for rayon braid hoses.
(b) Every five years for stainless steel hoses.
(4) Hose and hose connections located on the low pressure side of flow control or pressure reducing valves on devices discharging at atmospheric pressure shall be designed for the maximum low side working pressure. All connections shall be designed, constructed, and installed so there will be no leakage when connected.
(5) Where liquid transfer hose is not drained upon completion of transfer operations, such hose shall be equipped with an approved shutoff valve at the discharge end. Provisions shall be made to prevent excessive pressure in the hose, see Rule X(10).
(6) On hoses one-half inch in diameter or larger which are used for the transfer of anhydrous ammonia liquid or vapor, there shall be etched, cast, or impressed at five foot intervals the following information:

Anhydrous Ammonia
xxx psig (Maximum Working Pressure)
Manufacturer's Name or Trademark
Year of Manufacture

(7) Hoses used for transferring material (both liquid and vapor) to and from nurse tanks shall be restricted to a 25 feet maximum length and shall be racked when not in use to prevent undue damage to hose.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE X SAFETY RELIEF DEVICES (1) Every container used in the storage or transporting of anhydrous ammonia shall be provided with one or more safety relief valves of the spring-loaded type. The discharge from safety relief valves shall be vented away from the container, upward and unobstructed into the atmosphere. All safety relief valve discharge openings shall have raincaps that will allow free discharge of the vapor and prevent the entrance of water. Provision shall be made for draining condensation which may accumulate. The rate of discharge shall be in accordance with Table A.
(2) Container safety relief valves shall be set to start-to-discharge in relation to the design pressure of the container as follows:

Containers	Minimum	Maximum
ASME-U-68, U-69	110%	125%
ASME-U-200, U-201	95%	100%
ASME 1952, 1956, 1959 1962, 1965, 1968 or 1971	95%	100%
API-ASME	95%	100%

department of Transportation (as required by Hazardous Materials Regulations, Section 173.315 (I-3 and 3)).
(3) Safety relief devices shall be constructed to discharge at not less than the rates required in Rule X(1) before the pressure is in excess of 120 percent (not

including the 10% tolerance referred to in Rule X(2) of the maximum permitted start-to-discharge pressure setting of the device.

(4) Safety relief valves shall be arranged so the possibility of tampering will be minimized. If the pressure setting adjustment is external, the relief valve adjustment shall be sealed.

(5) Shutoff valves shall not be installed between the safety relief valves and the containers, except a shutoff valve may be used where the arrangement of this valve always affords required capacity flow through the relief valves.

Examples:

(a) A three-way valve installed under two safety relief valves, each of which has the required rate of discharge and is so installed as to allow either of the safety valves to be closed, but does not allow both safety valves to be closed at the same time.

(b) Two separate relief valves are installed with individual shutoff valves. In this case, the two shutoff valve stems shall be mechanically interconnected in a manner which will allow full required flow of one safety relief valve at all times.

(c) A safety relief valve manifold which allows one valve of two, three, four, or more to be closed and the remaining valve(s) will provide not less than the rate of discharge to allow the proper cubic feet per minute of air in relation to tank capacity as shown in Table A.

(6) Safety relief valves shall have direct communication with the vapor space of the container.

(7) Each safety relief valve used with systems shall be plainly and permanently marked as follows:

(a) With the letters "AA" or the symbol "NH3".

(b) The pressure in psig at which the valve is set to start-to-discharge.

(c) The rate of discharge of the valve in cubic feet per minute of the air at 60 degrees F and atmospheric pressure (14.7 psia).

(d) The manufacturer's name and catalog number.

(8) The flow capacity of the safety relief valve shall not be restricted by any connection to it on either the upstream or downstream side.

(9) The manufacturer or supplier of a safety relief valve manifold shall furnish complete data showing the flow rating through the combined assembly of the manifold with safety relief valves installed.

(10) A hydrostatic relief valve, venting to atmosphere at a safe location, shall be installed between each pair of shutoff valves in an ammonia line where the liquid may be trapped, except when the hose or line is protected by an internal equalizing valve with a differential pressure so designed as to not exceed 50 psig. The start-to-discharge pressure of hydrostatic relief valves shall be not less than 350 psig and not in excess of 400 psig.

(11) Discharge from safety relief devices shall not terminate within or beneath any building.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE XI SAFETY (1) A qualified attendant is required to transfer anhydrous ammonia and shall be trained in safe operating practices, use of equipment, safety devices, and the proper action to take in the event of emergencies.

(2) All storage systems shall have on hand, as a minimum, the following equipment for emergency and rescue purposes:

(a) One gas mask with 2 refill canisters suitable for anhydrous ammonia use. Canisters shall not be opened until ready for use and shall be discarded after use. Canisters outside date limitations will not be accepted as meeting the requirements of this rule.

(b) One pair of protective gloves made of material impervious to anhydrous ammonia (NH3).

(c) One pair of protective boots made of material impervious to anhydrous ammonia (NH3).

(d) One protective slicker/apron or protective pants and jacket made of material impervious to anhydrous ammonia (NH3).

(e) Easily accessible shower within the work area or at least 75 gallons of clean water in an open top container.

(f) Tight-fitting, vented chemical goggles.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE XII FILLINGS DENSITIES (1) Filling density shall be limited to 85 percent capacity by volume at 60 degrees F.

(2) The filling densities for nonrefrigerated containers by weight shall not exceed the following:

		Aboveground	Underground
(a)	Uninsulated	56%	58%
(b)	Insulated	57%	

(c) Containers regulated by department of Transportation shall be filled in accordance with Hazardous Materials Transportation Regulations (Subch. C, Rule 171.6).

(3) The filling density for refrigerated storage tanks shall be such that the tanks will not be liquid full at a liquid temperature corresponding to the vapor pressure at the start-to-discharge pressure setting of the safety relief valve.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE XIII TRANSFER OF LIQUIDS (1) A qualified attendant shall transfer liquids from the time the connections are first made until the rail car is finally disconnected or the transport truck is completely unloaded and finally disconnected. Any time a site is unattended,

the tank car shall not be connected to the unloading riser. During the transfer operations of the transport, chock blocks shall be so placed as to prevent rolling of the vehicle.

(2) Containers shall be filled or used only upon written authorization of owners.

(3) Containers shall be gauged and charged only in the open air or in a building especially provided for that purpose.

(4) Pumps used for transferring anhydrous ammonia shall be recommended and labelled for anhydrous ammonia service by the manufacturer:

(a) Liquid pumps may be piston, rotary, centrifugal or regenerative type for 250 psig working pressure.

(b) Positive displacement pumps shall have installed off the discharge port a constant differential relief valve discharging through a line of sufficient size to carry the full capacity of the pump at relief valve setting, which setting and installation shall be according to pump manufacturer's recommendation.

(c) A pressure gauge graduated from 0 to 400 psig shall be installed before the relief valve line on the discharge side of the pump.

(d) Centrifugal or regenerative pumps do not require a bypass valve, but the installation shall incorporate a line from the discharge side of the pump to the vapor space of the supplying tank and a shutoff valve shall be installed in this line.

(5) Plant piping shall contain shutoff valves located as close as practical to the pump connections.

(6) Compressors used for transferring or refrigerating anhydrous ammonia shall be recommended and labelled for anhydrous ammonia service by the manufacturer:

(a) Compressors may be reciprocating or rotary design for 250 psig working pressure.

(b) Plant piping shall contain shutoff valves located as close as practical to compressor connections.

(c) A relief valve large enough to discharge the full capacity of the compressor shall be connected to the discharge before any shutoff valve. The discharging pressure of this valve shall not exceed 300 psig and shall be installed so that it will be vented in a safe location if discharged.

(d) Compressors shall have pressure gauges graduated from 0-400 psig at suction and discharge.

(e) Adequate means, such as a drainable liquid trap, shall be provided on the compressor suction to minimize the entry of the liquid into the compressor.

(7) Loading and unloading systems shall be protected by backflow check valves or properly sized excess flow valves to prevent the emptying of the storage container(s) in the event of severance of the hose.

(8) Transport trucks shall not be utilized for bulk storage of anhydrous ammonia. It must be transferred into permanent storage of a capacity equal to or greater than the transport truck.

(9) Railway tank cars must be transferred into permanent storage of a capacity equal to 50 percent of the railway tank car. Sites not able to meet the 50 percent transfer requirement shall apply to the department annually for a Letter of Authorization. The department shall, after inspecting the site and its facilities and if these are found in compliance with these rules, except for the 50 percent transfer requirement, issue a one year permit allowing the transfer of anhydrous ammonia at such site. In the case of Paragraph 11 of this section, no letter of authorization is required.

(10) All transport or railroad loading and unloading riser liquid and vapor valves must be secured valves or a security fence with two gates on opposite sides shall be installed and kept locked during the time the plant is unattended.

(11) The transfer of anhydrous ammonia from a tank car or transport to any other unit for the purpose of converting anhydrous ammonia to aqueous ammonia shall only be done upon a railway spur owned or leased to the operator of such facility where the railway tank car can be retained for an indefinite period and where an aqueous converter is installed at a site. The transfer must be done in one continuous operation. The requirements of Rule VI must be met before such site and facility will be approved by the department. Approved anhydrous ammonia installations designed for converting aqueous ammonia must have sufficient permanent storage to permit continuous and uninterrupted unloading from railway tank cars or trucks.

(12) Provision must be made to prevent bleeding of transport and rail car liquid lines or hoses into the atmosphere when disconnecting. This shall be done through the use of wet hose with a shut-off valve at each end of the hose, by bleeding into water at no greater rate than one gallon of anhydrous ammonia to ten (10) gallons of ammonia-free water to prevent discharge of fumes into the atmosphere, or with an approved recovery vapor system.

(13) The filling of mobile containers with a capacity of 2000 gallons or less with anhydrous ammonia is permissible only at a permanent storage facility approved by the department for this purpose. Anhydrous ammonia may be transferred from a transport truck or other vehicle with a maximum capacity of 5,000 gallons into containers of 2,000 gallons capacity or less mounted on farm vehicles or containers of 3,000 gallons mounted on motor-driven applicators. This transfer operation is limited to rural areas and only on the premises of the consignee.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE XIV TANK CAR OPERATIONS (1) Caution signs shall be so placed on the track or car as to give necessary warning to persons approaching car from open end or ends of siding. These signs shall be left up until after car is unloaded and disconnected from discharge connections. Durable signs shall be at least 12 by 15 inches in size and bear the words "Stop-Tank Car Connected" or "Stop-Men at Work". The word "Stop" shall be in letters at least 4 inches high and the other words in letters at least 2 inches high on a background of contrasting color.

(2) The track of a tank car siding shall be substantially level.

(3) Brakes shall be set and wheels blocked on all cars being unloaded.

(4) Tank cars of anhydrous ammonia shall be unloaded only at permanent storage locations.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE XV LIQUID LEVEL GAUGING DEVICES (1) Each container, except containers filled by weight, shall be equipped with a liquid level gauging device of approved design.

(2) All gauging devices shall be arranged so that the maximum liquid level to which the container may be filled is readily determined.

(3) Gauging devices that require bleeding of the product to the atmosphere, such as the rotary tube, fixed tube and slip tube, shall be so designed that the bleed valve maximum opening is not larger than a No. 54 drill size, unless the device is equipped with an excess flow valve.

(4) Gauging devices shall have a design working pressure at least equal to the design pressure of the storage tank on which they are used.

(5) Fixed liquid level gauges shall be so designed that the maximum volume of the container filled by liquid shall not exceed 85 percent of its water capacity. The coupling into which the fixed liquid level gauge is threaded must be placed at the 85 percent level of the container. If located elsewhere, the dip tube of this gauge must be installed in such a manner that it cannot be readily removed. This does not apply to refrigerated storage of anhydrous ammonia.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE XVI PAINTING OF CONTAINERS (1) All abovegrcund containers shall be painted white or a light reflecting color.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE XVII INFORMATION SIGN (1) A sign with letters of a minimum height of two inches giving the name, address, and telephone number of owner, manager or agent of the anhydrous ammonia storage location shall appear at the site entrance(s) to the property or apart from the storage tanks. This information shall also appear on all tanks containing anhydrous ammonia.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE XVIII ELECTRICAL EQUIPMENT AND WIRING (1) Electrical equipment and wiring for use in anhydrous ammonia installations shall be either general purpose or weather resistant as appropriate.

(2) Where concentrations of ammonia in air in excess of 16 percent by volume are likely to be encountered, electrical equipment and wiring shall be of a type specified by and installed in accordance with National Electrical Code (National Fire Prevention Association 70, ANSI-C1) for Class 1, Group D locations.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE XIX SYSTEMS UTILIZING STATIONARY, PIER-MOUNTED OR SKID-MOUNTED ABOVEGROUND OR UNDERGROUND NON-REFRIGERATED STORAGE (1) Design, working pressure and classification of containers:

(a) Containers shall be constructed in accordance with Rule IV with a minimum design pressure of 250 psig.

(b) U-68 and U-69 ASME Code containers with a design pressure of 200 psig are acceptable if recertified to 250 psig and equipped with safety relief valves set at 250 psig as stated in Rule X(2).

(2) Installation of Storage Containers:

(a) Aboveground installation of anhydrous ammonia containers shall be installed on reinforced concrete footings or foundations or structural steel supports mounted on reinforced concrete foundations. The reinforced concrete foundations or footings must extend below the established frost line and shall be of sufficient width and thickness to support the total weight of the containers and contents adequately. The foundations shall maintain the lowest point of the tank at not less than 24 inches above the ground. I-beams shall support the weight of the tank and product.

(b) Skid-mounted anhydrous ammonia storage tanks must be installed on permanent concrete footing or adequate floating reinforced concrete slabs. Skid-mounted units shall include all piping and pumps or compressors as one unit. If the design of such a unit precludes a minimum of 24 inches ground-to-tank clearance, bottom-side inlet, outlet valves and piping are prohibited.

(c) Horizontal aboveground containers shall be mounted on foundations in such a manner as to permit expansion and contraction. Every container shall be supported so as to

prevent the concentration of excessive loads on the supporting portion of the shell. Means of preventing corrosion shall be provided on that portion of the container in contact with the foundations or saddles.

(d) Secure anchorage or adequate pier height shall be provided against container flotation wherever high flood water might occur.

(e) Distance between aboveground containers over 2000 gallons capacity shall be at least five feet.

(f) Container buried underground shall be placed so that the top of the container is at least one foot below the surface of the ground. Should ground conditions make compliance with this requirement impracticable, precautions, such as guard rails, shall be taken to prevent physical damage to the container. It will not be necessary to cover the portion of the container to which a manhole and other connections are affixed. When necessary to prevent flotation, containers shall be securely anchored or weighted.

(g) Underground containers shall be set on firm foundations (firm earth may be used) and surrounded with soft earth or sand well tamped in place. As a further means of resisting corrosion, the container, prior to being placed underground, shall be given a protective coating equivalent to hot dip galvanizing or two preliminary coatings of red lead followed by a heavy coating of coal tar or asphalt. The coated container shall be lowered into place in such a manner as to prevent abrasion or other damage to the coating.

(3) Container valves and accessories:

(a) All containers shall be equipped with a fixed liquid level gauge.

(b) All containers shall be equipped with a vapor pressure indicating gauge having a dial graduated from 0-400 psig.

(c) The filling connection shall be fitted with an approved combination back-pressure check valve, excess-flow valve, or a positive shutoff valve in conjunction with either an internal back-pressure check valve or an internal excess-flow valve.

(d) All containers shall be equipped with an approved vapor return valve.

(e) All vapor and liquid connections, except safety relief valves and those specifically exempt in this section, shall be equipped with approved excess-flow valves or fitted with approved remote controlled quick-closing internal valves which shall remain closed, except during operating periods.

(4) Safety devices: Every container shall be provided with one or more safety relief valves of the spring-loaded type and shall comply with the following:

(a) The discharge from safety relief valves shall be directed upward, unobstructed into the open air, and away from the container. Vent pipes shall not be restricted nor

smaller in size than the relief valve outlet connection. All relief valve discharges shall have raincaps that will allow the free discharge of the vapor and prevent the entrance of water. Provision shall be made for draining condensation which may accumulate.

(b) Vent pipes from two or more safety relief devices located on the same unit or similar lines from two or more different units may be run into a common header, provided the cross-sectional area of the header is at least equal to the sum of the cross-sectional area of the individual vent pipes.

(5) Underground containers:

(a) Spring-loaded relief valves installed on underground containers may be reduced to a minimum of 30 percent of the rate of discharge specified in Table A. Containers so protected shall not be uncovered after installation until the liquid anhydrous ammonia has been removed. Containers which may contain liquid anhydrous ammonia before being installed underground and before completely covered with earth are to be considered aboveground containers when determining the rate of discharge requirement of the relief valves.

(b) The discharge from vent pipes should be above the possible water level on underground installation where there is a probability that the manhole or housing may become flooded. All manholes or housings shall be provided with ventilated louvers or their equivalent. The area of such openings shall equal or exceed the combined discharge areas of safety relief valves and vent pipes that discharge their content into the manhole housing.

(6) Marking containers: Each tank or group of tanks shall be marked on at least two approaching sides with the words "Caution-Ammonia" or "Caution-Anhydrous Ammonia" in sharply contrasting colors with letters not less than four inches high.

(7) Capacity of containers: Individual storage container capacity shall be limited only by good engineering practice (according to The Code).

(8) Protection of tank accessories and grounding:

(a) Valves and other appurtenances shall be protected against tampering and physical damage. Such appurtenances shall also be protected during the transit of containers intended for installation underground.

(b) All connections to underground containers shall be located within a metal dome, housing, or manhole fitted with a metal removable cover.

(c) Storage tanks need not be grounded. Where an electrical system exists, such as for lights or pump motors, the electrical system shall be installed and grounded in a manner as required by the National Electrical Code or local ordinance.

(d) Manually controlled valves, which if open would allow anhydrous ammonia to discharge into the atmosphere, shall be kept secured when the installation is unattended.

(e) All areas occupied by storage installations shall be kept free of dry grass and weeds.

(f) The owner of an abandoned storage system shall be responsible for its maintenance, safe disposal of anhydrous ammonia, and shall keep the storage site free of dry grass and weeds.

(9) Reinstallation of containers: Containers once installed underground shall not later be installed aboveground or underground, unless they successfully withstand hydrostatic pressure tests at the pressure specified for the original hydrostatic test as required by The Code under which the container was constructed and show no evidence of serious corrosion. Reinstalled containers must also comply with Rule XIX(3).

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE XX SYSTEMS MOUNTED ON FARM WAGONS (IMPLEMENTS OF HUSBANDRY) FOR THE TRANSPORTATION OF ANHYDROUS AMMONIA

(1) This section applied to containers of 2000 gallons capacity or less and pertinent equipment mounted on farm wagons (implements of husbandry) and used for the transportation of anhydrous ammonia. Rule IV to Rule XVIII apply to this section unless otherwise noted.

(2) Design, working pressure and classification of containers:

(a) Containers shall be constructed in accordance with Rule IV with a minimum design pressure of 250 psig.

(b) The shell or head thickness of any container shall not be less than 3/16 of an inch.

(c) All containers over 500 gallons capacity should be equipped with semirigid baffle plates.

(3) Mounting container:

(a) Stop or stops shall be mounted on the truck, semi-trailer, or trailer or on the container in such a way that the container shall not be dislodged from its mounting due to the vehicle coming to a sudden stop. Back slippage shall also be prevented.

(b) A hold-down device shall be provided which will anchor the container to the vehicle at one or more places on each side of the container.

(c) When containers are mounted on four-wheel trailers, care shall be taken to insure that the weight is distributed evenly over both axles.

(d) When the cradle and the tank are not welded together, material shall be used between the two to eliminate metal-to-metal friction.

(4) Container valves and accessories:

(a) All containers shall be equipped with a fixed liquid level gauge.

(b) All containers with a capacity of 250 gallons or more shall be equipped with a pressure indication gauge having a dial graduated from 0-400 psig.

(c) The filling connection shall be fitted with a positive shutoff valve in conjunction with either an internal back-pressure check valve or an internal excess-flow valve.

(d) All containers with a capacity exceeding 250 gallons shall be equipped for spray loading or with a vapor return valve.

(e) All vapor liquid connections, except safety relief valves and those specifically exempt in Rule VII shall be equipped with excess-flow valves or quick-closing internal valves which shall remain closed except during operating periods.

(f) Fittings shall be adequately protected from physical damage by:

(i) A metal box or cylinder with an open top securely fastened to the container,

(ii) Rigid guards, well braced, welded to the container on both sides of the fittings; or

(iii) A metal dome. If a metal dome is used, the relief valve shall be properly vented through the dome.

(g) If a liquid withdrawal line is installed in the bottom of the container, the connections thereto, including hose, shall not be lower than the lowest horizontal edge of the vehicle axle.

(h) Both ends of the hose shall be made secure while in transit.

(5) Marking of container:

(a) Placard: Four (4) diamond type, non-flammable, department of Transportation gas placards shall be displayed (one on each side and one on each end).

(b) Marking: The words "Anhydrous Ammonia" shall appear on each side and each end in letters no less than two (2) inches high.

(c) The words "Liquid" or "Vapor" shall be placed on or within 12 inches of the appropriate valve by means of stencil, tag, decal, or color coding with a legible legend ORANGE LIQUID and YELLOW VAPOR on the tank.

(6) Farm wagons (implements of husbandry):

(a) Farm wagons (implements of husbandry) are as defined in the Montana Motor Vehicle Code.

(b) All farm wagons shall be securely attached to the vehicle drawing them by means of drawbars supplemented by safety chains of sufficient size and strength to prevent the towed vehicle parting from the drawing vehicle in case the drawbar should break or become disengaged.

(c) A farm wagon shall be constructed so that it will follow substantially in the path of the towing vehicle and will prevent the towed farm wagon from dangerously whipping or swerving from side to side.

(d) All farm wagons shall have at least five (5) gallons of readily available clean water.

(7) Storage of Containers: When a nurse tank containing 10 percent or more of anhydrous ammonia is at an unattended approved storage site, the manually controlled

valves shall be secured against tampering or the nurse tank shall be stored inside a locked, fenced enclosure. Nurse tanks shall be stored no less than 50 feet from the edge of the adjacent road, 150 feet from place of private or public assembly, and 750 feet from place of institutional occupancy. All pressure and liquid level gauges must be in working order.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE XXI SYSTEMS MOUNTED ON EQUIPMENT (IMPLEMENTS OF HUSBANDRY) FOR THE APPLICATION OF ANHYDROUS AMMONIA

(1) This section applies to systems mounted on farm equipment and used for the field application of anhydrous ammonia. Rule IV through Rule XVIII apply to this section unless otherwise noted.

(2) Design, working pressure and classification of containers:

(a) Containers shall be constructed in accordance with Rule IV with a minimum design pressure of 250 psig.

(b) The shell or head thickness of any container shall not be less than 3/16 of an inch.

(3) Mounting of containers:

(a) All containers and flow-control devices shall be securely mounted.

(b) Applicators must be marked the same way as systems mounted on farm wagons transporting anhydrous ammonia. (See Rule XX(5)).

(4) Containers, valves and accessories:

(a) Each container shall have a fixed liquid level gauge.

(b) The filling connection shall be fitted with a positive shutoff valve in conjunction with either an internal back-pressure check valve or an internal excess-flow valve.

(c) To assist in filling applicator tanks, it will be permissible to bleed the tank to open air provided the controlling orifice of the bleeder valve is not in excess of 5/16 inch in diameter. In this instance, an excess flow valve is not required.

(d) Metering devices may be connected directly to the tank withdrawal valve. A union type connection is permissible between the tank valve and metering device. Remote mounting of metering devices is permissible if the hose which meets the specifications set out in Table B is used. When the applicator tank is trailed and the metering device is remotely mounted, such as on the tractor tool bar, an automatic break-a-way, self-closing coupling shall be used.

(e) Valves and accessories shall be protected by means of well braced, rigid guards, and secured to the container on both sides of the fittings. The guards shall be designed to withstand a force in any direction of two times the weight of the loaded container.

(f) Applicators shall be filled at least 100 yards from any occupied building at any off-approved site.

(5) Safety equipment and operation shall be in accordance with the Montana Vehicle Code including rule 23.3.420 ARM.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE XXII REFRIGERATED STORAGE (1) Design of tanks:

(a) Tanks may be designed for any storage pressure desired as determined by economical design of the refrigerated system.

(b) Tanks with a design pressure exceeding 15 psig shall be constructed in accordance with Rule IV in addition the materials shall comply with Rule IV.

(c) Tanks with a design pressure of 15 psig and less shall be constructed in accordance with the general requirements of American Petroleum Institute Standard 620 or API Standard 12-C with the following modifications:

(i) The liquid specific gravity used for design shall be at least as high as the maximum specific gravity at minimum storage temperature of the ammonia being stored.

(ii) The joint efficiency shall not exceed 0.85 unless inspection requirements exceed those of API Standard 12-C. A joint efficiency of 1.00 may be used provided all shell weld junctions are radiographed in addition to the spot radiographic requirements of API Standard 12-C. Full penetration double butt weld shall be used for girth joints.

(iii) The design of shells other than vertical cylindrical tanks for all pressure up to 15 psig inclusive shall use design stresses no higher than the stress values given for pressures from 0.5 to 5 psig inclusive in the first edition of API Standard 620.

(d) Refrigerated storage tanks shall be hydrostatically tested to the highest level possible without the shell membrane stress during the test exceeding 30 percent of the specified minimum yield strength of the shell material. When this limitation precludes completely filling the tank, the remaining welded joints shall be tested using penetrant test methods specified in API Standard 12-C.

(e) Ferritic steels for tank shells and bottoms shall be selected for the design temperature. This application may be based on impact test requirements or equivalent criteria (See Table B).

(f) When austenitic steels or non-ferrous materials are used the Code shall be used as a guide for temperature requirements.

(g) Materials for nozzles, attached flanges, structural members which are in tension, and other such critical elements shall be selected for the design temperature. This selection may be based on impact test requirements or equivalent criteria (See Table B).

(2) Installation of storage tank:

(a) Tanks shall be supported on a non-combustible foundation designed to accommodate the type of tank being used.

(b) Secure anchorage or adequate pier height shall be provided against tank flotation wherever high flood water might occur.

(3) Tank valves and accessories, fill pipes and discharge pipes:

(a) Shutoff valves shall be:

(i) Provided for all connections, except those with a No. 54 drill size restriction, plugs, safety valves, thermometer wells, and

(ii) Located as close to the tank as practicable.

(b) When operating conditions make it advisable, a check valve shall be installed on the fill connection and a remotely operated shutoff valve on other connections located below the maximum liquid level.

(4) Safety devices:

(a) Safety relief valves shall be set to start-to-discharge at a pressure not in excess of the design pressure of the tank and shall have a total relieving capacity sufficient to prevent a maximum pressure in a container of more than 120 percent of the design pressure.

(b) The size of relief valves shall be determined by the largest volume requirement of the following:

(i) Possible refrigeration system upset, such as:

(A) Cooling water failure,

(B) Power failure,

(C) Instrument air or instrument failure,

(D) Mechanical failure of any equipment, or

(E) Excessive pumping rates.

(ii) The American National Standards Institute's Fire Safety Provisions (Section 4.5.2.2).

(c) All safety devices shall comply with the following:

(i) The discharge from safety relief valve shall be vented away from the tank at any desired angle above the horizon using a vent stack designed for weather protection. The size of discharge lines from safety relief valves shall not be smaller than the nominal size of the relief valve outlet connections. Provisions shall be made for draining condensation which may accumulate.

(ii) Discharge lines from two or more safety relief devices located on the same unit may be run into a common discharge header, provided the cross-sectional area of such header is at least equal to the sum of the cross-sectional area of the individual discharge lines and that the settings of the safety relief valves are the same.

(5) Protection of tank accessories and grounding: Refrigerated storage tanks shall comply with the provisions of Rule XIX(9).

(6) Reinstallation of tanks: Tanks of such size as to require field fabrication shall, when moved and reinstalled, be reconstructed and reinspected in complete accordance with

The Code under which they were constructed. The tanks shall be subjected to a pressure retest, and if re-rating is necessary, it shall be done in accordance with the applicable code procedures.

(7) Damage from vehicles: Precaution shall be taken to avoid any damage by trucks, tractors or other vehicles.

(8) Refrigerated load and equipment:

(a) The total refrigeration load shall be computed as the sum of the following:

(i) Load imposed by heat flow into the tank caused by the temperature differential between design ambient temperature and storage temperature.

(ii) Load imposed by heat flow into the tank caused by maximum sun radiation.

(iii) Maximum load imposed by filling the tank with anhydrous ammonia warmer than the design storage temperature.

(b) More than one storage tank may be handled by the same refrigeration system.

(c) Compressors:

(i) A minimum of two compressors shall be provided either of which is of sufficient size to handle the loads listed in Rule XXII(8)(a)(i)(ii). Where more than two compressors are provided, minimum standby equipment equal to the largest normally operating equipment shall be installed.

(ii) Compressors shall be sized to operate with a suction pressure at least 10 percent below the minimum setting of the safety valve(s) on the storage tank and shall withstand a suction pressure at least equal to 120 percent of the design pressure of the tank. Discharge pressure will be governed by condensing conditions.

(d) Compressor drives:

(i) Each compressor shall have its individual driving unit.

(ii) Any standard drive consistent with good design may be used.

(iii) An emergency source of power of sufficient capacity to handle the loads in Rule XXII(8)(a)(i)(ii) shall be provided, unless facilities are provided to safely dispose of vented vapors while the refrigeration system is not operating.

(e) Automatic control equipment:

(i) The refrigeration system shall be arranged with suitable controls to govern the compressor operation in accordance with the load as evidenced by pressure in the tank or tanks.

(ii) Any emergency alarm system shall be installed to function in the event the pressure in the tank or tanks rises to the maximum allowable operating pressure.

(iii) An emergency alarm and shutoff shall be located in the condenser system to respond to excess discharge pressure caused by failure of the cooling medium.

(iv) All automatic controls shall be installed in a manner to preclude operation of alternate compressors unless the controls will function with the alternate compressors.

(f) Separators:

(i) An entrainment separator of a size capable of holding any liquid material entering the line during the transfer operation shall be installed in the compressor suction line. The separator shall be equipped with a drain and gauging device.

(ii) An oil separator of a size capable of holding any liquid material entering the line during the transfer operation shall be installed in the compressor discharge line. It shall be designed for at least 250 psig and shall be equipped with a gauging device and drain valve.

(g) Condensers: The condenser system may be cooled by air or water or both. The condenser shall be designed for at least 250 psig. Provision shall be made for purging non-condensibles either manually or automatically.

(h) Receiver and liquid drain: A receiver shall be provided which is equipped with an automatic float valve to discharge the liquid anhydrous ammonia to storage or with a high pressure liquid drain trap of a capacity capable of holding any liquid material entering the line. The receiver shall be designed for at least 250 psig operating pressure and be equipped with the necessary connections, safety valves, and gauging device.

(i) Insulation:

(i) Where insulation is required, insulation thickness shall be determined by good design.

(ii) Insulation of refrigerated tanks and pipelines shall be waterproofed. The insulating material shall be fire retardant. The weatherproofing shall be fire resistant.

(j) Piping: All piping shall be well supported and provision shall be made for expansion and contraction. All refrigeration system piping shall conform to Section 5 of the American Standards Association's "Code for Pressure Piping" (B 31.1) as it applies to anhydrous ammonia.

(k) Safety equipment: All refrigerated storage plants shall have on hand the minimum safety equipment required under Rule XI(2).

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE XXIII REQUIREMENT OF CONSTRUCTION AND ORIGINAL TEST OF CONTAINERS (1) Containers shall be constructed of a material suitable for use with nitrogen fertilizer solutions.

(2) Nitrogen fertilizer solution containers shall be designed to withstand at least the maximum pressure to which they may be subjected.

(3) Containers in excess of 3,000 gallons and designed for 15 psig or greater shall be constructed in accordance with The Code.

(4) Pressure-vented containers not covered by The Code shall be tested by the manufacturer at one and one-half (1-1/2) times the design working pressure.

(5) Nitrogen fertilizer solution containers of 3,000-gallon capacity or less shall be clearly and permanently labeled as follows:

(a) Name and location of manufacturer.

(b) Design pressure (if pressure vented).

(6) Nitrogen fertilizer solution containers in excess of 3,000 gallons shall be clearly and permanently labeled as follows:

(a) Name and location of manufacturer.

(b) Design pressure (if pressure vented).

(c) Serial number.

(d) Nominal water capacity in U.S. gallons.

(e) Year of manufacture.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE XXIV CAPACITY OF CONTAINERS (1) Individual container capacity shall be limited only by The ASME Code.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE XXV CONTAINER VALVES AND ACCESSORIES (1) Shutoff valves and appurtenances shall be of material suitable for use with the nitrogen fertilizer solution being handled and designed for not less than the maximum pressure to which they may be subjected.

(2) Except for safety pressure and vacuum relief connections and vents, connections to pressure-vented containers shall have shutoff valves located as close to the container as practicable.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE XXVI PIPING, TUBING AND FITTINGS (1) All piping, including tubing, fittings, gaskets, and packing, shall be made of material suitable for use with nitrogen fertilizer solutions and designed for the maximum pressure to which they may be subjected.

(2) Screwed joints are permissible provided they are able to withstand maximum pressures to which they are subjected. Pipe joint compounds shall be resistant to nitrogen fertilizer solutions and compatible with materials employed.

(3) Provision shall be made in the piping system to compensate for expansion, contractions, jarring, vibration and settling.

(4) After assembly, all piping and tubing shall be tested and proved to be free from leaks at a pressure not less than the normal operating pressure of the system.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE XXVII HOSE SPECIFICATIONS (1) Hose and hose connectors shall be fabricated of materials that are resistant to the action of the nitrogen fertilizer solution being used.

(2) Hose and hose connectors shall be designed for at least the maximum pressure to which they may be subjected.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE XXVIII SAFETY DEVICES (1) Every pressure-vented container shall be provided with one or more safety pressure relief valves. The rate of discharge shall be in accordance with the provisions of Table E.

(2) Container safety pressure relief valves shall be set to start-to-discharge at a pressure not to exceed 110 percent of the design pressure of the container.

(3) Safety pressure relief valves shall be arranged so the possibility of tampering will be minimized. If the pressure setting adjustment is external, the relief valves shall be provided with means for sealing the adjustment.

(4) Shutoff valves shall not be installed between the safety pressure relief valves or the vacuum relief valve and the container. A safety relief valve manifold which allows one valve of two, three, four, or more to be closed and the remaining valve(s) will provide not less than the rate of discharge to allow the proper cubic feet per minute of air in relation to tank capacity as shown in Table A.

(5) Each safety pressure relief valve and vacuum relief valve used shall be clearly and permanently marked as follows:

(a) The relief setting.

(b) The rate of discharge. (See Table E.)

(c) The manufacturer's name and identification number.

(6) Connections for venting, such as couplings, flanges, nozzles, and discharge lines, to which relief valves are attached, shall have internal dimensions at least as large in diameter as the relief valve to avoid restriction of flow through the relief valves.

(7) Discharge from safety pressure relief devices of permanent storage containers shall be directed in such a manner as to prevent any impingement of escaping gas.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE XXIX TRANSFER OF LIQUIDS (1) A competent attendant shall supervise the transfer of liquids from the time the connections are first made until they are disconnected.

(2) Pumps shall be of a material suitable for use with the solution being handled and designed to withstand the working pressure.

(3) Air compressors may be used for transfer of nitrogen fertilizer solutions:

(a) The air compressor shall be protected with a back flow check valve in the air line to prevent the flow of nitrogen fertilizer solutions or vapor from the container into the air compressor.

(b) A relief valve large enough to discharge the full capacity of the compressor shall be connected to the discharge before any shutoff valve.

(4) All storage installations shall be equipped with devices so as to minimize tampering while installation is unattended.

(5) Containers shall be filled or used only upon authorization of owner or owner's agent.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE XXX TANK CAR LOADING AND UNLOADING POINTS AND OPERATIONS (1) A sign reading, "Stop-Tank Car Connected" or "Stop-Men at Work", shall be displayed at the active end or ends of the siding while the car is connected for loading or unloading.

(2) While tank cars are on siding for loading or unloading, the wheels at both ends shall be blocked on the rails.

(3) Tank car loading or unloading site shall be substantially level.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE XXXI LIQUID LEVEL GAUGING DEVICES (1) Gauging devices shall be arranged so that the maximum liquid level to which the container may be filled is readily determinable.

(2) Gauging devices shall have a design working pressure at least equal to the design pressure of the container on which they are used.

(3) Tube type liquid level gauging devices on containers in excess of 3,000 gallons shall be equipped with shutoff valves at the lower connection.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE XXXII INDICATING DEVICES (1) Because of explosion and extreme corrosion hazard, no thermometers or other devices containing mercury shall be used where there is slightest probability of introducing mercury into nitrogen fertilizer solutions.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE XXXIII STORAGE INSTALLATIONS FOR NITROGEN FERTILIZER SOLUTIONS (1) Location of Storage Containers. Permanent storage shall be located outside of densely populated areas. If located within the corporate limits of a village, town or city, written approval of the

municipality's governing body shall be submitted to the department, accompanied by a plot plan, drawn to scale, prior to installing said equipment. Storage tanks installed outside of corporate limits after the effective date of these rules shall not be less than 10 feet from the lot line of the property which has been or may be built on or not less than 400 feet from any school, hospital or other existing places of public and private assembly. A copy of the county's zoning permit or municipality's approval and plot plan shall be submitted to the department prior to site inspection. The department will approve sites based upon compliance with this rule.

(2) Installation of Storage Containers:

(a) Aboveground containers shall rest on the ground or on foundations in such a manner as to permit expansion and contraction. Every container shall be supported so as to prevent the concentration of excessive loads on the supporting portion of the shell. That portion of the container in contact with the foundation or the ground shall be protected against corrosion in accordance with The Code.

(b) Wherever high flood water might occur, container shall be securely anchored or placed on a pier of a height above the normal high water mark.

(3) Protection of Storage Containers and Accessories:

(a) Containers need not be electrically grounded. Where an electrical system exists, such as for lighting or pump motors, the electrical system shall be installed and grounded as recommended by the National Electrical Code (as adopted this 1st day of January, 1982).

(b) Storage container sites shall be kept free of debris and weeds.

(c) Information Sign. A sign with letters of a minimum height of 2 inches shall be displayed in a conspicuous place stating the name, address and telephone number of the owner, manager or local agent of the storage location.

(4) Safety Equipment. All stationary, pressure-vented storage plants shall have on hand as a minimum the following equipment:

(a) A gas mask, approved by the U.S. Bureau of Mines (30 CFR part II, Section 14f).

(b) One pair of rubber or plastic gloves.

(c) Readily accessible shower or at least 75 gallons of clean water in an open top container.

(d) Tight-fitting, vent-type chemical goggles or a full face shield.

(5) Transfer of Nitrogen Fertilizer Solutions:

(a) In the handling and transfer of nitrogen fertilizer solutions at the storage site, a closed system or an equally effective system which will control objectionable free vapors shall be provided.

(b) Transfer of nitrogen fertilizer solutions from trucks, semi-trailer or trailers in excess of 3,000-gallon

capacity shall be made only at sites approved by the department (Rule XXXV) or at the site of application.

(6) Filling Volume. The filling volume of pressure-vented nitrogen fertilizer solution storage containers shall not exceed 95 percent.

(7) Abandoned Systems. The owner of an abandoned storage system shall be responsible for its proper maintenance and the safe disposal of the solutions.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE XXXIV SYSTEMS MOUNTED ON TRUCKS, SEMI-TRAILERS AND TRAILERS FOR TRANSPORTATION OF NITROGEN FERTILIZER SOLUTIONS (1) Rule XXV applies to this section.

(2) Mounting Containers in Trucks:

(a) Stops (wood or metal blocks) shall be mounted on the truck, semi-trailer, trailer, or on the container in such a way that the container shall not be dislodged from its mounting due to the vehicle coming to a sudden stop. Back slippage shall also be prevented.

(b) Hold-down devices shall anchor the container to the cradle, frame, or chassis in a manner to prevent the container from rolling or bouncing off the vehicle and that will not create undue concentration of stress.

(c) Any truck or trailer designed so that the container or containers constitute in whole or part the stress member of the chassis of the vehicle in lieu of a frame shall be constructed to withstand the additional stresses which are imposed. Cradles, when welded, shall be welded to the container by a welder who is registered under The Code and shall be designed to withstand a force in any direction equal to two (2) times the weight of the container when filled with nitrogen fertilizer solution.

(d) If a liquid withdrawal line is installed in the bottom of a container, the connections thereto, including hose, shall be lower than the lowest horizontal edge of the trailer axle.

(e) Both ends of the hose shall be secured while in transit.

(f) When the cradle and the tank are not welded together, material which will not deteriorate with weather or create a friction shall be used between them to eliminate metal-to-metal friction.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE XXXV SYSTEMS MOUNTED ON VEHICLES AND IMPLEMENTS OF HUSBANDRY FOR THE TRANSPORTATION OF NITROGEN FERTILIZER SOLUTIONS (1) This section applies to containers of 3,000-gallon capacity or less and pertinent equipment (piping, valves and gauges attached to the container) mounted on vehicles and implements of husbandry used for the transportation of nitrogen fertilizer solutions. Rule XXVI applies to this section.

(2) Mounting Containers:

(a) A hold-down device shall be provided which will anchor the container at one or more places on each side of the container to the vehicle to prevent its dislodging in event of any sudden stop or start.

(b) When containers are mounted on four-wheel trailers, care shall be taken to insure that the weight is evenly distributed over both axles.

(c) When the cradle and the tank are dissimilar metals, material which will not deteriorate with weather or create friction shall be used between to eliminate metal-to-metal contact.

(3) Container, Valves and Accessories:

(a) Each container shall be equipped with a liquid level gauging device.

(b) If a liquid withdrawal line is installed in the bottom of the container, the connections thereto, including hose, shall not be lower than the lowest horizontal edge of the vehicle axle.

(c) Both ends of the hose shall be secured while in transit.

(4) Implements of husbandry are defined in the Montana Motor Vehicle Code transporting nitrogen fertilizer solutions shall include the following safety devices:

(a) All trailers shall be securely attached to the vehicle drawing them supplemented by safety chains of sufficient size and strength to prevent the towed vehicle parting from the drawing vehicle in the case the drawbar should break or become disengaged.

(b) A trailer shall be constructed so that it will follow in the path of the towing vehicle and will prevent the towed vehicle from slipping or swerving dangerously from side to side.

(c) All nitrogen fertilizer system vehicles shall carry at least 5 gallons of clean water.

(d) Conform with the requirement of rule 23.3.420 ARM.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE XXXVI SYSTEMS MOUNTED ON VEHICLES AND IMPLEMENTS OF HUSBANDRY FOR THE APPLICATION OF NITROGEN FERTILIZER SOLUTIONS (1) Working Pressure and Classifications of Containers. Containers shall be constructed in accordance with Rule XXV.

(2) Mounting of Containers shall be as follows:

(a) Each container shall be supported so as to prevent the concentration of excessive loads on the supporting portion of the shell.

(b) A hold-down device shall be provided which will anchor container to vehicle at one or more places on each side.

(c) When the cradle and the tank are of dissimilar metals, material which will not deteriorate with weather or

create friction shall be used between to eliminate metal-to-metal contact.

(3) Container, Valves and Accessories:

(a) Each container shall be equipped with a liquid level gauging device.

(b) Flow control equipment may be connected directly to the tank coupling or flange, in which case a flexible connection shall be used between such control equipment and the remainder of the liquid withdrawal system. Flow control equipment not so installed may be connected to the container with a flexible connection.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE XXXVII CERTIFIED STATEMENT A certified statement shall be filed by persons owning an anhydrous ammonia facility on forms furnished by the department stating that all the requirements, safety equipment, and the requirement of these rules have been met. This statement must be filed with the department before final approval of facility will be given by the department. No operation shall begin or continue until final approval has been issued.

RULE XXXVIII RIGHT OF ENTRY FOR INSPECTIONS (1) Authorized personnel from the department of Agriculture shall have a right to inspect anhydrous ammonia facilities at all reasonable times for the purpose of determining compliance with the provisions of these rules.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE XXXIX ENFORCEMENT (1) If, after an inspection, the department determines a violation of these rules may have occurred, then it shall issue a notice of violation to the owner of the anhydrous ammonia facility.

(2) The notice of violation shall include:

(a) The nature and evidence of the violation.

(b) Date and place of hearing for review of the violation(s).

(3) If, following the hearing, the department determines a violation occurred, then it may certify its findings and conclusions to a prosecuting attorney for prosecution of the violation.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE XL REQUEST FOR VARIENCE (1) A person who owns or is in control of anhydrous ammonia facility may apply in writing to the Montana department of Agriculture for a temporary or permanent variance from any requirement of the rules. The application for a variance shall include such information and data as requested by the Montana department of Agriculture.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE XLI VARIENCE PROCEDURE (1) The Montana department of Agriculture may grant a temporary or permanent variance if it finds that:

(a) The present or proposed anhydrous ammonia facility does not constitute a danger to public health or safety's and;

(b) Compliance with the rules from which the variance is sought would produce hardship without equal or greater benefits to the public.

(2) No variance or temporary variance may be granted except after public hearing on due notice and until the Montana Department of Agriculture has considered the relations interests of the applicant, other owners or property likely to be affected by the anhydrous ammonia facility, and the general public.

(3) The variance or temporary variance may be renewed if no complaint is made to the department because of it or if, after the complaint has been made and duly considered at a public hearing held by the department of Agriculture on due notice, the department finds that the renewal is justified. No renewal may be granted except on application therefore. An application shall be made at least 60 days before the expiration of the variance or temporary variance. A renewal pursuant to this subjection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (1).

(4) Variance or temporary variance, or renewal thereof is not a right of the applicant or holder thereof but shall be granted at the discretion of the department of Agriculture. However, a person adversely affected by a variance or temporary variance, or renewal granted by the department may obtain judicial review thereof.

(5) Nothing in this section and no variance, temporary variance, or renewal granted pursuant to this section may be construed to prevent or limit the application of 80-10-303(5), pre-existing facilities. If the department determines a danger to the health, safety or welfare exists that was not known at the time of issuance of the variance.

AUTH: 80-10-503, MCA IMP: 80-10-503, MCA

RULE XLII PRE-EXISTING FACILITIES (1) If after an inspection the department determines that a facility in existance prior to October 1, 1985 is not in compliance with the provisions in the Anhydrous Ammonia Facility Safety Act or these rules and that noncompliance may constitute a safety hazard then the department shall:

(a) notify the owner in writing that the facility is not in compliance and that the noncompliance may constitute a safety hazard;

(b) provide the owner an opportunity for a hearing to determine if continued noncompliance with the act constitutes a safety hazard.

(2) If following a hearing the department determines the facility constitutes a safety hazard then the department shall notify the owner of the determination and it may seek remedies provided in 80-10-303 MCA.

AUTH: 80-10,503, MCA IMP: 80-10-503, MCA

RULE XLIII TABLES (1) Table A - Rate of Discharge.

TABLE A - RATE OF DISCHARGE

Minimum required rate of discharge in cubic feet per minute (CFM) of air for safety relief valves. Discharge measured at 60 degrees F and atmospheric pressure (14.7 pounds per square inch).

Surface Area Sq. Ft.	CFM	Surface Area Sq. Ft.	CFM	Surface Area Sq. Ft	CFM
20	258	185	1,600	900	5,850
25	310	190	1,640	950	6,120
30	360	195	1,670	1,000	6,380
35	408	200	1,710	1,050	6,640
40	455	210	1,780	1,100	6,900
45	501	220	1,850	1,150	7,160
50	547	230	1,920	1,200	7,410
55	591	240	1,980	1,250	7,660
60	635	250	2,050	1,300	7,910
65	678	260	2,120	1,350	8,160
70	720	270	2,180	1,400	8,410
75	762	280	2,250	1,450	8,650
80	804	290	2,320	1,500	8,900
85	845	300	2,380	1,550	9,140
90	885	310	2,450	1,600	9,380
95	925	320	2,510	1,650	9,620
100	965	330	2,570	1,700	9,860
105	1,010	340	2,640	1,750	10,090
110	1,050	350	2,700	1,800	10,330
115	1,090	360	2,760	1,850	10,560
120	1,120	370	2,830	1,900	10,800
125	1,160	380	2,890	1,950	11,030
130	1,200	390	2,950	2,000	11,260
135	1,240	400	3,010	2,050	11,490
140	1,280	450	3,320	2,100	11,720
145	1,310	500	3,620	2,150	11,950
150	1,350	550	3,910	2,200	12,180
155	1,390	600	4,200	2,250	12,400
160	1,420	650	4,480	2,300	12,630
165	1,460	700	4,760	2,350	12,850
170	1,500	750	5,040	2,400	13,080
175	1,530	800	5,300	2,450	13,300
180	1,570	850	5,590	2,500	13,520

Surface area = Total outside surface area of container in square feet. When the surface area is not stamped on the name plate or when the marking is not legible, the area can be calculated by using one of the following formulas:

(a) Cylindrical container with hemispherical heads area = (overall length in feet times outside diameter in feet times 3.1416).
(b) Cylindrical container with semi-ellipsoidal heads. Area = (overall length in feet plus 0.3 outside diameter in feet) times diameter in feet times 3.1416.
(c) Spherical Container. Area = Outside diameter in feet squared times 3.1416.

Flow Rate SCFM Air = Cubic feet per minute of air required at standard conditions, 60 degrees F and atmospheric pressure (14.7 psia).

The rate of discharge may be interpolated for intermediate values of surface area. For container with total outside surface area greater than 2,000 sq. ft., the required flow rate can be calculated using the formula, Flow Rate SCFM Air = 22.11A degrees .82, where A = Outside surface area of the container in square feet.

(2) Table B - Guide for Selection of Materials for Refrigerated Ammonia Storage Tanks.

TABLE B - GUIDE FOR SELECTION OF MATERIALS FOR REFRIGERATED AMMONIA STORAGE TANKS

(a) Materials for shell and bottom for tanks of all design pressures shall have ductility at low temperatures equal to or superior to those listed in Table C.
(b) When austenitic steels or non-ferrous materials are used, the Code shall be used as a guide for temperature requirements.
(c) Materials for nozzles, attached flanges, structural members which are in tension, and other such critical elements shall be selected for the design temperature. This selection shall be based on impact test requirements, or on probabilities such as used for the plate materials listed in Table C.

(3) Table C - Minimum Material Requirements for Shells and Bottoms of Refrigerated Storage Tanks for Various Temperatures and Thicknesses.

TABLE C - MINIMUM MATERIAL REQUIREMENTS FOR SHELLS AND BOTTOMS OF REFRIGERATED STORAGE TANKS FOR VARIOUS TEMPERATURES AND THICKNESSES

Design Temperature	Thickness	Material Spec.	Qualifications to be Added to the Basic Specification
65 F to 25 F, Incl. (See Note 1)	Up to 1/2", Incl.	Any approved steel with specified min. T.S. not exceeding 60,000 psi	None
	Over 1/2" to 1", Incl.	A-131B (or C)	None
		Case 1256	None
		A-201 A & B	FGP (Fine Grain Practice)
	Over 1" to 1 3/8", Incl.	A-131C, Case 1256	None
		A-201 A & B	None
			FGP
	Over 1 3/8"	A-131C	Normalized
		Case 1256	Normalized
		A-201 A & B	FGP, Normalized
Below 25 F to 5 F, Incl. (See Note 2)	Up to 1/2", Incl.	Case 1256	None
		A-201 A & B	None
	Over 1/2" to 1 3/8", Incl.	A-131B (to 1" max.)	FGP
		A-131C	FGP
		Case 1256	FGP
		A-201 A & B (to 1" max.)	FGP, High Mang.*
		A-201 A & B (over 1")	FGP, High Mang., Normalized
	Over 1 3/8"	A-131C	Normalized
		Case 1256	Normalized
		A-201 A & B	FGP, High Mang., Normalized
Below -5F to -30F (See Note 3)	Up to 1/2" Incl.	Case 1256	FGP
		A-201 A & B	FGP, High Mang.
	Over 1/2" to 1 3/8" Incl.	A-131B (to 1" max.)	FGP, Normalized
		A-131C	Normalized
		Case 1256	FGP, Normalized
		A-201 A & B	FGP, High Mang., Normalized
	Over 1 3/8"	A-300 Class 1	A-201 A & B Only

*Manganese content of 0.70% to 1.0% is preferred in lieu of usual content of 0.80% maximum.

Note 1: The design temperature shall be taken as the lower of the following:

(a) The minimum temperature to which the tank contents will be refrigerated.
(b) The minimum estimated tank shell temperature due to atmospheric temperatures, considering the effectiveness of the insulation in keeping shell temperatures above expected minimum atmospheric temperature (if expected to be below the refrigerated temperature).

Note 2: For this thickness, temperature category approved steels include all those listed in API 12-C and API 620. Materials for vessels must comply with requirements of the Code and any additional requirements of this table. A-131 steel is not approved by ASME and some Code cases have not been approved by local jurisdictions. All specific materials listed in table are satisfactory for all designs based on API 12-C or API 620.

Note 3: For vessels constructed under the Code with a design temperature below -20F., the impact requirements shall comply with Table B.

(4) Table D - Repair Welding.

TABLE D - REPAIR WELDING

(a) All containers, piping and appurtenances which have contained or have been in direct contact with nitrogen fertilizer solutions containing ammonium nitrate must be thoroughly cleaned and washed with water (or steam) to eliminate all solid ammonium nitrate before welding or torch cutting may be attempted. Extreme caution should be taken before attempting to weld or torch cut any container when ammonium nitrate could be trapped, for example, in the area between tank shell and a reinforcing plate.
(b) All containers, piping, and appurtenances which have contained aqua ammonia (ammonium hydroxide) must be thoroughly vented and thoroughly washed with large quantities of water. After washing, they shall be filled with water to a level higher than area to be welded or repaired.
(c) All containers shall be welded in accordance with the Code.

(5) Table E - Safety Pressure Relief Valves.

TABLE E - SAFETY PRESSURE RELIEF VALVES

(a) The rate of discharge shall be stamped on the safety relief valve in cubic feet of air per minute at:
   (1) 60 degrees F,
   (2) 14.7 pounds per square inch absolute, and
   (3) 120 percent of the stamped start-to-discharge setting.

(b) Safety pressure relief valves in systems utilizing air compressors for the transfer of nitrogen fertilizer solutions shall have a minimum rate of discharge in cubic feet per minute of air of 120 percent of the compressor manufacturer's maximum rated capacity.

(c) Safety pressure relief valves in systems utilizing pumps for transfer of nitrogen fertilizer solutions shall have a minimum rate of discharge of 120 percent of the liquid inflow rate. This can be computed as follows: Liquid pump maximum rated capacity in GPM times 0.16 equals vapor flow in CFM.

(3) These rules are being proposed so as to implement the Anhydrous Ammonia Facility Safety Act enacted by the 1985 Montana Legislature. These rules provide the necessary safety requirements for the storage and handling of anhydrous ammonia. They also include the necessary procedures for administering the act.

(4) Interested persons may present their data, views or arguments either orally or in writing at the hearing, written data, views or arguments may also be submitted to O. Roy Bjornson, Administrator, Plant Industry Division, Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620, no later than August 29, 1986.

(5) Garth Jacobson has been designated to preside over the conduct of the hearing.

Keith Kelly
Director

Certified to the Secretary of State July 21, 1986

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF OPTOMETRISTS

In the matter of the proposed amendments of 8.36.403 concerning applications, 8.36.406 concerning general practice requirements, 8.36.407 concerning unprofessional conduct, 8.36.411 concerning disciplinary actions, 8.36.601 concerning requirements	)))))))	NOTICE OF PROPOSED AMENDMENT OF 8.36.403 APPLICATION FOR EXAMINATION, 8.36.406 GENERAL PRACTICE REQUIREMENTS, 8.36.407 UNPROFESSIONAL CONDUCT - VIOLATIONS, 8.36.411 DISCIPLINARY ACTIONS, 8.36.601 REQUIREMENTS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On September 1, 1986, the Board of Optometrists proposes to amend the above-stated rules.

2. The proposed amendment of 8.36.403 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1071, Administrative Rules of Montana)

"8.36.403 APPLICATION FOR EXAMINATION (1) will remain the same.

~~(a) The department shall then send such application to each member of the board for his or her approval or rejection, who, in turn, must return said application immediately to the department.~~

~~(b)~~ The department shall notify each applicant as to the acceptance or refusal of his application at least one week prior to the regular July meeting.

(2) No application fee for examination will be returned after the application has been accepted, ~~due to withdrawal of~~ regardless whether the applicant withdrew the application or failed ~~or his failure~~ to take the examination."

Auth: 37-10-202, MCA Imp: 37-10-302, MCA

3. The procedure of mailing applications between the Board members and the Board office for their approval is both inefficient and cumbersome. The short time frame allowed between the application deadline and notification letter and the great chance of applications being misplaced or lost are the reasons why the Board proposes to amend this rule.

The reason for the other proposed amendment is to make the language of this rule more concise.

4. The proposed amendment of 8.36.406 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1072 and 8-1073, Administrative Rules of Montana)

"8.36.406 GENERAL PRACTICE REQUIREMENTS (1) and (1)(a) through (e) will remain the same.

~~(f) the use of advertising or statements claiming professional superiority or having equipment others cannot obtain shall constitute a violation of section 37-10-311, MCA.~~

~~(g)~~ (f) the board will consider all advertising appearing over the signature of an individual as having been inserted and approved by that individual, and will hold the individual responsible for such advertising. If advertising appears over the signature of a company, firm, or corporation, all the individual officers or partners of the organization will be considered individually responsible for such advertising.

(2) will remain the same."

Auth: 37-1-131, 37-10-202, MCA Imp: 37-10-301, 37-10-311, MCA

5. The reason for the proposed amendment is that the Board entered into an agreement with the Federal Trade Commission that became final August 29, 1985, which prohibits the Board from maintaining rules that prohibit truthful advertising of claims of professional superiority with respect to the sale of optometric service.

6. The proposed amendment of 8.36.407 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1073 and 8-1074, Administrative Rules of Montana)

"8.36.407 UNPROFESSIONAL CONDUCT - VIOLATIONS ~~(1) Employing solicitors, agents, etc., to solicit patients, or employing persons to pass out cards or other advertising material constitutes a violation of section 37-10-311 (2)(c), MCA.~~

~~(2) It will be considered a violation of section 37-10-311 (2)(h), MCA for any person, firm or partnership to do any of the following:~~

~~(a) to advertise 'free examination of eyes', 'free examination', 'consultation included', or any other words or phrases which might convey the impression to the public that the eyes are examined free;~~

~~(b) to use advertising which states any stipulated amount of money, or no money, as 'down payment', and/or any stipulated amount of money as a payment, be it daily, weekly, monthly, or at the end of any other period of time; or~~

~~(c) to use in advertising, the word, 'installment' or 'credit' or a similar word whether it be in connection with or without a stipulated price.~~

~~(3)~~ (1) For the purposes of setting standards of conduct for the profession and of supplementing the statutory designation of unprofessional conduct set forth in section 37-10-311, MCA, the board defines the following conduct as unprofessional:

(a) through (m) will remain the same."
Auth: 37-1-131, 37-10-202, MCA Imp: 37-10-311, MCA

7. The reason for the proposed amendment of subsection (1) under Rule 8.36.407 is that it is redundant to Section 37-18-311 (2)(e), MCA. The reason for the additional changes is that the Board entered into an agreement with the Federal Trade Commission that became final August 29, 1985, which does not allow the Board to maintain rules that prohibit truthful advertising of price-related terms with respect to the sale of optometric services.

8. The proposed amendment of 8.36.411 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1075, Administrative Rules of Montana)

"8.36.411 DISCIPLINARY ACTIONS (1) and (1)(a) through (c) will remain the same.

(2) The board may impose one or more of the following sanctions in appropriate cases:

(a) revocation of a license;

(b) suspension of its judgment of revocation on terms and conditions determined by the board;

(c) suspension of the right to practice for a period not exceeding one (1) year;

(d) placing a licensee on probation;

(e) public or private reprimand or censure of a license;

(f) limitation or restriction of the scope of the license and the licensee's practice;

(g) deferral of disciplinary proceedings or imposition of disciplinary sanctions; or

(h) ordering the licensee to successfully complete appropriate professional training.

(3) When a license is revoked or suspended, the licensee must surrender the license to the board."
Auth: 37-1-131, 37-10-202, MCA Imp: 37-1-136, MCA

9. This proposed amendment is necessary because the Board wishes to be able to impose a variety of sanctions depending on the circumstances of the offense. A formal definition of those sanctions and circumstances is necessary to ensure due process.

10. The proposed amendment of 8.36.601 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1079, Administrative Rules of Montana)

"8.36.601 REQUIREMENTS (1) through (3) will remain the same.

(4) After attendance at an approved continuing education program the optometrist shall submit a completed Continuing Education Report Form.

(5) The board may randomly select submitted Continuing Education Report Forms for audit and verification. It will be the responsibility of each optometrist to maintain his or her own records of participation and make them available upon request."

Auth: 37-1-131, 37-10-202, MCA Imp: 37-10-308, MCA

11. The reason for the amendment is to establish a means by which the Board can ensure compliance with the statute requiring continuing education for license renewal.

12. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Optometrists, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than August 28, 1986.

13. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Optometrists, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than August 28, 1986.

14. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivisio or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 21 based on the 213 licensees in Montana.

BOARD OF OPTOMETRISTS
PAUL L. KATHREIN, OD
PRESIDENT

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

Certified to the Secretary of State, July 21, 1986.

BEFORE THE WORKERS' COMPENSATION DIVISION
OF THE STATE OF MONTANA

In the Matter of the Amendment of ARM 24.29.702 Regarding Self-Insurers	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE REGARDING SELF-INSURERS

TO: All Interested Persons:

1. On August 20, 1986, at 10:00 a.m., a public hearing will be held in Room 302 of the Workers' Compensation Building, 5 South Last Chance Gulch, Helena, Montana, to consider the proposed amendment of the rule ARM 24.29.702 regarding Self-Insurers under Sections 39-71-403 and 39-71-2101 to 39-71-2109, MCA, as amended by Chapter 480 of the Laws of 1985.

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

24.29.702 ELECTION TO BE BOUND BY COMPENSATION PLAN NO. 1

(1) Eligibility: Any employer or group of employers, except state agencies specified in section 39-71-403, MCA, may elect to be bound as a self-insurer under plan no. 1, if in accordance with 39-71-2102, MCA, the employer or group of employers submits, on forms provided by the division, satisfactory proof of solvency and financial ability to pay the compensation, benefits, and all liabilities which are reasonably likely to be incurred under the workers' compensation and occupational disease acts during the state's fiscal year or the portion of the state's fiscal year for which election under this plan is effective, and if, in accordance with 39-71-2103, MCA, the division finds the employer or group of employers to have the necessary finances. The individual employers of a group electing coverage as a self-insurance group must be primarily engaged in the same trades, businesses, occupations, professions or functions.

(2) Solvency and Ability to Pay: Proof of solvency and financial ability to pay compensation, benefits and liabilities is required. Employers or groups of employers electing to be self-insured must demonstrate financial stability by providing audited financial statements that upon analysis indicate sufficient security, as determined by the division, to protect the interests of injured workers. These shall consist of analysis of financial conditions, current and historical, including, but not limited

to, the following factors: quick ratio, current ratio, current liabilities to net worth, current liabilities to inventory, total liabilities to net worth, fixed assets to net worth, collection period, inventory turnover, assets to sales, sales to net working capital, accounts payable to sales, return on sales, return on assets, return on net worth and corporate bond rating. Only an employer or group of employers meeting financial standards acceptable to the division shall be granted permission to be bound as a plan no. 1 self-insurer.

(3) When Security Required: Security must be deposited with the division by the employer or group of employers on order of the division under the following conditions:

(a) The employer or group of employers no longer has the solvency or ability to pay compensation, benefits, and liabilities as determined under standards applied in subsection (2).

(b) The employer or group of employers does not have sufficient securities on deposit with the division under section 39-71-2107, MCA, to meet current liabilities, in addition to all other liabilities.

(c) Every group of employers must deposit security with the division. A group of employers exclusively comprised of political subdivisions may be required to deposit security under this rule.

(4) Surety Bond, Amounts Required: When security is required under subsection (3), the division will require that surety bonds be deposited in the following amounts:

(a) Under subsection 3(a), the amount shall be equivalent to the employer's or group of employers' total workers' compensation and occupational disease liabilities.

(b) Under subsection 3(b), the bond shall be in an amount which, in the division's judgment, provides reasonable protection and guaranty of the payment of outstanding liabilities.

(c) Under subsection 3(c), the amount shall be a minimum of $500,000 or 110% of the group of employers' cumulative average paid losses over the four previous years, whichever is greater, and shall be no less than the retention amount of the group of employers' excess insurance.

(5) Surety Bonds, Criteria: When a surety bond is required, the following criteria shall apply:

(a) The division shall accept a surety bond only from companies certified by the United States Department of Treasury as "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," as published in the Federal Register, Vol. 50, No. 126, July 1, 1985, copies of which are available from the Division of Workers' Compensation, 5 South Last Chance Gulch, Helena, Montana, 59601, and the Superintendent of Documents, United States Government

Printing Office, Washington, D.C., 20402. Surety must specify agreement to provide a claims guarantee payment bond.

(b) A bond replaced with another surety bond must be in identical form, be of the same coverage amount and contain inclusive dates of surety coverage. The division must be advised immediately of such a change.

(c) Surety bonds shall name the Montana Division of Workers' Compensation as obligee and be held by the division. Upon discontinuance of self-insured status for any reason, the division shall hold surety bonds of that employer as reserves for all outstanding workers' compensation liabilities. The division shall retain surety bonds until it is satisfied that all liabilities have been met or are properly reserved. In the event liabilities have not been met, the division shall disburse the proceeds of such surety bonds to the maximum extent possible to workers' compensation claimants and providers.

(d) The bond must include a statement that the bonding company is required to give thirty (30) days notice of its intent to terminate future liability to both the principal and the division. However, the bonding company shall not be relieved of liability for injuries occurring prior to the date of termination.

(e) A surety bond shall be issued on the form prescribed by the division as set forth in appendix A.

(6) Excess Insurance: Specific excess and aggregate excess insurance shall be required of all employers and groups of employers electing coverage under plan no. 1 as a proof of financial ability to pay compensation benefits and other liabilities. The contract or policy of specific excess insurance and aggregate excess insurance shall comply with all of the following:

(a) Is issued by a carrier licensed in the United States with a Best's Rating of A+, A or B+.

(b) Is not cancelable or nonrenewable unless written notice by registered or certified mail is given to the other party to the policy and to the division not less than thirty (30) days before termination by the party desiring to cancel or not renew the policy.

(c) Any contract or policy containing any type of commutation clause shall provide that any commutation effected thereunder shall not relieve the underwriter or underwriters of further liability in respect to claims and expenses unknown at the time of such commutation or in regard to any claim apparently closed at the time of initial commutation which is subsequently reopened by or through a competent authority. If the underwriter proposes to settle a liability for future payments payable as compensation for accidents or occupational diseases occurring during the term of the policy by the payment of a lump sum to the employer or group of employers to be fixed as provided in the commutation clause of the policy, then not less than thirty (30) days prior notice to such

commutation shall be given by the underwriter(s) or its (their) agent by registered or certified mail to the division. If any commutation is effected, the division shall have the right to direct such sum be placed in trust for the benefit of the injured employee(s) entitled to such future payments of compensation.

(d) If an employer or group of employers becomes insolvent and is unable to make benefit payments, the excess carrier shall make such payments to claimants as would have been made by the excess carrier to the employer, after it has been determined the retention level has been reached on the excess contract, as directed by the division.

(e) All of the following shall be applied toward the reaching of retention level in the excess insurance contract:

(i) payments made by the employer or group of employers,

(ii) payments due and owing to claimant by the employer or group of employers, and

(iii) payments made on behalf of the employer or group of employers by any surety bond under a bond required by the division as defined in subsection (4).

(f) Copies of a certificate of the excess insurance and aggregate insurance shall be filed with the division together with a certification such policy fully complies with the provisions of the Workers' Compensation Act.

(7) Initial Election: Individual Employers: An individual employer initially electing to be bound as a self-insurer must provide the following:

(a) A completed application on forms provided by the division.

(b) Audited financial statements for the last two (2) years.

(c) Proof that it has been in business for a period of not less than five (5) years; however,

(i) an employer in business less than five (5) years may be considered if its liability is guaranteed by a parent corporation which has been in business for a period of not less than five (5) years;

(ii) an employer whose liability is guaranteed by a parent corporation must provide a corporate resolution and an agreement of assumption and guarantee of workers' compensation liabilities on forms prescribed by the division as set forth in appendices B and C.

(d) Evidence that it has obtained an insurance policy of specific excess and aggregate excess insurance with policy limits and retention amounts acceptable to the division, as required in subsection (6). Excess insurance must be managed by a third-party administrator. Evidence must include the administrator's approved specific and aggregate Self Insured Retention and maximum policy limits;

(e) Evidence that it had a minimum of 100 employees per year over the preceding two (2) years; however, an

employer with a minimum of less than 100 employees per year over the preceding two (2) years may be considered if its liability is guaranteed by a parent corporation which has a minimum of 100 employees per year and at least two (2) years' experience as a self-insurer in another state and is guaranteeing the employer's liability as provided in subsection (7) (c) (ii).

(f) A loss run and summary from insurance carriers who provided its coverage during the preceding four (4) years.

(g)Evidence that its internal or contracted claims adjustment service is in compliance with ARM 24.29.804.

(8) Initial Election: Group of Employers: An employer initially electing to be bound as a group self-insurer must provide the following:

(a) A completed application on forms provided by the division;

(b) A list of all individual employers making up the group;

(c) A signed copy of the by-laws adopted by the group;

(d) A copy of an agreement signed by each individual employer showing:

(i) each employer's agreement to accept joint and several liability for all obligations incurred by the group.

(ii) provisions for addition of a new member to the self-insurance group.

(iii) provisions for withdrawal of a member from the self-insurance group.

(iv) provision for power of attorney between the individual employers and the self-insurance group.

(e) A copy of the last two years' audited financial statements of each individual employer participating in the group;

(f) Evidence that each employer in the group has been in business for a period of not less than five (5) years;

(g) Evidence that the group had a combined minimum of 100 employees per year over the preceding two (2) years;

(h) A loss run and summary from insurance carriers who provided coverage to each employer in the group during the preceding four (4) years;

(i) Evidence that it has an insurance policy of specific excess and aggregate excess insurance with policy limits and retention amounts acceptable to the division, as required in subsection (6). Excess insurance must be managed by a third-party administrator. Evidence must include the administrator's approved specific and aggregate Self Insurance Retention and maximum policy limits;

(j) A surety bond in an amount as required in subsection 4;

(k) Evidence of its internal or contracted claims adjustment service in compliance with ARM 24.29.804;

(l) Identification of the financial institution the group will use to deposit and withdraw funds for purposes of paying compensation;

(m) An explanation of how claims reserves will be established on each case and the method of review to assure accuracy and adequacy of the amount of the reserves;

(n) A composite listing of the estimated annual gross premium to be paid by each member of the association;

(o) A projection of administrative expenses for the first year of operation as an amount and as a percentage of the annual premium.

~~(2)~~(9) Permission: When the division finds the employer or group of employers to have the necessary finances, proof of solvency and financial ability as required in subsection (2) of this rule and security deposited with the division if required and proof of excess insurance as required in subsection (7) or (8) of this rule, it will issue the employer or group of employers an order granting permission to carry on business as a self-insurer from the date the finding is made through the remaining portion of the fiscal year within which the election of this plan is made, or through the ensuing fiscal year when the employer or group of employers renews this election. An election under this plan is effective only for the period specified in the order or until the order is revoked in accordance with subsection ~~(4)~~ (13).

~~(3)~~(10) Renewal Required: An employer or group of employers who has effectively elected to be bound by plan no. 1 may renew the election for the next ensuing fiscal year, by meeting all the requirements ~~of sections (1) (2)~~ of this rule ~~at least 30 days before the expiration of the state's fiscal~~ by April 30th each year. If an employer or group of employers does not renew its election, it must elect to be bound by compensation plan no. 2 or plan no. 3.

(11) Renewal, Individual Employers: An individual employer renewing an election to be bound as a selfinsurer under plan no. 1 must provide the following:

(a) A completed renewal application on forms provided by the division;

(b) Its latest year's audited financial statement;

(c) Evidence that it has obtained an insurance policy of specific excess and aggregate excess insurance with policy limits and retention amounts acceptable to the division , as required in subsection (6);

(d) Evidence it had a minimum of 100 employees over the preceding year;

(i) An employer with less than 100 employees over the preceding year may be considered if its liability is guaranteed by a parent corporation which has a minimum of 100 employees per year over the preceding two (2) years

and at least two (2) years' experience as a self-insurer in another state.

(e) An employer whose liability is guaranteed by a parent corporation must provide a corporate resolution and an agreement of assumption and guarantee of workers' compensation liabilities on forms prescribed by the division as set forth in appendices B and C;

(f) A loss run and summary for the preceding year and, on forms provided by the division, its number of open claims, the amounts paid to date on open claims and its estimated compensation and medical liabilities;

(g) A statement indicating whether or not estimated compensation and medical liabilities are included in the employer's balance sheet.

(12) Renewal, Group of Employers: A group of employers renewing an election to be bound as a group self-insurer must provide the following by April 30th each year:

(a) A completed application on forms provided by the division;

(b) A list of all individual employers making up the group;

(c) A copy of the latest year's audited financial statement;

(d) Evidence that the group had a combined minimum of at least 100 employees over the preceding year;

(e) A loss run and summary for the preceding year;

(f) A composite listing of the estimated annual gross premium to be paid by each member of the association;

(g) A projection of administrative expenses for the coming year's operation as an amount and as a percentage of the annual premium.

~~(4)~~(13) The division will revoke its order granting permission to carry on business as a self-insurer after determining that the employer or group of employers no longer has the necessary ~~finances~~ financial resources and ability to pay the compensation, benefits and all liabilities which have been or are reasonably likely to be incurred during the period the employer or group of employers has been a self-insurer and through the remaining fiscal year. The division may suspend the permission to operate as a self-insurer on good cause shown pending a hearing and decision on whether the permission should be revoked. The division's revocation order is not effective unless contested case procedures have been conducted in accordance with ARM 24.29.207. An employer or group of employers whose permission to carry on business as a self-insurer has been revoked must elect to be bound by compensation plan no. 2 or plan no. 3 on the effective date of such revocation.

(14) Any employer or group of employers operating as a self-insurer under plan no. 1 which terminates its self-insurer status, or the self-insurer status of any or all of its subsidiaries, or members, for any reason, must notify the division in writing of its intent to terminate twenty (20) days before such termination. An employer, or group of employers, who terminates as a self-insurer, but continues to operate in business must elect to be bound by compensation plan no. 2 or plan no. 3 on the effective date of such termination.

~~(5)~~(15) If an employer or group of employers seeking election to be bound by plan no. 1 under this rule does not agree with the division's decision, ~~he~~ it may request an administrative review in accordance with ARM 24.29.206. If the employer or group of employers does not agree with the division's decision after completion of administrative review procedures, ~~he~~ it may request contested case procedures in accordance with ARM 24.29.207.

AUTH: 39-71-203, MCA, and Chapter 480 of Laws of 1985;

IMP: 39-71-403 and 39-71-2101 to 39-71-2109, MCA, as amended by Chapter 480 of Laws of 1985.

3. Sections 39-71-403, MCA and 39-71-2101 to 39-71-2109, MCA, as amended by Chapter 480 of the Laws of 1985 require the division to establish rules by which individual employers and groups of individual employers may be certified as self-insured under plan no. 1 of the Workers' Compensation Act. These rules are necessary in order to provide procedures and guidelines by which the financial ability of employers to meet the obligations under the Workers' Compensation Act can be assessed for the purpose of determining whether they should be certified as self-insurers.

4. Interested persons may present their data, views and arguments either orally or in writing at the hearing. Written arguments, views or data may also be submitted to the Division of Workers' Compensation, 5 South Last Chance Gulch, Helena, Montana, 59601, no later than August 29, 1986.

5. Mr. Harold Wilcox, Administrative Officer of the division, has been designated to preside over and conduct the hearing.

6. The authority of the division to amend the rules as proposed is based on Section 39-71-203 and 39-71-2102, MCA, and Section 4 of Chapter 480 of the Laws of 1985. The proposed amended rule implements Sections 39-71-403 and 39-71-2101 to 39-71-2109, MCA, as amended by Chapter

480 of the Laws of 1985.

ROBERT J. ROBINSON,
Administrator
Division of Workers'
Compensation

Certified to the Secretary of State July 21, 1986.

APPENDIX A

MONTANA DIVISION OF WORKERS' COMPENSATION
5 South Last Chance Gulch
Helena, Montana 59601

SURETY BOND FOR SELF-INSURING EMPLOYERS

KNOW ALL MEN BY THESE PRESENTS: That _____ of _____ as Principal, and _____ of _____ as Surety, are held and firmly bound unto the Montana Division of Workers' Compensation, as Obligee, for the use and benefit of claimants entitled to benefits under the Workers' Compensation and Occupational Disease Acts, Title 39, Chapters 71 and 72, Montana Code Annotated, in respect to the employees of said Principal, in the penal sum of _____ Dollars ($_____) for the payment of which, the Principal and the Surety bind themselves respectively, and their respective heirs, administrators, executors, successors and assigns, jointly and severally, by these presents.

WHEREAS, In accordance with the provisions of said Workers' Compensation and Occupational Disease Acts, the Principal has elected and been permitted by the Division of Workers' Compensation to operate as a self-insurance carrier; and,

WHEREAS, In consideration thereof, and in consideration of the acceptance of this bond, the Principal hereby agrees as follows:

To pay compensation according to the terms and provisions of said Act to its employees, or to their dependents when death ensues, and to furnish medical aid pursuant to Section 39-71-704, MCA, and to pay funeral expenses, as provided by said Act, and to pay, perform and discharge any lawful award entered in regard to such injured or killed employees, or dependents of deceased employees.

And it is further agreed by said Principal and Surety that any lawful award entered against said Principal, shall likewise be accepted as an award against said Surety, and notice to said Principal shall be deemed notice to the Surety.

And it is further agreed by said Principal that said self-insurance permission is accepted subject to authority of said Division of Workers' Compensation to prescribe the rules and regulations, upon which said permission shall be

granted or continued, and subject to the full right and authority of said Division to at any and all times during the life of said permission prescribe new and additional rules and regulations.

And it is further agreed that the Surety does undertake and agree that the obligation of this bond shall cover and extend to all present, existing and potential liability of said Principal as a self-insurer to the extent of the penal sum herein named, without regard to specific injuries, date or dates of injuries, happenings or events which have or shall be granted by any award or awards entered or made under the Workers' Compensation and Occupational Disease Acts. However, the surety shall not be liable for obligations incurred through injuries occurring after the date of termination of this bond.

And it is particularly understood and agreed that the liability of said Principal for any such award or compensation is not limited to or by the amount of this bond, nor diminished, curtailed nor lessened by anything herein contained, and it is further understood and agreed that the said Surety shall be liable to the full penal sum herein mentioned for the default of the Principal in fully discharging any liability on the part of the Principal accruing hereunder. The liability herein imposed shall be joint and several as to and between said Principal and Surety, and each and all of them. The word "Surety" when herein used includes plural as well as singular.

NOW, THEREFORE, If said Principal and Surety shall perform or cause to be performed, each and every agreement, stipulation, term and covenant herein set forth and to pay or cause to be paid, all awards entered or made under the Workers' Compensation and Occupational Disease Acts, as provided by this bond, or under and in accordance with the terms, provisions and limitations of said Act, then this obligation to be null and void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER: (a) This bond shall continue in force until cancelled as herein provided; (b) This bond may be cancelled by the Surety by sending of notice in writing to the Obligee, stating when, not less than thirty (30) days thereafter, liability hereunder shall terminate.

IN TESTIMONY WHEREOF, Said Principal and said Surety have caused this instrument to be duly executed and have hereunto affixed their seals this _____ day

of _____, A.D. 19___.

Attest:

By_____
(Title)

(Seal)

_____
(Principal)

By_____
(Title)

_____
(Surety)

By_____
(Attorney-in-Fact)

APPENDIX B

RESOLUTION

At a meeting of the Executive Committee of the Board of Directors of _____, a corporation organized and existing under the laws of the State of _____, held on the_____ day of _____, 19___, a quorum being present, the following Resolution was adopted:

"RESOLVED, that _____, organized and existing under the laws of the State of _____, authorizes that its legally controlled subsidiary, _____ organized and existing under the laws of the State of _____ and its wholly-owned subsidiaries, (if any) _____ seek permission to self-insure workers' compensation and occupational disease liabilities in the State of Montana; and

BE IT FURTHER RESOLVED, that _____ will guarantee the payment of all workers' compensation and occupational disease liabilities by its self-insured subsidiary _____ resulting from operations in Montana as a permissibly self-insured; and

BE IT FURTHER RESOLVED, that any Vice President and Secretary of the parent corporation are severally authorized to sign the State of Montana's form entitled "Agreement of Assumption of Guarantee of Workers' Compensation Liabilities on Behalf of the Subsidiaries."

I, _____, the undersigned secretary of _____, a corporation, do hereby certify that I am the secretary of _____, that the foregoing is a full, true and correct copy of a resolution duly passed by the executive committee of the board of directors thereof at a meeting of said committee held on the _____ day of _____, 19___, and that said resolution has never been revoked, rescinded, or set aside, and is now in full force and effect.

IN WITNESS WHEREOF, I set my hand and the seal of the corporation this _____ day of _____, 19___.

_____
Name of Corporation

_____
Signed

_____
Typed Name

_____
Title

APPENDIX C

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
DIVISION OF WORKERS' COMPENSATION

Certificate No._____

_____
In the Matter of the Certificate of

AGREEMENT OF ASSUMPTION
AND
GUARANTEE OF WORKERS'
COMPENSATION AND OCCUPATIONAL DISEASE
LIABILITIES

Employer_____

Whereas, _____
(hereinafter called the Undersigned), has good and sufficient reason for executing this Agreement; and

Whereas, _____
(hereinafter called Self-Insurer), is, or has made application to be, a self-insurer pursuant to Sections 39-71-2101 through 39-71-2109, MCA, inclusive of the Montana Workers' Compensation Act;

Now, THEREFORE, It is understood and agreed that:

1. In consideration of the Division of Workers' Compensation of the State of Montana issuing permission to Self-Insure to said Self-Insurer, the Undersigned agrees to assume and guarantee to pay, or otherwise discharge promptly, all the liabilities and obligations which said Self-Insurer may incur as a self-insurer of its Montana workers' compensation and occupational disease liabilities.

2. This Agreement shall cover and extend to all potential liability for workers' compensation and occupational disease benefits as required by law of said Self-Insurer; as a self-insurer of its Montana workers' compensation and occupational disease liabilities arising on or

after the effective date hereof.

3. This Agreement shall not cover or extend to any workers' compensation or occupational disease liabilities of said Self-Insurer which are expressly insured by a carrier duly authorized to write Montana workers' compensation and occupational disease insurance.

4. This Agreement shall remain in full force and effect unless terminated in the manner hereinafter provided.

5. This Agreement may be terminated at any time by the Undersigned upon giving thirty (30) days written notice by registered or certified mail to the Division of Workers' Compensation. In this event the liability of the Undersigned, shall, at the expiration of thirty (30) days from receipt of said notice by said Division cease and terminate, except as to such liability of the Self-Insurer on account of any injury or disease suffered by any of its employees prior to the expiration of said thirty (30) days; it being expressly understood and agreed that the Undersigned shall be liable for default of said Self-Insurer in fully discharging all existing and potential liability of said Self-Insurer as a self-insurer as of the date of said termination.

6. A change in the proprietorship or the sale of said Self-Insurer does not terminate this Agreement.

7. In the event said Self-Insurer shall fail to pay compensation, as compensation is defined in the Montana Workers' Compensation and Occupational Disease Acts, when due, the Undersigned will pay the same, and the payment may be enforced against the Undersigned to the same extent as if said payment was the liability of it.

8. The undersigned is held and firmly bound for the payment of all legal fees and costs incurred by the State of Montana in any actions taken to enforce this Agreement.

9. If the Undersigned has not filed with the Montana Secretary of State to the extent required to entitle it to transact intrastate business in Montana it hereby agrees to submit itself to the jurisdiction of the Division of Workers' Compensation and the Montana courts for the purpose of enforcing the liabilities and obligations arising from this Agreement.

10. If the Undersigned has not filed with the Montana Secretary of State to the extent required to entitle it to transact intrastate business in Montana it hereby agrees that service of process may be effected on the Undersigned by sending notice to _____ by registered mail, return-receipt requested. Notice by this

form of mail will be deemed complete on the tenth day after such mailing.

11. This Agreement shall be binding upon the Undersigned, its successors and assigns.

SUBSCRIBED AND SEALED AT _____, _____, this _____ day of _____, 19___.

Attest:

_____
Company

CORPORATE SEAL

_____
Signature

_____ _____
Secretary Title

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

In the matter of the adoption of a rule pertaining to the interstate compact on the placement of children	)))))))	NOTICE OF PROPOSED ADOPTION OF A RULE PERTAINING TO THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On September 12, 1986, the Department of Social and Rehabilitation Services proposes to adopt a rule which pertains to the interstate compact on the placement of children.

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

RULE I INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN The department of social and rehabilitation services hereby adopts and incorporates by reference the regulations adopted by the association of administrators of the interstate compact on the placement of children. These regulations interpret the interstate compact on the placement of children and include clarifications of the applicability of the interstate compact on the placement of children with regard to the following: interstate relocation by foster parents; programs in which children are placed in family homes as an incident to their attendance at schools in other states; interstate placement of a child into the home of his parent, relative or non-agency guardian; interstate placements of children in educational institutions, hospitals and institutions for the mentally ill or mentally defective; and the requirement of a central state office for all compact referrals. A copy of the regulations adopted by the association of administrators of the interstate compact on the placement of children can be obtained from the Department of Social and Rehabilitation Services, 111 Sanders, Box 4210, Helena, Montana 59601.

AUTH: Sec. 53-4-111 MCA
IMP: Sec. 41-4-101, Art. VII, and 53-4-114 MCA

3. Article VII of the Interstate Compact on the Placement of Children (ICPC), which is codified at 41-4-101 MCA, empowers the Association of Administrators of the ICPC to "promulgate rules to carry out more effectively the terms and provisions of this compact". Five regulations have been promulgated which further define "placement", "educational institutions", "compact office operations", and the procedure for "educational placement". It is necessary to incorporate

by reference these regulations into our administrative rules to further define and carry out the functions of the compact.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than August 28, 1986.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request, along with any written comments he has, to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than August 28, 1986.

6. If the Department receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 10 persons based on the fact that approximately 100 placements through the interstate compact on the placement of children are anticipated to be effected by this proposed rule amendment in 1986.

Dave Lewis
Director, Social and Rehabilitation Services

Certified to the Secretary of State July 21, 1986.

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

In the matter of the amendment of Rules 46.25.101, 46.25.711, 46.25.722, 46.25.727 through 46.25.730, 46.25.738 and 46.25.744 pertaining to the General Relief Assistance and General Relief Medical programs	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.25.101, 46.25.711, 46.25.722, 46.25.727 THROUGH 46.25.730, 46.25.738 AND 46.25.744 PERTAINING TO THE GENERAL RELIEF ASSISTANCE AND GENERAL RELIEF MEDICAL PROGRAMS

TO: All Interested Persons

1. On August 20, 1986, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.25.101, 46.25.711, 46.25.722, 46.25.727 through 46.25.730, 46.25.738 and 46.25.744 pertaining to the General Relief Assistance and General Relief Medical programs.

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

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

Subsections (1) through (20) remain the same.

(21) "Indigent" or "misfortunate" means a person who is lacking the means, financial or otherwise, by which to prevent destitution for himself and others dependent upon him for basic necessities and who is otherwise eligible. ~~The--term does--not-include--an-able-bodied--person--under-the-age-of-50 years-unless-that--person-has--dependent-minor-children-living in-the-household.~~

Subsections (22) through (34) remain the same.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA; AUTH Extension, Sec. 19, Ch. 670, L. 1985, Eff. 7/1/85; Sec. 3, Ch. 10, Sp. L. March, 1986, Eff. 7/1/86; Sec. 6, Ch. 10, Sp. L. June, 1986, Eff. 6/30/86

IMP: Sec. 53-2-201, 53-2-301, 53-2-802, 53-3-109, 53-3-304 and 53-3-305 MCA

46.25.711 CONDITIONS OF ELIGIBILITY (1) General relief assistance for basic necessities will be provided, if otherwise eligible, to the following categories:

~~(a)--persons-50-years-of-age-and-older;~~

(ba) persons with dependent minor children; or

(cb) infirm persons.

(2) General relief assistance will be provided ~~for-three~~

~~months--in--any--twelve-month--period~~ to able-bodied persons ~~between--35--and--49--years--of-age~~ without dependent minor children, for two months in any twelve-month period, beginning with the month of application.

(3) General relief assistance will not be provided to persons in the following categories:

(a) able-bodied persons ~~under-35--years-of--age~~ without dependent minor children, who have received general relief assistance for two months within the last twelve months except that assistance received prior to November 1, 1986 will not be counted;

Subsections (3)(b) through (4)(b) remain the same.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA; AUTH Extension, Sec. 19, Ch. 670, L. 1985, Eff. 7/1/85; Sec. 6, Ch. 10, Sp. L. June, 1986, Eff. 6/30/86
IMP: Sec. 53-3-205, 53-3-206 and 53-3-209 MCA

46.25.722 PROVISION AND VERIFICATION OF ELIGIBILITY INFORMATION Subsections (1) through (4) remain the same.

(5) Failure to provide verification and documentation of information required in subsection (3) above within 30 days of application will result in ineligibility for that period.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA; AUTH Extension, Sec. 19, Ch. 670, L. 1985, Eff. 7/1/85
IMP: Sec. 53-3-205 MCA

46.25.727 MONTHLY INCOME AND RESOURCE STANDARD FOR GENERAL RELIEF ASSISTANCE (1) The monthly income standards are:

Monthly Income Standard

Number of Persons in Household	Monthly Income Standard Fiscal 1986	~~Fiscal 1987~~
1	$212	~~$219~~
2	~~284~~ 282	~~296~~
3	~~358~~ 354	~~372~~
4	~~432~~ 426	~~449~~
5	~~506~~ 501	~~526~~
6	~~580~~ 570	~~603~~
7	~~653~~ 642	~~679~~
8	~~727~~ 713	~~756~~
9	~~800~~ 785	~~832~~
10 or more	~~874~~ 857	~~909~~

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA; AUTH Extension, Sec. 19, Ch. 670, L. 1985, Eff. 7/1/85; Sec. 6, Ch. 10, Sp. L. June, 1986, Eff. 6/30/86
IMP: Sec. 53-3-205 MCA

46.25.728 INCOME AND RESOURCE COMPUTATION

Subsections (1) through (2)(c) remain the same.

~~(3)--For-all--eligible--persons-50-years--of-age-or-older and--persons--with-minor--dependent--children,-the--assistance amount-is-determined-in-the-month-of-application--as-specified in-(2)(b)-of-this-rule-and--thereafter-as--specified-in-(2)(a) of-this-rule.~~

~~(4)--For-all-eligible--persons-35-49--years-of--age,--the assistance--amounts-in-the-month-of-application-and--the-final month-are-determined--as-specified--in-(2)(b)-of-this-rule-and all-other-months-are-determined-as-specified-in-(2)(a)-of-this rule.~~

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA; AUTH Extension, Sec. 19, Ch. 670, L. 1985, Eff. 7/1/85; Sec. 6, Ch. 10, Sp. L. June, 1986, Eff. 6/30/86
IMP: Sec. 53-3-205, 53-3-209 and 53-3-311 MCA

46.25.729 INTERIM ASSISTANCE AND APPLICATION FOR OTHER PUBLIC ASSISTANCE PROGRAMS (1) Other federal or state programs of assistance that are reasonably available to meet the needs of a household must be applied for before general relief may be provided. A household shall be provided general relief after initial application for other assistance programs. As a condition of eligibility the applicant must pursue the entire administrative appeal process of those other programs applied for. Upon completion of this requirement, the recipient will be eligible if all other criteria are met.

Subsections (2) and (3) remain the same.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA; AUTH Extension, Sec. 19, Ch. 670, L. 1985, Eff. 7/1/85
IMP: Sec. 53-3-207 MCA

46.25.730 PERIODS OF ELIGIBILITY FOR GENERAL RELIEF ASSISTANCE Subsections (1) and (2) remain the same.

~~(3)--Eligibility-for-able-bodied--persons-age--35-through 49-with-no-minor-dependent--children-in-the-household-shall-be for--three--months--in-any--twelve-month-period.--Provision-of general-relief--assistance--will-begin--60-days-after-applica-tion.--The-applicant-must-remain-continuously-eligible-for-the 60-day--waiting--period.--This--continuous-eligibility-must-be verified-monthly-on-the-form-prescribed-by-the-department.~~

~~(a)--Any--time--continuous-eligibility--is--less--than--3 months-the--applicant--must--reapply--and-remain--continuously eligible-for-an-additional-60-day-period-before-general-relief assistance-will-be-granted.~~

(43) Eligibility for general relief assistance terminates at any time the department determines that the household:

(a) no longer meets eligibility criteria; or

(b) received general relief assistance by means of fraud or mistake.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA; AUTH Extension, Sec. 19, Ch. 670, L. 1985, Eff. 7/1/85; Sec. 6, Ch. 10, Sp. L. June, 1986, Eff. 6/30/86
IMP: Sec. 53-3-206 and 53-3-209 MCA

46.25.738 GENERAL RELIEF MEDICAL APPLICATION

(1) Requirements for application for general relief medical are the same as those for general relief assistance as described in ARM 46.25.720 and 46.25.722.

Subsections (2) through (2)(b) remain the same.

AUTH: Sec. 53-2-803, 53-2-201 and 53-3-114 MCA; AUTH Extension, Sec. 19, Ch. 670, L. 1985, Eff. 7/1/85; Sec. 6, Ch. 10, Sp. L. June, 1986, Eff. 6/30/86
IMP: Sec. 53-3-205, 53-3-206, 53-3-208 and 53-2-803 MCA

46.25.744 INCOME FOR GENERAL RELIEF MEDICAL

Subsections (1) through (3) remain the same.

(4) The monthly income levels are:

MONTHLY INCOME LEVELS

Family Size	Monthly Income Level
1	$ ~~314~~ 287
2	~~375~~ 433
3	~~400~~ 526
4	~~425~~ 618
5	~~501~~ 714
6	~~564~~ 804
7	~~624~~ 896
8	~~685~~ 988
9	~~744~~ 1,081
10	~~804~~ 1,173
11	~~864~~ 1,194
12	~~923~~ 1,215
13	~~983~~ 1,236
14	~~1,042~~ 1,256
15	~~1,102~~ 1,277
16	~~1,162~~ 1,298

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA; AUTH Extension, Sec. 19, Ch. 670, L. 1985, Eff. 7/1/85; Sec. 6, Ch. 10, Sp. L. June, 1986, Eff. 6/30/86
IMP: Sec. 53-3-205 and 53-3-206 MCA

3. Several facets of the General Relief Assistance and General Relief Medical programs were changed by passage of

HB 33 during the June, 1986, special legislative session. The purpose of all but three of these proposed administrative rule amendments is to comply with those legislative changes. The proposed changes to ARM 46.25.722 and 46.25.729 are to provide clear public notice of the consequences of failure to cooperate and the need to apply for all available assistance prior to receiving General Relief Assistance and General Relief Medical. The proposed amendment to ARM 46.25.738 is to correct prior incomplete requirements and ensure that applications for General Relief Medical meet all requirements for General Relief Assistance as set forth in both ARM 46.25.720 and ARM 46.25.722.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than August 28, 1986.

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

Dane Lewis

Director, Social and Rehabilitation Services

Certified to the Secretary of State July 21, 1986.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of rules to administer the sick leave fund for state employees	)))	NOTICE OF THE ADOPTION OF RULES TO ADMINISTER THE SICK LEAVE FUND FOR STATE EMPLOYEES

To: All Interested Persons.

1. On May 29, 1986, the department of administration published notice of the proposed adoption of rules to administer the sick leave fund for state employees at page 864 of the 1986 Montana Administrative Register, issue number 10.

2. The rules have been adopted with the following changes:

2.21.802 POLICY AND OBJECTIVES (1)-(2) Same as proposed rule.

(3) It is the objective of this policy to establish the structure of the sick leave fund, to establish eligibility requirements, and to establish procedures to administer both the sick leave fund and direct grants of sick leave.

(4) No funds shall be attached to any hours of sick leave which are: (a) donated to the sick leave fund; (b) are received as grants from the sick leave fund, or (c) are donated or received as direct grants. The agency employing the recipient of a grant from the sick leave fund or a direct grant of sick leave shall pay all costs of the use of that sick leave.

2.21.803 DEFINITIONS (1)-(2) Same as proposed rule.

(3) "Direct grant" means the extension to an employee, who may or may not be a participating employee, of up to ~~80~~ 160 hours of sick leave in a 12-month period which is donated by other state employees, who may or may not be participating employees, for the specific use of the employee.

(4) - (6) Same as proposed rule.

(7) "Maximum allowable benefit" means no more than ~~80~~ 160 hours of sick leave in any continuous 12-month period received as either grants from the sick leave fund or as direct grants.

(8)- (11) Same as proposed rule.

2.21.810 STRUCTURE OF SICK LEAVE FUND (1) The sick leave fund shall be administered by the department of administration. There shall be one sick leave fund with the following exception: ~~The Montana university system under the board of regents may establish and administer a sick leave fund plan for employees of the university system consistent with these rules.~~ Upon the approval of the board

of regents of higher education employees of the various units of the Montana university system may participate in either:

(a) a university system sick leave fund plan; or

(b) the sick leave fund administered by the department of administration.

~~(2) Where the university system elects to establish and administer a sick leave fund plan, the university system may adopt procedures in addition to those provided in these rules. Such procedures shall not be less specific, inconsistent, or in conflict with these rules.~~

~~(3)~~ (2) Same as proposed rule.

2.21.811 ADMINISTRATION OF SICK LEAVE FUND (1) - (4) Same as proposed rule.

(5) The employing agency shall certify that:

(a) the employee meets all eligibility requirements in Rule IX (2.21.814) to receive a grant from the sick leave fund. ~~in Rule IX.~~

(b-c) - (6) Same as proposed rule.

2.21.813 CONTRIBUTIONS (1) - (4) Same as proposed rule.

(5) A participating employee who is in the process of exhausting or who has exhausted all sick leave ~~and annual leave, and compensatory time~~ as the result of an extensive illness or accident at the time a request for additional contributions is made shall not be required to make the contribution. An exception must be approved by the agency head or designee and submitted to the department of administration within 45 days of the original request.

2.21.814 ELIGIBILITY TO RECEIVE GRANTS FROM THE SICK LEAVE FUND (1) A participating employee who meets the eligibility requirements of paragraph (6) of this rule may receive no more than a maximum of ~~80~~ 160 hours of sick leave in any continuous 12-month period in grants from the sick leave fund. Leave approved for a part-time employee shall be prorated. The maximum allowable benefit in any 12-month period from either grants from the fund or direct grants is ~~80~~ 160 hours.

(2) - (6) (a-b) Same as proposed rule.

(c) exhaust all personally accrued sick leave, annual leave, all other accrued paid leave, and compensatory time;

(d-h) - (7) Same as proposed rule.

~~(8) Denial of leave of absence or denial of sick leave grants may not be appealed to the sick leave advisory council.~~

~~(9)~~ (8) Same as proposed rule.

2.21.822 ELIGIBILITY TO RECEIVE DIRECT GRANTS (1) An employee may receive no more than a maximum of ~~80~~ 160 hours of sick leave in any ~~consecutive~~ continuous 12-month period in direct grants. Leave granted to a part-time employee shall be prorated. The maximum allowable benefit in any

12-month period from either direct grants or grants from the sick leave fund is ~~80~~ 160 hours.

(2) - (6) Same as proposed rule.

~~(7) Denial of leave of absence or direct grants may not be appealed to the sick leave fund advisory council.~~

3. A public hearing was conducted on June 19, 1986, to receive comments on these proposed rules. Testimony and other written comments received are summarized below. In responding to the comments, the department notes that the sick leave fund is not an extension of regular sick leave, but a transfer of existing sick leave between employees directly or via the fund; the sick leave fund is not long-term disability coverage for state employees and was not created to substitute for any personal long-term disability coverage which an employee elects to obtain privately, and no money was appropriated to operate the fund.

COMMENT: The benefit available in the proposed rules is 80 hours in a 12-month period. All those commenting requested that the benefit level be increased. Suggestions ranged from 160 hours to 240 hours to an unlimited benefit.
RESPONSE: The Sick Leave Fund Advisory Council has been divided on the maximum level of the benefit which should be allowed. They remained split following a review of the comments received on the proposed rules. Council members who opposed increasing the benefit and increasing the scope of the program said the cutbacks which will result from the special legislative session only increased their resolve to introduce this program with a limited benefit. Council members in favor of increasing the benefit level and all those persons and groups making comments argued that the 80-hour benefit level would result in limited participation in the fund itself. The department has decided to adopt a 160-hour benefit. 2.21.803, 2.21.814, and 2.21.822 will be amended. An agency may for budgetary, staffing or other reasons adopt an agency policy which establishes a lower maximum benefit.

COMMENT: 2.21.804(2d) (Rule IV) prohibits the use of grants of sick leave to care for immediate family members. All those commenting on this issue requested that care of family members be covered by the fund. One person suggested that family members should be covered and that use of the fund for this purpose be studied for abuse. Another person said excluding care for family members contradicted the sick leave rules, which allow this practice. A third group commented that family members should be covered, but the number of hours available for this purpose be restricted. The advisory council was split on this practice.
RESPONSE: The department has decided to exclude care of family members. We believe that the Legislature created the sick leave fund to provide an additional benefit

specifically for employees, but did not intend that family members be covered. After the state has some experience with this program, we will look again at extending this benefit to include family members. We disagree that this provision contradicts the sick leave rules. ARM 2.21.132 allows an employee to use sick leave to care for a family member only "until other attendance can reasonably be obtained." Use of grants from the sick leave fund or direct grants of sick leave would be far beyond the scope of the leave available to care for family members provided in the sick leave rules.

COMMENT: 2.21.814 (6d) (Rule IX) and by reference, 2.21.822(3) (Rule XII) require an employee to take 5 days of leave of absence without pay following exhaustion of all accrued leave and compensatory time. Those commenting on this requirement requested that it be eliminated. The advisory council recommended retaining it.
RESPONSE: The 5-day leave without pay requirement will be retained. Two methods were discussed by the council which could be used to determine that an employee has "suffered an extensive illness or accident." The first is to adopt a list of medical conditions which would qualify as extensive. The council decided this would not be feasible, because there are no funds to make such determinations. The second method discussed was reliance on the duration of the condition to determine that it is extensive. The council felt that if the condition lasts at least 10 days, that the employee exhausts all paid leave and compensatory time and then must take five days of leave without pay, that the condition is "extensive." This provision is typical in other Sick Leave Fund plans. The department agrees with the council's reasoning.

COMMENT: 2.21.814(8) (Rule IX) and 2.21.822(7) (Rule XII) provide that denial of leave of absence or denial of sick leave grants may not be appealed to the sick leave advisory council. Those commenting on this issue interpreted these sections as prohibiting any appeal or grievance relating to these rules. One group commenting suggested that termination of a participating employee should be reviewed by the council.
RESPONSE: These sections were included to make it clear that the council itself has no authority to hear appeals from employees. The intent of these sections was not to remove appeal or grievance rights already available to employees. The council recommended that these provisions be deleted from the sick leave fund rules to avoid confusion about appeal rights which have been generated. The council recommended remaining silent on this issue and the department agrees with this recommendation.

COMMENT: Four comments were received recommending that the authority to approve the receipt of grants of sick leave be

removed from department directors and made automatic or be turned over to an independent board. One group commenting suggested a number of amendments which would make approval of grants or direct grants automatic, noting "the deletion of the approval requirements should pose no difficulty since an employee using the fund or receiving a direct grant has presumably been ill or injured for some time prior to receiving benefits and supervisory personnel will have already had an opportunity to review sick leave use."
RESPONSE: The department disagrees. An agency head who agrees to allow an employee to receive grants or direct grants of sick leave also is agreeing to pay for those additional hours of sick leave. Approval of this additional time off will come after an employee has already been off work taking all paid leave and compensatory time. The department cannot justify creating a system which circumvents an agency head's authority to manage his or her employees. The advisory council agrees with this approach. If the employee believes he is aggrieved as the result of some action relating to the sick leave fund or direct grants, the employee may exercise available grievance rights.

COMMENT: Three related comments were received regarding first, the limit of 40 hours per year which an employee may contribute; second, the requirement that an employee must have a balance of 40 hours of sick leave before the employee can contribute, both of which were opposed by those commenting, and third, the possibility that employees could be pressured or coerced into making contributions.
RESPONSE: The advisory council raised all these issues and recommended restrictions so that the employee could not bankrupt his or her personal sick leave account, either voluntarily or through coercion. The department agrees with these restrictions. The council and department recognize the potential for abuse of the contribution system, but believe the restrictions will reduce the opportunity to pressure employees. As the person commenting noted, disciplinary action is appropriate where an employee is found to be pressuring or coercing another employee to make contributions.

COMMENT: One comment suggests modifying the definition of "maximum allowable benefit" (2.21.803 (7)) (Rule III), to "allowable benefit." They would define this term as the amount of leave received in a 12-month period.
RESPONSE: The department disagrees. The purpose of the definition as proposed is to set the maximum limit on sick leave which can be received as direct grants or grants. The proposed change would establish no limit. This definition is amended to provide a maximum benefit of 160 hours, increased from the proposed 80 hours.

COMMENT: The university system requested amended language in 2.21.810 (Rule V), in order to preserve the Board of Regents' authority to adopt personnel policy for the university system.
RESPONSE: The department agrees.

COMMENT: In 2.21.811 (Rule VI), one comment recommends reducing from 400 to 200 the number of hours which must be contributed to the sick leave fund before grants from the fund will be available.
RESPONSE: The advisory council recommended a minimum of 400 hours in the fund, because this represents two grants of 160 hours each, plus 80 additional hours. If a lower limit is set, the department of administration would be forced to request additional contributions from participating employees after only one grant was made. The department agrees with the council's recommendation.

COMMENT: A few departments allow their employees to "accrue" holidays on which they are required to work and to take them off at a later time. One comment requests that where the rules require an employee to exhaust sick and annual leave and compensatory time, the the employee also be required to exhaust "accrued holidays."
RESPONSE: Other agencies have employees who take alternate days off in lieu of work on holidays, but the practice is not so formalized. Because the administrative rules on holidays do not specifically use the term "accrued holidays," the department prefers that it not appear in the sick leave fund rules. Instead the sick leave fund rules will be amended, where appropriate, to add the phrase, "all other accrued paid leave," which is intended to cover accrued holidays.

COMMENT: One comment suggests that in 2.21.813 (Rule VIII), the phrase "and annual leave and compensatory time" be deleted.
RESPONSE: This section creates an exception to the request for additional contributions to maintain the fund balance. The department agrees that the employee should only have to exhaust all sick leave or be in the process of exhausting sick leave to avoid the additional contribution. However, if the employee later requests grants from the fund or receipt of direct grants, the employee would have to exhaust all paid leave and compensatory time.

COMMENT: One person asks if the requirement to exhaust all leave in order to obtain grants of sick leave is in conflict with 2-18-615, MCA, which provides, "Absence from employment by reason of illness shall not be chargeable against unused vacation leave credits unless approved by the employee."
RESPONSE: This issue was discussed by the council and reviewed by legal staff. The conclusion is that the sick leave fund is voluntary. It is not an extension of an

employee's regular sick leave, but is the transfer of sick leave. For these reasons, the department does not believe additional eligibility requirements for this voluntary program are in conflict with 2-18-615, MCA.

COMMENT: One comment suggests the need for automated record keeping for fund and direct grant activity.
RESPONSE: The department also would prefer automated record keeping; however, no funds were appropriated to operate this program.

COMMENT: One comment suggests that the advisory council meet at least bimonthly.
RESPONSE: 2.21.810 (Rule V) requires at least semiannual council meetings. The council already has requested a December, 1986 meeting to review fund activity and these rules. Council members did not see the need to require meetings on a more regular basis, but could meet at any time there is business to come before it.

BY: Ellen Feaver
Ellen Feaver, Director
Department of Administration

Certified to the Secretary of State July 21, 1986

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF MORTICIANS

In the matter of the adoption of a new rule regarding disciplinary actions	)))	NOTICE OF ADOPTION OF NEW RULE 8.30.707 DISCIPLINARY ACTIONS

TO: All Interested Persons:

1. On May 15, 1986, the Board of Morticians published a notice of adoption of the above-stated rules at page 740, 1986 Montana Administrative Register, issue number 9.

2. The board has adopted the rules as proposed with the addition of Authority Extension Sec. 4, Ch. 510, L. 1985.

3. No comments or testimony were received.

BOARD OF MORTICIANS
DENNIS DOLAN, CHAIRMAN

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

Certified to the Secretary of State, July 21, 1986.

BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of Rule 10.55.101, Accreditation Standards: Procedures	))))	NOTICE OF AMENDMENT OF RULE 10.55.101, ACCREDITATION STANDARDS: PROCEDURES

TO: All Interested Persons

1. On April 24, 1986, the Board of Public Education published notice of a proposed amendment concerning accreditation standards: procedures on page 649 of the 1986 Montana Administrative Register, issue number 8.

2. The Board has amended the rule as proposed.

3. At the public hearing which was held May 19, 1986, no persons testified and no written comments were received prior to May 22, 1986, the date on which the Board closed the hearing record.

In the matter of the adoption of Rule 10.57.101, Review of Policy	)))	NOTICE OF AMENDMENT OF RULE 10.57.101, REVIEW OF POLICY

TO: All Interested Persons

1. On April 24, 1986, the Board of Public Education published notice of a proposed amendment concerning review of policy on page 647 of the 1986 Montana Administrative Register, issue number 8.

2. The Board has amended the rule as proposed.

3. At the public hearing which was held May 19, 1986, no person testified and no written comments were received prior to May 22, 1986, the date on which the Board closed the hearing record.

Ted Hazelbaker

Ted Hazelbaker, Chairman
Board of Public Education

BY: Linda Vaughn D.J.

Certified to the Secretary of State July 16, 1986

BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of Rule 10.57.403, Class 3 Administrative Certificate	)))	NOTICE OF AMENDMENT OF RULE 10.57.403, CLASS 3 ADMINISTRATIVE CERTIFICATE

TO: All Interested Persons

1. On April 24, 1986, the Board of Public Education published notice of a proposed amendment concerning class 3 administrative certificate on page 637 of the 1986 Montana Administrative Register, issue number 8.

2. The Board has amended the rule as proposed.

3. At the public hearing which was held May 19, 1986, no person testified and no written comments were received prior to May 22, 1986, the date on which the Board closed the hearing record.

In the matter of the adoption of Rule 10.57.405, Class 5 Provisional Certificate	)))	NOTICE OF AMENDMENT OF RULE 10.57.405, CLASS 5 PROVISIONAL CERTIFICATE

TO: All Interested Persons

1. On April 24, 1986, the Board of Public Education published notice of a proposed amendment concerning class 5 provisional certificate on page 639 of the 1986 Montana Administrative Register, issue number 8.

2. The Board has amended the rule as proposed.

3. At the public hearing which was held May 19, 1986, no persons testified and no written comments were received prior to May 22, 1986, the date on which the Board closed the hearing record.

Ted Hazelbaker, Chairman
Board of Public Education

BY: _____

Certified to the Secretary of State July 16, 1986

BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of Rule 10.57.501, School Psychologists, Social Workers, Nurses and Speech and Hearing Therapists	)))))	NOTICE OF AMENDMENT OF RULE 10.57.501, SCHOOL PSYCHOLOGISTS, SOCIAL WORKERS, NURSES AND SPEECH AND HEARING THERAPISTS

TO: All Interested Persons

1. On April 24, 1986, the Board of Public Education published notice of a proposed amendment concerning school psychologists, social workers, nurses and speech and hearing therapists on page 642 of the 1986 Montana Administrative Register, issue number 8.

2. The Board has amended the rule as proposed.

3. At the public hearing which was held May 19, 1986, no persons testified and no written comments were received prior to May 22, 1986, the date on which the Board closed the hearing record.

In the matter of the adoption of Rule 10.58.103, Visitations	)))	NOTICE OF AMENDMENT OF RULE 10.58.103, VISITATIONS

TO: All Interested Persons

1. On April 24, 1986, the Board of Public Education published notice of a proposed amendment concerning visitations on page 644 of the 1986 Montana Administrative Register, issue number 8.

2. The Board has amended the rule as proposed.

3. At the public hearing which was held May 19, 1986, no persons testified and no written comments were received prior to May 22, 1986, the date on which the Board closed the hearing record.

Ted Hazelbaker

Ted Hazelbaker, Chairman
Board of Public Education

BY:

Certified to the Secretary of State July 16, 1986

BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of Rule 10.58.303, Professional Education	NOTICE OF AMENDMENT OF RULE 10.58.303, PROFESSIONAL EDUCATION

TO: All Interested Persons

1. On April 24, 1986, the Board of Public Education published notice of a proposed amendment concerning professional education on page 645 of the 1986 Montana Administrative Register, issue number 8.

2. The Board has amended the rule as proposed.

3. At the public hearing which was held May 19, 1986, no persons testified and no written comments were received prior to May 22, 1986, the date on which the Board closed the hearing record.

Ted Hazelbaker, Chairman
Board of Public Education

BY:

Certified to the Secretary of State July 21, 1986

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

In the matter of the amendment of rules 16.44.104 , 16.44.105, 16.44.106, 16.44.109, 16.44.110, 16.44.111, 16.44.116, 16.44.202, 16.44.301, 16.44.302, 16.44.303, 16.44.304, 16.44.305, 16.44.306, 16.44.307, 16.44.330, 16.44.333, 16.44.404, 16.44.415, 16.44.416, 16.44.417, 16.44.425, 16.44.609, and 16.44.702, and the adoption of new rules I - VIII, regarding an update of state regulations to bring them into conformance with the federal hazardous waste program	NOTICE OF AMENDMENT AND ADOPTION OF RULES (Hazardous Waste Management)

TO: All Interested Persons

1. On May 29, 1986, the department published notice of proposed amendments of rules and adoption of new rules, as listed in the above caption, concerning hazardous waste management facility permits, definitions, classification of wastes, identification and listing of wastes, standards applicable to generators of hazardous waste, standards for permitted facilities, and regulation of certain hazardous waste recycling activities, at page 890 of the Montana Administrative Register, issue number 10.

2. The department has adopted the rules with changes which include substantive changes and form changes including the correction of all references to rule 16.44.333(1), (4), (5) or (6) to read 16.44.333(1)(a), (d), (e) or (f); the addition of parentheses to the initial phrases of subsections (5)(c), (d), and (e) of rule 16.44.105 to clarify meaning; and the insertion of publishing dates corresponding to all 1985 CFR references. Those and other changes follow (matter stricken is interlined, new matter is capitalized):

16.44.104 PERMITTING REQUIREMENTS: EXISTING AND NEW HWM FACILITIES Same as proposed.

16.44.105 TEMPORARY PERMITS (INTERIM STATUS)

(1) Same as proposed.

(2) If the department has reason to believe upon examination of a Part A application that it fails to meet the requirements of ARM 16.44.119, it shall notify the owner or operator in writing of the apparent deficiency. Such notice shall specify the grounds for the department's belief that the application is deficient. The owner or operator shall have 30 days from receipt to respond to such a notification and to explain or cure the alleged deficiency in his Part A applica-

tion. If, after such notification and opportunity for response, the department determines that the application is deficient it may SHALL take appropriate enforcement action.

(3)-(4) Same as proposed.

~~(3)~~-(5) Interim status terminates when:

(a)-(b) Same as proposed.

(c) (For owners or operators of each land disposal facility which is in existence on the effective date of statutory or regulatory amendments under RCRA that render the facility subject to the requirement to have a HWM permit and which is granted interim status) twelve months after the date on which the facility first becomes subject to such permit requirement unless the owner or operator of such facility:

(i)-(ii) Same as proposed.

(d) (For owners or operators of each incinerator facility) INTERIM STATUS TERMINATES on November 8, 1989, unless the owner or operator of the facility submits a Part B application for an HWM permit for an incinerator facility by November 8, 1986.

(e) (For owners or operators of any facility - other than a land disposal or an incinerator facility) INTERIM STATUS TERMINATES on November 8, 1992, unless the owner or operator of the facility submits a Part B application for an HWM permit for the facility by November 8, 1988.

16.44.106 APPLICATION FOR PERMIT

(1)-(6) Same as proposed.

(7) After August 1, 1986, any Part B permit application submitted by an owner or operator of a facility that stores, treats, or disposes of hazardous waste in a surface impoundment or a landfill must be accompanied by information~~,~~ ~~reasonably ascertainable--by-the-owner-or-operator,~~ on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, such information must address:

(a) ~~reasonably-foreseeable~~ potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

(b)-(c) Same as proposed.

16.44.109 CONDITIONS OF PERMITS

(1)-(21) Same as proposed.

(22) The department hereby adopts and incorporates herein by reference 40 CFR sections 264.72, 264.73(b)(9) (7-1-85 EDITION), ~~264,75,~~ and 264.76. 40 CFR sections 264.72, 264.73(b)(9), ~~264,75,~~ and 264.76 are federal agency rules setting forth requirements for owners and operators of HWM facilities concerning respectively, manifest discrepancies, operating records, ~~biennial--reports~~ and unmanifested waste reports.

(23) Same as proposed.

16.44.110 ESTABLISHING PERMIT CONDITIONS

(1) Same as proposed.

(2) Each HWM permit shall include permit conditions necessary to achieve compliance with the Act and applicable rules including each of the applicable requirements specified in 40 CFR Parts 264 and ~~267~~ 266 (7-1-85 EDITION). In satisfying this provision, the department may incorporate applicable requirements of 40 CFR Parts 264 and ~~267~~ 266 directly into the permit or establish other permit conditions that are based on these parts.

(3)-(5) Same as proposed.

(6) The department hereby adopts and incorporates by reference 40 CFR Parts 264 and ~~267~~ 266 (7-1-85 EDITION). 40 CFR Parts 264 and ~~267~~ 266 are federal agency rules setting forth requirements, for owners and operators of HWM facilities, concerning respectively, standards for operation and maintenance of facilities and ~~interim standards for new hazardous waste land disposal facilities~~ standards for specific hazardous wastes such as recyclable wastes and specific types of facilities.

(7) Same as proposed.

16.44.126 [NEW RULE I] RESEARCH, DEVELOPMENT, AND DEMONSTRATION PERMITS (1) The department may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under 40 CFR Part 264 or 266 (7-1-85 EDITION). Any such permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits:

(a)-(c) Same as proposed.

(2) Same as proposed.

(3) The department may SHALL order an immediate termination of all operations at the facility at any time it determines that termination is necessary to protect human health and the environment.

(4) Same as proposed.

(5) The department hereby adopts and incorporates herein by reference 40 CFR PartS 264 AND 266 (BOTH PARTS ARE CONTAINED IN THE 7-1-85 EDITION), which pertains to STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE MANAGEMENT FACILITIES AND TO standards for the management of specific hazardous wastes such as recyclable materials. Copies of 40 CFR PartS 264 AND 266 may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

16.44.111 DURATION OF PERMITS Same as proposed.

16.44.116 MODIFICATION OR REVOCATION AND REISSUANCE Same as proposed.

16.44.202 DEFINITIONS In this chapter, the following terms shall have the meanings or interpretations shown below:

(1)-(15) Same as proposed.

~~(15)~~ (16)(a) Same as proposed.

(b) The department hereby adopts and incorporates by reference herein 40 CFR Part 266 (7-1-85 EDITION), which is a federal agency rule pertaining to standards for the management of specific hazardous wastes such as recyclable materials and specific types of hazardous waste management facilities. A copy of 40 CFR Part 266 may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

(17)-(105) Same as proposed.

16.44.301 POLICY Same as proposed.

16.44.302 DEFINITION OF WASTE Same as proposed.

16.44.303 DEFINITION OF HAZARDOUS WASTE Same as proposed.

16.44.304 EXCLUSIONS Same as proposed.

16.44.305 SPECIAL REQUIREMENTS FOR HAZARDOUS WASTE GENERATED BY SMALL QUANTITY GENERATORS

(1)-(2) Same as proposed.

(3) Hazardous waste that is recycled and that is excluded from regulation under ARM 16.44.306(1)(b)(iii) and (v), 16.44.306(1)(c), or 40 CFR Part 266 (7-1-85 EDITION), is not included in the quantity determinations of this rule and is not subject to any requirements of this rule. Hazardous waste that is subject to the requirements of ARM 16.44.306(2) and (3) and subparts C, D, and F, of 40 CFR Part 266 (7-1-85 EDITION) is included in the quantity determination of this rule and is subject to the requirements of this rule.

(4) Same as proposed.

(5) If a small quantity generator generates acutely hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acutely hazardous waste are subject to regulation under this chapter:

(a) a total of one kilogram of acute hazardous wastes listed in ARM 16.44.331, 16.44.332, or 16.44.333(1)(e); or

(b) a total of 100 kilograms of any residue or contaminated soil, water waste, or other debris resulting from the discharge, into or on any land or water, of any acute hazardous wastes listed in ARM 16.44.331, 16.44.332, or commercial chemical product listed in ARM 16.44.333(1)(e).

(6)-(9) Same as proposed.

(10) The department hereby adopts and incorporates by reference herein subparts C, D, and F of 40 CFR Part 266 (7-1-85 EDITION) which pertains to the handling of recycled materials. A copy of subparts C, D, and F of 40 CFR Part 266 or any portion thereof may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

16.44.306 REQUIREMENTS FOR RECYCLABLE MATERIALS

(1)(a) Same as proposed.

(b) The following recyclable materials are not subject to the requirements of this rule but are regulated under subparts C through G of 40 CFR Part 266 (7-1-85 EDITION) and all applicable provisions in subchapters 1, 8, and 9 of this chapter:

(i) recyclable materials used in a manner constituting disposal (subpart C, 40 CFR Part 266 (7-1-85 EDITION));

(ii) hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under subpart O of 40 CFR Part 264 or subpart O of 40 CFR Part 265 (subpart D, 40 CFR Part 266) (7-1-85 EDITION);

(iii) [reserved for used oil];

(iv) recyclable materials from which precious metals are reclaimed (subpart F, 40 CFR Part 266 (7-1-85 EDITION));

(v) spent lead-acid batteries that are being reclaimed (subpart G, 40 CFR Part 266 (7-1-85 EDITION));

(c) Same as proposed.

(2) Same as proposed.

(3)(a) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of Subparts A through L of 40 CFR Parts 264 and 265 (7-1-85 EDITION) and subchapters 1, 8, and 9 of this chapter, except as provided in section (1) of this rule. (The recycling process itself is exempt from regulation.)

(b) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the notification requirements of section 3010 of RCRA, as amended, 40 CFR 265.71 and 265~~,~~75 265.72 (7-1-85 EDITION) (dealing with the use of the manifest and manifest discrepancies), except as provided in section (1) of this rule.

(4) The department hereby adopts and incorporates by reference subpart O of 40 CFR Part 264, subpart O of 40 CFR Part 265, 40 CFR 265.71, 265~~,~~75 265.72, and subparts C through G of 40 CFR Part 266. (ALL CFR SECTIONS AND PARTS REFERRED TO HEREIN ARE CONTAINED IN THE 7-1-85 EDITION.) These federal agency rules refer, respectively, to: standards for owners and operators of hazardous waste treatment, storage, and disposal facilities, specifically pertaining to incinerators (40 CFR Part 264, subpart O); interim status standards for owners and operators of hazardous waste treatment, storage, and disposal facilities, specifically pertaining to incinerators (40 CFR Part 265, subpart O); use of a manifest system for interim status facility owners and operators (40 CFR 265.71), requirements pertaining to a biennial report (40 CFR 265~~,~~75 265.72), and recyclable materials (40 CFR Part 266). The department hereby adopts and incorporates by reference herein section 3010 of RCRA (Resource Recovery and Conservation Act of 1976, as amended), 42 U.S.C. 3010. A copy of these provisions or any portion thereof may be obtained from the Solid Waste Man-

agement Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

16.44.307 RESIDUES OF HAZARDOUS WASTE IN EMPTY CONTAINERS (1)-(2) Same as proposed.

(3) A container or an inner liner removed from a container that has held any hazardous waste, or hazardous material identified in ARM 16.44.333, except a waste or material that is a compressed gas or that is identified ~~in~~ as acutely hazardous in ARM 16.44.331, 16.44.332 or 16.44.333 (1)(e), is empty if:

(a)-(c) Same as proposed.

(4) Same as proposed.

(5) A container or an inner liner removed from a container that has held a an acute hazardous waste listed in ARM 16.44.331 or 16.44.332 or an acute hazardous material identified in ARM 16.44.333(1)(e), other than a compressed gas, is empty if:

(a)-(c) Same as proposed.

16.44.325 [NEW RULE III] RECLASSIFICATION TO A MATERIAL OTHER THAN A WASTE Same as proposed.

16.44.326 [NEW RULE IV] STANDARDS AND CRITERIA FOR RECLASSIFICATION TO A MATERIAL OTHER THAN A WASTE Same as proposed.

16.44.327 [NEW RULE V] RECLASSIFICATION AS A BOILER Same as proposed.

16.44.328 [NEW RULE VI] PROCEDURES FOR RECLASSIFICATION Same as proposed.

16.44.330 LISTS OF HAZARDOUS WASTES -- GENERAL Same as proposed.

16.44.333 DISCARDED COMMERCIAL CHEMICAL PRODUCTS, OFF-SPECIFICATION SPECIES, CONTAINER RESIDUES, AND SPILL RESIDUES THEREOF (1) The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded, when they are burned for purposes of energy recovery in lieu of their original intended use, when they are used to produce fuels in lieu of their original intended use, when they are applied to the land in lieu of their original intended use, or when they are contained in products that are applied to the land in lieu of their original intended use:

(a) Any commercial chemical product, or manufacturing chemical intermediate having the generic name listed in subsections (1)(e) or (f) of this rule.

~~(2)~~(b) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in subsections (1)(e) or (f) of this rule.

~~(3)~~(c) ~~Any residue remaining in a container that has held~~ Any container or inner liner removed from a container that has been used to hold any commercial chemical product or manufacturing chemical intermediate having the generic name listed in ~~sub~~SUBsections ~~(5)~~(1)(e) or ~~(6)~~(f) of this rule, or any container or inner liner removed from a container that has been used to hold any off-specification chemical product and manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in ~~sub~~SUBsections ~~(5)~~ (1)(e) or ~~(6)~~(f) of this rule, unless the container is empty as defined in ARM 16.44.307.

~~(4)~~(d) Any residue or contaminated soil, water or other debris resulting from the discharge, into or on any land or water, of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in ~~sub~~SUBsection ~~(5)~~(1)(e) or ~~(6)~~(f) of this rule, or any residue or contaminated soil, water or other debris resulting from the discharge, into or on any land or water, of any off-specification chemical product and manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in ~~sub~~SUBsection ~~(5)~~(1)(e) or ~~(6)~~(f) of this rule.

~~(5)~~(e) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products or manufacturing chemical intermediates referred to in subsections ~~(1)~~ (1)(a) through ~~(4)~~ (d) of this rule are identified as acute hazardous wastes (H) and are subject to the small quantity exclusion defined in ARM 16.44.305(5). These wastes and their corresponding EPA hazardous waste numbers are those wastes listed in 40 CFR 261.33(e).

~~(6)~~(f) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products or manufacturing chemical intermediates referred to in subsections ~~(1)~~ (1)(a) through ~~(4)~~ (d) of this rule are identified as toxic wastes (T) unless otherwise designated and are subject to the small quantity exclusion defined in ARM 16.44.305(1) and (6). These wastes and their corresponding EPA hazardous waste numbers are those wastes listed in 40 CFR 261.33(f).

(i) Same as proposed.

16.44.334 [NEW RULE VII] ADDITIONAL REGULATION OF CERTAIN HAZARDOUS WASTE RECYCLING ACTIVITIES ON A CASE-BY-CASE BASIS

(1)-(2) Same as proposed.

(3) The department hereby adopts and incorporates herein by reference 40 CFR Part 265, Appendix V (7-1-85 EDITION), which sets forth examples of incompatible wastes. A copy of 40 CFR Part 265, Appendix V, may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

16.44.335 [NEW RULE VIII] PROCEDURES FOR CASE-BY-CASE REGULATION OF HAZARDOUS WASTE RECYCLING ACTIVITIES Same as proposed.

16.44.404 MAINTENANCE OF REGISTRATION AND REGISTRATION FEES Same as proposed.

16.44.415 ACCUMULATION TIME

(1)-(3) Same as proposed.

(4)(a) A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in ARM 16.44.331, 16.44.332 or 16.44.333(1)(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with section (1) of this rule provided he:

(i) complies with 40 CFR 265.171, 265.172, and 265.173(a) (7-1-85 EDITION); and

(ii) marks his containers either with the words "Hazardous Waste" OR "ACUTELY HAZARDOUS WASTE", AS APPLICABLE, or with other words that identify the contents of the containers.

(b) Same as proposed.

(c) The department hereby adopts and incorporates by reference herein 40 CFR 265.171 pertaining to condition of containers, 40 CFR 265.172 pertaining to compatibility of waste with containers, and 40 CFR 265.173(a) pertaining to closure of containers during storage. (ALL CFR SECTIONS REFERRED TO HEREIN ARE CONTAINED IN THE 7-1-85 EDITION.) A copy of 40 CFR 265.171, 265.172, and 265.173(a) or any portion thereof may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59620.

16.44.416 RECORDKEEPING Same as proposed.

16.44.417 ~~BIENNIAL~~ ANNUAL REPORTING Same as proposed.

16.44.425 INTERNATIONAL SHIPMENTS Same as proposed.

16.44.609 STANDARDS FOR EXISTING FACILITIES WITH TEMPORARY PERMITS (INTERIM STATUS) (1) A person who receives a temporary permit under 16.44.605 must comply with the standards and requirements in 40 CFR Part 265, subparts B through and including Q.

(2) The department hereby adopts and incorporates herein by reference 40 CFR Part 265, subparts B through and including Q, and excluding subpart H and 40 CFR 265.75 (7-1-85 EDITION). The equivalent of subpart H is set forth in subchapter 8 of this chapter. The equivalent of 40 CFR 265.75 is set forth in ARM 16.44.613. Subparts B through Q of 40 CFR Part 265 are federal agency rules setting forth general facility standards (B); requirements for preparedness and prevention (C); requirements for contingency plan and emergency procedures (D); manifest system, recordkeeping and reporting requirements (E); groundwater monitoring requirements (F); closure and post-closure requirements (G); requirements for use and management of containers (I) and requirements for tanks (J), surface

impoundments (K), waste piles (L), land treatment (M), landfills (N), incinerators (O), thermal treatment (P), and chemical, physical and biological treatment (Q). A copy of 40 CFR Part 265, subparts B through and including Q, excluding subpart H, or any portion thereof, may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

16.44.613 [NEW RULE III] ANNUAL REPORT Same as proposed.

16.44.702 STANDARDS AND REQUIREMENTS FOR PERMITTED FACILITIES (1) Same as proposed.

(2) The department hereby adopts and incorporates herein by reference 40 CFR Part 264, Subparts B through and including O, excluding Subpart H and 40 CFR 264.75 (7-1-85 EDITION). The equivalent of subpart H is set forth ~~in full~~ in subchapter 8 of this chapter. The equivalent of 40 CFR 264.75 is set forth in ARM 16.44.613. Subparts B through O, excluding subpart H, are federal agency rules setting forth, respectively, general facility standards (B); requirements for preparedness and prevention (C); requirements for contingency plan and emergency procedures (D); manifest system, recordkeeping and reporting requirements (E); groundwater monitoring requirements (F); closure and post-closure requirements (G); requirements for use and management of containers (I); and requirements for tanks (J); surface impoundments (K); waste piles (L); land treatment (M); landfills (N); and incinerators (O). A copy of 40 CFR Part 264, subparts B through and including O, excluding subpart H, or any portion thereof, may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

3. Comments received by the department, and the department's responses, follow:

(a) Comment: In reference to Rule 16.44.105, objection was made to the fact that an interim status temporary permit may be deemed to have been issued to a facility in existence as of the effective dates of regulatory amendments.

Response: It would be contrary to state law to amend the rule such that it is more restrictive than federal language, Section 75-10-405(2), MCA.

(b) Comment: In reference to 16.44.105(2), it was stated that "may" should be changed to "shall" when the state takes enforcement actions.

Response: The suggested language change was adopted.

(c) Comment: In reference to 16.44.106(3), an objection was made to the language "An application for a permit is complete notwithstanding the failure of the owner or operator to submit the exposure information described in section (7) of this rule."

Response: The department is without authority to change this language under the "not more restrictive" rule of Section 75-10-405(2), MCA. It should be noted that the rationale for this language is that the department wants to avoid delaying processing of any Part B applications submitted prior to August 1, 1986. Further, it is contemplated that upon submission of a Part B application prior to August 1, 1986, the information under 16.44.106(7) and timetables for submission of the information will be required within the permits.

(d) Comment: It was suggested that the language in 16.44.106(7) and (7)(a), "reasonable ascertainable by the owner or operator" and "reasonably foreseeable," be excised.

Response: The department concluded that the wording would be clearer if the language were taken out. Information is available from the department on how to report about exposure to wastes and potential releases under this rule.

(e) Comment: In 16.44.106(7)(c) it was requested that "health effects resulting from such releases" be added.

Response: Addition of the language would constitute a violation of the "not more restrictive" rule, Section 75-10-405(2), MCA.

(f) Comment: After 16.44.106(7)(c), it was suggested that "the potential environmental damage resulting from such releases" be added.

Response: A requirement for reporting environmental damage in the Part B application is already contained in 16.44.120.

(g) Comment: In reference to Rule I(3) [16.44.126], it was suggested that "may" be changed to "shall" in the ordering by the department of an immediate termination.

Response: This suggestion was adopted.

(h) Comment: In reference to 16.44.111(4), it was suggested that the department review permits within a three-year period instead of a five-year period.

Response: The department is without authorization to implement this proposal, pursuant to Section 75 -10 -405(2), MCA.

(i) Comment: In reference to 16.44.302, it was asked at what efficiency for burning does the rule refer to when it states, "burned to recover energy."

Response: The rule refers to burning at any and all efficiencies.

(j) Comment: It was suggested that 16.44.105(d) is worded awkwardly.

Response: The wording was changed for clarification.

(K) Comment: In reference to 16.44.105(c)(i), it was asked whether the twelve-month lapse between becoming subject to the permit and submitting a Part B application has to remain at twelve months.

Response: Yes. See Section 75-10-405(2), MCA.

by John J. Drynan M.D.
JOHN J. DRYNAN, M.D., Director
William J. Gatz

Certified to the Secretary of State July 21, 1986.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) of Rule I (42.31.301) through) Rule IV (42.31.304) relating) to the seven day credit limit) of cigarette and tobacco) products.)	NOTICE OF THE ADOPTION of Rule I (42.31.301) through Rule IV (42.31.304) relating to the seven day credit limit of cigarette and tobacco products.

TO: All Interested Persons:

1. On May 29, 1986, the Department published notice of the proposed adoption of Rules I through IV (42.31.301 through 42.31.304) relating to the seven day credit limit of cigarette and tobacco products at pages 940, 941, and 942 of the 1986 Montana Administrative Register, issue no. 10.

2. The Department has adopted these rules as proposed.

3. No comments or testimony were received.

4. The authority for the rules is 16-10-104, MCA, and the rules implement 16-10-305, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 07/21/86

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

In the matter of the adoption of a rule and amendment of Rule 46.12.401 pertaining to provider sanctions in the general relief medical assistance program	))))))	NOTICE OF THE ADOPTION OF RULE (I) 46.25.746 AND THE AMENDMENT OF RULE 46.12.401 PERTAINING TO PROVIDER SANCTIONS IN THE GENERAL RELIEF MEDICAL ASSISTANCE PROGRAM

TO: All Interested Persons

1. On June 12, 1986, the Department of Social and Rehabilitation Services published notice of the proposed adoption of a rule and amendment of Rule 46.12.401 pertaining to provider sanctions in the general relief medical assistance program at page 1005 of the 1986 Montana Administrative Register, issue number 11.

2. The Department has amended Rule 46.12.401 as proposed.

3. The Department has adopted Rule 46.25.746, GROUNDS FOR SANCTIONING, as proposed.

4. The Department has thoroughly considered all commentary received:

Comment: Chapter Number 370, Laws of Montana, 1985 does not require the state to do anything but says that the state may establish a system of penalties and sanctions. Therefore, it is necessary that the department clarify its statement of reasonable necessity in the final notice of adoption.

Response: The department agrees. The department has proposed these changes in rule subchapters (12 and 25) governing Montana Medical Assistance Programs, Medicaid and State Medical. Currently, the administrative rules provide for sanctions against providers who have been found to have abused the Montana Medicaid Program but not the State Medical Program. These programs are generally of the same scope and intent. They are also administered in the same manner using the same payment methods and schedules. It is necessary to provide for sanctions against abusive providers of the State Medical Program to protect the program against fraud and abuse as well as inappropriate medical assistance provided to recipients. It is also appropriate to make consistent the rules controlling the two programs.

Director, Social and Rehabilitation Services

Certified to the Secretary of State July 21, 1986.

VOLUME NO. 41 OPINION NO. 73

CITIES AND TOWNS - Authority to borrow money or issue general obligation bonds for furnishing a swimming pool;
CITIES AND TOWNS - Lack of authority to borrow money to repair or maintain a swimming pool;
ELECTIONS - Requirements for furnishing a municipal swimming pool;
MUNICIPAL GOVERNMENTS - Authority to borrow money or issue general obligation bonds for furnishing a swimming pool;
MUNICIPAL GOVERNMENTS - Lack of authority to borrow money to repair or maintain a swimming pool;
MONTANA CODE ANNOTATED - Sections 7-7-4221, 7-16-4101, 7-16-4103 to 7-16-4105, 7-16-4107;
MONTANA CONSTITUTION - Article XI, section 4.

HELD: 1. A city or town must have an election pursuant to section 7-7-4221, MCA, to issue general obligation bonds for the purpose of furnishing a municipal swimming pool. However, an election is not required for the city or town to borrow money for that purpose by means other than issuing general obligation bonds.

2. A city or town may not borrow money for the purpose of maintaining or repairing a municipal swimming pool.

10 July 1986

John T. Flynn
Townsend City Attorney
P.O. Box 96
Townsend MT 59644

Dear Mr. Flynn:

You requested an opinion on the following question:

> May a city or town borrow money for the purpose of repairing and furnishing a municipal swimming pool pursuant to section 7-16-4101, MCA, without such a proposal being submitted to a vote of the electors?

Section 7-16-4103, MCA, provides authority to "maintain" and "equip" a swimming pool from funds of the city or town raised for such purposes. The authority to borrow money or issue bonds is provided by section 7-16-4104, MCA, which provides in relevant part:

> (1) A city or town council or commission may contract an indebtedness on behalf of the city or town, upon the credit thereof, by borrowing money or issuing bonds:
>
> (a) for the purpose of purchasing and improving lands for public parks and grounds;
>
> (b) for procuring by purchase, construction, or otherwise swimming pools, athletic fields, skating rinks, playgrounds, museums, a golf course, a site and building for a civic center, a youth center, or combination thereof; and
>
> (c) for furnishing and equipping the same.
>
> (2) ... No money may be borrowed on bonds issued for the purchase of lands and improving the same for any such purpose until the proposition has been submitted to the vote of the qualified electors of the city or town and a majority vote is cast in favor thereof.

The statute is clear that an election is required for borrowing money on bonds to purchase or improve lands.

Section 7-7-4221, MCA, requires an election for any general obligation bonds (excluding refunding and revenue bonds) issued "for any purpose authorized by law." Statutes relating to the same matter must be read together to give effect to all. Schuman v. Bestrom, 42 St. Rptr. 54, 693 P.2d 536, 538 (1985).

I therefore conclude that an election is required for the city or town to issue general obligation bonds to furnish a municipal swimming pool. However, there is no statutory requirement for an election to borrow money by means other than issuing general obligation bonds.

Your question also concerns the authority of the city to borrow money, without an election, to repair the swimming pool.

Section 7-16-4104, MCA, authorizing the city to incur indebtedness, does not include authority to do so for maintenance or repairs. The word "maintenance" has been held to be synonymous with "repair." Morris v. American Liability & Surety Co., 185 A. 201, 203 (Pa. 1936). However, those words are not synonymous with "equipping" or "furnishing." See Neal v. City of Morrilton, 92 S.W.2d 208, 209 (Ark. 1936); Black's Law Dictionary 631, 804, 1105-06, 1462 (rev. 4th ed.).

It is evident the Legislature intended that maintenance and repair of swimming pools be funded by tax levy (§ 7-16-4105, MCA) or park funds (§ 7-16-4107, MCA).

Finally, in this regard, I am aware that statutes pertaining to municipal authority are to be liberally construed in favor of the municipality. Mont. Const. art. XI, § 4; Tipco v. City of Billings, 197 Mont. 339, 642 P.2d 1074, 1077 (1982). However, the statutes in question are, in my opinion, clear and unambiguous, leaving no room for statutory construction beyond the clear meaning of the language. Furthermore, to construe the city's authority to enable it to borrow money for purposes not included in section 7-16-4104, MCA, would leave that section meaningless. See Hanrahan v. Anderson, 108 Mont. 218, 90 P.2d 494, 500 (1939).

THEREFORE, IT IS MY OPINION:

1. A city or town must have an election pursuant to section 7-7-4221, MCA, to issue general obligation bonds for the purpose of furnishing a municipal swimming pool. However, an election is not required for the city or town to borrow money for that purpose by means other than issuing general obligation bonds.

2. A city or town may not borrow money for the purpose of maintaining or repairing a municipal swimming pool.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 41 OPINION NO. 74

CITIES AND TOWNS - Authority of municipal board of building code appeals to grant modifications;
HEALTH - Authority of municipal board of building code appeals to grant modifications;
MUNICIPAL GOVERNMENTS - Authority of municipal board of building code appeals to grant modifications;
ADMINISTRATIVE RULES OF MONTANA - Section 8.70.101;
MONTANA CODE ANNOTATED - Sections 2-4-101 to 2-4-711, 50-60-203(1), 50-60-206, 50-60-301, 50-60-303(1);
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 81 (1977), 37 Op. Att'y Gen. No. 66 (1977).

HELD: 1. The procedures in section 50-60-206, MCA, do not apply to boards of building code appeals established by municipalities.

2. A municipal board of building code appeals constituted in accordance with section 204 of the 1982 Uniform Building Code has authority to review the refusal of a building official to allow modifications pursuant to section 106 of the 1985 Uniform Building Code and, if appropriate, to permit such modifications.

11 July 1986

Sam Warren
Deputy City Attorney
City of Missoula
201 West Spruce
Missoula MT 59802-4297

Dear Mr. Warren:

You have requested my opinion concerning the following questions:

1. Does section 50-60-206, MCA, supplement or modify the powers and duties of municipal building code boards of appeal established pursuant to section 204 of the 1982 Uniform Building Code?

2. Does the Missoula Board of Building Code Appeals have the authority to grant a "variance" from section 802(c) of the 1985 Uniform Building Code to an applicant who seeks to conduct a preschool program above the first floor of a building?

I conclude that section 50-60-206, MCA, has no application to the Missoula Board of Building Code Appeals (Board) but that the Board does have the authority to grant modifications to strict application of the 1985 Uniform Building Code if the conditions in section 106 thereof are satisfied.

The Department of Commerce (Department) is required under section 50-60-203(1), MCA, to adopt a state building code. With limited exceptions the Department has designated the 1985 Uniform Building Code as that code. § 8.70.101, ARM. Section 50-60-206(1)(a), MCA, further authorizes the Department to grant variances from application of the state building code "if strict compliance would cause any undue hardship; but no variance or modification shall affect adversely provisions for health, safety, and security, and equally safe and proper alternatives may be prescribed therefor." Any such variance may be granted only after a public hearing conducted in accordance with the Montana Administrative Procedure Act, §§ 2-4-101 to 711, MCA. § 50-60-206(2), MCA.

Municipalities and counties, however, are permitted to adopt and enforce building codes, which must be the same as the state building code, in place of the Department's regulation. § 50-60-301, MCA. See 37 Op. Att'y Gen. No. 81 at 338 (1977); 37 Op. Att'y Gen. No. 66 at 269 (1977). If a municipality does enact its own code, it must also establish an appeal procedure for persons aggrieved by building officials' decisions. § 50-60-303(1), MCA. The City of Missoula has adopted such a municipal building code, and the Board provides the required appellate review. Missoula, Mont. Code, §§ 15.04.010, 15.36.010 to 15.36.060 (1986). The Board's general authority and composition are governed by section 204 of the 1982 Uniform Building Code:

> In order to determine the suitability of alternate materials and methods of

> construction and to provide for reasonable interpretations of this code, there shall be and is hereby created a Board of Appeals consisting of members who are qualified by experience and training to pass upon matters pertaining to building construction. The building official shall be an ex officio member and shall act as secretary of the board. The Board of Appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt reasonable rules and regulations for conducting its investigations and shall render all decisions and findings in writing to the building official with a duplicate copy to the appellant.

See § 8.70.101(1)(b), ARM; Missoula, Mont. Code, §§ 15.36.020, 15.36.030. The Board's clear purpose, like that of the Department under section 50-60-206, MCA, is to ensure that adequate recourse against improper decisionmaking by municipal building officials exists. The Board thus has the power to do that which, in the first instance, a building official could.

It is quite clear that section 50-60-206, MCA, has reference only to the Department's powers and not to those of the Board. The term "department," as used in such provision, is defined in section 50-60-101(4), MCA, to mean the Department of Commerce, and the authority granted includes the power to reverse the order of any state agency under the state building code and to review disapproval of applications for permission for the construction of buildings under such code. All hearings under this section, moreover, are governed by the Montana Administrative Procedure Act which has no application to local governmental units such as the Board. §§ 2-4-102(2)(b), 2-4-601 to 631, MCA. Those provisions are irreconcilable with a contention that section 50-60-206, MCA, applies to the Board.

Resolution of your second question is largely dependent upon section 106 of the 1985 Uniform Building Code:

> Whenever there are practical difficulties involved in carrying out the provisions of this code, the building official may grant modifications for individual cases, provided

> he shall first find that a special individual reason makes the strict letter of this code impractical and that the modification is in conformity with the intent and purpose of this code and that such modification does not lessen any fire protection requirements or any degree of structural integrity. The details of any action granting modifications shall be recorded and entered in the files of the code enforcement agency.

Section 106 thus permits, if the conditions specified therein are satisfied, "modifications" to literal application of the code by the involved building official. One such modification could be to the requirements of section 802(c) which prohibits use of certain buildings for kindergarten or first- or second-grade pupils above the first floor. The rule itself provides an exception "[i]n buildings equipped with an automatic sprinkler system throughout ... provided there are at least two exits directly to the exterior for the exclusive use of such occupants." The Board, in turn, has the power under section 204 of the 1982 Uniform Building Code to review the refusal of a building official to allow a modification to literal application of section 802(c) and, if it determines the modification should have been granted, to authorize it. Any other conclusion unnecessarily restricts the substantive scope of the Board's functions and disserves the purpose of section 50-60-303(1), MCA, which is to ensure that an adequate appeal procedure exists. In this instance, whether strict compliance with section 802(c) should be waived is, nonetheless, subject to the limited grounds provided under section 106, including those requiring no lessening of fire protection standards. The Board thus does not have unfettered discretion in granting modifications and may not simply authorize a "variance" on the basis of claimed or real hardship resulting from compliance with section 802(c).

THEREFORE, IT IS MY OPINION:

1. The procedures in section 50-60-206, MCA, do not apply to boards of building code appeals established by municipalities.

2. A municipal board of building code appeals constituted in accordance with section 204 of the 1982 Uniform Building Code has authority to review the refusal of a building official to allow modifications pursuant to section 106 of the 1985 Uniform Building Code and, if appropriate, to permit such modifications.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 41 OPINION NO. 75

ALCOHOL - Authority of city to regulate sale of liquor through enactment of obscenity ordinance;
CITIES AND TOWNS - Authority of city to enact obscenity ordinance regulating live performances in premises licensed to sell liquor;
CRIMINAL LAW AND PROCEDURE - Authority of city to enact obscenity ordinance regulating live performances in premises licensed to sell liquor;
LICENSES - Authority of city to suspend or revoke liquor license for violation of obscenity ordinance;
MUNICIPAL GOVERNMENTS - Authority of city to enact obscenity ordinance regulating live performances in premises licensed to sell liquor;
ADMINISTRATIVE RULES OF MONTANA - Sections 42.12.222, 42.13.101;
MONTANA CODE ANNOTATED - Sections 7-1-4123(2), (4), 16-1-103, 16-1-303(2)(n), 16-3-304, 16-3-309, 16-4-406, 16-4-408, 16-4-503, 45-5-504, 45-5-505, 45-8-201;
1889 MONTANA CONSTITUTION - Article III, section 10;
1972 MONTANA CONSTITUTION - Article II, section 7; article XI, section 4;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 100 (1977), 40 Op. Att'y Gen. No. 48 (1984);
UNITED STATES CONSTITUTION - Amendments I, XXI.

HELD: 1. The State's authority under the Twenty-first Amendment to regulate the sale of liquor has not been delegated to municipalities with general powers.

2. A municipality with general powers may not punish a violation of its obscenity ordinance by suspending or revoking the liquor license of the offender.

3. The validity of a city ordinance regulating activities such as live dance performances in establishments licensed to serve liquor must be measured against free expression standards imposed by the United States and Montana constitutions.

4. A proposed city ordinance prohibiting any live performance involving dance or the removal of clothing in establishments licensed to serve liquor would be an unconstitutional abridgment

of free expression because (1) it fails to distinguish carefully between protected and unprotected conduct and (2) the requisite governmental interest in regulating such conduct has not been sufficiently established.

5. A proposed city ordinance prohibiting live entertainment containing the performance of specified sexual acts in establishments licensed to serve liquor may, if carefully drafted and supported by sufficient evidence, be shown to further an important and substantial governmental interest unrelated to the suppression of free expression and may be upheld as the least restrictive means of furthering that interest.

16 July 1986

Russell L. Culver
City Attorney
City of Baker
Baker MT 59313

Dear Mr. Culver:

You have requested my opinion on the validity of a proposed city ordinance which would prohibit certain live performances and entertainment on licensed premises within the city of Baker.

The proposed ordinance contains the following provisions:

1. No live performances are permitted on a licensed premise which contain any form of dancing. Such prohibition on dancing does not include the incidental movement or choreography of singers or musicians which are made in connection with their singing or playing of a musical instrument. This restriction applies to all licensed premises.

2. No live performances are permitted on a licensed premise which involve the removal of clothing, garments or any other costume. Such prohibition does not include the removal of head wear or foot wear or the incidental removal of a tie, suit coat, sport coat, jacket, sweater or similar outer garments. Incidental removal for purposes of this section shall mean the removal of a garment or article of clothing which is not a part of the act for performance.

3. No entertainment on a licensed premise shall contain

   (a) The performance of acts, or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;

   (b) The actual or simulated touching, caressing or fondling of the breasts, buttocks, anus or genitals;

   (c) The actual or simulated displaying of the pubic hair, anus, vulva or genitals; or the areola of a female.

The term "licensed premises" would be defined to mean any establishment for which a state retail all-beverages liquor license and a city liquor license have been issued. The owner or manager of the establishment would have the duty to ensure compliance with the ordinance and would be subject to certain penalties for failure to comply. Each day a person or entity permits or participates in prohibited activity would be considered a separate offense. Each offense would subject the owner or manager to a maximum term of 30 days in jail, a maximum fine of $500, or both, as well as revocation or suspension of the city license; a person who is guilty of participating in a prohibited performance would also be subject to a 30-day jail sentence, a $500 fine, or both.

Your letter indicates that a local group of citizens has expressed concern about "go-go" dancing at certain bars in Baker and would like the city council to pass an ordinance prohibiting sexually oriented live performances. The council wishes to know whether the proposed ordinance would be valid or constitutional.

An analysis of the proposed ordinance's validity must begin with a determination of the city's authority to enact regulatory ordinances which apply only to establishments licensed to serve liquor and located within the city.

Baker is a municipality with general powers and thus has legislative power, subject to the provisions of state law, to adopt ordinances required to secure and promote the general public health and welfare. In addition to this general police power, the city also has the authority to exercise any power granted by state law. § 7-1-4123(2), (4), MCA. The powers of an incorporated city are to be liberally construed. Mont. Const. art. XI, § 4.

Baker has not adopted a self-government charter under the 1972 Montana Constitution; consequently, the city has only those powers expressly given to it by the Legislature. See D & F Sanitation Service v. City of Billings, 43 St. Rptr. 74, 713 P.2d 977 (1986). If the power of Baker to enact an ordinance on a subject exists, it must be found in some statute, conferred in express terms or by necessary implication. State ex rel. City of Butte v. Police Court, 65 Mont. 94, 210 P. 1059 (1922).

The proposed ordinance would regulate live performances and entertainment only in places where liquor is sold. The city's authority to enact such an ordinance depends upon whether the ordinance is viewed as an effort to control obscenity or an attempt to regulate the sale of liquor. The city has express statutory authority to adopt an obscenity ordinance; on the other hand, the State has preempted the field with respect to the control of the sale of liquor, and a city with general powers does not have authority or jurisdiction to enact ordinances dealing with control of liquor sales. I have concluded that the proposed ordinance should be viewed as an exercise of the city's power to regulate obscenity and would not be invalid merely because it proscribes

the performances only in establishments licensed to sell liquor. I have further concluded, however, that the city and its proposed ordinance may not be given the latitude accorded to a state agency which is the repository of the state's power, under the Twenty-first Amendment to the United States Constitution, to regulate intoxicating liquors and that the proposed ordinance must be reviewed under the stricter standards applied to general police power infringements of protected constitutional interests.

I.

The proposed ordinance does not refer to the term "obscenity." Nevertheless, your inquiry makes it clear that the proposed ordinance is directed toward nude or partially nude "go-go" or striptease dancing, which may come within the reach of Montana's obscenity law.

Section 45-8-201, MCA, defines the offense of obscenity. Subsection (1)(b) prohibits a person from presenting, directing, or participating in an obscene play, dance, or other performance to anyone under the age of 18. Subsection (1)(d) prohibits a person from performing an obscene act or otherwise presenting an obscene exhibition of his body to anyone under the age of 18. The statute requires proof that the person acted purposely or knowingly with knowledge of the obscene nature of the performance. Subsection (2), which defines the term "obscene," was rewritten in 1975 to comply with the federal constitutional requirements enunciated in Miller v. California, 413 U.S. 13 (1973). Conviction of the offense of obscenity may result in a fine of at least $500 but not more than $1,000, imprisonment in the county jail for a term of not to exceed six months, or both.

Prior to 1979, a city could not adopt an ordinance more restrictive as to obscenity than the provisions of section 45-8-201, MCA. See, e.g., U.S. Mfg. & Distrib. Corp. v. Great Falls, 169 Mont. 298, 546 P.2d 522 (1976). Former subsection (2) of section 45-8-201, MCA, expressly prohibited more restrictive community ordinances. However, on November 7, 1978, Montana voters approved Initiative 79, which completely changed subsection (5) to allow a city to adopt an ordinance more restrictive as to obscenity than the state statutes. This amendment became effective January 1,

1979, and now empowers a city to enact an ordinance concerning obscenity, even if the ordinance is more restrictive than state law.

Regarding the city's power to regulate liquor, however, the Montana Supreme Court has held that cities do not have authority or jurisdiction to enact ordinances dealing with control of sales of liquor. State ex rel. Libby v. Haswell, 147 Mont. 492, 414 P.2d 652 (1966). The Court in Libby found that the State has preempted liquor control as a matter of statewide concern and that the city had no implied power to legislate with respect to this subject. The entire control of the sale of liquor reposes in the State Department of Revenue and not with local municipalities. See §§ 16-1-103, 16-1-303(2)(n), MCA; 40 Op. Att'y Gen. No. 48 (1984). Under the 1972 Constitution, state preemption still applies to local governments with general powers. See D & F Sanitation Service v. City of Billings, supra. Although a city may provide for the issuance of city liquor licenses (§ 16-4-503, MCA), and may enact ordinances defining the areas in which alcohol beverages may be sold (§ 16-3-309, MCA) and restricting the hours of sale (§ 16-3-304, MCA), these exceptions to state preemption of liquor regulation do not confer upon a municipality the power to regulate liquor sales or nullify a state liquor license. See 37 Op. Att'y Gen. No. 100 (1977).

To the extent that the penalty provisions in the proposed ordinance would confer upon Baker the power to nullify, in effect, a state liquor license by permitting the suspension or revocation of a city liquor license, the proposed ordinance exceeds the authority of the city to legislate in this preempted field. While Baker may obtain additional city revenues by issuing city liquor licenses for a fee as provided in section 16-4-503, MCA, it may not regulate state liquor licensees by suspending or revoking their privilege to engage in business for failure to comply with a city obscenity ordinance. Suspension and revocation are matters for the Department of Revenue. See §§ 16-4-406, 16-4-408, MCA; §§ 42.12.222, 42.13.101, ARM.

Baker's highly restricted role in liquor regulation is also relevant to the free expression issues presented here. In California v. LaRue, 409 U.S 109 (1972), and New York State Liquor Authority v. Bellanca, 452 U.S.

714 (1981), the United States Supreme Court upheld state regulations prohibiting performances of specified sexual acts and topless dancing in establishments granted a license to serve liquor. The Supreme Court in these cases has construed the Twenty-first Amendment as a source of power which permits a state to prohibit expressive activities in the context of its liquor licensing and regulatory authority, even if some of those activities are within the limits of the constitutional protection of freedom of expression. The proposed ordinance under consideration by the Baker city council uses, in paragraph three, portions of California's state liquor regulations which were held to be constitutional in LaRue.

However, this broad power under the Twenty-first Amendment has not been delegated by Montana to local municipalities such as Baker. Although I must conclude that the city has authority, pursuant to section 45-8-201(5), MCA, to enact an obscenity ordinance which applies to establishments with liquor licenses, I must also conclude that the city would have to justify any such ordinance under the stricter standards typically used to review infringements on constitutionally protected interests which result from the exercise of the city's general police power.

II.

The proposed ordinance contains three substantive provisions. The first prohibits live performances which contain any form of dancing, with a limited exception for singers and musicians. The second provision forbids any live performance which involves the removal of clothing, again with limited exceptions. Finally, the proposed ordinance would prohibit entertainment which contains specified sexual acts, touching, or nudity.

It is apparent that this proposed ordinance is more restrictive than section 45-8-201, MCA. It does not require a determination that the prohibited activities are obscene. It applies to performances for adults as well as for persons under the age of 18. It provides for strict criminal liability of owners, managers, and participants. While it is limited to establishments licensed to sell liquor, it extends the police power of the city to prohibit all forms of nightclub or barroom entertainment which involve dancing, whether or not the

dancing is sexually oriented or nude, as well as those forms which involve nudity, whether or not the nudity is associated with sexual conduct.

In Olson v. City of West Fargo, 305 N.W.2d 821 (N.D. 1981), the North Dakota Supreme Court determined that a municipal ordinance with virtually identical provisions did not unconstitutionally infringe on free speech or expression under the city's normal police power, coupled with the additional authority conferred by the Twenty-first Amendment to regulate the use and license the sale of liquor. In North Dakota, however, cities are a repository of the state power under the Twenty-first Amendment and are statutorily authorized to regulate and restrict the operation of liquor licenses; they are expressly permitted to pass ordinances which prohibit dancing or various forms of entertainment on licensed premises. The fact that Montana municipalities with general powers have not been delegated and do not share this additional regulatory authority leads me to conclude that Olson is distinguishable and that a different analysis must be applied in order to determine the constitutionality of Baker's proposed ordinance.

The First Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment, prohibits a state or local government from enacting any law which abridges the freedom of speech. The 1972 Montana Constitution also contains a protective provision regarding free speech. Article II, section 7 states that "[n]o law shall be passed impairing the freedom of speech or expression." I emphasize the final phrase of this provision to point out that the 1972 Constitution revised the 1889 Constitution by enlarging a citizen's freedom to express himself. See 1889 Mont. Const. art. III, § 10; Bill of Rights Committee Proposal, Montana Constitutional Convention Transcript, Vol. II, p. 630. The comments of the Bill of Rights Committee at the constitutional convention indicate that the convention delegates intended a substantive change with the addition of this phrase:

> The committee unanimously proposes the adoption of former Article III, section 10 with one substantive change. The freedom of speech is extended, in line with federal decisions under the First Amendment, to cover the freedom of expression. Hopefully, this

> extension will provide impetus to the courts in Montana to rule on various forms of expression similar to the spoken word and ways in which one expresses his unique personality in an effort to re-balance the general backseat status of states in the safeguarding of civil liberties. The committee wishes to stress the primacy of these guarantees in the hope that their enforcement will not continue merely in the wake of the federal case law.

Quite clearly, therefore, article II, section 7, of the 1972 Montana Constitution provides at least as much protection of expression as does the First Amendment to the United States Constitution. See, e.g., Mickens v. City of Kodiak, 640 P.2d 818 (Alaska 1982).

The threshold issue involved in evaluating the constitutionality of the proposed ordinance is whether or not the prohibited activities come within these constitutional guarantees of freedom of speech and expression. Although the Montana Supreme Court has not addressed this issue, the United States Supreme Court has afforded First Amendment protection to live entertainment and nonobscene nude dancing. See Schad v. Borough of Mount Ephraim, 452 U.S. 61 (1981). The Court has not spoken dispositively on the amount of constitutional protection that is warranted for such activities in the absence of an assertion of a state's Twenty-first Amendment authority, but it has consistently noted that the potential artistic or communicative value of nude or partially nude dancing requires that its regulation be evaluated under First Amendment standards.

Exactly what the standards are, and what considerations are relevant in determining the extent to which live performances may be regulated, remain to be answered. The Court has stated that each medium of expression must be assessed for First Amendment purposes by standards suited to it. Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546 (1975). The standards suited to live performances are not necessarily identical to the strict obscenity standards set forth in Miller v. California, supra, and section 45-8-201, MCA, and may vary depending upon where a particular type of performance falls along the continuum between pure speech and gross sexual conduct.

I realize that the ordinance under discussion here is merely a proposal and that the city has not held hearings, made findings, or initiated prosecutions with respect to this ordinance. I also realize that courts in other jurisdictions have utilized varying analytical approaches in determining the constitutionality of local efforts to make nude or partially nude dancing a criminal offense. See Annot., Nude Entertainment as Public Offense, 49 A.L.R.3d 1084 (1973). Because performances with dancing or nudity may involve both speech and conduct, I conclude that the appropriate constitutional analysis of Baker's proposed ordinance requires a review of the governmental interests which the ordinance attempts to further. Government regulation of conduct which embodies both speech and nonspeech elements may be sufficiently justified (1) if it furthers an important or substantial governmental interest; (2) if the governmental interest is unrelated to the suppression of free expression; and (3) if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest. See Miller v. California, 413 U.S. at 26 n.8, citing United States v. O'Brien, 391 U.S. 367 (1968).

Live performances have traditionally received a lesser degree of First Amendment protection than written or pictorial "speech." See, e.g., Doran v. Salem Inn, 422 U.S. 922, 932 (1975) (noting that "the customary 'barroom' type of nude dancing may involve only the barest minimum of protected expression"). As the mode of expression moves from the printed page to the commission of public acts that may themselves violate valid penal statutes, the scope of permissible state regulation significantly increases. See California v. LaRue, 409 U.S. at 117. An initial inquiry must be made as to whether the particular activity at issue has a significant speech component. If the activity is primarily speech, it must be evaluated in accordance with the standards set forth in Miller v. California, supra. If the activity has so few communicative elements as to be primarily conduct, regulation of that conduct is valid as long as any incidental restriction on the speech elements is by the least restrictive alternative. See F. Schauer, The Law of Obscenity at 200 (1976).

While the nature of the communication involved in most barroom dancing may be such that "few of us would march our sons and daughters off to war" to protect that form of expression, the Supreme Court has nonetheless recognized that the proscription of nude dancing infringes on some forms of visual presentation which would not fall within the Court's definition of obscenity. See Krueger v. City of Pensacola, 759 F.2d 851 (1985), citing Young v. American Mini Theaters, 427 U.S. 50 (1976). Consequently, the city's interest in regulating such activities must be based upon something other than a desire to censor the form of the communication because of the community's dislike of its content.

Viewed on its face rather than as applied to a specific course of conduct, section 1 of the proposed ordinance (prohibiting live performances which contain any form of dancing) is probably overbroad and unconstitutional. By definition, dancing is rhythmical movement which is expressive of emotions or ideas and, therefore, has a significant communicative element. See In re Giannini, 446 P.2d 535 (Cal. 1968); Morris v. Municipal Court, 652 P.2d 51 (Cal. 1982); Yauch v. State, 505 P.2d 1066 (Ariz. Ct. App. 1973). The ordinance would apply not only to obscene dances, which fall outside the ambit of First Amendment protection, but also to nonobscene forms of dance such as folk dancing or ballet, which clearly come within that ambit. Other than Olson v. City of West Fargo, supra, I have found no authority supporting an ordinance which sweeps as broadly as section 1 of the proposed ordinance.

Your inquiry does not indicate the governmental interest which would be served by the proposed ordinance against dance performances. If the proponents of the ordinance are primarily concerned with the propriety of barroom dancing, it would be difficult to show either that the governmental interest was unrelated to the suppression of free expression or that the incidental restriction of First Amendment freedoms was no greater than necessary. While such legitimate and significant governmental interests as crime prevention, health, safety, and the protection of children may justify some regulation of otherwise protected free expression, the city would have to show that the articulated concern had more than merely speculative factual grounds and was actually a motivating factor in the passage of the ordinance. See

Krueger v. City of Pensacola, supra. Without more, I cannot say that this provision of the proposed ordinance is substantially related to a legitimate governmental interest and is drawn in a sufficiently narrow and clear manner so that it applies only to the particular conduct it seeks to regulate.

I call your attention to the Supreme Court's discussion of the legitimate concerns of the State of California which led to the regulations upheld in LaRue, 409 U.S. at 111. In justifying the promulgation of its rules, the state presented evidence connecting nude entertainment with prostitution, rape, assault, and sexual contact between customers and entertainers. While such explicit legislative findings may not be required where a state exercises its broad power under the Twenty-first Amendment (see Bellanca, 452 U.S. at 717), Baker must rely on the exercise of its less extensive police power and its authority under section 45-8-201(5), MCA, and must identify, articulate, and substantiate those governmental interests which are to be furthered by the ordinance. In the absence of factual findings supporting a legitimate need for the dance prohibition, for example, a reviewing court would have no basis for upholding any restriction whatsoever on this form of expression.

Section 2 of the proposed ordinance (prohibiting live performances which involve the removal of clothing) presents similar concerns. Although the conduct of removing one's clothing may contain less of a communicative or expressive element than dancing, as part of a live performance it may still possess this element; however, it is entirely prohibited by this section regardless of the context in which it occurs. The section does not distinguish between obscene and nonobscene conduct. Again, the governmental interest is not identified. If the section is intended only to prevent striptease acts, it has not been drawn narrowly or specifically enough to withstand the constitutional challenge that it is overbroad in its proscription.

Although it does not require nudity as an element of the offense, section 2 is related to section 3(c) of the proposed ordinance, which prohibits the actual or simulated displaying of various parts of the body. The sections combine to prohibit any live nude or partially

nude performances or entertainment which involve removal of clothing or exposure of the specified body parts.

However, an entertainment program may not be prohibited solely because it displays the nude human figure; nudity alone does not place otherwise protected material outside the mantle of the First Amendment. Shad v. Borough of Mount Ephraim, supra. Clearly all nudity cannot be deemed obscene and cannot be suppressed, irrespective of its context or degree, solely to protect persons from ideas or images that a legislative body thinks unsuitable for them. Erznoznik v. City of Jacksonville, 422 U.S. 205 (1975).

Nudity in entertainment which is performed in licensed premises before a willing audience may be distinguished from the kind of public nudity traditionally subject to indecent-exposure laws. See § 45-5-504, MCA. Where the nudity unreasonably intrudes upon the privacy interests of unwilling viewers, a state or a municipality may protect individual privacy by enacting reasonable time, place, and manner regulations. Erznoznik v. City of Jacksonville, supra. Montana law punishes lewd public exposure of genitals under circumstances in which a person knows that his conduct is likely to cause affront or alarm, and the First Amendment provides no protection to such conduct. See, e.g., State v. Price, 37 St. Rptr. 1926, 622 P.2d 160 (1980). However, the First Amendment limits the power of the government, acting as censor, to selectively shield the public from some kinds of expression which the government determines to be more offensive than other kinds. The nudity provisions of the proposed ordinance, no less than the dancing provisions, discriminate among forms of entertainment based upon their content and must be justified under the O'Brien standards discussed above.

Sections 3(a) and (b) of the proposed ordinance (prohibiting entertainment which contains the performance of specified sexual acts) appear to be directed at performances that partake more of "gross sexuality" than of communication--the sort of "bacchanalian revelries" which fall within the permissible limits of regulation as set forth in LaRue and Miller. Montana sexual crimes statutes prohibit some of the conduct to which these provisions are addressed. See, e.g., § 45-5-505, MCA. Other conduct may come within the prohibitions of the State's

obscenity law. See § 45-8-201(2)(a), MCA. While a particular performance containing such conduct may have communicative or expressive aspects, a local government has greater power to regulate expression which is directed to the accomplishment of an illegal act when such expression consists, in part, of conduct or action. California v. LaRue, supra. I conclude that a carefully drawn obscenity ordinance prohibiting live performances which contain sexual conduct constituting gross sexuality would be a valid exercise of the city's authority under section 45-8-201(5), MCA, and could be justified under the O'Brien analysis as the least restrictive alternative insofar as otherwise protected expression may be incidentally affected.

The United States Supreme Court has emphasized that precision of drafting and clarity of purpose are essential where First Amendment freedoms are at stake. Any ordinance enacted under section 45-8-201(5), MCA, or the city's general police power which implicates the freedom of expression must be narrowly and specifically drawn so that it does not sweep far beyond the permissible restraints on obscenity and reach forms of expression protected by our state and federal constitutions.

THEREFORE, IT IS MY OPINION:

1. The State's authority under the Twenty-first Amendment to regulate the sale of liquor has not been delegated to municipalities with general powers.

2. A municipality with general powers may not punish a violation of its obscenity ordinance by suspending or revoking the liquor license of the offender.

3. The validity of a city ordinance regulating activities such as live dance performances in establishments licensed to serve liquor must be measured against free expression standards imposed by the United States and Montana constitutions.

4. A proposed city ordinance prohibiting any live performance involving dance or the removal of clothing in establishments licensed to serve

liquor would be an unconstitutional abridgment of free expression because (1) it fails to distinguish carefully between protected and unprotected conduct and (2) the requisite governmental interest in regulating such conduct has not been sufficiently established.

5. A proposed city ordinance prohibiting live entertainment containing the performance of specified sexual acts in establishments licensed to serve liquor may, if carefully drafted and supported by sufficient evidence, be shown to further an important and substantial governmental interest unrelated to the suppression of free expression and may be upheld as the least restrictive means of furthering that interest.

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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