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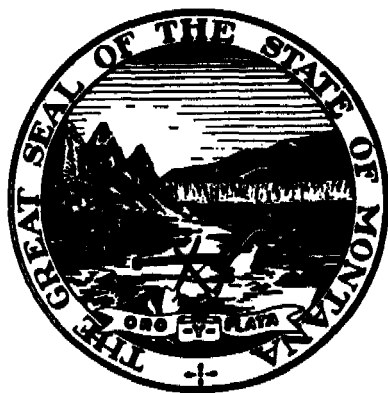
JUN 15 1988

OF MONTANA

RESERVE

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 11

OF MONTANA

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

Page Number

TABLE OF CONTENTS

NOTICE SECTION

FAMILY SERVICES, Department of, Title 11

11-16 Notice of Public Hearing on Proposed Repeal and Adoption - Foster Care Placement of Children. 1052-1056.

11-17 Notice of Public Hearing on Proposed Amendment and Adoption - Residential Placement of Youth in Need of Supervision and Delinquent Youth. 1057-1059

FISH, WILDLIFE AND PARKS, Department of, Title 12

12-2-164 Notice of Proposed Amendment - Fish Disease Certification. No Public Hearing Contemplated. 1060-1062

12-2-165 Notice of Public Hearing on Proposed Amendment - Extension of 10 Horsepower Restriction on Yellowstone River to the Springdale Bridge. 1063-1064

HIGHWAYS, Department of, Title 18

18-58 Notice of Proposed Adoption, Amendment and Repeal - Title 18, Chapter 8, Gross Vehicle Weight. No Public Hearing Contemplated. 1065-1116

LABOR AND INDUSTRY, Department of, Title 24

24-9-26 (Human Rights Commission) Notice of Proposed Repeal and Adoption - Procedures for Hearings of Petitions for Declaratory Rulings. Notice of Proposed Amendment - Confidentiality - Procedure on Finding of No Cause. No Public Hearing Contemplated. 1117-1126

LABOR AND INDUSTRY, Continued

24-16-11 Notice of Public Hearing on Proposed
Amendment and Adoption - Prevailing Wage Rates
and Substantive Rules. 1127-1136

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36-14-1 Notice of Public Hearing on Proposed
Adoption - Administration of the Safety of Dams
Program. 1137-1164

REVENUE, Department of, Title 42

42-2-404 Notice of Proposed Amendment and
Adoption - Coal Gross Proceeds - Imputed
Valuation for Refined Coal. No Public Hearing
Contemplated. 1165-1167

42-2-405 Notice of Public Hearing on Proposed
Amendment - Treatment of Foreign Taxes. 1168-1169

42-2-406 Notice of Proposed Amendment -
Industrial Machinery and Equipment Trend Factors.
No Public Hearing Contemplated. 1170-1174

42-2-407 Notice of Public Hearing on Proposed
Adoption - Corporation License Tax Nexus
Standards. 1175-1177

42-2-408 Notice of Public Hearing on Proposed
Adoption and Amendment - Sales Factor
Computations. 1178-1179

42-2-409 Notice of Public Hearing on Proposed
Adoption - Contractor Regulations, Corporation
License Tax. 1180-1184

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

46-2-540 Notice of Proposed Amendment - Food
Stamp Program - Incorporation by Reference of
Federal Regulations. No Public Hearing. 1185-1186

RULE SECTION

ADMINISTRATION, Department of, Title 2

AMD Sexual Harassment Prevention Policy.
NEW 1187-1189

COMMERCE, Department of, Title 8

AMD (Board of Landscape Architects) Examination. 1190

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

AMD Surface Water Quality Standards -
NEW Classification of Surface Waters in the State. 1191-1193

LABOR AND INDUSTRY, Department of, Title 24

REP (Human Rights Commission) Procedures for
AMD Contested Case Hearings.
NEW 1194-1195

REVENUE, Department of, Title 42

Notice of Correction - Correction of Rule
Numbers - Net Proceeds Rules for the Natural
Resource and Corporation Tax Division. 1196

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

AMD Civil Rights Complaints. 1197-1198

AMD Diagnosis Related Groups (DRGs). 1199-1200

AMD Speech Therapy Services. 1201-1204

INTERPRETATION SECTION

Opinions of the Attorney General.

84 Counties - Responsibility for Indemnifying
Fire District Employees - County
Commissioners - County Officers and
Employees - Employees, Public -
Responsibility for Indemnifying Fire
District and Fire Service Area Employees -
Fire Districts - Insurance - Montana Tort
Claims Act. 1205-1211

85 Counties - Adjustment to Salaries of County
Officials Due to County Reclassification -
County Attorneys - Salary Adjustment Due to
County Reclassification - County
Commissioners - County Officers and
Employees. 1212-1217

86 Administrative Law and Procedure -
Applicability of Montana Administrative
Procedure Act to School Districts and Local
Governments - School Districts -
Disqualification of County School
Superintendent in School Controversy,
Timeliness of Affidavit - Superintendent of
Public Instruction - Authority to Promulgate
Rules Concerning Timeliness of
Disqualification Affidavits Under Section
20-3-211(3), MCA. 1218-1220

Page Number

SPECIAL NOTICE AND TABLE SECTION

Functions of the Administrative Code Committee.	1221
How to Use ARM and MAR.	1222
Accumulative Table.	1223-1232

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the repeal	)	NOTICE OF PUBLIC HEARING ON
of Rules 11.7.101, 11.7.102	)	THE PROPOSED REPEAL OF
and 11.7.104 and the	)	RULES 11.7.101, 11.7.102
adoption of rules pertaining	)	AND 11.7.104 AND THE
to foster care placement of	)	ADOPTION OF RULES
children	)	PERTAINING TO FOSTER CARE
	)	PLACEMENT OF CHILDREN

TO: All Interested Persons

1. On June 29, 1988, at 10:00 a.m., a public hearing will be held in the conference room of the Department of Family Services, 48 North Last Chance Gulch, Helena, Montana to consider the repeal of Rules 11.7.101, 11.7.102 and 11.7.104 and the adoption of rules pertaining to foster care placement of children.

2. Rules 11.7.101, 11.7.102 and 11.7.104 as proposed to be repealed are on pages 11-299 and 11-300 of the Administrative Rules of Montana.

AUTH: Section 41-3-1103, MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87
IMP: Section 41-3-1103, MCA

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

RULE I DEFINITIONS (1) The following definitions apply to the rules contained in this subchapter.

(a) "Department" means the department of family services.

(b) "Foster care" or "substitute care" means full time care of a child in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction and, if necessary, treatment to children who are removed from or without the care and supervision of their parents or guardian.

(c) "Residential treatment" means treatment provided by a licensed youth care facility or child placing agency approved by the department to provide intensive treatment to children who are seriously mentally, emotionally or behaviorally disturbed.

(d) "Voluntary placement" means an out of home placement of a child by the department after the parents or guardians have requested the assistance of the agency and signed a voluntary placement agreement.

(e) "Voluntary placement agreement" means a written agreement between the department and the parents or guardians of a child which contains the consent of the parents or

guardians to placement in foster care and the rights and obligations of the parents or guardians, and the department while the child is in placement.

(f) "Youth care facility" (YCF) means a licensed facility in which foster care is provided and includes youth foster homes, youth group homes and child care agencies.

AUTH: Section 41-3-1103, MCA; Auth Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87

IMP: Section 41-3-301, 41-3-302 and 4-3-1103, MCA

RULE II GENERAL REQUIREMENTS (1) A child will be evaluated for placement in foster care by the department if he meets the following criteria:

(a) the child meets the legal definition of an abused, dependent or neglected child contained in section 41-3-102, MCA and removal from the home is necessary for the youth's protection;

(b) the removal of the child from the home occurred pursuant to a voluntary placement agreement or was the result of a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child and that reasonable efforts have been made to prevent the need for out of home placement (except that a child who is in imminent or apparent risk of harm may be placed in foster care pending such judicial determination);

(c) placement in foster care is in the best interests of the child; and

(d) the department, or a public agency having an appropriate agreement with the department, has the legal authority to place the child.

(2) Legal authority to place the child may be established as follows:

(a) the child is in imminent or apparent danger of harm and emergency placement is necessary to assure the child's protection. If emergency placement is used, the department must file a petition with the court within 48 hours (excluding weekends and holidays) seeking a court order to authorize the placement.

(b) A court order granting the department the right to place the child in a protective facility or granting temporary or permanent legal custody of the child.

(c) A written voluntary placement agreement signed by the custodial parent, or other person having legal custody and the department which grants the department the right to place the child in foster care, subject to the restrictions set forth in [Rule III].

(3) Children who meet the criteria set forth in subparagraph (1), will be evaluated by the department to determine the appropriate type of placement. The department will consider the individual behaviors of the child, the

family's situation and the community.

AUTH: Section 41-3-1103, MCA; Auth Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87

IMP: Section 41-3-301, 41-3-302 and 4-3-1103, MCA

RULE III VOLUNTARY PLACEMENT (1) Voluntary placement agreements may not exceed six months in duration.

(2) The department will accept voluntary placement agreements only:

(a) if the child is in danger of being abused, or neglected or dependent; and

(b) the parents are temporarily absent from the home, and no other placement alternatives are available;

(c) the parents are unable to provide adequate care for the child because of extreme temporary stress;

(d) the parents are worried about their hostile, abusive or neglectful feelings toward their child and are willing to voluntarily seek the assistance or services necessary to assure the child can be returned to them as soon as possible.

(3) If any of the following conditions exist, voluntary placement agreements will not be accepted. In such cases, the department will take appropriate legal action to protect the child.

(a) the child has suffered severe abuse or neglect;

(b) the child has suffered repeated abuse after services have been offered to the family;

(c) the parents behavior is dangerous to the child;

(d) the parents refuse treatment or services which seek to reunify the family;

(e) the child is completely rejected or unwanted by the parents; or

(f) the child requires treatment in a residential treatment facility.

(4) Voluntary placement agreements will not be accepted if:

(a) the youth requests placement to avoid being held responsible for his behavior or because of personality conflicts with the parents.

(b) the parent requests placement because of behavior problems of the youth or personality conflict with the youth. In such cases, the department will make appropriate referrals for services for the family to address these problems.

AUTH: Section 41-3-1103, MCA; Auth Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87

IMP: Section 41-3-301, 41-3-302 and 4-3-1103, MCA

RULE IV CRITERIA FOR PLACEMENT (1) The department will not place abused or neglected children in foster care, unless:

(a) Continuation in the home would be contrary to the welfare of the child.

(b) The placement is the least restrictive alternative available which is appropriate to meet the needs of the child.

(c) The placement will improve the likelihood of the reunification of the family at the earliest possible time. If reunification is not possible, the placement will improve the likelihood of achieving a permanent stable home for the child as soon as possible.

(d) The placement is in a YCF licensed by the department or by an appropriate licensing authority of another state or is with a person legally responsible for the child.

(e) The placement is in the best interests of the child.

(f) The placement will provide services and/or treatment appropriate for the child's individual needs.

(g) The placement is in close proximity to child's family, if possible.

AUTH: Section 41-3-1103, MCA; Auth Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87

IMP: Section 41-3-301, 41-3-302 and 4-3-1103, MCA

RULE V PLACEMENT IN RESIDENTIAL TREATMENT (1) A child may be referred for placement in residential treatment if:

(a) the child experiences severe delinquent, social and/or behavioral problems that prevent adjustment to his family, school and/or community;

(b) the child is a danger to himself or others;

(c) intensive residential treatment is necessary to restore or develop an acceptable personal or community adjustment; and

(d) all other lesser restrictive alternatives cannot meet the needs of the child.

(2) Placement in residential treatment outside of Montana will not be approved, unless:

(a) there are no available programs, facilities or other placements in Montana which can provide appropriate treatment or services for the child; or

(b) the placement is in closer proximity to the child's family than any placement available within the state; and

(c) the placement can provide the appropriate services and treatment of the child at a cost less than that offered by any available placement within the state.

(3) Placement in residential treatment shall not exceed 12 months, unless extension of the placement is authorized in writing by the department.

(a) Extensions will be granted if:

(i) the child is making active consistent and measurable progress toward changing the behaviors which mandated placement;

(ii) the child has a continuing need for intensive

treatment; and

(iii) the child will be able to be reunified with his family or reintegrated into the community within a reasonable amount of time.

(4) No child shall be placed in residential treatment unless there is a placement agreement signed by the provider and the placing agency which contains the following:

(a) identification of the problems of the child which require placement in residential treatment;

(b) services to be provided for the youth;

(c) duration of the placement;

(d) desired outcome of the services or treatment to be provided; and

(e) a discharge plan.

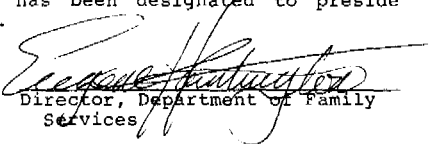
AUTH: Section 41-3-1103, MCA; Auth Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87

IMP: Section 41-3-301, 41-3-302 and 4-3-1103, MCA

4. Rationale. These rules are necessary to establish the department's requirements for the placement of children in out of home care. The rules include the federal requirements contained in Title IV-E of the Social Security Act and existing departmental policy.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Family Services, P.O. Box 8005, Helena, Montana 59604, no later than July 7, 1988.

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


Director, Department of Family
Services

Certified to the Secretary of State May 31, 1988.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of Rule 11.7.401	)	THE PROPOSED AMENDMENT OF
and the adoption of rules	)	RULE 11.7.401 AND THE
pertaining to residential	)	ADOPTION OF RULES
placement of youth in need	)	PERTAINING TO RESIDENTIAL
of supervision and	)	PLACEMENT OF YOUTH IN NEED
delinquent youth	)	OF SUPERVISION AND
	)	DELINQUENT YOUTH

TO: All Interested Persons

1. On June 29, 1988, at 10:00 a.m., a public hearing will be held in the conference room of the Department of Family Services, 48 North Last Chance Gulch, Helena, Montana to consider the proposed amendment of Rule 11.7.401 and the adoption of rules pertaining to residential placement of youth in need of supervision and delinquent youth.

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

11.7.401 DEFINITIONS

Subsections (1)(a) through (1)(d) remain the same.

(e) "Residential treatment" means treatment provided by a licensed youth care facility or a child placing agency approved by the department to provide intensive treatment to youth who are seriously mentally, emotionally or behaviorally disturbed.

(ef) "Youth care facility" (YCF) means a licensed facility in which foster care is provided and includes youth foster homes, youth group homes ~~or~~ and child care agencies as defined in section 41-3-1103(6), (7) and (8), MCA.

Subsection (1)(f) remains the same renumbered as (1)(g).

AUTH: Section 52-1-103(17), MCA

IMP: Section 41-5-525 through 529, MCA

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

RULE I CRITERIA FOR APPROVING RECOMMENDATIONS (1) The department will approve the recommendation of the youth placement committee if the recommended placement meets the following criteria:

(a) The placement is the least restrictive alternative necessary to meet the needs of the youth and community and is appropriate considering the youth's offense;

(b) The placement is in close proximity to the youth's family or residence, if possible;

(c) The placement will provide treatment or a program

11-6/9/88

MAR Notice No. 11-17

appropriate to the youth's needs and will result in the reintegration of the youth into the community at the earliest possible time;

(d) The placement is in a licensed youth care facility or a youth correctional facility, unless the placement is with a parent or with a person having legal custody of the youth;

(e) The placement is in the best interests of the youth; and

(f) The placement is in a facility which has a contract with the department to accept youths placed by the department at the rate determined by the department, or has otherwise been approved by the department.

AUTH: Section 52-1-103(17), MCA

IMP: Section 41-5-525 through 529, MCA

RULE II RECOMMENDATIONS FOR RESIDENTIAL TREATMENT

(1) The youth placement committee may recommend youth for placement in residential treatment if:

(a) the youth experiences severe delinquent, social and/or behavioral problems that prevent adjustment to his family, school and/or community;

(b) the youth is a danger to himself or others;

(c) intensive residential treatment is necessary to restore or develop an acceptable personal or community adjustment; and

(d) all other lesser restrictive alternatives cannot meet the needs of the youth.

(2) Placement in residential treatment outside of Montana will not be approved, unless:

(a) there are no available programs, facilities or other placements in Montana which can provide appropriate treatment or services for the youth; or

(b) the placement is in closer proximity to the youth's family than any placement available within the state; and

(c) the placement can provide the appropriate services and treatment of the youth at a cost less than that offered by any available placement within the state.

(3) Placement in residential treatment shall not exceed 12 months, unless extension of the placement is authorized in writing by the department.

(a) Extensions will be granted if:

(i) the youth is making active, consistent and measurable progress toward changing the behaviors which mandated placement;

(ii) the youth has a continuing need for intensive treatment; and

(iii) the youth will be able to be reunified with his family or reintegrated into the community within a reasonable amount of time.

(4) No youth shall be placed in residential treatment

unless there is a placement agreement signed by the provider and the placing agency which contains the following:

- (a) identification of the problems of the youth which require placement in residential treatment;
- (b) services to be provided for the youth;
- (c) duration of the placement;
- (d) desired outcome of the services or treatment to be provided; and
- (e) a discharge plan.

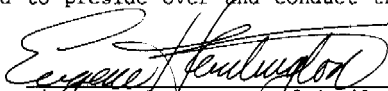
AUTH: Section 52-1-103(17), MCA

IMP: Section 41-5-525 through 529, MCA

4. Rationale. The youth placement committees are charged by law with recommending placements for youths committed by the youth courts to the department of family services. These rules are necessary to specify the department's criteria for evaluating the recommendations of the youth placement committees.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Family Services, P.O. Box 8005, Helena, Montana 59604, no later than July 7, 1988.

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



Director, Department of Family
Services

Certified to the Secretary of State May 31, 1988.

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

In the matter of the	)	NOTICE OF PROPOSED
amendment of Rule	)	AMENDMENT OF RULE
12.7.501 pertaining to	)	12.7.501 PERTAINING TO
Fish Disease Certification	)	FISH DISEASE CERTIFICATION
		NO PUBLIC HEARING
		CONTEMPLATED

TO: All interested persons

1. On July 15, 1988, the Montana Department of Fish, Wildlife and Parks proposes to amend rule 12.7.501 which requires the certification of salmonid fish and fish eggs as free from disease before being imported into the state.

2. The proposed rule to be amended will read as follows:

12.7.501 FISH DISEASE CERTIFICATION (1) Diseases.

Salmonid fish or eggs may not be imported into the state of Montana for release into any private or public waters, hatcheries, or holding tanks unless written certification is provided that the importation or source is free of the following diseases and/or infectious organisms that are known to cause these diseases. In this rule, "source" means the hatchery, lake or stream from which the importation originated.

(a) Salmonid eggs shipped into Montana shall be certified to have come from brood stock and from a source free of infectious pancreatic necrosis (IPN), infectious hemopoietic necrosis (IHN), viral hemorrhagic septicemia (VHS), bacterial kidney disease, furunculosis, and common or Hagerman type enteric redmouth. Salmonid eggs from a stock known to be infected with Myxobolus cerebralis or from a source or watershed where Myxobolus cerebralis is known to exist may be imported under specific conditions, including incubation in spore-free water and proper disinfection procedures. Importation of salmonid eggs from a stock or source containing Myxobolus cerebralis will only be allowed by written permission of the director of the Montana department of fish, wildlife and parks.

(b) Salmonid fish shipped into Montana shall be certified free of IPN, IHN, VHS, bacterial kidney disease, furunculosis, and common or Hagerman type enteric redmouth. Any salmonid fish ~~older than four months shall also be certified free of myxosoma cerebralis, the causative agent of whirling disease~~ shall also be certified free of Myxobolus cerebralis and shall be from a watershed or source where Myxobolus cerebralis is not known to occur.

(2) ~~Type of certification required:~~ Certification must be made in the state of origin by a designated pathologist by using established microbiological techniques and procedures as outlined in the American Fisheries Society Fish Health Section

Procedures for the Detection and Identification of Certain Fish Pathogens. Certification shall consist of a typewritten statement in the English language that the hatchery of origin, the wild stock, ~~or~~ and the individual shipment is free of the infectious organisms specified in (1). The certification shall also state that the shipment of live salmonids is free of visible symptoms of any other bacterial diseases. The original certification must be signed in ink by the designated pathologist. At least 5 days prior to importation, the Montana department of fish, wildlife and parks must receive a copy of this inspection report at its office in Helena, Montana 5960420 with notification of the method of shipment and its expected time and place of arrival in Montana. A copy of the certification must also be attached to or accompany each shipment. No specific certification is required from the watershed on which the hatchery of origin, the wild stock or the individual shipment is located. If, however, Myxobolus cerebralis is known to exist in that watershed, no fish originating from that watershed may be imported into Montana.

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

AUTH: Sec. 87-3-223, MCA

IMP: Sec. 87-3-221, MCA

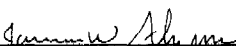
3. The rationale for this amendment is that in the last few years there has been an increase throughout the western United States of the diseases described in this rule. In particular, myxobolus cerebralis has been spreading rapidly throughout the western states. The amendments are proposed in order to strengthen the state's ability to keep these diseases from spreading into the state and damaging the state's wild fishery.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Eileen Shore, Department Attorney, Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, Montana, 59620, no later than July 11, 1988.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Eileen Shore, Department Attorney, Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, Montana, 59620, no later than July 11, 1988.

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 amendment, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly

affected has been determined to be 220 persons based on private and commercial pond license holders.


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

Certified to the Secretary of State May 31, 1988.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 12.6.901) ON THE PROPOSED AMENDMENT
OF ARM 12.6.901: EXTENSION
OF 10 HORSEPOWER RESTRICTION
ON YELLOWSTONE RIVER TO THE
SPRINGDALE BRIDGE

TO: All interested persons

1. On June 30, 1988, a public hearing will be held at the Community Room, City-County Complex, 414 East Callender, Livingston, Montana at 7:30 o'clock p.m., to consider the proposed amendment of Rule 12.6.901 pertaining to a 10 horsepower restriction on the Yellowstone River between Livingston and Springdale.

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

12.6.901 WATER SAFETY REGULATIONS (1) remains the same.

(1)(a) remains the same.

(b) The following waters are closed to the use of all boats propelled by machinery of over 10 horsepower, except in cases of use for search and rescue, official patrol, or for scientific purposes:

(i) all rivers and streams in the following counties east of the continental divide:

Silver Bow:

Beaverhead:

Jefferson:

Madison:

Gallatin:

exception-Missouri downriver from
Headwaters State Park;

Park:

exception-Yellowstone downriver from I-90
~~bridge at Livingston~~ Springdale Bridge;

Broadwater:

exception-Missouri downriver from the
Broadwater-Gallatin county line;

(ii) through (2) remains the same.

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

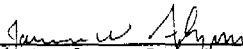
IMP: 87-1-303, 23-1-106(1). MCA

3. This rule is being amended in response to complaints concerning the danger posed to other water users by high speed boating in the section of river between the I-90 bridge at Livingston and the Springdale Bridge. This section of river is heavily used by floating and wading recreationalists including the elderly and very young. High-speed motor craft pose a threat to these users. Downstream from Springdale the river is larger and floating and wading pressures less and therefore more suitable for use by high-speed crafts.

The amendment must be reviewed and approved by the Department of Health and Environmental Sciences before becoming effective as required by Section 87-1-303, MCA.

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 Fred Robinson, Staff Attorney, Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, Montana, 59620, no later than July 8, 1988.

5. Fred Robinson has been designated to preside over and conduct the hearing.


James W. Flynn, Secretary
Montana Fish and Game
Commission

Certified to the Secretary of State May 31, 1988.

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
adoption, amendment, and	)	ADOPTION, AMENDMENT,
repeal of rules in Title 18,	)	AND REPEAL OF RULES
Chapter 8 (Highways, Gross	)	IN TITLE 18, CHAPTER 8
Vehicle Weight)	)	(HIGHWAYS, GROSS
		VEHICLE WEIGHT)

NO PUBLIC HEARING
CONTEMPLATED

TO: All Interested Persons:

1. On July 11, 1988, the Department of Highways proposes to revise Chapter 8, Gross Vehicle Weight Division.

2. The department is proposing the revision of this chapter because much of the text is statutory language, repetitious material, some of the provisions conflict with present statutes, and there is a need to clarify present practices. Also, the chapter has been reorganized for ease in location of subjects.

The following rules are proposed to be adopted: Rule I, Rule II, Rule III, Rule IV, Rule V, Rule VI and Rule VII.

All present rules in chapter 8 are proposed to be amended or repealed, except the following five rules: 18.8.303, 18.8.408, 18.8.429, 18.8.517, and 18.8.518.

The following rules are proposed to be amended: 18.8.101, 18.8.201, 18.8.301, 18.8.304, 18.8.306, 18.8.404, 18.8.405, 18.8.411, 18.8.412, 18.8.413, 18.8.414, 18.8.415, 18.8.418, 18.8.420, 18.8.422, 18.8.426, 18.8.428, 18.8.501, 18.8.502, 18.8.504, 18.8.508, 18.8.509, 18.8.512, 18.8.513, 18.8.514, 18.8.515, 18.8.601, 18.8.701, 18.8.801, 18.8.901, 18.8.902, 18.8.1002, 18.8.1101, and 18.8.1401.

The following rules are proposed to be repealed: 18.8.302, 18.8.305, 18.8.401, 18.8.402, 18.8.403, 18.8.406, 18.8.407, 18.8.409, 18.8.410, 18.8.416, 18.8.417, 18.8.419, 18.8.421, 18.8.423, 18.8.425, 18.8.427, 18.8.503, 18.8.505, 18.8.506, 18.8.507, 18.8.510, 18.8.511, 18.8.1003, 18.8.1004, 18.8.1005, 18.8.1006, 18.8.1007, and 18.8.1201.

3. The proposed revision provides as follows:

18.8.101 DEFINITIONS (1) The following definitions shall apply throughout this chapter:

~~(a) -- Gross Vehicle Weight --- The weight of a vehicle without load, plus the weight of any load thereon.~~
~~----- (b) -- Axle Measurement --- The distance between the axes shall be to the nearest foot. --- When a fractional measurement is exactly one-half ($1/2$) foot, the next larger whole number shall be used.~~

~~(c) (a) Holidays - The holidays are New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day, and Friday preceding any above-named holiday, when holiday is on Saturday, and Monday following any above-named holiday, when holiday is on Sunday.~~

~~(d) -- Restricted Route Load Permit --- An authorization, granted by the Department of Highways in writing, allowing a vehicle or a combination of vehicles to travel specified highways in excess of the weight allowed in section 61-10-105, MCA and where the maximum weight is computed by a statutory formula or limited by the rules and regulations of the Department of Highways.~~

~~(e) -- Single Axle --- Consists of all axles forty (40) inches or less apart. --- Maximum gross weight 10,000 pounds.~~

~~(f) -- Single Axle Load --- The total load transmitted to the road by all wheels whose centers may be included between two (2) parallel transverse vertical planes forty (40) inches apart, extending across the full width of the vehicle. --- For weights, see G.V.W. Form 30-B, which is available from the Gross Vehicle Weight Division.~~

~~(g) (b) Tandem axle - Consists of two axles more than forty (40) inches and less than 96 inches apart center of axle to center of axle. For weights, see G.V.W. Form 30-B, which is available from the gross vehicle weight division.~~

~~(h) -- Tandem Axle Load -- Restricted Route --- Two (2) consecutive axles more than forty (40) inches or less than ninety-six (96) inches apart shall not carry a load in excess of thirty-four thousand (34,000) pounds.~~

~~(i) Special Permit --- An authorization, granted by the Department of Highways, in writing, allowing a vehicle or combination of vehicles to exceed the maximum dimensions specified by statute, which shall be limited by the rules and regulations of the Department of Highways.~~

~~(c) Daylight hours - one half hour before sunrise to one half hour after sunset.~~

~~(d) Commercial use - vehicles registered to a business, company, co-op, or corporation and are used in these businesses.~~

~~(e) Personal use - vehicles registered to a private individual for his own personal use.~~

This rule is advisory only, but may be a correct interpretation of the law.

Auth: IMPLIED, 61-10-121 and 61-10-122 MCA; Imp: Title 61, Chapter 10.

REASON: This rule is being amended to delete statutory definitions, clarify an existing definition, and propose three new definitions to clarify licensing procedures.

18.8.201 INTERSTATE APPORTIONED LICENSING (1) Apportioned or proportional registration is a method of licensing commercial vehicles travelling interstate in which the fees are prorated by the percentage of miles travelled in each jurisdiction.

(2) The State of Montana is a member of two major apportioned licensing agreements. These agreements are known as the International Registration Plan and the Uniform Vehicle Registration Proration and Reciprocity Agreement.

~~(3) -- In addition to Montana, the following jurisdictions are members of the International Registration Plan -- Alabama (Effective October 1, 1980), Alberta, Arkansas, Colorado, Idaho, Illinois, Iowa, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, Virginia, Wisconsin, and Wyoming -- Carriers from these jurisdictions receive instructions, submit applications, and receive identification through their base (home) jurisdiction, which allows their travel in other jurisdictions.~~

~~(4) -- Members of the Uniform Vehicle Registration Proration and Reciprocity Agreement are -- Montana, Alaska, Arizona, British Columbia, California, Kansas, Nevada, New Mexico, North Dakota, and Washington -- Carriers from these jurisdictions submit an application and receive identification from each jurisdiction in which they wish to travel.~~

~~(5) (3) Montana based carriers and carriers from the Uniform Agreement jurisdictions are to contact the Gross Vehicle Weight Division, Box 4639, Helena, Montana 59602 59604, Ar-Gr-406-449-2476 406-444-6130, (2701 Prospect Avenue), for complete instructions and application forms. Carriers in the International Registration Plan from other states and provinces are to contact their base (home) jurisdiction for instructions.~~

(4) Custom combine trucks and trailers proportionally registered and displaying a Montana proration cab card are not required to pay additional ad valorem tax, G.V.W. fees, or license plate fees. Fuel permits and size and weight permits are required if applicable.

Auth: 61-3-716 MCA; Imp: 61-3-711 through 61-3-733 MCA.

REASON: This amendment deletes lists of jurisdictions belonging to each plan so the rule does not have to be revised as others join or withdraw. Also, a new subsection (4) is proposed to clarify licensing of custom combine operators to replace Rule 18.8.305, which is proposed to be repealed.

18.8.301 GENERAL RECIPROCITY INFORMATION (1) Vehicles registered in other states or jurisdictions are governed by the following:

(a)--Passenger cars are granted full reciprocity, except full Montana registration is required when owner establishes residence, becomes gainfully employed, or vehicles are used for profit.

(b)--Non-Resident Salesmen are granted full reciprocity on passenger vehicles when carrying samples and soliciting business.--Full Montana registration required--(Section 61-3-701, MCA)--when selling and delivering merchandise at the time of sale.

(c)--House Trailers are granted full reciprocity when towed by car or truck for recreational purposes only.

(d)--Students---Same as other passenger cars or personal use vehicles.

(e)--All non-resident vehicles used for recreational purposes by the owner or operator are to be granted full reciprocity for travel in, into, or through Montana.--The only requirement is that they be of legal size and weight or a legal combination.--The reciprocity applies to any state of license.--As an example: Passenger cars with boat trailer, Passenger cars with house trailers, Trucks with campers and trailers, Trucks only, Buses not chartered or for hire, Trucks with house trailers, etc.

(f)--All non-resident vehicles used for personal living quarters shall be granted reciprocity for travel into or through Montana, if the towing vehicle and the mobile home or trailer house are owned by the person using the vehicle living quarters.--The above does not apply in any type of commercial movement.--The above does not apply to persons gainfully employed in the State of Montana. Vehicles registered in other states and provinces may be granted reciprocity on certain license requirements and fees. Specific information for each jurisdiction is available by contacting the Gross Vehicle Weight Division, P.O. Box 4639, Helena, Montana 59604, A.C. 406-444-6130, (2701 Prospect Avenue.)

Auth: 61-3-716 MCA; Imp: 61-3-711 through 61-3-733 MCA.

REASON: This amendment deletes statutory language and adds a new informational paragraph.

18.8.302 TRANSIT PLATES - TRANSIT PERMITS - TRANSPORTER PERMITS - DEALERS LICENSE - SPECIAL PERMITS IN LIEU OF REGISTRATION - TEMPORARY REGISTRATION - IS HEREBY REPEALED. (1) Reciprocity may or may not be granted to these types of registration depending on the existing reciprocity agreement between Montana and the jurisdiction involved. Specific information for each jurisdiction is available by contacting the Gross Vehicle Weight Division, P.O. Box 4639, Helena, Montana 59601-7-A.E. 406-449-2476, (2701-Prospect-Avenue)

Auth: 61-3-716 MCA; Imp: 61-3-711 through 61-3-733 MCA.

REASON: Repeal is proposed because these subjects are under the jurisdiction of the Registrar of Motor Vehicles.

18.8.304 VEHICLES OWNED BY GOVERNMENTAL AGENCIES (1) All vehicles owned and operated into or through the State of Montana by the following are exempt from the payment of G.V.W. fees or temporary trip permits: United States Government, all states of the United States, any political subdivision of any state, Canadian Government, all provinces of Canada, and all political subdivisions of all Provinces of Canada. All government vehicles leased to commercial enterprises must license in Montana or purchase trip permits for interstate travel.

Auth: 61-3-716 MCA; Imp: 61-3-711 through 61-3-733 MCA.

REASON: The amendment is proposed for clarification of licensing of government vehicles leased to commercial enterprises.

18.8.305 NON-RESIDENT CUSTOM COMBINE OPERATORS- IS HEREBY REPEALED. (1) Special Permits are issued to cover registration, gross vehicle weight fees, size and weight, and fuel requirements. Detailed information is available by contacting the Gross Vehicle Weight Division, P.O. Box 4639, Helena, Montana 59601-7-A.E. 406-449-2476, (2701-Prospect Avenue) Also see ARM Sub-Chapter 57-Overdimensional Permit Requirements.

(2) Custom combine trucks and trailers licensed under proration and displaying Montana proration cab card are fully licensed in Montana. No further Montana vehicle license is required, unless prorate G.V.W. Fee weight is exceeded.

Auth: 61-3-716 MCA; Imp: 61-3-711 through 61-3-733 MCA.

REASON: It is proposed to repeal this rule and incorporate the information in Rule 18.8.201.

18.8.306 FUEL, SIZE, WEIGHT, SAFETY, AND CARGO HAULING AUTHORITY PUBLIC-SERVICE-COMMISSION REQUIREMENTS (1) The reciprocity granted does not excuse or relieve any owner or operator of any vehicle granted reciprocity from complying with all fuel laws, driver and vehicle safety requirements, all commercial carrier laws and regulations, Public-Service Commission laws, and all the size and weight provisions of Sections 61-10-101 through 61-10-148, MCA.

Auth: 61-3-716 MCA; Imp: 61-3-711 through 61-3-733 MCA.

REASON: The amendment is proposed to reflect transfer of Public Service Commission duties to the Highway Patrol by recent legislation.

18.8.401 TRUCKS AND TRAILERS - IS HEREBY REPEALED. (1) ~~The 6-V.W. fees provided in Section 61-10-201, MCA (Schedule I) and Section 61-10-202, MCA (Schedule II) (6-V.W. Fee Chart effective January 1, 1968) and 55¢ Fee Chart effective July 1, 1969 are to be collected at the time of registration of every truck, truck tractor (tractor), trailer, and semi-trailer based on the maximum gross loaded weight, not to exceed the weights set forth in Sections 61-10-101 through 61-10-110, MCA, in lieu of the above fees, Section 61-10-203, MCA (Schedule III) fees may be collected on powered vehicles.~~

Auth: 61-10-201 through 61-10-203 MCA; Imp: 61-10-201 through 61-10-203 MCA.

REASON: Repeal - statutory language.

18.8.402 VEHICLES WITH A GROSS WEIGHT IN EXCESS OF 42,000 POUNDS. - IS HEREBY REPEALED. (1) ~~In addition to the fees provided in Section 61-10-201, MCA (Schedule I) and Section 61-10-202, MCA (Schedule II) (6-V.W. Fee Charts effective January 1, 1968) for each motor truck, truck tractor (tractor), trailer, or semi-trailer hauling loads in excess of 42,000 pounds, there shall be collected a fee of \$62.50 for each 2,000 pounds or fraction thereof. Such vehicles are not to exceed the weight limits provided in Sections 61-10-101 through 61-10-110, MCA.~~

Auth: 61-10-201 through 61-10-203 MCA; Imp: 61-10-201 through 61-10-203 MCA.

REASON: Repeal - statutory language.

18.8.403 TRAILERS UNDER 2,500 POUNDS GROSS WEIGHT-COMMERCIAL - IS HEREBY REPEALED.

~~(1) Commercial---All-commercial-trailers-with-a-gross weight-of-under-2,500-pounds-shall-pay-a-G.V.W.-fee-of-\$3.75. The-following-are-a-few-of-the-common-commercial-uses:~~

~~(a)---Trailers-registered-to-a-business,-company,-co-op, or-corporation;~~

~~----(b)---Rental-trailers,-including-boat-rental-trailers and-horse-rental-trailers;~~

~~----(c)---Trailers-licensed-to-a-business-enterprise, includ ing-farms;~~

~~----(d)---Trailers-used-for-refuse-by-garages,-offices, office-buildings,-hotels,-motel,-apartment-houses,-etc;~~

~~----(e)---Trailers-used-for-delivery-of-machines,-equipment, merchandise,-propane-tanks,-fertilizer,-etc;~~

~~----(f)---Trailers-owned-by-Associations,-Clubs,-Cemeteries (Not-owned-by-City,-County,-or-State),-Private-Schools;~~

Auth: 61-10-202 MCA; Imp: 61-10-202 MCA.

REASON: Repeal - statutory language.

18.8.404 TRAILERS UNDER 2,500 POUNDS --PERSONAL-USE-- EXEMPT (1) All trailers under 2,500 pounds, when registered to an individual and used for his own personal use, are exempt. Trailers registered to companies, corporations, or business enterprises ~~are not personal-use-trailer~~ and used in their business are considered commercial and are not exempt.

This rule is advisory only, but may be a correct interpretation of the law.

Auth: IMPLIED, 61-10-202 MCA; Imp: 61-10-202 MCA.

REASON: The amendment is to clarify trailer use.

18.8.405 75% FEES (1)---A-fee-equal-to-75%-of-the-fees set-forth-in-Section-61-10-201,-MCA-(Schedule-I)-and-Section 61-10-202,-MCA-(Schedule-II)-shall-be-paid-for;

(a)---All-pole-trailers,-No-restriction-on-use;

- ~~(b)---All-trucks, truck-tractors, trailers, or semi-trailers-used-exclusively-for-hauling-livestock-and-logs.~~
~~(c)---Truck-tractors-and-lowboy-trailers-used-exclusively-for-hauling-equipment.~~
~~(d)---Truck-tractors-drawing-or-hauling-lowboy-trailers.~~
~~(2) The-75%-fee-does-not-apply-to-fees-in-Section-61-10-203, MCA, Schedule-III.~~
(1) Equipment necessary to complete a contract, but not consumed on the construction project, may be hauled by truck tractors and low-boy trailers licensed with 75% fees.
~~(3)---Equipment-includes-items-necessary-to-complete-a-contract-or-job.---Equipment-would-include-such-items-of-cargo-as-tanks, trucks, pickup-trucks, automobiles, rollers, pumps, light-plants, transformers, transformer-oil, etc.~~
~~(4)---A-common-carrier-can-be-engaged-in-the-movement-of-equipment.~~
~~(5)---Another-common-movement-of-equipment-is-the-piggy-back-hauling-of-empty-log-trailers-on-log-tractors.~~
~~(6)---Care-should-be-taken-with-some-items, such-as-pipe, beams, ties, etc., which-are-used-by-contractors-as-part-of-their-equipment.~~
~~(7)---Commodities, such-as-lumber, steel, cement, pipe, boilers, insulations, etc., which-will-be-consumed-in-construction, cannot-be-hauled-on-the-75%-fee.~~
~~(8)---The-75%-fee-is-not-applicable-to-dump-trucks, flat-bed-trucks, grease-service-trucks, van-trucks, dry-cement-trucks, or-any-other-type-of-truck.~~
~~(9)---The-75%-fee-is-not-applicable-to-any-trailer, except-log-trailers, pole-trailers, and-trailers-used-exclusively-for-hauling-livestock.~~
~~(10)---The-75%-fee-applies-only-to-the-tractors-described-above.~~

This rule is advisory only, but may be a correct interpretation of the law.

Auth: IMPLIED, 61-10-204 MCA; Imp: 61-10-204 MCA.

REASON: The amendment is to omit statutory language and unnecessary examples. It has also been reworded for clarity.

18.8.406 55% FEES - IS HEREBY REPEALED. ~~(1)---A-fee-equal-to-55%-of-the-fees-set-forth-in-Section-61-10-201, MCA (Schedule-I)-and-Section-61-10-202, MCA (Schedule-II)-shall-be-paid-for-trucks, truck-tractors, trailers, and-semi-trailers-used-exclusively-to-haul-ready-mix-concrete.~~
~~(2)---The-hauling-of-sand, gravel, bulk-or-packaged-dry-cement, or-any-other-product, except-ready-mix-concrete-is-prohibited-in-or-on-vehicles-licensed-at-55%-fees.~~

Auth: IMPLIED, 61-10-205 MCA; Imp: 61-10-205 MCA.

REASON: Repeal - statutory language.

18.8.407 HOUSE TRAILERS - IS HEREBY REPEALED. (1) ~~G.V.W. fees shall be collected at the time of all registration of all house trailers at \$54 for each foot of the overall body length, exclusive of bumpers and hitch.~~

Auth: IMPLIED, 61-10-208 MCA; Imp: 61-10-208 MCA.

REASON: Repeal - statutory language.

18.8.409 BUSES AND STAGES - IS HEREBY REPEALED. (1) ~~The G.V.W. fees or taxes provided for buses or stages shall be \$7.00 per seat for maximum adult seating capacity, exclusive of the first seven seats and the operator's seat.~~ (2) ~~Motor vehicles which are regularly used to haul freight and passengers shall be taxed upon the basis of gross weight.~~

Auth: IMPLIED, 61-10-207 MCA; Imp: 61-10-207 MCA.

REASON: Repeal - statutory language.

18.8.410 SCHOOL BUSES - IS HEREBY REPEALED. (1) ~~School buses shall be exempt from the \$7.00 per seat tax as provided for buses and stages.~~

(2) ~~School buses used in charter service shall pay the \$7.00 per seat tax as provided for buses and stages.~~

Auth: IMPLIED, 61-10-207 MCA; Imp: 61-10-207 MCA.

REASON: Repeal - statutory language.

18.8.411 STATION WAGONS, SUBURBANS, AND JEEPS VANS

(1) ~~Station wagons, suburbans, and jeeps vans may be registered as passenger vehicles if used principally for the purpose of transporting persons. Or, they may be registered as trucks, if used principally for the transportation of freight or merchandise. Vehicles must be registered as trucks if used only for the transportation of freight or merchandise.~~

(2) ~~Any registrant may elect to register the above vehicles as passenger vehicles if they are to be used for purposes ordinarily performed by passenger cars. This would include towing boat trailers, house trailers, hauling camping~~

equipment, game, and various other uses performed by private automobiles.

(3)---If the vehicles are to be used primarily for the transportation of commodities, materials, merchandise, produce, freight, or animals, they should be registered as trucks.

(4) (2) The altering of any vehicle by addition of a truck body makes registration as a truck mandatory.

(5)---The preceding instructions do not permit the licensing of other truck types as passenger vehicles because of their use in transporting persons.

This rule is advisory only, but may be a correct interpretation of the law.

Auth: IMPLIED, Title 61, Chapter 10 MCA; Imp: 61-1-107 and 61-10-201 MCA.

REASON: Amended to modernize the wording and clarify the rule.

18.8.412 SELF-PROPELLED CAMPERS - HOUSE CARS

MOTOR HOMES (1) Self-propelled campers Motor homes used as recreational vehicles may be licensed as passenger cars and when so licensed are not subject to G.V.W. fees. When used commercially, a motor home must be licensed as a truck and pay G.V.W. fees.

This rule is advisory only, but may be a correct interpretation of the law.

Auth: IMPLIED, Title 61, Chapter 10 MCA; Imp: 61-10-201 MCA.

REASON: Amendment is to clarify the licensing of motor homes based upon usage.

18.8.413 DEALER PLATES - (1) When displayed on a vehicle owned by the dealer and hauling the dealer's own property, dealer plates are exempt from payment of G.V.W. fees. The exemption includes transit from the factory, delivery to customers of vehicles, and vehicles from the customer to dealer's place of business. G.V.W. fees need not be paid for vehicles displaying a dealer's plate except when any provision of 61-10-214(3) has been violated.

This rule is advisory only, but may be a correct interpretation of the law.

Auth: IMPLIED, 61-10-214 MCA; Imp: 61-10-214 MCA.

REASON: Amended to delete text that is statutory and clarify when G.V.W. fees apply to dealer plates.

18.8.414 INCREASE IN WEIGHT &/OR CHANGE OF CLASSIFICATION (1) The operator will be entitled to credit for fees already paid when an increase in weight and/or change of classification is made.

(1)---To-increase-weight-and-change-classification-Example---A-truck-was-originally-registered-at-18,000-pounds, Full-Fee---(Fee-paid---\$37.50)---The-owner-wishes-to-change to-22,000-pounds, 75% Livestock-Fee

22,000-pounds-Livestock-Fee-----\$46.88
18,000-pounds-Livestock-Fee-----28.13
Charge-for-Permit-----\$18.75

(2) No credit shall be given for more than the lesser gross weight when changing from a more costly to a cheaper classification.

(3)---Example---A-truck-originally-registered-at-18,000 pounds, Livestock-Fee---(Fee-paid---\$28.13)---The-owner wishes-to-change-24,000-pounds, Full-Fee

24,000-pounds-Full-Fee-----693.75
18,000-pounds-Livestock-Fee-----28.13
Charge-for-Permit-----\$65.62

(4)---To-increase-weight-in-same-fee-classification-Example---A-farm-truck-was-originally-registered-at-16,000 pounds,---(Fee-paid---\$6.00)---The-owner-wishes-to-increase farm-truck-at-24,000-pounds-G-V-W

24,000-pounds-Farm-Fee-----\$15.00
16,000-pounds-Farm-Fee-----6.00
Charge-for-Permit-----\$9.00

(3) (5) The G.V.W. Law provides specifically only for increase in G.V.W. by payment of additional fees in the same classification.

(6) (4) To-determine-the-proper-fees, the-date-of-the original-registration-should-always-be-used---Example---A truck-was-originally-registered-on-March-10---Application-is made-for-increase-in-weight-on-September-2---The-full-annual fee-must-be-used---not-the-1/2-year-fee. The date for determining the proper fees will be based on the date of the current registration.

(7)---Non-resident-owners-and-operators-required-to license-and-pay-G-V-W-fees-shall-be-governed-by-the-regulations-stated-above.

(8)---Non-resident-owners-and-operators-required-to-pay G-V-W-fees-only-shall-be-governed-by-the-regulations-stated above.

(9)---License-Plate-fees-are-not-subject-to-quarterly payment.

This rule is advisory only, but may be a correct interpretation of the law.

Auth: IMPLIED, 61-10-201, 61-10-202, 61-10-209, and
61-10-233 MCA; Imp: 61-10-201, 61-10-202, 61-10-209, and
61-10-233 MCA.

REASON: Amend to delete unnecessary examples and reword for clarity.

18.8.415 MONTHLY - QUARTERLY G.V.W. FEES (1)---The owner-or-operator-of-a-vehicle-with-a-GROSS-WEIGHT-IN-EXCESS OF-24,000-POUNDS-may-make-application-for-G.V.W.-fees-for-a three-month-period-which-corresponds-to-one-quarter-of-the calendar-year.

(2)---At-the-time-of-registration,an-applicant-may-elect to-pay-G.V.W.-fees-either-annually-or-quarterly-when-the-GROSS WEIGHT-applied-for-EXCEEDS-24,000-pounds.

(3) (1) The quarter fee shall be one fourth of the fee set forth in schedules I, II, and III if the gross weight exceeds 24,000 pounds and shall be based on a calendar quarter.

(4) A-Quarterly-Fee-may-be-paid-at-the-beginning-of-a calendar-quarter.--The-applicant-wishing-to-skip-a-quarter-of G.V.W.-fees-must-make-application-for-a-succeeding-quarter AFTER-THE-BEGINNING-of-the-quarter.

(5) (2) A The calendar quarter quarters is are as follows: first quarter - January, February, March; second quarter - April, May, June; third quarter - July, August, September; and fourth quarter - October, November, December.

(6) Each-fee-paid-at-the-time-the-basic-license-fee (610.00-registration-fee)-is-paid-shall-be-one-fourth-the-fee in-excess-of-24,000-pounds-set-forth-in-Schedules-I,-II,-and III.--No-additional-fee-of-61.00-shall-be-collected. Registration-is-the-payment-of-the-license-(610.00 registration).

(3) For each monthly or quarterly fee collected at any time, other than at the time the basic registration fee is collected, there shall be collected a \$5.00 additional fee. If the payment of the monthly or quarterly G.V.W. fee is made prior to the purchase of the Montana registration (Montana license plate), the additional fee of \$5.00 per month or quarter is to be paid for each vehicle.

(7) (4) It-is-suggested-that-a-simple-rule-is "No 61.00 The \$5.00 additional fee is not collected due when an Owner's Certification of Registration and Tax Receipt is issued or an-R-P-O a Registration Purposes Only Receipt (R.P.O.) is issued (T, TR, R.P.O.)".

~~(8) For each Quarterly Fee collected at any time, other than at the time the basic registration fee is collected, there shall be collected \$1.00 Additional Fee--If the payment of the quarterly G.V.W. fee is made prior to the purchase of the Montana registration (Montana license plate), the additional fee of \$1.00 per quarter is to be paid for each vehicle.~~

(5) The G.V.W. fee receipt will state the issue date, effective date, and expiration date. The receipt is only valid for the time period between the effective date and the expiration date.

(6) Sixty day temporary window and temporary personalized plate window stickers do not include G.V.W. fees. G.V.W. fees must be paid prior to operation on the highway. Fees collected with the temporary stickers are subject to the additional \$5.00 fee.

(7) Twenty day stickers issued by dealers and county treasurers do include G.V.W. Fees.

This rule is advisory only, but may be a correct interpretation of the law.

Auth: 61-10-209 MCA; Imp: 61-10-209, 61-3-342, 61-3-317, and 61-10-201 MCA.

REASON: Amend to delete statutory language, reword for clarity and add subsections to correspond to present practices.

18.8.416 QUARTER FEE CHANGES OR CHANGES OF WEIGHT OR CLASSIFICATION - IS HEREBY REPEALED. (1)---Example---A truck was originally registered at 22,000 pounds, Full Fee (G.V.W. fee paid -- \$62.50) The owner wishes to change to 30,000 pounds for one quarter.

(a)---30,000 pounds, Full Fee-----\$-51.56
22,000 pounds previously paid
credit allowed-----None-
G.V.W. Fee-----\$-51.56
Quarterly Fee-----1.00
Total Fee-----\$-52.56

(2)---The full one quarter is collected, PLUS \$1.00,--No credit is allowed for ANY part of the 22,000 pound fee.

Auth: IMPLIED, 61-10-201, 61-10-202, 61-10-209, and 61-10-233 MCA; Imp: 61-10-201, 61-10-202, 61-10-209, and 61-10-233 MCA.

REASON: Repeal - contains only unnecessary examples.

18.8.417 QUARTER INCREASE IN WEIGHT OR CHANGE OF CLASSIFICATION - IS HEREBY REPEALED. (1)---Quarter-Fees may be increased by a change of weight or change of classification by payment of additional fees to the expiration date of the G.V.W. fees previously paid. Example---Quarter-Fee was originally paid for 36,000 pounds. Increase required to 42,000 pounds. Both 100% fees:

(a)---42,000-pounds-100%-Fee-1-Quarter-----\$-135.94
 36,000-pounds-100%-Fee-1-Quarter-----93.75
 Additional-Amount-to-be-Collected-----\$-42.19
 No-Additional-\$1.00-Fee-is-to-be-collected.

(2)---Windshield-stickers-DO-NOT-include-G.V.W.-FEES. G.V.W.-Fees-must-be-paid-prior-to-operation-on-the-highway. Quarter-Fees-collected-with-Windshield-Stickers-shall-have the-additional-\$1.00-fee-collected.

(3)---Quarter-Fee-paid-in-the-wrong-amount--Vehicle licensed-one-quarter:

(a)---42,000-pounds-100%-Fee-----\$100.75
 Additional-Fee-----1.00
 Total-Amount-Collected-----\$101.75

The-amount-should-have-been:

42,000-pounds-100%-Fee-----\$135.94
 Additional-Fee-----1.00
 \$136.94

The-additional-amount-to-be-collected-----\$27.19

The-\$1.00-Additional-Fee-is-NOT-to-be-collected.

Auth: IMPLIED, 61-10-201, 61-10-202, 61-10-209, and 61-10-233 MCA; Imp: 61-10-201, 61-10-202, 61-10-209, and 61-10-233 MCA.

REASON: Repeal - contains only unnecessary examples.

18.8.418 PERIOD OF QUARTER FEE (1) Each quarter shall be considered as a separate G.V.W. registration. The owner may apply for a new gross weight, either higher or lower than the original quarter, or may change classification. An application for a new gross weight registration or a change in classification may be made for each quarter.

(2)---Be-not-compute-quarterly-G.V.W.-fees-for-any vehicle-with-a-gross-weight-of-less-than-24,001-pounds,or bus-seat-fee,or-75¢-mobile-homes-fees.

(3) (2) A registration may be for more than one quarter or to the end of the year. Example--

(a)---January-to-June-30-is-two-quarters.
 (b)---January-to-September-30-is-three-quarters.
 (c)---April-to-December-31-is-three-quarters.
 (d)---July-1-to-December-31-is-1/2-year.

(4) (3) If a period of three quarters is originally purchased, a change of weight or a change of classification must be computed for the period of the original payment if credit is to be allowed. Fees for the change of weight or classification will be computed for the period of the current G.V.W. fee receipt if credit is due.

(5) --- A three quarter payment cannot be divided into single quarters for the purpose of change of weight or change of classification, if credit is to be allowed for fees previously paid.

(a) --- A 100% Fee for 36,000 pounds was paid for January to June, \$187.50. The operator wishes to change weight on April 12 to 42,000 pounds, 100% fee. The change with credit allowed is computed as follows:

42,000 pounds, 100% G.V.W. fee, 2 quarters --- \$271.88
36,000 pounds, 100% G.V.W. fee, 2 quarters --- \$187.50

Additional Fee Due	-----	\$ 84.38
Alternate with no credit allowed:		
42,000 pounds, 100% G.V.W. fee, 1 quarter	-----	\$135.94
Less Credit	-----	None
Fee to be Collected	-----	\$135.94
61.00 Quarter Additional Fee	-----	1.00
Total to be Collected	-----	\$136.94

This rule is advisory only, but may be a correct interpretation of the law.

Auth: IMPLIED, 61-10-209 MCA; Imp: 61-10-209 MCA.

REASON: Amend to delete unnecessary examples and reword for clarification.

18.8.419 EXPIRATION - IS HEREBY REPEALED. (1) --- All G.V.W. fees paid by the calendar quarter ending December 31 expire on December 31. The grace period provided by law is ten calendar days or seven business days, whichever is the greater. Vehicles operating after expiration date without payment of G.V.W. fees for the quarter are in violation of Section 61-10-232.

(2) --- The date of payment of fees shall determine the date fees will expire.

(a) --- Example --- An applicant makes application for one quarter on June 20 and has not paid a G.V.W. fee for the quarter ending June 30. The fee will expire on June 30.

Auth: IMPLIED, 61-10-223 and 61-10-209 MCA; Imp: 61-10-223 and 61-10-209 MCA.

REASON: Repeal - statutory language.

18.8.420 G.V.W. VALIDATING IDENTIFICATION (1) Each truck, truck tractor, trailer, semi trailer or three unit combination ~~trailer~~ with a gross weight in excess of 24,000 pounds (or non-resident paying a G.V.W. fee ONLY) will be issued a G.V.W. ~~validating-decal-and~~ cab card showing the expiration of the G.V.W. fees paid. ~~G.V.W.-validating-plates will no longer be issued.~~ The cab card will be either an Owner's Registration Receipt, G.V.W. Form 3, or G.V.W. Form 63.

(2) ~~---The-decal-is-to-be-placed-in-the-upper-right-hand corner-of-the-Montana-registration-plate---The-renewal-decal is-to-be-placed-over-the-expired-decal.~~

(3) ~~---Decals-will-be-issued-in-five-series:--A--1004 G.V.W.-Fee;--B--754-G.V.W.-Fee;--C--164-G.V.W.-Fee-(Farm);--D --Schedule-III-Fees-(Combined-Gross-Weight);--and-E--554 G.V.W.-Fees.~~

(4) ~~---Each-decal-will-have-the-large-figure-"1",-"2", "3",-or-"4"-in-the-center-which-indicates-the-expiration-date of-the-G.V.W.-Fee-"1"--Expires-March-31,-"2"--Expires-June 30,-"3"--Expires-September-30,-and-"4"--Expires-December-31r~~
~~---(5)---The-G.V.W.-validating-identification-will-be issued-by-the-G.V.W.-Division-after-the-payment-of-G.V.W. fees.~~

This rule is advisory only, but may be a correct interpretation of the law.

Auth: IMPLIED, 61-10-209 MCA; Imp: 61-10-209 MCA.

REASON: Amend to reflect fact that validating decals are no longer issued. Correct terminology error in subsection (1).

18.8.421 DELIVERY ZONE PERMIT - IS HEREBY REPEALED.

(1) ~~---Delivery-Zone-Permits-are-issued-to-trucks-or-truck tractors-licensed-under-61-10-201-(Schedule-I-Fees)-to-draw-a trailer-or-semi-trailer-in-the-local-delivery-zone-of-a specific-city-when-the-trailer-or-semi-trailer-has-entered the-State-in-combination-with-a-truck-or-truck-tractor licensed-under-61-10-203-(Schedule-III-Fees).~~

(2) ~~---Additional-fees-are-not-due-when-the-above licensing-requirements-are-met.~~

(3) ~~---Upon-completion-of-an-application,-which-can-be obtained-from-the-Gross-Vehicle-Weight-Division,-Box-4639, Helena,-Montana-59601,-a-Permit-Cab-Card-is-issued-to-the truck-or-truck-tractor---This-Permit-Cab-Card-must-be-carried in-the-vehicle-at-all-times-and-is-non-transferable,-unless the-transfer-is-requested-and-is-made-by-the-Gross-Vehicle Weight-Division.~~

(4) ~~---The-Permit-Cab-Card-will-designate-the-local delivery-area-in-which-the-vehicle-may-operate.~~

~~{5}---The permit is issued at no charge and has no expiration date as long as it is used in compliance with these regulations and with section 61-10-203-(4) and (5), MCA.~~

Auth: IMPLIED, 60-2-201 and 60-3-101 MCA; Imp: 61-10-203 MCA.

REASON: Repeal - statutory language.

18.8.422 TEMPORARY TRIP PERMITS (1) The time limit on all temporary trip permits shall be 72 hours. For extension of temporary trip permits, see paragraph (8) or (9).

(2) Vehicles used by displays or exhibitions (including circuses and carnivals) may be endorsed permitted to cover the period of their schedule for a single trip through the State. The last date the vehicle is to be in Montana is shown as the expiration date of all temporary trip permits issued to displays, carnivals, and circuses. Maximum permit fees must be paid.

~~{3}---The fees are as follows:~~

~~-----{a}---\$10.00 for each vehicle for each trip of 200 miles or less.~~

~~{b}---\$15.00 for each vehicle for each trip over 200 miles and up to 400 miles.~~

~~{c}---\$20.00 for each vehicle for each trip over 400 miles.~~

~~{4}---Each truck, each truck tractor, each trailer, and each semi-trailer within a combination of vehicles shall purchase a trip permit.~~

~~{5} {3}~~ A trip shall be the total number of miles travelled in Montana on public highways, roads and streets by each vehicle.

~~{6} {4}~~ Each vehicle or each truck or trailer in a combination of vehicles with a gross weight of over 6,000 pounds travelling under the following conditions is required to purchase a temporary trip permit:

(a) Vehicles titled or domiciled in a state not having a reciprocal agreement with the State of Montana.

(b) Non-reciprocal dealers plates.

(c) Commercial busses or charter busses operating from non-reciprocal states.

(d) House trailers being transported for sale or resale by use of non-reciprocal dealers plates.

(e) All non-resident ~~intransit~~ transit plates, or special permits, including ~~intransit~~ transit plates used to transport house trailers.

(f) Non-resident Vehicles ~~vehicles~~ travelling with improper ~~proration---weight~~ G.V.W. or license licenses.

(g) All non-resident trucks or trailers not carrying proper registration cards or papers showing state of domicile.

(h) All non-resident vehicles a part of an interstate fleet not ~~prorated~~ licensed as required by reciprocal agreements, including ~~prorated~~ vehicles without proper papers.

(i) All non-resident vehicles hauling loads in excess of license of state of domicile.

(j) All non-resident vehicles not currently licensed.

(k) All government vehicles leased by commercial enterprises.

~~47~~ (5) Exceptions are: (a) Non-resident interstate vehicles properly licensed from states with which Montana has reciprocity on gross weight fees.

(b) Non-resident house trailers towed non-commercially through Montana properly licensed in another state, the principal use of which is living quarters, temporary or permanent.

(c) Non-resident vehicles travelling on Montana trip permits are not required to purchase Montana license plates.

(d) Montana temporary trip permits shall not be issued to resident vehicles.

(e) Trailers drawn by trucks or tractors licensed under Schedule III fees, including ~~prorated~~, are not subject to trip permits if currently licensed and the registration receipt accompanies the vehicle.

(f) Vehicles with less than three axles licensed in an I.R.P. International Registration Plan jurisdiction.

(g) Vehicle or combination of vehicles not exceeding 26,000 pounds gross vehicle weight licensed in an I.R.P. International Registration Plan jurisdiction.

(h) Government vehicles operated by government personnel.

~~48~~ (6) Non-resident vehicles licensed with a temporary trip permit may perform an intrastate movement.

~~49~~ (7) Upon application to a G.V.W. enforcement officer or a highway patrolman, a trip permit may be extended by ~~his~~ the officer's endorsement for up to 15 days in an emergency, such as mechanical breakage or unsafe road conditions.

~~410~~ (8) Upon application to a G.V.W. enforcement officer or highway patrolman, a permit may be extended for a period of a holiday or weekend where the enforcement officer or patrolman has knowledge that the vehicle could not load or unload. The extension shall be limited to the period of the holiday.

~~411~~ (9) Extension-of-Temporary-Trip-Permits-for additional-miles-may-be-accomplished-as-follows--Example- Truck-"X"-enters-the-State-at-Monida-to-travel-to-Billen-and return-to-Monida---a-total-of-130-miles--The-fee-collected

would-be-610-00-(under-200-total-miles)---At-Billion-Truck
 "X" is instructed by the home office to travel to Williston,
 North Dakota via Great Falls, Havre and Culbertson---the
 distance-being-684-miles-from-Monida---The-truck-immediately
 is-subject-to-a-new-trip-permit-for-over-400-miles-at-a-fee
 of-\$20.00. The-permit-cannot-be-extended-for-an-additional
 \$10.00---A-new-permit-at-full-fee-must-be-purchased-for-the
 total-number-of-miles-the-vehicle-will-travel-in-the-State-of
 Montana-in-the-single-trip. An extension of mileage on a trip
 permit requires a new permit if the mileage increases the
 cost of the permit. No credit from the prior permit may be
 given and a new permit must be issued from the point of entry
 to the exit point with a full fee charged for miles travelled
 in Montana.

(10) The department of highways may designate agents to
 sell temporary trip permits.

This rule is advisory only, but may be a correct
 interpretation of the law.

Auth: IMPLIED, 61-10-212 MCA; Imp: 61-10-211 through 214
 MCA.

REASON: Amend to delete statutory language and unnecessary
 examples. Reword to clarify present practices.

18.8.423 SINGLE MOVEMENT PERMITS - IS HEREBY REPEALED.

(1)---This-law-is-under-the-administration-of-the
 Registrar-of-Motor-Vehicles.
(2)---A-Single-Movement-Permit-may-be-issued-by-the
 county-treasurer-for-the-movement-of-any-vehicle-which-would
 be-subject-to-registration-and/or-registration-and-G.V.W.
 fees--The-permit-is-valid-ONLY-for-an-unladen-vehicle.
-----(3)---Single-Movement-Permits-may-be-obtained-from
 county-treasurers-only---Permits-may-be-obtained-ONLY-from
 the-treasurer-in-the-county-where-the-vehicle-is-located-when
 the-trip-starts-(the-origin-of-the-trip).
(4)---The-permit-is-in-lieu-of-payment-of-registration
 fees-and-G.V.W.-fees--The-permit-is-in-lieu-of-registration
 fees-paying-the-754-per-foot-fee-for-mobile-homes.
(5)---A-mobile-home-or-house-trailer-may-be-issued-a
 single-movement-permit:
(a)---If-the-mobile-home,less-the-hitch,exceeds-25
 feet-in-length;
(b)---If-the-mobile-home-is-considered-unladen-when-all
 items-are-removed,-except-the-equipment-originally-installed
 by-the-manufacturer-and-personal-effects-of-owners.
(6)---The-permit-is-not-valid-for-the-movement-of-a
 mobile-home-or-house-trailer-less-than-25-feet-in-length,
 exclusive-of-hitch--The-permit-is-not-valid-for-interstate

~~intrastate movement of any vehicle. Such vehicle must travel by transit permit or temporary trip permits. (Interstate movement when the point of origin is in Montana. A Single Movement Permit is required. Trip permits do not apply.)~~

Auth: IMPLIED, 61-4-310 MCA; Imp: 61-4-310 MCA.

REASON: Repeal - jurisdiction of the Registrar of Motor Vehicles.

18.8.425 TRANSIT PERMITS - IS HEREBY REPEALED. (1) ~~The Registrar of Motor Vehicles has established that Transit Permits and Transit Plates may be displayed for the transit of both New and Used vehicles into and through the State.~~
(2) ~~When such plates are displayed, temporary trip permits are not to be required for any vehicle in the combination.~~
(3) ~~Transit Plates are not valid for interstate movement at any time. Transit plates are not valid on personal vehicles, including mobile homes or in any movement which is not from manufacturer to dealer or distributor or from distributor to dealer.~~
(4) ~~When Transit Permit Plates are displayed on Mobile Home Combinations, the towing vehicle is not to be charged an additional temporary trip permit.~~
(5) ~~Transit Permit Plates do not apply to towing units only (when not in combination with a mobile home) from non-reciprocal states. Temporary trip permits are to be charged.~~
(6) ~~Transit Permits expire December 31. No Grace Period.~~

Auth: IMPLIED, 61-4-301 MCA; Imp: 61-4-301 through 61-4-308 MCA.

REASON: Repeal - jurisdiction of the Registrar of Motor Vehicles.

18.8.426 CUSTOM COMBINES (1) Operators of custom combines are issued special permits to cover registration, gross vehicle weight fees, overwidth and overheight, and fuel requirements. Detailed information may be obtained by contacting the Gross Vehicle Weight Division, Box 4639, Helena, MT 59604, 406-444-6130. Also, refer to sub-chapters 5 and 7 for overdimensional and additional weight permit requirements.

(2) Combines owned and operated by a farmer, used by him on his own lands and incidentally moved over the highways from his own lands to his own lands or to a point

for service or returned from service, are not subject to license or gross weight fees.

~~(2) (3) Combines operated by implement dealers being delivered to a farmer or rancher, or moved from a farm or ranch to a dealer's place of business, or moved from dealer to dealer, are not subject to license of any kind.~~

~~(4) Custom combine permits include height to and including 14 feet, 6 inches and width to and including 15 feet.~~

~~(3)---Non-residents-and-residents-engaged-in-the business-of-custom-combining-are-subject-to-the-provisions-of Sections-15-24-301, 15-24-1001, and 15-70-311, MCA.~~

This rule is advisory only, but may be a correct interpretation of the law.

Auth: 15-70-314, IMPLIED, 15-24-1001 MCA; Imp: 61-10-214, 15-24-301, 15-24-1001, and 15-70-311 MCA.

REASON: Amend for clarification.

18.8.427 PROPERTY TAX PAID STICKER - IS HEREBY REPEALED.

~~(1)---The-Property-Tax-Paid-Sticker-is-required-on-all house-trailers-which-are-subject-to-property-taxes-in Montana.~~

~~---(2)---The-evidence-of-tax-payment-is-for-all-trailer houses-moved-from-point-to-point-in-Montana-or-from-a-point in-Montana-to-a-point-out-of-the-State.~~

~~(3)---The-sticker-is-not-required-on-new-trailers-in-transit.---The-sticker-is-not-required-on-non-resident-vehicles used-for-recreational-purposes.~~

~~(4)---The-Department-of-Revenue-has-approved-the-following-documents-as-proof-of-tax-payment-in-lieu-of-"Property Tax-Paid-Sticker".~~

~~(a)---A-Tax-Receipt-from-the-County-Treasurer.~~

~~(b)---An-Affidavit-from-the-County-Assessor-stating-the house-trailer-is-part-of-a-dealer's-stock-or-replacement.~~

Auth: IMPLIED, 15-24-202 through 15-24-208 MCA;

Imp: 15-24-202 through 15-24-208 MCA.

REASON: Repeal - jurisdiction of the Department of Revenue.

18.8.428 FERTILIZER VEHICLES ~~(1) License-fertilizer vehicles-the-same-as-S-M.-(Special-Mobile-Equipment)-or trailers-or-trucks,-depending-on-usage.~~

(1) Fertilizer vehicles to and including 9 feet in width: (a) Laden - requires proper safety equipment, must

fully license, and pay 55¢ G.V.W. fees if moved on the highway.

(b) Unladen - may license with S.M. (special mobile) license.

(2) Overwidth fertilizer vehicles exceeding 9 feet in width - must be unladen and must display S.M. (special mobile) license when operated on the highway.

(3) Fertilizer vehicles used exclusively by a farmer in his own farming operation are exempt from subsections (1) and (2).

(4) Vehicles capable of hauling other commodities are not considered fertilizer spreaders and must pay the appropriate G.V.W. fees.

This rule is advisory only, but may be a correct interpretation of the law.

Auth: IMPLIED, 61-10-205, 61-10-206, 61-10-201, and 61-10-202 MCA; Imp: 61-10-205, 61-10-206, 61-3-431, 61-10-201, and 61-10-202 MCA.

REASON: Amend to reflect present practices. Rework for clarification.

18.8.501 SPECIAL PERMIT (Dimensions - Exceeding statutory limits.) (1) Special permit (hereafter referred to as an overdimensional "permit") may be issued for either width, height, or length in excess of the statutory limits, or a combination of any of the three dimensions. A An overdimensional permit shall be issued for an irreducible load only, except when otherwise expressly set forth in the rules and regulations. The duration of a an overdimensional permit may be either a single trip or a term permit.

Auth: IMPLIED, 61-10-121 MCA; Imp: 61-10-101 through 61-10-148 MCA.

REASON: Amend to add the word "overdimensional" to indicate the type of permit. This word has been inserted throughout Sub-Chapter 5.

18.8.502 SINGLE TRIP (1) A single trip overdimensional permit shall be issued under-the-following conditions if:

{a}--The-load,-vehicle,-combination-of-vehicles,-or other-thing-exceeds-any-one-of-these-dimensions,-Width,-15 feet,-length,-95-feet,-or-Height,-14-1/2-feet-

{b} (a) Montana-license-for a The powered vehicle is operating on a Montana temporary trip permit.

~~(e) (b) Applicant is engaged in a single movement, or does not specify otherwise, or requests a single trip permit.~~

~~(d) (c) Overdimensional permit is transmitted by telegram, telecopier, telex, or communication service, except mail.~~

~~(e)--Truck, truck-tractor, trailer, or semi-trailer is unladen and of a width exceeding 120 inches (10 feet).~~

Auth: IMPLIED, 61-10-121 MCA; Imp: 61-10-121 and 61-10-124 MCA.

REASON: Amend to delete statutory language, reword for clarification, and bring into conformity with present practices.

18.8.503 TERM PERMIT - IS HEREBY REPEALED. ~~(1)--A Term Permit may be issued under the following conditions:~~

~~(a)--Load, vehicle, combination of vehicles, or other thing is 15 feet or less in width, 95 feet or less in length, or 14 1/2 feet or less in height.~~

Auth: IMPLIED, 61-10-121 and 61-10-124 MCA; Imp: 61-10-121 and 61-10-124 MCA.

REASON: Repeal - statutory language.

18.8.504 DURATION OF PERMIT (1) The duration of a single trip overdimensional permit is the length of time for the specified move shown on the permit. The duration of a an overdimensional term permit is for the period of the license of the vehicle and/or the G.V.W. fees.

Auth: IMPLIED, 61-10-121 MCA; Imp: 61-10-101 through 61-10-148 MCA.

REASON: Amend by rewording to conform to 61-10-121(1) and 61-10-124(4) MCA.

18.8.505 FEE FOR PERMITS - IS HEREBY REPEALED. ~~(1) The fees for permits for dimensions exceeding statutory limits are:~~

~~(a)--Single-Trip-Permit, \$10.00.~~

~~(b)--Term-Permit, \$75.00.~~

~~(c)--G.V.W. Form 71, No Fee---Issued to U.S. Government, all state, city, county, and political subdivisions of same and other governments.~~

Auth: 61-10-124 MCA; Imp: 61-10-101 through 61-10-148 MCA.

REASON: Repeal - statutory language.

18.8.506 ISSUANCE OF PERMIT - IS HEREBY REPEALED. (1) ~~The permit shall be issued to the powered vehicle (truck, truck tractor, special mobile equipment, or other powered vehicle).~~
(2) ~~No verbal permit shall be issued by telephone or otherwise. A written permit is required.~~
(3) ~~The permit shall be carried in the vehicle to which the permit is issued when the vehicle is travelling on the highway.~~
(4) ~~Alteration of any word or figure on the face of a permit will void the permit immediately and will subject the permit to confiscation by the inspecting officer.~~

Auth: IMPLIED, 61-10-121 MCA; 61-10-101 through 61-10-148 MCA.

REASON: Repeal - Information will be incorporated in Rule 18.8.509, General Permit Restrictions.

18.8.507 INSURANCE - IS HEREBY REPEALED. (1) ~~The insurance statement on the face of the permits must comply with the insurance regulations under ARM-18-8-801.~~

Auth: IMPLIED, 61-10-121 and 61-10-122 MCA; Imp: 61-10-101 through 61-10-148 MCA.

REASON: Repeal - Information will be incorporated in Rule 18.8.801 for uniformity.

18.8.508 SELF-ISSUING PERMIT (1) Upon payment of fees, Trip trip or term self-issuing overdimensional permits may be obtained from the Helena G.V.W. Office for excess width, height, weight, and length. These permits shall be completed for use as needed by the purchaser.

(2) The permittee must insert all information on the permit form in order to validate the permit. If the permit is not filled out completely, it will be confiscated. Repeated failures to completely fill out information will result in the applicant being denied the privilege of using self-issuing permits.

(3) Any questions concerning self-issuing permits must be directed to the Gross Vehicle Weight Division, Box 4639, Helena, MT 59604, (406) 444-6130.

Auth: IMPLIED, 61-10-121 MCA; Imp: 61-10-101 through 61-10-148 MCA.

REASON: Amend for clarification and additional information.

18.8.509 GENERAL PERMIT RESTRICTIONS (1) A permit may not be issued under Unless otherwise specified, an overdimensional permit is subject to the following conditions:

(a) -- For travel on Sundays, holidays, after 12 noon on Saturdays, or at night unless special permission is obtained from the Helena G.V.W. Office and specifically noted on the face of the permit, except that either a Trip Height Permit or a Term Height Permit may be issued for travel at any time if the load is not in excess of 14-1/2 feet in height.

(a) Vehicles or vehicles with a load 9 feet wide, or 95 feet long without overhang, or 75 feet long with overhang, or 14 feet 6 inches high may travel continuously.

(b) Travel is not allowed from 3 p.m. Friday to sunrise on Monday for vehicles or loads exceeding 9 feet in width, or 95 feet in length without overhang, or 75 feet in length with overhang, or 14 feet 6 inches in height on highways indicated on G.V.W. Form 32 permit or "red route restrictions" map, which is available from the Gross Vehicle Weight Division, Box 4639, Helena, MT 59604, (406) 444-6130.

(c) Vehicles or vehicle combinations with a non-built-up load to and including 16 feet wide, or 120 feet long, or 16 feet high may travel during daylight hours, 7 days a week, excluding holidays and holiday weekends, on all highways except those indicated on "red route restrictions" map.

(d) Vehicles or vehicle combinations with a non-built-up load exceeding 16 feet wide, or 120 feet long, or 16 feet high may travel during daylight hours, Monday through Friday. No travel is allowed Saturday, Sunday, holidays, or holiday weekends. No travel after 3 p.m. on Friday until sunrise on Monday on routes indicated on "red route restrictions" map.

(e) (b) The holidays are New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day, and Friday preceeding any above-named holiday when the holiday is on Saturday, and Monday following any above-named holiday, when holiday is on Sunday.

(2) (e) Alteration of any word or figure on the face of a permit will void the permit immediately and it will be subject to confiscation by the inspecting officer.

(3) (d) A permit which requires alteration or is lost must be replaced by purchase of another permit.

(4) (e) A permit is not transferable from one person to another, nor is it transferable with the change of ownership of a vehicle except as provided in 61-10-121(1), MCA.

(5) No verbal permit shall be issued by telephone or otherwise. A written permit is required. The original permit must be carried in the assigned vehicle.

(6) Overdimensional movement is prohibited when adverse conditions make travelling hazardous. Adverse conditions are defined as conditions caused by snow, ice, sleet, fog, mist, rain, dust, smoke, or maintenance and construction of the roadway or any other condition which adversely affects visibility, traction of the permitted load, or affects the safety of the travelling public.

(7) If any oversize or overweight movement by the permittee constitutes a hazard or is involved in an accident upon any highway in the state of Montana, such permittee shall be subject to additional restrictions at the discretion of the administrator of the G.V.W. Division for special permits for future use of the highways.

(8) Convoys of more than one load will not be allowed unless otherwise specified by other regulations.

(9) All vehicles shall comply with Montana licensing requirements.

(10) The total responsibility for protection of the public using the highway shall be assumed by the permittee.

(11) Vehicles and/or vehicles with loads with dimensions exceeding 10 feet wide, or 95 feet long, or 14' 6" in height are restricted to 55 m.p.h. unless a lower speed is posted on the highway or required as a condition of the permit.

This rule is advisory only, but may be a correct interpretation of the law.

Auth: IMPLIED, 61-10-121 and 61-10-122 MCA; Imp: 61-10-101 through 61-10-148 MCA.

REASON: This rule is proposed to be amended for clarification, to delete repetitious material, to reflect present practices, and to incorporate information from Rules 18.8.506, 18.8.601, 18.8.1003, 18.8.1007, 18.8.701, and 18.8.1005, so all general permit restrictions will be in one location.

Also, adverse conditions and speed restrictions are proposed to be included.

The proposed time and dimension restrictions and the implementation of the map, indicating highways which are restricted, resulted from a traffic volume study by the Program Development Division. It was determined the volume of traffic greatly increased after 3 p.m. on Friday and throughout the weekend on certain routes, so limitations are proposed on these routes for the safety of the traveling

public. The map will be available from the Gross Vehicle Weight Division.

RULE 1 EMERGENCY MOVES (1) At its discretion, the department may issue permits for emergency travel.

(2) The party requesting the emergency move shall contact the department of highways, G.V.W. division, for authorization of the emergency move.

(3) Emergency travel may be granted under the following conditions:

(a) Acts of nature.

(b) Derailments.

(c) Highway accidents.

(4) The department of highways may require safety devices, flag vehicle requirements, and routes of travel.

(5) A special permit shall be required when an emergency move is made.

This rule is advisory only, but may be a correct interpretation of the law.

Auth: IMPLIED, 61-10-121 and 61-10-122 MCA; Imp: 61-10-101 through 61-10-148 MCA.

REASON: Adopt to regulate emergency moves.

18.8.510 FLAGMAN REQUIREMENTS (EXCEPT HOUSE TRAILERS AND MOBILE HOMES) - IS HEREBY REPEALED. (1) --For house trailers-and-mobile-homes-see-requirements-in-ARM-18-8-1003 and-18-8-1007.

(2) --Vehicles-or-loads-with-a-total-outside-width-up-to-and-including-144-inches-are-not-required-to-utilize-flagman escorts.

(3) --Vehicles-or-loads-with-a-total-outside-width-in excess-of-144-inches-shall-be-preceded-by-a-flagman-escort-on all-two-lane-highways-for-the-purpose-of-warning-other-high-way-users.

(4) --On-completed-four-lane-highways, no-flagman-escort is-required-on-vehicles-or-loads-up-to-and-including-168 inches-(14-feet)-in-width.

(5) --Vehicles-or-loads-exceeding-168-inches-(14-feet)-on completed-four-lane-highways-are-required-to-be-followed-by-a flagman-escort.

(6) --The-vehicle-or-load-shall-properly-display-lights which-meet-the-standard-requirements-in-Section-61-9-219, MCA.

(7) --If-the-vehicle-or-load-passes-through-a-hazardous area, or-load-being-transported-continuously-infringes-upon

~~the adjacent lane of traffic, a flagman must be placed front and rear.~~

~~(8) -- The flagman requirement does not apply to dual wheel tractors under 15 feet in overall width, unless the vehicle is travelling through a hazardous area.~~

Auth: IMPLIED, 61-10-121 and 61-10-122 MCA; Imp: 61-10-101 through 61-10-148 MCA.

REASON: Repeal - replace by adoption of Rule IV in an effort toward uniformity, clarity, and ease in locating information.

RULE II REGULATIONS AND EQUIPMENT FOR FLAG VEHICLES

(1) A flag vehicle may be any passenger car or pickup truck that is properly equipped and used to warn other traffic of an oversize or overweight movement.

(2) The flag vehicle preceding or following the property being transported shall be between 500 and 1,000 feet of the movement.

(3) A sign with the words "wide load" or similar wording shall be visible from the front of the vehicle and rear of the vehicle at all times when piloting an oversize load. Letters shall not be less than 8 inches in height. The letters shall be dark in color on a light colored background.

(4) Flashing amber lights, visible front and rear, a minimum of 5 inches in diameter, 50 candlepower, 60 to 90 flashes per minute, shall be mounted at each end of a "wide load" sign on the roof of the flag vehicle. A revolving light may be substituted for flashing lights. Lights shall be flashing at all times when piloting an oversize load.

(5) All flag vehicles shall be equipped with two way radio communication.

This rule is advisory only, but may be a correct interpretation of the law.

Auth: IMPLIED, 61-10-121 and 61-10-122 MCA; Imp: 61-10-101 through 61-10-148 MCA.

REASON: Adopt - to replace text previously contained in Rules 18.8.1003, 18.8.1007, and 18.8.511 in an effort toward uniformity, clarity, and ease in locating information.

RULE III REGULATIONS AND EQUIPMENT FOR VEHICLES OR LOADS EXCEEDING 10 FEET WIDE (1) A sign with the words "WIDE LOAD" or similar wording shall be mounted a minimum of 8 feet above the surface of the highway on the towing vehicle

and a minimum of 6 feet above the surface of the highway on the back of the trailing unit or load. Letters shall not be less than 8 inches in height. The letters shall be dark in color on a light colored background.

(2) Flashing amber lights, a minimum of 5 inches in diameter, 50 candlepower, 60 to 90 flashes per minute, shall be mounted at each end of the wide load sign. On the power unit, a revolving light may be substituted for flashing lights. Lights shall be flashing at all times when moving an oversize vehicle or load.

(3) Flag vehicles may be required under Rule IV in lieu of "wide load" signs and flashing lights.

(4) Towing vehicles must be equipped with two-way radio communications.

This rule is advisory only, but may be a correct interpretation of the law.

Auth: IMPLIED, 61-10-121 and 61-10-122 MCA; Imp: 61-10-101 through 61-10-148 MCA.

REASON: Adopt - to replace portions of Rules 18.8.513, 18.8.1003, and 18.8.1007 for uniformity, clarity, and ease in locating information.

18.8.511 REGULATIONS FOR FLAGMAN ESCORTS - IS HEREBY REPEALED. ~~(1)--A-flagman-preceding-or-following-the-property-being-transported-shall-be-within-1,000-feet-of-said movement.~~

~~(2)--Flags-shall-be-displayed-on-the-driver's-side-of-a flagman's-pilot-car.~~

~~(3)--Each-flag-shall-be-mounted-on-a-staff-and-clearly visible-for-the-full-height-of-the-flag.--Flags-shall-be-not less-than-12"-x-12"-and-shall-be-red-without-printing-or advertising.~~

~~(4)--A-sign-with-the-words-"WIDE-LOAD"-shall-be displayed-on-the-front-of-the-vehicle-and-rear-of-the-vehicle when-the movement-exceeds-12-feet-in-width.--betters-shall not-be-less-than-8-inches-in-height;--Words-similar-to-"WIDE LOAD"-are-acceptable.~~

Auth: IMPLIED, 61-10-121 and 61-10-122 MCA; Imp: 61-10-101 through 61-10-148 MCA.

REASON: Repeal - replace with Rule II.

RULE IV WHEN FLAG VEHICLES ARE REQUIRED (1) Flag vehicles are required front and rear on primary and secondary highways and at the rear on interstate highways if the

vehicle or load exceeds the width of the travel lane from the centerline to the continuous shoulder line or the edge of the paved surface, whichever is the lesser.

(2) A vehicle or load over 10 feet wide but not exceeding the width of the travelled lane must be preceded and followed by a flag vehicle front and rear when it is not equipped with flashing amber lights and "WIDE LOAD" signs.

(3) A flag vehicle is required at the rear when the vehicle or load exceeds 100 feet in length on primary or secondary highways. A flag vehicle is required at the rear when a vehicle or load exceeds 110 feet in length on the interstate highway.

This rule is advisory only, but may be a correct interpretation of the law.

Auth: IMPLIED, 61-10-121 and 61-10-122 MCA; Imp: 61-10-101 through 61-10-148 MCA.

REASON: Adopt - replace Rule 18.8.510 and portions of Rule 18.8.1003 in an effort to clarify, simplify, and make uniform the regulations concerning flag vehicles and equipment.

18.8.512 HEIGHT (1) Each permit is automatically restricted to clearance of any bridge or underpass or other overhead obstruction on the route travelled.

(2) The permittee will be responsible for checking the route or routes to be travelled to determine clearance of bridges and/or other structures. ~~The permit does not guarantee such clearances for maximum height as specified in the list of bridges and structures prepared by the Department of Highways. The list may be secured from the G.V.W. Division as G.V.W. Form 30-A.~~

(3) The permittee shall be responsible for obtaining overheight clearances, including payment of all expenses incident incidental to removal of any thing obstructing clearances.

~~(4) Utility lines--See Sections 69-4-601 through 69-4-604, MCA, and Sections 69-4-202 and 69-4-203, MCA.~~

~~(5) Clearance Signing--Effective immediately, clearance signs will not be erected for any structure with more than 14'6" clearance.~~

~~(6) The signs on the structures will have "down" arrows. All structures with 14'6" clearance or less will also have the W-12-2 sign and supplemental panel in advance.~~

~~(7) Railroad companies do not desire clearance signs which refer to specified height mounted on their structures. Clearance signs will be ground-mounted directly in front of the column or abutment of the structure. The sign mounted at the structure shall be the W-12-2 without the supplemental~~

~~panel--The advanced warning sign will be the W-12-2 and the supplemental panel~~

~~(8)--All signs will have black lettering and borders on reflectorized yellow backgrounds.~~

~~(9) (4) A single trip permit only shall be issued for height in excess of 14 1/2 feet. All loads with a height of 14 feet, 6 inches or less may be issued either a term or single trip overdimensional permit.~~

~~(10) (5) A term permit for height in excess of statutory limits to and including 14 1/2 feet may be issued for a built-up load. Non-reducible loads with a height in excess of 14 feet, 6 inches will be issued single trip overdimensional permits.~~

Auth: IMPLIED, 61-10-121 and 61-10-122 MCA; Imp: 61-10-101 through 61-10-148 MCA.

REASON: Amend to delete repetitious material, old Maintenance Division regulations, and clarify present practices.

18.8.513 WIDTH (1) A single trip or term permit may be issued for the following built-up reducible loads to and including 9 feet in width, if they are hauled by vehicles that do not exceed 9 feet in total width.

- ~~(a)--Baled or loose hay--farm, ranch, or commercial;~~
- ~~(b)--Forest products in natural state--logs, cants, ties, studs, pulp wood hauled crosswise;~~
- ~~(c)--Culverts lengthwise;~~
- ~~(d)--Tanks lengthwise;~~
- ~~(e)--Beams;~~
- ~~(f)--Logging equipment;~~
- ~~(g)--Contractors equipment;~~
- ~~(h)--Oilfield equipment;~~
- ~~(i)--Christmas trees;~~
- ~~(2)--The commodities listed in subsection (b) of section~~
- ~~(1) above may also be hauled by vehicles equipped with log bunks not exceeding 9 feet in width.~~

(3) (2) Permits for reducible and non-reducible loads up to and including 9 feet wide the above may be issued for travel at night, Saturdays, Sundays, and holidays, provided load displays lights are displayed the full width of the vehicle and load.

(4) (3) Resident implement dealers may purchase a term overdimensional permit for widths determined by the department.

(4)--A "Wide Load" or similar sign shall be displayed on all loads exceeding 10 feet in width.

~~(5) Maximum widths for nonreducible loads may be found in rules 18-8-502 and 18-8-503 regarding single trip and term permits.~~

Auth: IMPLIED, 61-10-121 and 61-10-122 MCA; Imp: 61-10-101 through 61-10-148 MCA.

REASON: Propose to delete the list of cargos for purposes of uniformity, reword for clarification, add a subsection regarding implement dealers, and transfer previous subsection (4) to Rule III.

18.8.514 LENGTH (1)--A term length permit may be issued up to and including 95 feet in length.

(1) A term length permit may ~~shall not~~ be issued to a single powered vehicle, including load, up to and including in excess of 50 feet in length for continuous travel provided full length and width of vehicle and load is lighted.

(2) A single trip overdimensional permit may be issued to a single vehicle including its load in excess of 50 feet with the following restrictions:

(a) Travel during daylight hours only, 7 days a week.

(b) No travel holidays or holiday weekends.

(c) No travel after 3 p.m. Friday to sunrise Monday on the highways designated on the "red route restrictions" map.

(3) Any combination of vehicles hauling a load which extends beyond the rear of the trailer, to and including 75 feet in length, or 9 feet in width, or 14 feet 6 inches in height, and displaying lights full width and length of the load may travel continuously.

(4) Any vehicle combination up to and including 95 feet in length with a load that does not extend beyond the front or rear of the combination may travel continuously.

(5) Any combination of vehicles with load, which extends beyond the front or rear of the combination of vehicles, and has a total combined length including the vehicles and load, in excess of 75 feet, but not exceeding 120 feet, is restricted to the following:

(a) Travel during daylight hours, 7 days a week excluding holidays and holiday weekends, on all highways except those indicated on the "red route restrictions" map.

(6) Any combination of vehicles with load, which has a total combined length in excess of 120 feet is restricted to the following:

(a) Travel during daylight hours, Monday through Friday. No travel is allowed on Saturday, Sunday, holidays, or holiday weekends. No travel after 3 p.m. on Friday until sunrise on Monday on routes indicated on "red route restrictions" map.

(7) No overdimensional permit may be issued for a combination of vehicles in excess of 95 feet except as provided in subsection (8).

(8) A trip overdimensional permit in excess of 95 feet may be issued for a vehicle combination used exclusively for hauling heavy equipment (non-reducible loads) or to return unladen if vehicle combination is not reducible.

(9) A vehicle combination with a non-divisible length load which exceeds 95 feet may be issued a single trip overdimensional permit.

(10) Resident implement dealers may purchase a term overdimensional permit for lengths determined by the department.

~~(3)--A-Trip-or-Term-length-Permit-may-be-issued-for travel-on-Saturdays,-Sundays,-holidays-and-at-night,-to-and including-75-feet-in-length,-provided-the-load-shall-have lights-full-width-at-the-extreme-rear-of-the-load-and-the vehicle-and-load-do-not-exceed-9-feet-in-width-and-14.5-feet in-height.~~

~~(4)--Trip-or-Term-length-Permits-may-be-issued-for travel-on-Saturdays,-Sundays,-holidays-and-at-night-for-car carrier-combinations-up-to-95-feet-in-length,-including-load.~~

~~(5)--Violations-of-the-permit-will-be-recorded-on-the permit---Three-violations-and-the-permit-will-be-confiscated and-cannot-be-reissued,-except-by-the-Helena-S.V.W.-Office.~~

Auth: IMPLIED, 61-10-121 and 61-10-122 MCA; Imp: 61-10-101 through 61-10-148 MCA.

REASON: Amend by deleting statutory language, bring into conformity with present practices, reword for clarity and uniformity, include information for implement dealers, address problems encountered by reducing equipment length because of equipment design, make more enforceable, and remove conflicts with confiscation policy of other permits in Sub-Chapter 9.

18.8.515 REGULATIONS FOR MOVEMENT OF A LONG LOAD

~~(1)--A-load-exceeding-the-statutory-length,-but-not exceeding-the-statutory-width,-shall-be-moved-with-the-following-regulations:~~

~~(2)--A-load-with-a-combined-length,-including-towing vehicle,-of-100-feet-or-less---No-flagmen-are-required, provided-the-truck-has-power-to-maintain-a-minimum-speed-of 25-miles-per-hour-and-a-"Long-load"-sign-is-displayed-on-the rear.~~

~~(3)--A-load-with-a-combined-length,-including-towing vehicle,-over-100-feet-requires-a-flagman-in-front-and-rear of-the-unit-(or-convey)-.~~

(4) -- When the combination is part of a convoy not to exceed 10 vehicles, the combinations in the convoy shall travel 1,000 feet apart.

(5) -- Each load shall be equipped with flashing amber lights and red fluorescent flag on the rear.

(6) -- The flagman requirements may be increased during the tourist season or in areas of heavy tourist travel.

(1) Vehicles and combinations of vehicles with non-reducible loads exceeding 95 feet to and including 120 feet, but not exceeding the statutory width, are restricted to the following:

(a) Travel during daylight hours, 7 days a week, excluding holidays and holiday weekends, on all highways except those indicated on the "red route restrictions" map.

(b) A long load with a combined length, including towing vehicle, over 100 feet requires a flag vehicle at the rear of the combination and a "long load" sign displayed at the rear of the load when travelling on a two-lane highway. The power vehicle must maintain a minimum speed of 25 m.p.h. at all times.

(c) A long load with a combined length, including towing vehicle, over 110 feet requires a flag vehicle at the rear of the combination and a "long load" sign displayed at the rear of the load when travelling on an interstate highway. The power vehicle must maintain a minimum speed of 25 m.p.h. at all times.

(2) Vehicles and combinations of vehicles with non-reducible loads exceeding 120 feet, but not exceeding the statutory width, are restricted to the following:

(a) Travel during daylight hours, Monday through Friday. No travel is allowed Saturday, Sunday, holidays, or holiday weekends. No travel after 3 p.m. Friday until sunrise on Monday on routes indicated on "red route restrictions" map.

(3) The following restrictions apply for travel on primary, secondary, and interstate highways for all vehicle combinations with non-reducible loads over 95 feet long:

(a) Vehicle combinations shall be equipped with flashing amber lights and red fluorescent flags on the rear.

(b) When the combination is part of a convoy not to exceed 5 vehicle combinations with loads, the combinations in the convoy shall travel 1,000 feet apart. A flag vehicle is required at the front and rear of the convoy if the vehicle combination with load exceeds 100 feet in length on two lane highways or 110 feet in length on interstate highways.

(c) At the discretion of the department, the flag vehicle requirements may be increased during the tourist season, during inclement weather, or in hazardous areas.

Auth: IMPLJED, 61-10-121 and 61-10-122 MCA; Imp: 61-10-101 through 61-10-148 MCA.

REASON: Amend for clarification of restrictions for different lengths on various types of highways, delete repetitious text, and change "flagmen" to comply with Section 61-1-411 MCA. Composition of a convoy is also clarified.

RULE V WRECKERS AND/OR TOW VEHICLE REQUIREMENTS

(1) The following regulations apply to wreckers and/or tow vehicles:

(a) When proceeding to an emergency, the wrecker or tow vehicle must enter an open weigh station except if the emergency creates highway blockage and/or serious threat to life and property. If this condition exists, the wrecker or tow vehicle must have top lights flashing and may pass by the open weigh station.

(b) The wrecker or tow vehicle may tow the vehicles or vehicle combination from the emergency scene to the first location where the wrecker and/or tow vehicle may safely adjust and conform to the statutory permitted size. The safe location may be a highway pull out, parking area, etc. The wrecker or tow vehicle operator will be issued an overdimensional permit, in excess of the statutory permit dimensions, to the first location where the vehicles may be safely adjusted to size.

(c) Any wrecker or tow vehicle and a vehicle combination exceeding 80,000 pounds must have a restricted route-load permit prior to travel on a Montana highway.

(d) When returning from an emergency, the wrecker or tow vehicle and load which exceeds 8,000 pounds must enter an open weigh station.

This rule is advisory only, but may be a correct interpretation of the law.

Auth: IMPLIED, 61-10-121 and 61-10-141 MCA; 61-10-121 and 61-10-141 MCA.

REASON: Adopt - to regulate operation of wreckers and/or tow vehicles during emergencies.

18.8.601 OVERWEIGHT SINGLE TRIP PERMITS

(1) The department of highways hereby adopts and incorporates by reference the weight analysis manual, which sets forth the weights and conditions for movements of various equipment. A copy of the weight analysis manual published by the bridge bureau of the department of highways is on file in ~~may-be-obtained-from~~ the Gross Vehicle Weight Division, Box 4639 2701 Prospect Avenue, Helena, Montana 59624 59620.

~~(2) -- Overweight Permits may be issued for single trips only pursuant to Section 61-10-125, MCA.~~

~~(3) -- The permittee must first obtain a special permit, G.V.W. Form 327, pursuant to Section 61-10-124, MCA. The permit shall be valid for the period of the license or G.V.W. Fee, whichever is the lesser period of time. Example: A permit issued to a unit licensed with a Trip Permit would expire in 72 hours. Term permits expire December 31 and are extended to the grace period of the license or gross weight fees, whichever is the lesser.~~

~~(4) -- All miles to be travelled shall be included in computing the fee. The total miles shall include all public roads (county roads), streets (city streets), and highways (interstate, primary, and secondary).~~

~~(2) (5) The maximum axle loads and the minimum axle spacing for which overweight permits may be issued for non-built-up loads shall conform to the requirements of the weight analysis manual which manual is hereby adopted by reference and is on file and of record with the Office of the Secretary of State. Refer to paragraph (1) of this Rule.~~

~~(3) (6) An overweight load shall be considered to be a built-up non-reducible load when it consists of a single item that cannot be readily dismantled, divided, or otherwise reduced. Loads of heavy equipment (i.e., built dozers with blades and rippers attached and cranes with counterweights and booms attached) loaded in configurations closely approximating operational configurations, shall generally not be considered reducible or divisible. Such heavy equipment that meet these criteria may, with the approval of the issuing authority, be partially dismantled and rearranged to achieve safer highway configurations.~~

~~(4) (7) Subject to the exercise of discretion of the administrator, G.V.W. Division, permits may be issued for overweight loads of more than one item or for greater weights than those provided in the weight analysis manual where written application is made showing good cause for such exception. Refer to paragraph (1) of this Rule.~~

~~(5) (8) Overweight permits issued without speed restrictions imposed for to vehicles with maximum dimensions of 75 feet in length, or 9 feet in width or 14.5 feet 14 feet, 6 inches in height, or such other dimensional restrictions as may be imposed, shall be allowed to travel during the hours of darkness, Saturdays, Sundays and holidays unless special speed restrictions are imposed issued for continuous travel. Overweight vehicles in excess of these dimensions shall be limited as provided for in such permit.~~

~~(9) Overweight Permits are not transferable from one person to another, nor are they transferable with the change of ownership of a vehicle.~~

~~(6) (10) Permits may be issued for~~ do not allow travel on any state highway ~~provided that~~ where seasonal load limits are ~~not in effect, restricting weights below normal limits.~~

~~(7) The fee will be computed on the total miles travelled, which shall include all city streets, county roads, and all primary, secondary, and interstate highways.~~

~~(11) Alteration of any word or figure on the face of a permit will void the permit immediately and subject the permit to confiscation by the inspecting officer.~~

~~(12) No verbal permit shall be issued by telephone or otherwise. A written permit is required by Montana law.~~

Auth: 61-10-121 and 61-10-122 MCA; Imp: 61-10-101 through 61-10-148 MCA.

REASON: Amend - delete statutory language and unnecessary examples, reword for clarification, and transfer general provisions to Rule 18.8.509.

RULE VI CONDITIONS IMPOSED FOR MAXIMUM WEIGHT

(1) When required by weight analysis, a maximum speed limit of 55 miles per hour on the interstate and 45 miles per hour on two-lane highways is imposed unless a slower speed is required.

(2) When required by weight analysis, where speed is restricted across an interstate structure, there must be two rear flag vehicles. There must be a front and rear flag vehicle for an overweight permitted load where a speed restriction is imposed for travel across structures on primary and secondary highways.

(3) Before crossing any structure or structures, the hauling unit shall come to a complete stop approximately 50 feet from the end of the structure. After flag vehicles have stopped all traffic onto the structure, the overweight vehicle shall proceed at a speed not to exceed 5 miles per hour with the center of the unit directly over the centerline of the roadway of the structure. There shall be no alteration of the speed (changing of gears) while on the structure or approach.

(4) Flag vehicles shall not permit any other traffic on the structure until the overloaded vehicle is off the structure.

(5) Any violation of any of the above conditions, or axle weights and axle spacing, will automatically prohibit the owner from receiving any other permits for roading or hauling the vehicle in violation or any other similar vehicle under his jurisdiction or control.

(6) The word "structure" shall mean any bridge, overpass, etc.

This rule is advisory only, but may be a correct interpretation of the law.

Auth: IMPLIED, 61-10-121 and 61-10-122 MCA; Imp: 61-10-101 through 61-10-148 MCA.

REASON: Adopt to clarify conditions imposed for maximum weights. This information was previously incorporated in Rule 18.8.1201, which is proposed to be repealed.

A study performed by engineering personnel of the department determined that an increase in speed on the highways and structures would not cause any more damage than is presently being done, so the speeds are proposed to be increased.

Also, flag vehicle requirements are proposed to be made more stringent for the safety of the traveling public in conjunction with the higher speeds.

18.8.701 RESTRICTED ROUTE-LOAD PERMITS (1)--Restricted Route-Load-Permits-(G.V.W.-Form-30)-are-issued-to-owners-or operators-of-trucks,-truck-tractors,-busses,-or-powered vehicles.--The-permit-is-issued-to-the-powered-vehicle-and-is valid-for-any-lawful-combination.

(2)--Restricted-Route-Load-Permits-shall-expire-on-the expiration-of-the-license-or-G.V.W.-fee,-whichever-is-the lesser-period-of-time.--Example:--A-permit-issued-to-a-unit licensed-with-a-trip-permit-would-expire-in-72-hours.--Term permits-expire-December-31-and-are-extended-to-the-grace period-of-the-license-or-gross-weight-fees,-whichever-is-the lesser.

(3)--All-vehicles-must-have-required-Montana-licenses.

(4)--Highway-routings-shall-be-specified-by-the-Department-of-Highways-and-subject-to-change-as-the-following-conditions-may-change:

(a)--Safety

(b)--Highway-capacity

(c)--Economics-of-highway-maintenance-and-vehicle operation.

(1) (5) The restricted routes shall be shown on the G.V.W. Form 30-A permit.

(6)--Weights-are-shown-for-any-group-of-axes-or-any vehicle-(or-combination-of-vehicles)-on-G.V.W.-Form-30-B, which-is-available-from-the-Gross-Vehicle-Weight-Division, Box-46397-Helena,-Montana-59601-(2701-Prospect-Avenue)-7-(406) 449-2476-444-6130.

(7)--No-group-of-axes-shall-exceed-the-following weights-as-set-by-the-Highway-Commission-on-December-20, 1967,-except-that-two-consecutive-sets-of-tandem-axes-may carry-a-gross-load-of-34,000-pounds-each,-providing-the

overall-distance-between-the-first-and-last-axes-of-such consecutive-sets-of-tandem-axle-is-36-feet-or-more;

{8}--Maximum-gross-weight-allowed-on-any-vehicle-or combination-shall-be-determined-by-the-following-formula:
$$W = 500 \left\{ \frac{N}{N-1} + 2N + 36 \right\}$$

W--Gross-Weight

E--Wheel-Base-in-Feet

N--Number-of-Axes

{9}--The-Restricted-Route-Load-Permit-shall-be-in writing-on-a-form-adopted-by-the-Department-of-Highways-and shall-be-completed-in-all-aspects;

{10}--The-Department-of-Highways-may-revoke,-cancel-or suspend-the-Restricted-Route-Load-Permit-at-any-time-and-any peace-officer,-officer-of-the-Montana-Highway-Patrol-or employees-of-the-Department-of-Highways-may-confiscate-said permit-when-any-person-is-found-operating-a-vehicle-in-violation-of-the-conditions-of-the-permit,-laws-of-Montana-governing-the-rules-or-the-road,-or-any-of-the-regulations-established-by-the-Department-of-Highways-governing-the-issuance of-permits;

{11}--The-Restricted-Route-Load-Permit-may-be confiscated-at-the-discretion-of-the-inspecting-officer;

{12}--The-confiscated-permit-shall-be-retained-to-the G.V.W. Division-with-a-detailed-explanation-of-the-violation;

{13}--The-permittee-may-immediately-apply-in-writing-for a-replacement-permit,-provided-that-the-permittee-has-not lost-a-permit-through-confiscation-in-the-preceding-three months;

{14}--If-the-permittee-has-lost-one-permit-in-the-preceding-three-months,-a-replacement-permit-cannot-be-issued except-by-approval-of-the-Director-of-Highways-or-his-duly appointed-representative;

{15}--If-the-permittee-has-lost-two-permits-by-confiscation-in-the-preceding-three-months,-a-replacement-can-be issued-only-by-action-of-the-Director-of-Highways;

{16}--Axle-distances-shall-be-measured-to-the-nearest foot;

{17}--The-Department-of-Highways-may,-in-its-discretion,- reduce-the-maximum-axle-and-axle-group-loads-when-road-subgrades-have-been-weakened-by-climatic-conditions-or-other causes;

{18}--The-operation-of-vehicles-or-combinations-of vehicles-having-dimensions-or-weights-in-excess-of-the maximum-limits-herein-recommended-shall-be-permitted-only-if and-when-authorized-by-special-permit-issued-by-the Department-of-Highways-or-its-officers,-supervisors,-or agents-acting-pursuant-to-duly-delegated-authority-from-said Department,-including-the-Montana-Highway-Patrol;

{19} Restricted-Route-Load-Permits-are-not-transferable from-one-person-to-another,-nor-are-they-transferable-with the-change-of-ownership-of-a-vehicle.

~~(20) Alteration of any word or figure on the face of a permit will void the permit immediately and will subject the permit to confiscation by the inspecting officer.~~

~~(21) No verbal permit shall be issued by telephone or otherwise. A written permit is required by Montana law.~~

(2) The bridge formula in Section 61-10-107 is interpreted as follows:

$$W = 500 \left(\frac{LN}{N-1} + 12N + 36 \right)$$

W = the maximum weight in pounds that can be carried on a group of two or more axles to the nearest 500 pounds.

L = spacing in feet between the outer axles of any two or more consecutive axles.

N = number of axles being considered.

Auth: IMPLIED, 61-10-107 MCA; Imp: 61-10-101 through 61-10-148 MCA.

REASON: Amend - delete statutory language, incorporate material in Rules 18.8.509 and 18.8.901, reword for clarity and to conform to present policy.

A subsection explaining the bridge formula has been included to bring the rules into conformity with Federal interpretation.

18.8.801 INSURANCE (1) A minimum of \$100,000/300,000 Public Liability and a minimum of \$50,000 property damage insurance is required before a special size, weight, or restricted route-load or special vehicle combination permit may be issued. The permit must show the name of the insurance company.

(2) Carriers with I.C.C. authority may show their I.C.C.M.C. number in lieu of the above insurance requirements.

(3) Carriers with public service commission authority may show their public service commission authority number on the permit in lieu of the above insurance requirement.

Auth: IMPLIED, 61-10-121, 61-10-122, and 61-10-124 MCA; Imp: 61-10-121, 61-10-122 and 61-10-124 MCA.

REASON: Amend to include minimum insurance amounts. For uniformity, present Rules 18.8.507 and 18.8.1004 are proposed to be repealed and this rule will be the only rule regarding insurance requirements.

18.8.901 CONFISCATION OF PERMITS (1) Any violation of a special permit, term permit, or restricted route-load permit will be grounds for confiscation by an inspecting officer.

(2) A violation is considered as such whether it is violation of the laws of Montana, conditions attached to the permit, or the rules and regulations established by the department of highways. Actions contrary to the rules of suspension as classified below will also be considered a violation.

(3) In all cases where a violation is apparent to the inspecting officer, the violated portion of the permit will be confiscated and returned to the Helena G.V.W. Office. ~~The inspecting officer will determine the status of the record of the owner and operator and the officer will then inform the violator of his rights and liabilities attendant to each case.~~

(4) In each case where a violation of an oversize, overweight, or restricted route-load or special vehicle combination permit is apparent to the inspecting officer, the violated portion of the permit will be confiscated. ~~The inspecting officer will notify the G.V.W. Office in Helena, immediately while vehicle and driver are at hand. The G.V.W. Office will then notify the inspecting officer the status of the record of the owner and operator. The officer will then inform the violator of his rights and liabilities attendant to each case.~~

~~(5) Communication is to be made by telephone call and G.V.W. Form SW-1 will be prepared for each permit confiscated.~~

~~(6) The record of the owner or operator will be kept in Helena at the G.V.W. Office and will be open to inspection at any time. The records will show the number of violations, the form of violation, the circumstances of the permit itself, and the date of confiscation and any action taken on the violation and confiscation.~~

(5) In all cases at the discretion of the department, the permittee owner or operator of the vehicle may will be entitled to secure purchase a special movement permit to reach a destination which shall be at the discretion of the inspecting officer, either to a point of safety for the travelling public or to a point of actual destination. The owner or operator will always be notified as to the possibility of action that will be taken on each violation.

~~(8) An inspecting officer will not alter or change any condition, term, or regulation of a permit which has been found violated.~~

Auth: IMPLIED, 61-10-121, 61-10-122, and 61-10-143 MCA;
Imp: 61-10-121, 61-10-122, and 61-10-143 MCA.

REASON: Amend for clarity and to bring into conformity with present practices. The words "the violated portion" are proposed to be inserted because several permits are now combined on one form. Violation of one permit does not violate the entire permit form.

18.8.902 ADMINISTRATIVE PENALTIES (1) The following schedule of administrative penalties will attach to result from the violations of a special permit issued to the permittee; in the manner set forth.

(2) -- Violations within Ninety-Days:

- (a) First violation - re-issue new permit.
- (b) Second violation - 24-hour suspension.
- (c) Third violation - 30-day suspension.
- (d) Fourth violation - 60-day suspension.
- (e) Fifth violation - 90-day suspension.

(f) For each additional 30-day period, the owner or operator will be allowed one additional violation. For violations exceeding the fifth violation, the permittee must apply in writing to the administrator of the Gross Vehicle Weight Division for a new permit.

(3) -- First violation:

(a) -- For violations within 90 days, re-issue new permit.

(4) -- Second violation:

(a) -- For violations within 90 days, 24-hour suspension.

(b) -- For violations within 120 days, re-issue new

permit.

(5) -- Third violation:

(a) -- For violations within 90 days, 30-day suspension.

(b) -- For violations within 120 days, 24-hour suspension.

(c) -- For violations within 150 days, re-issue new

permit.

(6) -- Fourth violation:

(a) -- For violations within 90 days, 60-day suspension.

(b) -- For violations within 120 days, 30-day suspension.

(c) -- For violations within 150 days, 24-hour suspension.

(d) -- For violations within 180 days, re-issue new

permit.

(7) -- Fifth violation:

(a) -- For violations within 90 days, 90-day suspension.

(b) -- For violations within 120 days, 60-day suspension.

(c) -- For violations within 150 days, 30-day suspension.

(d) -- For violations within 180 days, 24-hour suspension.

(e) -- For violations within 210 days, re-issue new

permit.

(8) -- Sixth violation:

(a) -- For violations within 90 days, 120-day suspension.

(b) -- For violations within 120 days, 90-day suspension.

(c) -- For violations within 150 days, 60-day suspension.

(d) -- For violations within 180 days, 30-day suspension.

(e)--For-violations-within-210-days,-24-hour-suspension-
 (f)--For-violations-within-240-days,-re-issue-new
 permit-
 (9)--Seventh-violation-
 (a)--For-violations-within-90-days,-100-day-suspension-
 (b)--For-violations-within-120-days,-150-day-suspension-
 (c)--For-violations-within-150-days,-120-day-suspension-
 (d)--For-violations-within-100-days,-90-day-suspension-
 (e)--For-violations-within-210-days,-60-day-suspension-
 (f)--For-violations-within-240-days,-30-day-suspension-
 (10)--Eighth-violation-
 (a)--For-violations-within-90-days,-100-day-suspension-
 (b)--For-violations-within-120-days,-150-day-suspension-
 (c)--For-violations-within-150-days,-120-day-suspension-
 (d)--For-violations-within-100-days,-90-day-suspension-
 (e)--For-violations-within-210-days,-60-day-suspension-
 (f)--For-violations-within-240-days,-30-day-suspension-
 (11)--Ninth-violation-
 (a)--For-violations-within-90-days,-100-day-suspension-
 (b)--For-violations-within-120-days,-150-day-suspension-
 (c)--For-violations-within-150-days,-120-day-suspension-
 (d)--For-violations-within-100-days,-90-day-suspension-
 (e)--For-violations-within-210-days,-60-day-suspension-

Auth: IMPLIED, 61-10-121, 61-10-122, and 61-10-143 MCA;
 Imp: 61-10-121, 61-10-122, and 61-10-143 MCA.

REASON: Amend to make the rule enforceable and practical.
 It is proposed to give the G.V.W. administrator discretion
 after the fifth violation.

18.8.1002 TOWING UNIT (Toter) REQUIREMENTS (1) A
 mobile home not exceeding 8 feet in width with combination a
combined length over 60 feet shall have towing unit (toter)
 with minimum capacity of 3/4 ton equipped with dual tires
drive-axle.

(2) A mobile home not exceeding ten (10) feet in width,
 and a combined length not exceeding sixty-five (65) feet
 shall have a towing unit (toter) with a minimum capacity of
 3/4 ton equipped with a dual tires drive-axle.

(3) A mobile home not exceeding ten (10) feet in width
 with a combined length exceeding sixty-five (65) feet in
 length shall have a towing unit (toter) with a minimum capa-
 city of 1 ton equipped with dual tires drive-axle and-a-four-
speed-transmission.

(4) A mobile home twelve (12) feet in width and any
 length combination shall have a towing unit (toter) with a
 minimum capacity of 2 tons equipped with a dual tires drive
axle-and-four-speed-transmission.

Auth: IMPLIED, 61-10-121 and 61-10-122 MCA; Imp: 61-10-101 through 61-10-148 MCA.

REASON: Amend to reflect modern practices of using dual tires and automatic transmissions.

18.8.1003 OVERSIZE MOVEMENT REQUIREMENTS - IS HEREBY REPEALED. (i)--The following are regulations covering movement of oversize mobile homes, sectional homes, sectional buildings, portable homes and buildings, prefab homes and buildings, not including precut panelized homes or buildings, and house or building moving.

(a)--Oversize movements are prohibited (except for mobile homes that do not exceed 8 feet in width or 70 feet in length) under the following conditions, unless special permission is granted by the Helena G.V.W. Office:

(i)--During hours of darkness.

(ii)--When inclement weather prevails making travel conditions hazardous.

(iii)--On Sundays and after 12 noon on Saturdays.

(iv)--On Holidays.--Holidays are New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day.

(v)--On Friday preceding any above named holiday, when holiday is on Saturday.

(vi)--On Monday following any above named holiday, when holiday is on Sunday.

(2)--It is the intent of the regulations to follow, including (4) to move mobile homes safely over the highways of Montana without flagmen or flag cars.--The regulations apply to a maximum width of 12 feet as set forth in (4).

(3)--For the purpose of this regulation, mobile home shall be as defined in Sections 61-1-501, 61-4-309, and 15-24-201, MCA and in addition shall include sectional homes or sections of homes, sectional buildings or sections of buildings, portable homes and buildings, and prefab homes and buildings (public or private).--Sectionally portable or prefab homes or buildings shall be considered units from which hitch, safety lighting equipment, wheel carriage, running gear, or dollies are removed and returned on arrival at delivery site.

(4)--12 feet in width shall include any mobile home up to 15 feet in width provided the hitch is so placed that the distance from the center (front or rear) of the toter to the extreme left of the toter mobile home combination is not in excess of 6 feet, not including toter safety devices.--"Left" is to be the customary left of a motor vehicle.--The total width must be shown in the Special Permit.

{5}--The-toter-drawing-a-mobile-home-over-10-feet-wide to-and-including-12-feet-wide-shall-be-equipped-with-a-"Wide-load"-sign-mounted-above-the-car-

{6}--The-bottom-of-the-toter-"Wide-load"-sign-shall-be mounted-a-minimum-of-8-feet-above-the-highway-surface-and flashing-amber-lights-shall-be-mounted-at-each-end-of-the sign--The-amber-lights-used-for-this-purpose-shall-be-{5} five-inch-minimum-diameter; a-minimum-candle-power-of-50-and a-flashing-frequency-of-60-to-90-per-minute--The-flashing amber-lights-shall-be-operating-at-all-times-when-moving-a mobile-home--The-"Wide-load"-sign-shall-not-be-visible-when not-moving-a-mobile-home--The-toter-drawing-a-mobile-home over-10-feet-wide-shall-have-"Wide-load"-sign-on-front-of-the toter-

{7}--Flashing-amber-lights-shall-be-placed-on-rear-of all-mobile-homes-that-are-greater-than-ten-{10}-feet-in width--The-flashing-lights-shall-be-at-least-five-{5}-inches in-diameter-and-shall-be-visible-for-500-feet-and-placed-not less-than-6-feet-above-the-road-surface--The-flashing-amber lights-shall-be-operating-at-all-times--The-flashing-amber lights-shall-remove-the-necessity-of-a-rear-flagman-

{8}--Letters-used-on-the-"Wide-load"-sign-shall-have-a minimum-height-of-8-inches--The-sign-shall-be-removed-when the-flag-car-or-toter-is-not-moving-a-wide-load-

{9}--"WIDE-LOAD"-signs-may-have-ording-"Overwidth", "Oversize", or-similar-wording, indicating-over-dimension movement-

{10}--A-"Wide-load"-sign-shall-be-attached-to-the-rear of-the-mobile-home-and-shall-be-positioned-six-{6}-feet-above the-roadway-and-the-sign-shall-comply-with-the-specifications for-the-sign-

{11}--A-toter-and-mobile-home-equipped-and-moved-as-pre- vided-in-{6}-through-{10}-shall-be-allowed-to-travel-and-the total-responsibility-for-protection-of-the-public-using-the highway-shall-be-assumed-by-the-permittee--The-State-of Montana-shall-be-protected-by-the-permittee-from-all liability-

{12}--In-lieu-of-toter-equipment-in-{6}, mobile-homes that-are-over-10-feet-in-width-and-12-feet-or-less-in-width shall-be-preceded-by-flagmen-{flag-car}-and-followed-by-a flagman-{flag-car}--Each-shall-be-1,000-feet-from-the-unity front-and-rear--Flag-cars-shall-be-equipped-with-flashing amber-lights-and-"Wide-load"-signs--Signs-are-to-be-as specified-in-{8}--The-flashing-amber-lights-shall-be operating-at-all-times-when-assisting-in-the-movement-of-a mobile-home--The-sign-shall-be-removed-when-the-flag-car-or toter-is-not-involved-with-a-wide-load-

{13}--Flag-cars-and-equipment-{6}-through-{10}-are-not required-for-mobile-homes-10-feet-or-less-in-width-

{14}--The-rules-and-regulations-established-herein-are subject-to-change-

~~{15}--If-any-movement-of-a-vehicle-by-an-owner-or-operator-constitutes-a-special-hazard-or-is-involved-in-an-accident-upon-any-highway-in-the-State-of-Montana--such-owner-or-operator-shall-be-subject-to-additional-restrictions-at-the-discretion-of-the-Director-of-Highways-on-applications-for-special-permits-for-future-use-of-the-highways.~~

~~{16}--Brakes-are-required-on-all-mobile-homes-having-gross-weight-of-3,000-pounds-or-more.--Brakes-shall-be-controlled-from-the-towing-vehicle.--Brakes-on-the-mobile-home-shall-be-break-away-brakes.~~

Auth: IMPLIED, 61-10-121 and 61-10-122 MCA; Imp: 61-10-121 and 61-10-122 MCA.

REASON: Repeal to treat sectional homes the same as other overdimensional loads. For uniformity, the information is proposed to be incorporated in Rules 18.8.509, Rule IV, Rule II and Rule III. Also, statutory language has been deleted.

18.8.1004 INSURANCE REQUIREMENTS - IS HEREBY REPEALED.

~~{1}--A-minimum-insurance-of-625,000/50,000-public-liability-and-610,000-property-damage-shall-be-carried-on-all-toters-in-combination-with-mobile-homes-of-a-maximum-width-of-ten-{10} feet.~~

~~{2}--A-minimum-insurance-of-6100,000/300,000-public-liability-and-650,000-property-damage-shall-be-carried-on-all-toters-in-combination-with-mobile-homes-exceeding-ten-{10} feet-in-width.--Carriers-registered-with-the-Montana-Public-Service-Commission-and/or-the-Interstate-Commerce-Commission-shall-furnish-their-permit-number-or-M.C.R.-number-in-lieu-of-proof-of-insurance.~~

Auth: IMPLIED, 61-10-121 and 61-10-122 MCA; Imp: 61-10-121 and 61-10-122 MCA.

REASON: Repeal - incorporate in amended Rule 18.8.801.

18.8.1005 TOTER LICENSE REQUIREMENTS - IS HEREBY REPEALED. ~~{1}--A-Montana-owner's-personal-toter-used-for-movement-of-the-owner's-own-mobile-home-which-is-his-living-quarters--either-permanent-or-temporary--must-display-Montana-plates-with-1000-G.V.W.--Fee-paid-for-maximum-gross-loaded-weight-with-mobile-home-in-place.~~

~~{2}--Toters-licensed-in-other-states-or-provinces-and-used-for-pleasure-or-recreation--No-trap-permit-or-other-Montana-license-required-if-currently-licensed-in-another-jurisdiction.~~

(3)--Toters-licensed-in-other-states-or-provinces-and used-to-move-the-owner's-own-mobile-home-into-or-out-of-the state-and-not-used-for-any-other-purpose---No-trip-permit-or other-Montana-license-required-if-currently-licensed-in another-jurisdiction;

(4)--Private-Hauler---Montana-Based---Toter-shall-be registered-(Montana-plates),-and-Montana-100%-Schedule-I, G-V-W,-fee-paid-for-maximum-gross-loaded-weight-with-mobile home-in-place,-or-Montana-Prorate-License-

(5)--Reciprocal-license-is-valid-for-interstate-movement only-

(6)--Montana-Temporary-Trip-Permit-is-required-when license-is-not-reciprocal-

(7)--Montana-Dealers-Plates-are-not-valid-on-toter. Must-be-registered-and-have-Montana-100%-Schedule-I, G-V-W, Fees-paid-for-maximum-gross-loaded-weight-with-mobile-home-in place-

(8)--Non-resident-Dealer-Plates-are-not-valid-on-toter. Toter-must-have-Montana-Temporary-Trip-Permit-or-Montana-registration-with-Montana-100%-Schedule-I, G-V-W,-Fees-paid-for maximum-gross-loaded-weight-with-mobile-home-in-place,-except where-reciprocity-expressly-granted-for-interstate-movement only-

(9)--Montana-Single-Movement-Permit-is-not-valid-for intrastate-movement-into-or-through-the-State-

(10)--Montana-Transit-Plates-are-valid-for-movement-of combination-of-toter-and-mobile-home-from-factory-to-dealer or-dealer-to-dealer-in-interstate-travel-only--Transit Plates-are-not-valid-for-movement-of-toter-only--Transit Plates-issued-by-other-states-and-provinces-are-not-valid-- Montana-Temporary-Trip-Permits-are-required--Montana-Transit Plates-are-not-valid-for-movement-of-personal-trailers-at-any time-

Auth: IMPLIED, 61-10-121 and 61-10-122 MCA; Imp: 61-10-101 through 61-10-148 MCA.

REASON: Repeal - for uniformity, incorporate in amended Rule 18.8.509, General Permit Regulations.

18.8.1006 MOBILE HOME LICENSE REQUIREMENTS - IS HEREBY REPEALED. (1)--Private-Hauler-(Commercial)-must-be-Montana registered-with-G-V-W,-fee-of-75¢-per-foot-paid,-or-Single Movement-Permit-with-tax-sticker-or-county-assessor's declaration-displayed-

(2)--Montana-Dealers-Plate-may-be-displayed-when-vehicle is-delivered-to-the-customer-or-when-the-dealer-is-bringing mobile-home-from-the-factory-to-his-lot--May-be-displayed when-returning-mobile-home-to-his-lot,-such-as-a-trade-in. Montana-Dealers-Plate-may-not-be-loaned-or-in-possession-of

persons other than the dealer. -- Mobile home displaying a Dealers-Plate must have county assessor's declaration or tax sticker and Department of Revenue, Form MH-17 in the mobile home.

(3) -- All mobile homes shall display Department of Revenue Mobile Home Declaration, Form MH-17 as required by Sections 15-24-262 and 15-24-2647, MCA. -- Form MH-17 may be obtained from county assessors or weigh stations.

(4) -- Mobile homes, of which the U.S. Government is the lessor, which are moved by the lessee shall be required to have permits the same as any other trailer. -- Mobile homes moved by Government contractors are subject to license or permits the same as any other commercial movement.

(5) -- Mobile homes owned by the U.S. Government, any State Government, any County, City, or School District and moved by their own employees and their own powered vehicle shall not be charged Montana license fees or trip permits.

(6) -- No Fee Permit, GrVW, Form 717 shall be used when Oversize Permit is required for State, County, City, or other public move. -- GrVW, Form 32 is never issued.

Auth: IMPLIED, 61-10-121 and 61-10-122 MCA; Imp: 61-10-101 through 61-10-148 MCA.

REASON: Repeal - for uniformity, incorporate in amended Rule 18.8.509, General Permit Regulations.

18.8.1007 REGULATIONS COVERING MOVEMENT OF OVERSIZE MOBILE HOMES, SECTIONAL HOMES, SECTIONAL BUILDINGS, PORTABLE HOMES AND BUILDINGS, PREFAB HOMES AND BUILDINGS, NOT INCLUDING PRE-CUT PANELIZED HOMES OR BUILDINGS, AND HOUSE OR BUILDING MOVING, OVER 12 FEET WIDE, INCLUDING EAVES - IS HEREBY REPEALED. (1) -- The issuance of all permits shall be coordinated through the Helena Office of the Gross Vehicle Weight Division of the Department of Highways.

(2) -- In the interest of safety and minimum disruption of other highway traffic, the GrVW Division shall have the authority to specify highway routings over which such buildings may be moved and the hours during which movements on the highway can be made.

(3) -- Widths shall not exceed 18 feet, including eaves.

(4) -- Buildings must be of frame construction only, with out concrete, bricks, blocks, or masonry.

(5) -- Convoys of more than one building will not be permitted.

(6) -- Traffic in either direction shall not be held up for more than five minutes.

(7) -- Maximum speed shall be 50 miles per hour and minimum speed shall be 20 miles per hour unless conditions require a lower speed.

- (8)--Oversize-movement-is-prohibited;
- (a)--During-hours-of-darkness;
- (b)--When-inclement-weather-prevails-making-travel conditions-hazardous;
- (c)--On-Sundays-and-after-12-noon-on-Saturdays;
- (d)--On-Holidays--Holidays-are-New-Years-Day, Memorial Day, Fourth-of-July, Labor-Day, Thanksgiving-Day, and Christmas-Day;
- (e)--On-Friday-preceding-any-above-named-holiday, when holiday-is-on-Saturday;
- (f)--On-Monday-following-any-above-named-holiday, when holiday-is-on-Sunday;
- (9)--Movements-must-be-preceded-by-one-flag-car-to-warn and-regulate-traffic-and-all-safety-equipment-must-be-installed-to-meet-specifications, including-flashing-lights-and wide-load-signs--No-flag-car-is-required-for-movement-over completed-sections-of-the-Interstate-System-of-Highways;
- (10)--The-use-of-two-way-radio-communication-between pilot-cars-and-toter-is-required-effective-July-1, 1972.

Auth: IMPLIED, 61-10-121 and 61-10-122 MCA; Imp: 61-10-121 and 61-10-122 MCA.

REASON: Repeal - for uniformity, incorporate in Rules 18.8.509, Rule II, Rule III, Rule IV and Rule VII.

RULE VII REGULATIONS COVERING MOVEMENT OF ALL VEHICLES OR LOADS EXCEEDING 15 FEET WIDE, TO AND INCLUDING 18 FEET WIDE (1) The issuance of all permits shall be approved by the Helena office of the gross vehicle weight division of the department of highways.

(2) In the interest of safety and minimum disruption of other highway traffic, the G.V.W. Division may specify highway routings for such oversize loads and may specify the hours of travel.

(3) Widths shall not exceed 18 feet.

(4) The permittee shall not delay traffic in excess of ten minutes.

Auth: IMPLIED, 61-10-121 and 61-10-122 MCA; Imp: 61-10-121 and 61-10-122 MCA.

REASON: Adopt to clarify regulations for dimensions specified. Incorporate material from Rule 18.8.1007.

18.8.1101 MOVEMENT OF HOUSES, BUILDINGS, EXTREMELY HEAVY MACHINERY, AND OTHER LARGE AND UNUSUAL OBJECTS (1) Movement by special permit of houses, buildings, heavy

machinery and other large and unusual objects, which do not qualify under other rules and regulations of the department of highways, shall be at the discretion of the department of highways.

(2) ~~Each application shall be considered upon the applicant supplying all information required by the Department of Highways. Such information may include dimensions of object, axle space, and detailed weights, a complete description of the proposed route, and any other information deemed necessary by the Department of Highways.~~ Application shall be made upon a G.V.W. form 32-J or other form specified by the department of highways. These forms are available from the Gross Vehicle Weight Division, Box 4639, Helena, Montana 59604, (2701 Prospect Avenue), (406) 444-6130.

(3) ~~The Department of Highways may require any~~ Any special permit to must be approved by ~~issued from the Helena G.V.W. office headquarters only.~~

(4) The permittee shall furnish flag vehicles, flag persons, pilot cars, flagmen, and such signs as required by the department of highways.

(5) The permittee shall not delay traffic stop other vehicles in excess of ten minutes. The applicant shall make every possible effort to keep other traffic moving at all times.

(6) The permittee shall furnish such insurance as the department of highways may require.

(7) The permittee shall be responsible for obtaining all necessary clearance or permits from city, county, or public utility.

(8) All necessary authority shall be obtained from the state of Montana public service commission.

~~(9) All vehicles shall display all licenses and taxes required by Montana statutes.~~

~~(10)~~ (9) Advance notice of any movement may be required by the department of highways.

This rule is advisory only, but may be a correct interpretation of the law.

Auth: 61-10-121 and 61-10-122 MCA; Imp: 61-10-101 through 61-10-148 MCA.

REASON: Amend for clarification and to correspond with the law.

18.8.1201 CONDITIONS IMPOSED FOR MAXIMUM WEIGHT (DW 21 CONDITIONS) - IS HEREBY REPEALED. (1) Maximum speed limit of thirty-five (35) miles per hour upon the highway proper-

(2) Before crossing any structure or structures, the hauling unit shall come to a complete stop approximately fifty (50) feet from the end of the structure.

(3) After flagmen have stopped all traffic onto the structure, the vehicle shall proceed at a speed not to exceed two (2) miles per hour (three miles per hour on interstate structures), with the center of the unit directly over the centerline of the roadway of the structure. There shall be no alteration of the speed (changing of gears) while on the structure or approach.

(4) The unit shall be moved across structures on the completed interstate at a speed not to exceed three (3) miles per hour.

(5) Flagmen shall not permit any other traffic on the structure until the overloaded vehicle is off the structure.

(6) Any violation of any of the above conditions, including axle weights and axle spacing, will automatically prohibit the owner from receiving any other permits for loading or hauling the vehicle in violation or any other similar vehicle under his jurisdiction or control.

(7) The word "structure" shall mean any bridge, overpass, etc.

(8) The word "vehicle" shall mean truck tractor and semi-trailer, tractor and equipment, or special mobile equipment.

Auth: 61-10-121 and 61-10-122 MCA; Imp: 61-10-101 through 61-10-148 MCA.

REASON: Repeal - incorporate the regulation in proposed Rule VI.

18.8.1401 QUALIFICATIONS AND TRAINING FOR G.V.W. PERSONNEL AS PEACE OFFICERS (1) Each employee shall be of good moral character and integrity. Each employee is subject to an extensive background investigation, including credit check.

(2) Each employee shall, unless he or she has previous acceptable law enforcement training experience, successfully complete and graduate from the basic Montana law enforcement academy training course at Bozeman and, in addition, shall serve a ninety (90) day apprenticeship as a G.V.W. Enforcement Officer before he is authorized to make the arrests provided for in 61-12-206, MCA. In addition, each employee shall successfully complete any other Montana law enforcement academy courses required by the G.V.W. Division.

(3) In addition, each employee must successfully complete the G.V.W. Division's training program. The maximum

allowable time to complete the training program is 90 calendar days.

(4) An entry level officer must also successfully serve a probationary period of nine months.

(5) Prior to making arrests as provided in 61-12-206, MCA, an employee must execute the prescribed code of ethics.

(6) The employee must also take the official oath of office, which is filed with the Secretary of State.

Auth: 61-12-202 MCA; Imp: 61-12-201 and 61-12-202 MCA.

REASON: Amend for clarification and to conform to present practices.

4. Interested persons may present their data, views, or arguments, concerning the proposed revisions in writing to Jesse Munro, Administrator, Gross Vehicle Weight Division, 2701 Prospect Avenue, Helena, Montana, 59620, no later than July 8, 1988.

5. If a person who is directly affected by the proposed revision wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments to Jesse Munro, Administrator, Gross Vehicle Weight Division, 2701 Prospect Avenue, Helena, Montana, 59620, no later than July 8, 1988.

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

By: 

Gary J. Wicks
Director of Highways

Certified to the Secretary of State May 31, 1988.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the repeal	)	NOTICE OF PROPOSED REPEAL
of rules 24.9.249-24.9.260	)	OF RULES 24.9.249-24.9.260
and the adoption of rules I	)	AND THE PROPOSED ADOPTION
through XIV (procedures for	)	OF RULES I-XIV (PROCEDURES
hearings of petitions for	)	FOR HEARINGS OF PETITIONS
declaratory rulings)	)	FOR DECLARATORY RULINGS)

NO PUBLIC HEARING
CONTEMPLATED

TO: All Interested Persons

1. On July 22, 1988, the human rights commission proposes to repeal rules 24.9.249 - 24.9.260, found on pages 24-394 through 24-399, Administrative Rules of Montana.

2. The commission proposes the repeal as part of a complete revision of its rules governing hearings of petitions for declaratory rulings and contested case hearings. New rules I-XIV are proposed to replace repealed rules 24.9.249 - 24.9.255. The commission adopted new rules to replace 24.9.256 - 24.9.260 on May 24, 1988.

3. The authority of the commission to repeal the rules is based on sections 49-2-204 and 49-3-106, MCA. The rules implement sections 2-4-104, 2-4-106, 2-4-302, 2-4-602, 2-4-623, 49-2-201, 49-2-203, 49-2-501, 49-2-502, 49-2-503 and 49-2-505, MCA.

4. On July 22, 1988, the human rights commission proposes to adopt rules I through XIV. All rules relate to the procedures used by the commission in hearing petitions for declaratory rulings.

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

RULE I PURPOSE AND SCOPE OF RULES (1) Rules [I through XIV] are the rules of practice and procedure for declaratory rulings before the human rights commission.

(2) A declaratory ruling from the human rights commission may be sought in two contexts. First, any aggrieved or interested person may petition the human rights commission for a declaratory ruling as to the applicability of any statute within the jurisdiction of the commission or any rule or order of the commission. Second, any person, educational institution, financial institution, governmental entity, state or local agency which seeks an exemption from the requirements of chapter 2, or chapter 3 of title 49, MCA, may petition the human rights commission for a declaratory ruling to grant such an exemption.

(3) A petition for a declaratory ruling is the sole method of obtaining a binding determination of legal rights, duties, or privileges from the commission or its staff other than by a determination of such matters by means of a contested

case hearing. While opinions of the staff of the commission carry persuasive weight, only judicial determinations, contested case and declaratory ruling decisions, and the rules of the commission are binding upon the commission.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-501, 49-2-401, 49-3-105, MCA

RULE II CONSTRUCTION OF STATUTES AND RULES (1) Statutes and rules of the commission which have the intent and purpose of protecting rights, duties and privileges secured by law are liberally construed. "Liberal construction" means, without limitation, giving broad coverage and inclusive interpretation to human rights statutes and rules to assure enforcement and protection of the rights secured by them.

(2) Statutes and rules of the commission will be strictly construed with respect to exemptions from them, bona fide occupational qualifications or other exceptions from the protection of law. "Strict construction" means, without qualification, allowing exemptions or exceptions only in extraordinary circumstances where they are specifically authorized by law and have a factual basis.

(3) In those situations where the interpretation of a statute, rule or other law is unclear from Montana precedent, the commission may use other pertinent and persuasive precedent to aid statutory interpretation.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-501, 49-2-401, 49-3-105, 49-2-402, 49-2-403, MCA

RULE III FORM AND CONTENT OF PETITION (1) Petitions for declaratory ruling shall contain each of the following:

- (a) The name and address of the petitioner.
- (b) A statement of the interest or aggrievement of the petitioner in seeking a declaratory ruling and the reason for the filing of the petition.
- (c) A detailed statement of facts showing the justification for a declaratory ruling.
- (d) The statute, rule or legal authority which supports the issuance of a declaratory ruling.
- (e) The contentions of law or authority in support of the petition.
- (f) The precise questions of fact or law presented for decision.
- (g) The specific relief requested should the petition be granted.
- (h) A statement of the names, addresses and interests of all persons known to be interested in the declaratory ruling which is being sought and those whose interests may be materially affected by the declaratory ruling which is sought.

(1) A statement of the reasonable efforts made by the petitioner to identify interested or affected persons.

(2) If the petitioner fails to adequately identify its interest, or need for a declaratory ruling, or if a petitioner fails to adequately identify interested or affected persons or attempts to identify them, the petition may be summarily dismissed.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-501, 49-2-401, 49-3-105, MCA

RULE IV FILING AND DOCKETING FOR HEARING (1) Petitions for declaratory rulings must be filed at the offices of the Human Rights Commission, 1236 Sixth Avenue, PO Box 1728, Helena, MT 59624-1728.

(2) Petitions for declaratory rulings may be heard by the full commission, by a single commissioner, or by a hearing examiner appointed by the commission.

(3) Upon the filing of a petition for a declaratory ruling the administrator of the human rights division shall review the sufficiency of the petition for compliance with [rule III], the standing of the petitioner, the existence of a genuine case or controversy, the availability of other adequate remedies at law, subject matter jurisdiction, multiplicity of proceedings, lack of a substantial legal question or other defects apparent on the face of the petition.

(4) If it appears the petition is adequate as a matter of law and there are reasonable grounds for it to be heard, the administrator shall assign the petition to a hearing examiner for hearing or set the matter for hearing before the commission. If the petition is defective as a matter of law or there are no reasonable grounds for it to be heard, the administrator shall present the petition to the commission for its consideration.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-501, 49-2-401, 49-3-105, MCA

RULE V APPOINTMENT OF HEARING EXAMINER AND AUTHORITY (1) A hearing examiner or commissioner assigned to preside over petitions for declaratory rulings and hearings upon them shall have those powers and that authority contained in rule 24.9.306.

(2) The hearing examiner shall expedite the hearing of petitions for declaratory rulings to the extent possible consistent with preserving the right to a fair hearing.

(3) The hearing examiner shall, to the extent possible and in compliance with the rights of the public to be heard and participate in public hearings, encourage and permit public participation in declaratory ruling hearings as well as public commentary upon the issues before the commission.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-501, 49-2-401,
49-3-105, 2-4-611, MCA

RULE VI NOTICE (1) The administrator shall notify interested parties and the public of the petition for a declaratory ruling, the date of the prehearing conference regarding the petition, and the hearing of the petition. The administrator may require the petitioner to prepare the notice and serve it as required by this rule.

(2) The notice of hearing shall contain:

(a) The time and place of the prehearing conference regarding the petition.

(b) The date, time and place of hearing.

(c) The identity of the petitioner.

(d) The issues posed for consideration.

(e) The method for obtaining a copy of the petition and procedure for intervention or participation in declaratory ruling proceedings.

(3) The petitioner shall notify the interested or affected parties identified in the petition and any other interested or affected parties identified by the administrator of the petition. The petitioner shall give notice by serving a copy of the notice of hearing and the petition, by first class mail.

(4) The commission staff shall notify the public of the petition through news releases issued by the administrator, which describe the petition, advise of the prehearing and hearing dates and explain how interested parties may intervene or participate in proceedings.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-501, 49-2-401,
49-3-105, MCA

RULE VII PARTIES (1) Any person who demonstrates an interest in the outcome of a petition for a declaratory ruling by showing his or her rights, duties or privileges will be affected by the ruling or who shows that he or she may be aggrieved by the outcome of a ruling may intervene in declaratory ruling proceedings.

(2) Any person, even though he or she does not have a direct interest in the outcome of a petition for a declaratory ruling, may participate in proceedings in a limited manner, as allowed by the commission or a hearing examiner. Parties permitted to appear or participate in proceedings for limited purposes may comment upon the petition and file briefs in support of their position, but may not examine witnesses, control proceedings or seek review of proposed orders or rulings of the commission or hearing examiner.

(3) The staff of the commission may intervene and participate in proceedings for a declaratory ruling as a party,

or for limited purposes, to represent the interests of the commission or the public.

(4) The staff of the commission may identify any party who may have an interest in the outcome of declaratory ruling proceedings and notify the party of the petition for a declaratory ruling.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-501, 49-2-401, 49-3-105, MCA

RULE VIII PLACE OF HEARING (1) Except as provided in subsection (2), hearings of petitions for declaratory rulings will be conducted at Helena, Lewis and Clark County, Montana.

(2) The hearing examiner or commission may conduct the hearing of a petition for declaratory ruling in a place other than Helena, Montana, upon the request of the petitioner or a party for good cause. The hearing examiner or the commission may, on motion of a party or its own motion, conduct declaratory ruling proceedings at any place within the state of Montana to assure the conduct of a fair hearing.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-501, 49-2-401, 49-3-105, MCA

RULE IX PREHEARING CONFERENCES (1) Upon appointment to preside over a petition for a declaratory ruling, a commissioner or the hearing examiner will fix the dates for a prehearing conference and hearing.

(2) The hearing examiner will conduct a prehearing conference using the procedures set forth in rule 24.9.324. In addition, during the prehearing conference, the hearing examiner will determine the interests of persons seeking intervention or other participation in the hearing on the petition in accordance with [rule VII]. The hearing examiner may exclude from the proceedings persons who do not seek intervention or request to participate in the hearing on or before the date of the prehearing conference. Persons excluded from the proceedings are not permitted to participate in any manner.

(3) The prehearing order which is prepared following a prehearing conference may address matters of evidence, including the introduction of scientific studies, the presentation of expert testimony, and facts which will be officially noticed.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-501, 49-2-401, 49-3-105, MCA

RULE X NATURE OF HEARINGS (1) Hearings on petitions for declaratory rulings shall be formal unless the parties

stipulate that proceedings may be informal under section 2-4-604, MCA.

(2) The parties may, by stipulation that proceedings may be informal, or by other stipulation, provide for hearing upon written evidence, stipulated fact, scientific evidence and literature, or otherwise.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-501, 49-2-401, 49-3-105, 2-4-603, 2-4-604, MCA

RULE XI PROPOSED ORDERS (1) Following the introduction of evidence on the petition and the close of hearing the commission or the hearing examiner shall make a proposed order upon the petition in the form of findings of fact, conclusions of law and proposed orders. Conclusions of law may be in the form of an opinion. Rules 24.9.327 and 24.9.328 will apply to proposed orders made under this rule.

(2) Any party aggrieved by a proposed order may file exceptions to it in accordance with rules 24.9.327 and 24.9.328.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-501, 2-4-621, 2-4-623, 49-2-401, 49-3-104, MCA

RULE XII FINAL ORDERS (1) The commission may enter its final order upon a petition based on the proposed order or the exceptions of the parties, or in the form of findings of fact, conclusions of law and final orders, in accordance with rule 24.9.331.

(2) All commission final orders upon a petition for declaratory ruling will be published in the Montana administrative register. The petitioner shall bear any cost of publication.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-501, 49-2-401, 49-3-105, 2-4-623, MCA

RULE XIII EFFECT OF DECLARATORY RULING (1) Commission rulings and orders on petitions for a declaratory ruling are binding only upon the commission and the parties to the petition.

(2) The commission may limit the scope and application of the ruling or order to the facts or the situation presented by the petition and the evidence. The commission may also limit the precedential weight of any such ruling or order.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-501, 49-2-401, 49-3-105, MCA

RULE XIV INCORPORATION OF OTHER RULES BY REFERENCE (1) To the extent these rules may not provide for procedures for

petitions for declaratory rulings, the commission or the hearing examiner may apply rules 24.9.301 - 24.9.331, applicable to contested case hearings.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-501, 49-2-401, 49-3-105, MCA

6. The commission proposes the rules as part of an overall review of its procedural rules in order to streamline its procedures, eliminate redundant and unnecessary material, provide clear guidance to attorneys, unrepresented parties, and the public, and clarify that the commission's procedural rules are intended to implement chapter 3 of Title 49, MCA.

7. The authority of the commission to adopt the proposed rules is based on sections 49-2-204 and 49-3-106, MCA. The rules implement sections 2-4-501, 2-4-603, 2-4-604, 2-4-611, 2-4-623, 49-2-401, 49-2-402, 49-2-403, and 49-3-105, MCA.

8. Interested parties may submit their data, views, or arguments on the proposed repeal or adoption in writing to Margery H. Brown, Chair, Human Rights Commission, P.O. Box 1728, Helena, Montana, 59624-1728 no later than July 21, 1988.

9. If a person who is directly affected by the proposed repeal or adoption wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Margery H. Brown, Chair, Human Rights Commission, P.O. Box 1728, Helena, Montana, 59624-1728, no later than July 21, 1988.

10. If the agency receives requests for a public hearing on the proposed repeal or adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal, from the administrative code committee of the legislature, from a governmental subdivision or agency, or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons based upon the number of potential parties to cases in Montana.

In the matter of the	)	NOTICE OF PROPOSED
amendment of rules 24.9.212	)	AMENDMENT OF RULES
(confidentiality) and 24.9.225	)	24.9.212 (CONFIDENTIALITY)
(procedure on finding of	)	AND 24.9.225 (PROCEDURE
no cause)	)	ON FINDING OF NO CAUSE)

NO PUBLIC HEARING
CONTEMPLATED

TO: All Interested Persons

1. On July 22, 1988, the human rights commission proposes to amend rules 24.9.212 and 24.9.225. Rule 24.9.212 relates to confidentiality of complaints under investigation by the commission staff and rule 24.9.225 relates to the procedure to be followed in the investigative process when the commission staff has issued a finding of no cause to believe discrimination has occurred.

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

24.9.212 CONFIDENTIALITY (1) No complaint, information obtained in the investigation of a complaint, or records required to be filed with the commission shall be made matters of public information, or disclosed to persons without an interest in them, by the commission prior to the ~~certification of a case for public hearing~~, a determination regarding cause or a finding of no cause under rules 24.9.224 or 24.9.225, or other agency action terminating investigation and entering an order with respect to a complaint. This rule does not apply to such earlier disclosures to a party, individual or agency outside of the commission as may be necessary to the carrying out of the commission's functions under the act or code provided that the reasonable expectations of individual privacy of persons named in the commission's records are protected.

(2) ~~Upon certification of a case for hearing a determination regarding cause, a finding of no cause or other agency action terminating investigation and entering an order with respect to complaint~~, the commission shall continue to protect the identity of persons having a reasonable expectation of privacy throughout the hearing process. Any information made public shall be altered only to provide for the anonymity of those persons whose privacy rights are to be protected, and are entitled to protection by law.

(3) The commission may disclose any record or information contained therein to any party, individual or agency pursuant to a written request by, or with the prior written consent of the individual to whom the record pertains.

(4) Disclosure of information regarding complaints alleging violations of federal law which are within the jurisdiction of the human rights commission because of

worksharing arrangements with federal agencies may be further restricted by provisions of federal law.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-504, 49-2-505, 49-3-307, 49-3-308, MCA.

24.9.225 PROCEDURE ON FINDING OF NO CAUSE (1) - (4) no change.

(5) Upon request of a party the commission may vacate an order of dismissal issued pursuant to subsection (3), if vacating the order is justified for any of the following reasons:

(a) mistake, inadvertence, surprise, or excusable neglect;

(b) fraud (whether intrinsic or extrinsic), misrepresentation, other misconduct of an adverse party, or gross error by the division; or

(c) any other reason justifying relief from the operation of the final order.

The request must be made within a reasonable time. A motion under this subsection does not affect the finality of a final order or suspend its operation. Notwithstanding the provisions of this subsection, the commission may correct errors on its own motion where there is a lack of jurisdiction and may set aside an order for fraud upon the commission. Any request permitted by this subsection may be denied where a party has failed to comply with the provisions of these rules for appeal of findings and the failure is not attributable to one of the factors set forth in subsections (5)(a), (b), or (c) of this rule.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-504, 49-2-505, 49-2-509, 49-3-307, 49-3-308, 49-3-312, MCA

3. The commission proposes the amendment to rule 24.9.212 to define more narrowly when and under what circumstances the commission staff should restrict access to information contained in its investigative files. The commission proposes the amendment to rule 24.9.225 in order to insure a case can be reopened if an order of dismissal has been improperly issued by the commission staff.

4. The authority of the commission to make the proposed amendments is based on sections 49-2-204 and 49-3-106, MCA. The rule as amended implements sections 49-2-504, 49-2-505, 49-3-307 and 49-3-308, MCA.

5. Interested parties may submit their data, views, or arguments on the proposed amendment in writing to Margery H. Brown, Chair, Human Rights Commission, P.O. Box 1728, Helena, Montana, 59624-1728 no later than July 21, 1988.

6. If a person who is directly affected by the proposed amendment wishes to express his data, views, and arguments

orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Margery H. Brown, Chair, Human Rights Commission, P.O. Box 1728, Helena, Montana, 59624-1728, no later than July 21, 1988.

7. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment from the administrative code committee of the legislature, from a governmental subdivision or agency, or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons based upon the number of potential parties to cases in Montana.

MONTANA HUMAN RIGHTS COMMISSION
MARGERY H. BROWN, CHAIR

By: Anne L. MacIntyre
ANNE L. MacINTYRE
ADMINISTRATOR
HUMAN RIGHTS DIVISION

Certified to the Secretary of State May 31, 1988.

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

In the matter of the	)	NOTICE OF PUBLIC
amendment of Rules 24.16.9001	)	HEARING ON PROPOSED
through 24.16.9007 and the	)	AMENDMENTS AND ADOPTION
adoption of new rules on	)	OF PREVAILING WAGE RATES
the prevailing wage rates.	)	AND SUBSTANTIVE RULES

TO: All interested persons:

1. On Tuesday July 12, 1988, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendments to the existing prevailing wage rates and applicable rules, as well as the adoption of new rules interpreting the application and effect of the prevailing wage rates.

2. The rules as proposed to be amended are:

24.16.9001 PURPOSE AND SCOPE (1) These rules are adopted pursuant to ~~18-2-409 and~~ 18-2-431, MCA, giving the commissioner rulemaking authority to implement the Montana Prevailing Wage law, commonly known as Montana's "Little Davis-Bacon" Act. (18-2-401, et seq., MCA). The purpose of the above referenced statutes and these rules is to protect local labor markets, to maintain the general welfare of Montana workers on public works projects, to eliminate wage cutting as a method of competing for public contracts, to maintain wages and rates paid on public works at a level sufficient to attract highly skilled laborers performing quality workmanship and to prevent the rate of wages from adversely affecting the equal opportunity of Montana contractors to bid on public works.

(2) In 1931, the legislature enacted the Montana "Little Davis-Bacon" Act. The act requires a hiring preference for Montana workers in all contracts let for public works, a 50% preference on state or federally funded projects, and empowers the commissioner ~~of the department of labor and industry~~ to determine the minimum wage rates to be paid to all workers on public work contracts.

(3) In 1973, the Montana Legislature added the word "services" to what is now 18-2-403(1), MCA. The legislative history of this amendment suggests that the Legislature was extending Montana's Little Davis-Bacon Act beyond its original parameters. See Feb. 7, 1973, minutes of the House Labor and Employment Relations Committee. As a result of this amendment, the commissioner has issued prevailing wage rates for "services" as defined in Rule I. For example, rates have been published covering janitorial services as well as automobile and snowmobile repair and maintenance.

Imp. Sections 18-2-401, 18-2-402, 18-2-403, and 18-2-411, MCA. Auth.18-2-431, MCA.

24.16.9002 DEFINITIONS As used in these rules, the following definitions apply:

(1) "Act" means section 18-2-401 through 432, MCA.
(2) "Apprentice" means a worker employed to learn a skilled trade under a written apprenticeship agreement registered with the department's Apprenticeship Bureau or complying with the provisions of ARM-24-21-401:

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

(4) "Commissioner" means the commissioner of labor and industry.

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

(5) "Department" means the department of labor and industry.

(6) "District" means a prevailing wage district as established under 18-2-411. The commissioner has established ten (10) districts, made up of the following counties:

District 1 - Flathead, Lake, Lincoln, and Sanders;

District 2 - Mineral, Missoula, and Ravalli;

District 3 - Beaverhead, Deer Lodge, Granite, Madison, Powell, and Silver Bow;

District 4 - Blaine, Cascade, Choteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole;

District 5 - Broadwater, Jefferson, Lewis and Clark, and Meagher;

District 6 - Gallatin, Park, and Sweet Grass;

District 7 - Fergus, Golden Valley, Judith Basin,

Musselshell, Petroleum, and Wheatland;

District 8 - Big Horn, Carbon, Rosebud, Stillwater, Treasure, and Yellowstone;

District 9 - Daniels, Garfield, McCone, Phillips,

Richland, Roosevelt, Sheridan, and Valley; and

District 10 - Carter, Custer, Dawson, Fallon, Prairie, Powder River, and Wibaux.

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

~~(8) (7) "Public contracting agency" includes:~~

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

~~(b) the Montana university system;~~

~~(c) any local government or political subdivision thereof;~~

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

(e) any board, council, commission, trustees or other public body acting as or on behalf of a public agency.

{9} (8) "Public contractor" means a contractor holding a valid public contractors license issued by the Montana department of commerce as provided for in section 37-71-201, et seq., MCA, or having entered into a contract for the performance of construction, service, repair or maintenance work with the federal government or a public contracting agency.

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

{11} (10) "Standard prevailing rate of wages" means ~~those wages determined by the commissioner, in accordance with 18-2-401(5) and 18-2-402, MCA, to be the common or predominate rate of wages paid by contractors for work on projects of a similar character in the county or locality where a contract for public works is performed. It is not necessarily an average or mean wage paid.~~ the standard prevailing rate of wages as defined in 18-2-401. A standard prevailing rate of wages determined according to these rules is not a prescribed wage rate, but is rather, a minimum at or above which an individual performing labor on a public work project shall must be compensated.
Imp. 18-2-402, 18-2-403, and 18-2-411, MCA. Auth. 18-2-431.

24.16.9003 ESTABLISHING THE STANDARD PREVAILING RATE OF WAGES (1) When deemed necessary, ~~but no more frequent than once a year,~~ the commissioner will ~~establish~~ establishes standard prevailing rate of wages for each district rates and delineate the county or locality where the standard applies for each craft, classification or type of worker traditionally needed to complete a public works project.

(2) ~~The~~ For each district, the commissioner will compile wage rate information that reflects wage rates actually paid to workers ~~on various types of construction state-wide~~ engaged in public works and in private or commercial projects. If sufficient information is unavailable for any given district, the commissioner may look to existing collective bargaining agreements in the district..

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

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

(ii) valid collective bargaining agreements,

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

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

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

(vi) other pertinent information.

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

~~-----{i}---the project name or identification, location and a brief description of the type of construction performed;~~

~~-----{ii}---the date construction began and the completion date, if any;~~

~~-----{iii}---the approximate cost of the project;~~

~~-----{iv}---the names and addresses for the contractor, subcontractors and the contracting party letting the contract;~~

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

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

~~{vii} wage rate information may be submitted to the commissioner either on form DHI-PE-1 "Wage Information Survey", available from the office of the commissioner, at the address shown in subsection {3} below or by calling (406) 444-5600.---Information may be submitted in any form substantially conforming to form DHI-PE-1.~~

~~{e} (b) The commissioner may request clarification, additional information or independent verification of information submitted pursuant to this rule.~~

~~{d} (c) Biannually, The the commissioner may conduct conducts a survey of wage rates paid to workers on construction projects in one or more counties districts.~~

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

~~{3} (e) Wage information may be considered by the commissioner only if such information is delivered at the Office of the Commissioner, Department of Labor and Industry Building, corner of Roberts and Lockey, P.O. Box 1728, Helena, Montana 59624, within the time set by the commissioner. by or before the close of business on the first day of July or on the next business day, if the first day of July falls on a Saturday, Sunday or state holiday.~~

~~After this deadline has passed, the commissioner will review each craft, classification or type of work by a county or locality and establish standard prevailing rates of wages.~~

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

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

~~----- (4) --- A determination of standard prevailing wage rates made pursuant to this section does not apply to:~~

~~----- (a) --- a building constructed solely for use as a residence by one or two families; or,~~

~~----- (b) --- projects not required by law to be publicly bid and the total cost of the project does not exceed \$7,500.00.~~

(3) Within each district, the commissioner considers current wage rate information on file and sets the standard prevailing rate of wages for each craft, trade, occupation, or type of workers covered by the provisions of the Act. Except as provided in subsection (4) of this rule, all rates shall be adopted in accordance with 24.16.9007.

(4) If the commissioner receives a written request for a rate for a particular craft, trade, or occupation that is covered by the provisions of the Act, the commissioner may set an interim, advisory, rate that may be used by the public contracting agency or public contractor until the rate is published in accordance with 24.16.9007. Such rates will not be established more frequently than once every three months.

Imp. 18-2-402, 18-2-403, 18-2-411. Auth. 18-2-431.

24.16.9005 OBLIGATIONS OF PUBLIC CONTRACTING AGENCIES

(1) A public contracting agency will must include in the bid specifications and contracts for any public works
~~(projects not described in ARM-24-16-9003(5)-supra)~~ the following:

(a) An unequivocal agreement by the contractor to give preference to employment of bona fide Montana residents in compliance with 18-2-403(1) MCA. For any state construction project except where specifically prohibited by federal law the bid specifications and the contract shall provide that at least 50% of the workers (including workers employed by subcontractors) will be bona fide Montana residents in compliance with 18-2-421(2) 18-2-403(1) and 18-2-409, MCA. In the case of a particular contractor such percentage of Montana residents shall be modified to comply with any written directive by the commissioner specifying a different percentage.

(b) An unequivocal agreement by the contractor that a worker (including workers employed by a subcontractor) performing labor on the project will be paid the applicable standard prevailing rate of wages as determined by the

commissioner pursuant to ARM-24-16-9003 and 24-16-9004;
~~supra.~~

(c) A listing of standard prevailing wage rates determined by the commissioner applicable at the project sites and language in the contractor's agreement incorporating the same by reference or otherwise.

(d) The contract provisions must clearly show that the contractor and its subcontractors are bound to pay wages at rates determined by the commissioner, and to give required preferences.

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

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

(4) If a public contracting agency fails to comply with the requirements of this rule, the obligation to pay the standard prevailing rate of wages will be placed on the public contracting agency and the public contractor may be relieved of such obligation.

Imp. 18-2-402, 18-2-403, 18-2-411, 18-2-422, MCA. Auth. 18-2-431.

24.16.9006 OBLIGATIONS OF PUBLIC CONTRACTORS AND SUBCONTRACTORS (1) All public contractors and subcontractors shall give preference in hiring to bona fide Montana residents in the performance of contracts for public works.

(a) In the performance of a contract for a state project a public contractor shall ensure that at least fifty percent (50%) of all workers performing labor under the contract for public works are bona fide Montana residents.

(b) For cause as provided in ~~18-2-421(e)~~ 18-2-409, MCA, a contractor may in writing request that the commissioner modify percentage residency requirements on a particular state project. The commissioner may modify or waive residency requirements under the provision of the statute and shall by written directive notify the contracting agency of any such modification or waiver.

(2) All public contractors and its subcontractors shall classify each worker who performs labor on a public works project according to the applicable standard prevailing rate of wages for such craft, classification or type of worker established by the commissioner, and shall pay

each such worker a rate of wages not less than the standard prevailing rate.

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

(4) Public contractors and subcontractors shall keep clear and legible records for each employee who performs labor on a public works project showing:

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

(b) whether or not the employee is a bona fide Montana resident;

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

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

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

(5) Public contractors and subcontractors must properly classify workers in accordance with the craft or trade to be performed. For example, an electrician or plumber may not be classified as a laborer in order to pay a lower prevailing rate of wages.

Imp. 18-2-402, 18-2-403, 18-2-411, and 18-2-422, MCA. Auth. 18-2-431, MCA.

24.16.9007 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

(1) The commissioner's determination of minimum wage rates, including fringe benefits for health and welfare, pension contributions and travel allowance, by craft, classification or type of worker, and by character of project, ~~shall be~~ are adopted in accordance with the Montana Administrative Procedures Act and rules implementing the Act.

(a) A notice of proposed adoption of the commissioner's determination ~~shall be~~ is published in the Montana Administrative Register 30 to 45 days prior to adoption according to regular publication dates scheduled in 1.2.419.

(b) Adopted wage rates ~~shall remain in effect~~ are effective until superceded and replaced by a subsequent adoption.

~~(c) An adoption of wage rates shall have no effect on contracts for public works awarded during the effective period of a previous adoption of rates under these rules.~~

The wage rates applicable to a particular public works project are those in effect at the time the bid specifications are advertised.

(d) The wage rates proposed and the wage rates adopted ~~shall be~~ are incorporated by reference in respective notices published in the Montana Administrative Register.

(2) The commissioner ~~will maintain~~ maintains a mailing list of interested persons and agencies. A copy of any notice, proposed rate of wages, adopted rates, wages or other information ~~will be~~ are distributed to each addressee. All others may obtain a copy or be included on the mailing list upon request delivered to the Administrator, Employment Relations Division, Department of Labor and Industry, ~~Corner of Beckey and Roberts~~, P.O. Box 1728, Helena, MT 59624. Copies of adopted wage rates ~~will be~~ are available at reproduction cost for a period of five years following their effective date.

(3) The standard prevailing rates of wages, effective September-25-1987, are hereby adopted and incorporated by reference. ~~These rates are effective until the adoption of new rates pursuant to Sections 18-2-401, 18-2-402, and 18-2-411, MCA, as amended October 17, 1987.~~ Copies of the rates are available upon request from the Employment Relations Division, Department of Labor and Industry, Corner of Lockey and Roberts, P.O. Box 1728, Helena, MT 59624, (406) 444-5600. Imp. 18-2-402, 18-2-403, and 18-2-411, MCA. Imp. 18-2-431, MCA.

3. The new proposed rules provide:

Rule I. SERVICES - DEFINITION - EXCLUSIONS - EXAMPLES

(1) (a) "Services", as used in the Act and these rules, means services performed by a person engaged in a recognized trade or craft, or any skilled, semiskilled, or skilled manual labor related to the maintenance, repair, or construction of a public building or facility.

(b) The term "services" does not include services performed by a person engaged in an executive, administrative, or professional capacity.

(2) (a) The services covered by the Act are diverse. Many times, what services are covered must be decided on a case-by-case basis. Nevertheless, the commissioner has decided to use as guidance the definition of "service employee" as it was originally defined in 1965 in the federal Services Contract Act, 41 USC 357(b). In 1976, the definition of "service employee" was broadened beyond those engaged in crafts, trades, or manual labor. The commissioner believes the earlier definition, except for watchmen and guards, reflects more closely the intent of the Montana Legislature in adding the word "services" to the prevailing wage law.

(b) The following is a list of examples of those services that have been deemed by the commissioner as subject to the prevailing wage law. The list of examples

should not be construed as either limiting or expanding the term "services", but is provided for illustrative purposes only:

- (i) garbage collection;
- (ii) janitorial services;
- (iii) coin machine repair;
- (iv) automobile repair and maintenance; and
- (v) television and radio repair

Imp. 18-2-401, 18-2-402, 18-2-403, 18-2-411, and 18-2-422.
Auth. 18-2-431.

Rule II \$25,000 LIMIT - ENFORCEMENT

(1) Any public works contract, subject to the provisions of the Act, must contain provisions in accordance with 18-2-403.

(2) In accordance with the definition of "labor" in 18-2-401, the commissioner has determined that the requirement to pay the prevailing rate of wages applies only to contracts or bid specifications for public works in excess of \$25,000. This dollar limitation will be applied to the general contract, unless the commissioner has reason to believe the general contract has been bifurcated in order to avoid application of the Act.

(3) If a complaint is filed with the department alleging noncompliance with the provisions of the Act, the department shall investigate the circumstances giving rise to the complaint.

(4) If, upon investigation, the department finds reasonable cause to believe a violation of the Act has occurred, the department shall issue a notice of noncompliance with the Act to the public contracting agency and the public contractor.

(5) After notice of noncompliance the public contracting agency and the public contractor shall have thirty (30) days to comply with the Act. In order to comply with the Act, any wages owed through application of the standard prevailing rate wages must be paid.

(6) If the public contracting agency or public contractor fails to comply with the Act as provided in subsection (5), the department may institute action in court to enforce compliance with the Act.

(7) This rule does not impose any time limitation on the remedies provided in 18-2-407, MCA, or 18-2-432, MCA. Imp. 18-2-401, 18-2-402, 18-2-403, and 18-2-422, MCA. Auth. 18-2-431, MCA.

4. The proposed amendments and the proposed new rules are necessary in order to implement the statutory amendments in the prevailing wage law that were effective October 1, 1987 and are necessary in order to address particular problems with respect to the definition of the term "services", the procedure used by the commissioner in setting the prevailing wage rates, liability of public contracting agencies, classification of workers, and the

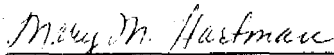
procedure used by the department in enforcing prevailing wage violations.

It was further necessary to determine new prevailing wage rate districts for the entire state as required by 18-2-402 and 18-2-411. After the new districts were created, it was then necessary to conduct a survey and set the new prevailing wages for each for each district. The actual prevailing rate of wages, attached to this notice, have been determined in accordance with this process.

5. Interested parties may submit their data, views, or comments, either orally or in writing, at the hearing. Written data, views, or comments may also be submitted to the Administrator, Employment Relations Division, Department of Labor and Industry, P.O. Box 1728, Helena, MT 59624, no later than July 15, 1988.

6. David A. Scott, Chief Counsel, Department of Labor and Industry, P.O. Box 1728, Helena, MT 59624, has been designated to preside over and conduct the hearing.

7. The authority of the department to amend the existing rules and adopt the proposed rules is based on 18-2-431, MCA, and the rules implement 18-2-401, 18-2-402, 18-2-403, 18-2-411 and 18-2-422, MCA.


Mary M. Hartman, Commissioner
Department of Labor and
Industry

Certified to the Secretary of State on May 31, 1988.

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

In the matter of the adoption)
of rules for the administration) NOTICE OF PUBLIC HEARING
of the safety of dams program)

TO: All Interested Persons:

1. On the following dates, at the locations given, the Department of Natural Resources and Conservation will hold public hearings to consider the adoption of rules for the administration of the Montana Dam Safety Act pursuant to 85-15-110, MCA:

(1) July 11, 1988, at 2 p.m. at Sheraton Missoula, 200 South Pattee Street, Missoula, Montana.

(2) July 12, 1988, at 2 p.m. at DNRC conference room, 1520 East Sixth Avenue, Helena, Montana.

(3) July 13, 1988, at 2 p.m. at Ramada Inn, 1223 Mullaney Lane, Billings, Montana.

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

3. The proposed rules provide as follows:

RULE I DEFINITIONS Unless the context requires and clearly states otherwise, in these rules:

(1) "Act" means the Montana Dam Safety Act, Title 85, Chapter 15, MCA.

(2) "Breach flooded area" means the area downstream from a dam that would be inundated if the dam failed.

(3) "Commence construction" means the actual start of site preparation and on-site building, but does not include preliminary surveying work, site exploration, or engineering plans preparation.

(4) "Construction permit" means a written authorization issued by the department giving the owner authorization to construct a dam or reservoir in accordance with conditions that ensure construction of the dam and reservoir in a thorough, secure, and substantial manner.

(5) "Corps" means United States army corps of engineers.

(6) "Dam" means any artificial barrier, including appurtenant works, used to impound or divert water with an impounding capacity of 50 acre-feet or greater measured to the crest of the dam embankment.

(7) "Days" means calendar days--including Sundays and holidays. If the final day is a holiday, or weekend, it shall be the next following day of business.

(8) "Department" means the department of natural resources and conservation and any of its employees, agents, or designees authorized by the director of the department to act on behalf of the department.

(9) "Emergency procedures and warning plan" means a

predetermined plan of action to be taken to reduce the potential for property damage and loss of lives in an area affected by a dam break.

(10) "Existing dam or reservoir" means any dam or reservoir 50 acre-feet or greater complete and capable of impounding water prior to October 1, 1985, or under construction on that date and completed with reasonable diligence.

(11) "Height of dam" means the vertical distance from the lowest elevation of the dam crest to the lowest point of natural ground, including any stream channel, along the downstream toe of the dam.

(12) "High-hazard corps-inspected dam" means a dam that was determined to be high-hazard by the corps of engineers pursuant to P.L. 92-367 and for which a resultant dam safety report has been submitted to the owner.

(13) "Inundation" means water, regardless of depth, over the general level of the submerged ground adjacent to and including the stream channel.

(14) "Loss of life" means loss of human life.

(15) "New dam" or "new reservoir" means a dam or reservoir where initial construction occurs after October 1, 1985.

(16) "Operating permit" means a permit issued by the department for a period not to exceed 5 years to operate a high-hazard dam or reservoir.

(17) "Operation plan" means the written instructions prepared by the owner that prescribe the proper operation procedures, maintenance procedures, emergency procedures, and warning plan, and any other features necessary to the safe operation of the dam or reservoir.

(18) "Permit" means construction or operation permit.

AUTH: 85-15-110, MCA

IMP: 85-15-106, MCA

RULE II DUTIES AND AUTHORITY (1) The general responsibility to administer and enforce the provision of this act and all rules thereunder shall be carried out by the water resources division of the department.

(2) Except where specifically stated, the authority of the department and compliance by the owner of the dam or reservoir to these rules apply to:

(a) dams having a reservoir capacity behind the dam of 50 acre-feet or more measured to the crest of the dam embankment or measured to the maximum water surface that would occur during a probable maximum flood, whichever is less;

(b) reservoirs of 50 acre-feet or more that retain water both as a result of a dam and as an excavation in the impoundment area, measured to the crest of the dam and include the impoundment capacity below the normal land surface; and

(c) multiple or a series of dams erected on a valley, basin, coulee, or ravine where each reservoir is less than 50 acre-feet, but all are operated singly as one reservoir

containing more than 50 acre-feet. Whether the series is operated as a single reservoir will be a question of fact in each instance. Factors to consider include:

- (i) whether all dams or reservoirs are under the same ownership and control;
- (ii) whether all dams or reservoirs operate as a unit, i.e., if one of the dams or reservoirs suffers a change, it will, in most instances, affect one or more of the other dams or reservoirs; or
- (iii) whether the dams or reservoirs are physically proximate and on the same valley, basin, coulee, or ravine.

(3) For the purpose of the department's determining the authority or need for an application for hazard classification, construction permit, or operation permit or investigation of a complaint, the department may calculate the reservoir capacity in acre-feet, in absence of detailed data, as 0.4 times the vertical height in feet from the downstream toe of the dam to the crest of the dam times the water surface area at that level in acres.

AUTH: 85-15-110, MCA

IMP: 85-15-106, MCA

RULE III EXEMPTIONS (1) Dams and reservoirs licensed and subject to inspection by the federal energy regulatory commission that are exempt as provided in 85-15-107, MCA, include dams and reservoirs for which a license application is pending before the commission.

(2) Naturally occurring reservoirs only are exempt from these rules. Naturally occurring reservoirs that are developed by excavation in the reservoir area or excavation and/or backfill of an outlet system are not exempt.

(3) A high-hazard dam or reservoir does not include:
(a) an obstruction in a canal used to raise or lower water therein or divert water therefrom;

(b) a flood levee on the bank of a natural lake or stream, the primary purpose of which is to control floodwaters;

(c) railroad fill structure and road or highway fill not intended to store or accumulate water for future use; and

(d) an obstruction in the channel of a stream, watercourse, or floodplain, which has the single purpose of spreading water within the bed of the stream or watercourse or floodplain upstream from the obstruction for irrigation of only that land containing the spread water.

AUTH: 85-15-110, MCA

IMP: 85-15-107, MCA

RULE IV CANCELLATION OF PERMITS (1) Permits may be canceled by the department for cause including but not limited to the following:

- (a) violation of any permit condition;
- (b) failure to fully disclose all relevant facts or obtaining a permit through misrepresentation;
- (c) violation of the act or these rules; or

(d) change or newly discovered condition or circumstance that makes or would make the dam unsafe.

AUTH: 85-15-110, MCA

IMP: 85-15-216, MCA

RULE V LIABILITY (1) These rules do not relieve or lessen the responsibility of any person owning, operating, or controlling any high-hazard dam or reservoir for any damages to persons or property caused by defects. These rules do not affect criminal liability of dam owners or operators pursuant to 85-15-501, MCA.

(2) After October 1, 1985, owners of high-hazard dams without an operation permit are strictly liable, regardless of negligence, for any damages resulting from leakage or overflow of water or floods caused by the failure or rupture of the dam or reservoir.

(3) After July 1, 1990, owners of corps-inspected high-hazard dams without an operation permit are strictly liable, regardless of negligence, for any damages resulting from leakage or overflow of water or floods caused by the failure or rupture of the dam or reservoir.

AUTH: 85-15-110, MCA

IMP: 85-15-305, MCA

RULE VI WHO HAS TO APPLY FOR HAZARD DETERMINATION (1) An application for hazard determination must be made by an owner proposing to construct, including new construction, alteration, repair, enlargement, or removal of, any dam or reservoir that has or could impound to the crest of the dam 50 acre-feet or more. This requirement applies even if the department performed a hazard determination on previous construction to the dam or reservoir and found it not to be a high-hazard dam. This requirement does not apply to the owner who already possesses a valid operation permit for the high-hazard dam.

AUTH: 85-15-110, MCA

IMP: 85-15-209, MCA

RULE VII HAZARD DETERMINATION BY THE CORPS (1) The department will automatically adopt the determination of high-hazard for those dams classified by the corps pursuant to P.L. 92-367. A copy of the letter or document of such determination or reference to a report by the corps must accompany any application for construction permit or operation permit. The owner may request a determination by making an application for hazard determination.

AUTH: 85-15-110, MCA

IMP: 85-15-209, MCA

RULE VIII MULTIPLE DAMS (1) A single application may be submitted for more than one dam only when the dams are for the same reservoir and the dams would flood the same drainage if failure should occur.

AUTH: 85-15-110, MCA

IMP: 85-15-209, MCA

RULE IX APPLICATION (1) An application for hazard

determination must be submitted to the department.

(2) An application must be made on a form provided by the department and must contain at least the following:

- (a) name, address, and phone number of the owner;
 - (b) reservoir and dam general description to include not less than the impoundment capacity, dam height, location, and purpose;
 - (c) maps showing the location of the proposed structure;
 - (d) signature of owner and date of the signature; and
 - (e) an inspection fee of \$125;
- (3) Consideration of each alternative dam height and storage capability must be submitted in an additional application containing all relevant information for the alternative.

AUTH: 85-15-110, MCA

IMP: 85-15-209, MCA

RULE X APPLICATION PROCESSING PROCEDURES (1) The department shall:

(a) notify the owner in writing within 10 days of receipt that an application has been received and advise the owner of any additional information required to complete the application;

(b) arrange for a field investigation with the dam owner to gather data or information to make a hazard determination;

(c) classify the hazard of the dam or reservoir based on the application, the site inspection, and evaluation of the potential flooded area caused by a dam failure; and

(d) notify the owner in writing of the hazard classification determination within 60 days of receipt of a complete application.

AUTH: 85-15-110, MCA

IMP: 85-15-209, MCA

RULE XI CRITERIA FOR DETERMINATION (1) The department's hazard determination shall be based on the consequences of dam failure--not the condition, probability, or risk of failure. A dam must be classified high-hazard if the impoundment capacity is 50 acre-feet or larger and it is determined that a loss of human life is likely to occur within the breach flooded area as a result of failure of the dam.

(2) The breach flooded area, for the purpose of this classification only, is the flooded area caused by a breach of the dam with the reservoir full to the crest of the emergency spillway and excludes the flooded area created by a 100-year flood without the dam.

(3) The evaluation of the effects of flood inundation, for the purpose of classification, will continue downstream until the flood stage is equal to that of the 100-year floodplain.

(4) The breach flow hydrograph and downstream routing of the breach flows, for the purpose of classification, will be estimated by the department either by visual determination or dam breach modeling techniques.

(5) Loss of life is assumed to occur if the following structures are present or planned for as a matter of public record or notice in the breach flooded area: occupied houses and farm buildings, stores, gas stations, parks, golf courses, stadiums, ball parks, interstate, principal, and other paved highways, and including railroads, highway rest areas, RV areas, developed campgrounds; and excluding unpaved county roads and all private roads.

AUTH: 85-15-110, MCA

IMP: 85-15-209, MCA

RULE XII CHANGE IN CLASSIFICATION (1) A high-hazard dam owner may request the department to reconsider a hazard determination. A request for reconsideration must include the data and analyses necessary to show that the dam is not a high-hazard dam. The owner shall pay for reasonable inspection costs incurred by the department as a result of the reconsideration.

(2) A classification of high-hazard dam is automatically rescinded if the dam is constructed to impound less than 50 acre-feet measured to the crest of the dam or if the dam is breached. A construction permit is necessary to perform the construction to reduce the impoundment capacity of the high-hazard dam or breach the high-hazard dam.

AUTH: 85-15-110, MCA

IMP: 85-15-209, MCA

RULE XIII DAMS IN SERIES (1) The worst case scenario shall govern for determining the hazard classification of dams in series where more than one mode of failure is possible among the dams. Classification shall be based on potential for failure under combined and, if applicable, individual dam breach scenarios based on a reasonable likelihood of occurrence.

(2) If an upstream dam has the capability to create failure in a downstream high-hazard dam because of its failure flood wave, the upstream dam must be classified as a high-hazard dam.

(3) If the failure flood wave of the upstream dam will cause failure of the downstream dam, and the combined flows will likely cause a loss of life, the upstream dam must be classified as a high-hazard dam.

AUTH: 85-15-110, MCA

IMP: 85-15-209, MCA

RULE XIV CONSTRUCTION PERMIT APPLICATION - GENERAL REQUIREMENTS

(1) An owner who wishes to construct, alter, repair, enlarge, or remove a high-hazard dam shall apply for and receive from the department a construction permit prior to any construction.

(2) A single application must be submitted for each dam, even if the dams are part of a single project or facility.

(3) The requirements of this sub-chapter do not apply to high-hazard, corps-inspected dams until July 1, 1990.

(4) An application for a construction permit must

include the application form, engineering design report, and three sets of the construction plans and specifications.

(5) Each application must include a form provided by the department and signed by the owners of the dam or reservoir. The application form must include the name, address, and phone number of the owner, name of the proposed dam or reservoir, and its purpose.

(6) The construction plans and specifications and engineering report must be prepared by or under the supervision of an engineer experienced in dam design and construction and shall be certified with the seal of the engineer.

(7) Within 30 days after receipt of the application, the department shall notify the applicant of any errors or omissions and request any additional information necessary to properly evaluate the application. The department may disapprove any application for failure to promptly submit the required information.

(8) The department shall issue a construction permit if the design and construction as proposed conforms to the design and construction criteria specified in these rules and to accepted practices and procedures of the engineering profession.

AUTH: 85-15-110, MCA

IMP: 85-15-210, MCA

RULE XV DEPARTMENT INSPECTION COSTS DURING CONSTRUCTION

(1) The owner shall pay for the department's actual and necessary costs, excluding salary and travel expenses, incurred for occasional inspections during construction if a need arises from a particular circumstance to ensure a safe dam.

(2) The cost must be paid within 30 days of billing by the department.

(3) Failure to pay the costs billed within 30 days of mailing by the department will result in the automatic cancellation of the construction permit and a forfeiture of all rights acquired under the permit.

AUTH: 85-15-110, MCA

IMP: 85-15-110(6), MCA

85-15-211, MCA

85-15-216, MCA

RULE XVI NEW CONSTRUCTION - ENGINEERING DESIGN REPORT (1)

An engineering design report for construction of a new dam must include:

(a) a summary describing:

(i) the name of the proposed dam;

(ii) the name of the engineer;

(iii) the mailing address of the engineer;

(iv) the location of the proposed dam;

(v) the type, size, and height of the proposed dam;

(vi) the storage capacity and reservoir surface area for normal and maximum water surface elevation;

(vii) a general description of the dam and appurtenances;
(viii) maps showing the location of the structure that include county and state roads, and access to the site and the outline of the reservoir (Aerial photographs or USGS maps may be used);

(ix) an outlet discharge capacity rating table for each foot of head above the inlet or control section indicating the discharge that can be safely released;

(x) a rating table indicating spillway discharge capacity in cubic feet per second for each foot of head above the control section, including the crest elevation referenced from mean sea level (Include the equations for determining the discharge capacity rating);

(xi) a table showing the reservoir area (in acres) and storage capacity (in acre-feet) for each foot of elevation from zero storage to the crest of the dam (Indicate the elevation of the dead storage, outlet elevation, and the elevation of the spillway(s). All elevations shall be given in feet above mean sea level); and

(xii) photographs of the proposed site;

(b) construction plans reduced to 11 x 17 inches;

(c) construction and material specifications;

(d) a geology report giving a summary of the geological factors of the local area and dam foundation and the reservoir site, including:

(i) faults and fault history that may affect the dam or reservoir site;

(ii) seismicity of area and region; and

(iii) evaluation of reservoir perimeter for slide potential;

(e) a geotechnical report describing the investigation and evaluation and design of the foundation, abutments, embankment of the dam, and the borrow materials. Include an analysis to indicate that the dam, spillway, and appurtenances will be stable during construction, filling, and under all conditions of reservoir operations, including design earthquake loading;

(f) a hydrologic and hydraulic report giving the hydrologic/hydraulic design procedure(s) or method(s) used, including the reservoir inflow hydrographs, the reservoir outflow hydrographs, the spillway discharge capacity, flow characteristics of the spillway throughout its entire length at design discharge, the area of the drainage basin, hydrologic and hydraulic characteristics, the pertinent rainfall and stream flow records and flood flow records and estimates and, if done, the incremental analysis for loss of life for the spillway design;

(g) a drainage design report describing the data and evaluation of the seepage expected and the drainage and instrumentation design. The report must include criteria, design data, and references to show that seepage flow through the embankment, foundation, abutments, and appurtenant

structures will be monitored and controlled so that no internal erosion will take place and so there will be no sloughing in the area where the seepage emerges;

(h) a quality control plan describing the extent and nature of the quality control during the proposed construction. The plan must include the responsibilities of the owner and engineer, the frequency of inspection, and any other items not already stated in the construction plans and specifications that are necessary to ensure compliance with the approved plans and specifications and construction of a safe dam;

(i) a plan for monitoring the performance of the dam. The plan must describe the assumptions, design considerations, and the proposed construction for the aspects of the dam to be monitored; and

(j) a report of other design data, assumptions, and analysis data pertinent to individual dams and site conditions.

AUTH: 85-15-110, MCA

IMP: 85-15-210, MCA

RULE XVII NEW CONSTRUCTION - CONSTRUCTION PLANS (1) The construction permit application for the construction of a new dam must be made on plan sheets no larger than 24 x 36 inches or smaller than 21 x 30 inches. Construction details on the plans should be sufficiently complete to accurately lay out the structure and build it.

(2) The plans must be detailed engineering designs that consist of drawings and specifications that include as a minimum the following:

(a) a cover sheet indicating the name of the project, index of drawings, designated access to the project, and the location with respect to highways, roads, and streams;

(b) certifications by the engineer and the owner must be placed on the title sheet (first sheet) of the drawings. The certifications must be similar to those presented in examples 1 and 2.

(i) EXAMPLE 1

Certification by Engineer

I hereby certify that these plans for the (insert the correct word or words choosing from: construction of the; repair of the; enlargement of the; alteration of the; or removal of the) _____ Dam were

Name of Dam

prepared by me (or under my direct supervision) for the owners thereof.

(_____)

(ENGINEER'S _____)

(_____)

(SEAL _____)

(_____)

Firm Name

Engineer

(ii) EXAMPLE 2

Certification by Owner

I, _____, owner, whose
Name of Owner
Post Office Address is _____,
Owner's Address
Zip _____, do hereby accept and approve these plans
and will cause the dam to be constructed pursuant to these
plans and specifications and any authorized changes.

Owner

- (c) site maps that include but are not limited to:
- (i) plan view of site including embankment, and emergency spillway;
 - (ii) topography of structure site including all topographic features;
 - (iii) land ownership;
 - (iv) base lines;
 - (v) center line of embankment and emergency spillway;
 - (vi) property lines and fence lines;
 - (vii) construction limits;
 - (viii) utility lines and pipelines;
 - (ix) roads, highways, and railroads (with names);
 - (x) bench marks to mean sea level;
 - (xi) borrow areas and waste areas;
 - (xii) clearing and grubbing areas;
 - (xiii) waterways, diversions, and channel improvements;
 - (xiv) wells;
 - (xv) fence removal and construction;
 - (xvi) scale and north arrow;
 - (xvii) location of springs, seeps, underground mines, mine drainage and openings, the sub drain system; and
 - (xviii) project stationing, cross-sections, borings and test pits, instrumentation, reference points and other pertinent data shall be included;
- (d) a profile along the dam axis and borrow area showing the locations, elevations, and depths of borings or test pits, including logs of bore hole(s) and test pits;
- (e) a maximum cross-section of the dam showing elevation and width of crest, slopes of upstream and downstream faces, thickness of riprap, zoning of earth embankment, location of internal drains and filters, core trenches, elevation size and type of outlet conduit, valves, operating mechanism, and dimensions of all other essential structural elements;
- (f) details of the outlet works. This should include the intake structure, the gate system, drawings that show conduit details, the trash rack, and the downstream outlet structure;

- (g) plan, profile, and control section of all the spillways, including details of any concrete work, complex control structures, concrete chutes, or energy dissipating devices;
- (h) drawings showing sub drains, anti-seep mechanisms, and other pertinent structures;
- (i) foundation plan showing excavation with proposed grout drain holes, elevations and size of core trench, cutoff walls, or other foundation treatments;
- (j) details of diversion scheme if applicable;
- (k) location and types of instrumentation of drainage and/or seepage control facilities; and
- (l) other drawings required for construction and technical review of appurtenant structures.

AUTH: 85-15-110, MCA

IMP: 85-15-210, MCA

RULE XVIII NEW CONSTRUCTION - CONSTRUCTION AND MATERIAL SPECIFICATIONS

(1) The construction permit application for construction of a new dam must contain construction and material specifications, including a detailed description of the work to be performed and a statement of the requirements for the permanent construction; for example, foundation preparation, placement of materials, and concrete quality control. Also, any special techniques should be carefully described.

(2) The specifications must include the following provisions:

(a) the technical provisions describing the method of construction and quality control for the project including, at a minimum, the following:

- (i) clearing and grubbing and other site preparation;
 - (ii) foundation preparation and construction requirements;
 - (iii) spreading and compaction requirements to include lift thicknesses, moisture content, and degree of compaction with appropriate compaction curves, slopes, and grades;
 - (iv) material and gradation and construction requirements for filters and drains;
 - (v) material and installation requirements for pipes and fittings;
 - (vi) material and placement requirements for concrete;
 - (vii) installation of monitoring devices;
 - (viii) revegetation and permanent erosion control, including slope protection;
 - (ix) public safety;
 - (x) construction erosion and sediment control; and
 - (xi) material and installation requirements for equipment;
- (b) general provisions that specify the rights, duties and responsibilities of the owner, engineer, builder, and the prescribed order of work;
- (c) provisions for adequate observation and inspection

by the engineer during construction;

(d) provisions that the plans and specifications must not be materially changed without prior written approval of the engineer;

(e) provisions that certain stages of construction must not proceed without the engineer's approval. Those stages requiring approval are:

(i) after clearing and excavation of foundation and prior to placing any fill material;

(ii) after installation of outlet conduit and before placing any backfill material around conduit;

(iii) after construction is completed and before any water is stored in reservoir; and

(iv) at such other times as determined necessary by the engineer;

(f) provisions that all materials and workmanship must be subject to inspection, examination, and test by the engineer at any and all times during manufacture or construction, and at any and all places where such manufacture or construction are carried on;

(g) provisions that allow the owner or engineer to reject defective material and workmanship and require its correction or replacement with proper material; and

(h) Provisions that the engineer may suspend any work that may be subject to damage by weather conditions.

AUTH: 85-15-110, MCA

IMP: 85-15-210, MCA

RULE XIX REPAIR, ALTERATION, OR ENLARGEMENT - ENGINEERING DESIGN REPORT, PLANS, AND SPECIFICATIONS (1) The engineering design report and the plans and specifications for a construction permit application must contain the following:

(a) engineering design report - The report must address and provide specific information pertaining to the following as appropriate or as specified by the department:

(i) a summary, including those items in Rule XVIII(1), and a general description of the proposed work, and for repair must include the specific measures to be taken to reasonably ensure the problem will not recur;

(ii) appropriate geotechnical, hydrologic, and hydraulic calculations and assumptions relative to design of repairs, enlargement, or alteration of the dam or its appurtenances;

(iii) calculations and assumptions relative to design of repairs, enlargement, or alteration to the structural elements of the dam;

(iv) reservoir operation during the construction, including drawdown and refill schedules; and

(v) seepage control, including complete description of measures taken to protect the integrity of the dam during the construction; and

(b) plans and specifications - Detailed construction plans and specifications must be submitted and must include as a minimum the following:

(i) a cover sheet indicating the name of the project, name of owner, certification by the engineer and the owner pursuant to Rule XVII(1), designated access to the site, and the location with respect to highways, roads, streams, and the dam(s) that are affected by the structure;

(ii) drawings showing appropriate cross section and profile views of the proposed work with center lines and horizontal and vertical control points clearly identified in a sufficiently large scale to clearly indicate the extent and complexity of the work to be performed;

(iii) technical provisions, as may be required, to describe the method of construction and quality control for the proposed work; and

(iv) general provisions that specify the rights, duties, and responsibilities of the owner, engineer, and contractor.

AUTH: 85-15-110, MCA

IMP: 85-15-210, MCA

RULE XX GENERAL MAINTENANCE AND ORDINARY REPAIRS THAT DO NOT REQUIRE A CONSTRUCTION PERMIT

(1) General maintenance and ordinary repairs that do not require a construction permit are those activities that do not impair the safety of the dam. These activities include:

(a) removal of brush or weeds, or cutting of trees, removal of slash from the embankment or spillway, and removal of small stumps is included, provided no deep excavation into the embankment occurs;

(b) repair of erosion gullies or minor rodent damage on the embankment or in the spillway (large gullies that have already weakened the dam must be repaired in accordance with Rule XIX);

(c) surface grading of the embankment crest or spillway to eliminate potholes and provide proper drainage, provided that the freeboard is not reduced; and

(d) placement of additional riprap and bedding on the upstream slope, or in the spillway, in areas that have sustained minor damage. This would involve restoring the original riprap protection and maintaining the original capacity where the damage has not yet resulted in weakening of the dam.

AUTH: 85-15-110, MCA

IMP: 85-15-210, MCA

RULE XXI REMOVAL - ENGINEERING REPORT, PLANS, AND

SPECIFICATIONS (1) The engineering report must include detailed descriptions and design assumptions for the removal, partial removal, or abandonment of the dam.

(2) Plans and specifications must include as a minimum the following:

(a) a cover sheet indicating the name of the project, name of owner, certification by the engineer and the owner pursuant to Rule XIX(1), designated access to the site, and the location with respect to highways, roads, and streams;

(b) method of draining the reservoir during removal and

statement of the sequence of operations;
(c) method of disposal or stabilization of the sediment;
(d) disposition of the dam materials;
(e) description of the reclamation actions to be applied to the dam and impoundment area; and
(f) means for removal of the dam to prevent future impoundment.

AUTH: 85-15-110, MCA

IMP: 85-15-210, MCA

RULE XXII CONSTRUCTION PERMIT - STANDARD TERMS (1) The following are standard terms and conditions included in any approval of a construction permit application for construction:

(a) construction work must be started within one year from date of approval, unless an extension is granted;

(b) the owner shall provide the department evidence that he has required a performance bond from the contractor for the completion of construction of the dam in the amount of at least 50% of the estimated cost of the project;

(c) the owner shall engage an engineer to provide engineering services during construction and the engineer shall:

(i) be responsible to determine if and when the actual conditions do not conform to the design, and that the construction was carried out in substantial compliance with the approval plans and specifications;

(ii) submit to the department in writing, 30 days before start of construction:

(A) the estimated time to complete the construction activities; and

(B) the inspection force, independent from the construction contractor, by which quality control will be achieved;

(iii) submit to the department in writing within 10 calendar days of the reporting period construction progress reports during the construction period at intervals of 30 days, or more frequent if specified by the department in the permit or upon order of the department.

The construction reports must summarize the detailed daily log of all construction operations, that includes written and photographic records, documenting:

(A) the date, location, and results of tests performed on construction materials;

(B) a narrative of problems encountered during construction and inspection and the manner in which they are resolved; and

(C) the foundation excavation and placement of backfill in the core trench;

(iv) have the engineering report, plans, specifications, and all previous construction progress and inspection reports available at the construction site for reference;

(v) notify the department at least 3 days in advance of

material placed in the foundation, cutoff trench, outlet foundation, and any other area requested by the department; and

(vi) conduct a final inspection;

(d) the department may conduct unscheduled and periodic inspections during construction as deemed necessary to ensure that the structure is being built in conformity to the approved plans and specifications and will result in a safe dam. The department inspections do not relieve the owner and/or the engineer in charge of the responsibility of providing adequate inspection of the work;

(e) the department shall be promptly advised of all changes in the approved design, plans, or specifications. There shall be no change in the approved design, plans, or specifications without approval of the engineer. All such approved changes shall be recorded on the complete set of as-built drawings;

(f) the owner shall notify the department of the completion and certify that the work has been performed in accordance with the provisions of the permit. Within 30 days after completion, the owner shall submit written certification by the engineer that the structure has been constructed in conformance with the plans, specifications, and changes. Also within one year of completion, the owner shall submit certification by the engineer that the dam and appurtenances are functioning as designed;

(g) the owner, except for construction involving removal of a dam, shall maintain one set and submit one set to the department of as-built drawings and descriptive matter prepared by the engineer showing and describing the dam or reservoir as actually constructed and any other items that may be of permanent value and have a bearing on the safety and performance of the dam or reservoir;

(h) if a dangerous or emergency condition including but not limited to flood during construction, slope failure, or earthquake develops during construction, the project engineer and owner shall initiate a plan and act to immediately correct the dangerous condition and give notification pursuant to Rule XLI; and

(i) for dams where a low level conduit drain is required or has been included, the drain must remain open and no water shall be stored in the reservoir until approval has been granted by the engineer.

AUTH: 85-15-110, MCA

IMP: 85-15-210, MCA

RULE XXIII FINAL INSPECTION - NOTICE OF COMPLETION (1) The owner shall give the department at least 10 days advance notice of the engineer's final construction inspection.

(2) If, after the review, the department determines that the work has not been performed in accordance with the provisions of the permit, the department shall specify the deficient items or necessary work in writing to the owner, who

shall cause the work to be completed in conformity with the permit.

AUTH: 85-15-110, MCA

IMP: 85-15-211, MCA

RULE XXIV RELEASE OF THE PERFORMANCE BOND (1) The performance bond cannot be released by the owner any sooner than 1 year after completion of construction.

(2) If the owner or the surety decides to abandon the project, the owner or the surety shall immediately notify the department in writing and, if during construction, submit suitable plans to render the dam safe.

AUTH: 85-15-110, MCA

IMP: 85-15-210, MCA
85-15-211, MCA

RULE XXV NOTICE, ORDER, AND REVOCATION FOR NONCOMPLIANCE

(1) If at any time during construction of any dam or reservoir the department finds that the work is not being done in accordance with the provisions of the permit, including revisions, it shall give a written notice and order by certified mail or by personal service to the owner.

(2) The notice and order must state the particulars in which the permit is not being or has not been complied with and shall order the immediate compliance.

(3) The department may order that no further work be done until evidence of compliance has been submitted to the department.

(4) If a permittee fails to comply with the permit after receipt of a notice, the permit is deemed canceled, and all rights acquired under the permit are forfeited.

(5) If, after any inspections, investigations, or examinations, or at any time as the work progresses, it is found by the department that amendments, modifications, or changes are necessary to ensure safety, the department may order the owner to revise the plans and specifications.

(6) If, after any inspections, investigations, or examinations, or at any time as the work progresses, conditions are discovered that will not permit the construction of a safe dam or reservoir, the department shall cancel the permit.

AUTH: 85-15-110, MCA

IMP: 85-15-210, MCA
85-15-211, MCA
85-15-216, MCA

RULE XXVI OPERATION PERMIT REQUIREMENTS (1) For all high-hazard dams not exempt pursuant to the act and Rule III, the department shall require an operation permit and impose such reasonable conditions as are necessary to ensure that high-hazard dams are safely operated and maintained, and that the operation and maintenance of high-hazard dams are consistent with the act and all implementing orders and administrative rules. An application for an operation permit to operate a high-hazard dam must be submitted to the

department:

(a) by October 1, 1990, for an unpermitted high-hazard existing dam;

(b) by July 1, 1995, for an unpermitted high-hazard corps-inspected dam;

(c) before operation of a high-hazard dam for which a construction permit has been issued.

(d) by the date specified in the permit for renewal of an operation permit for a permitted high-hazard dam.

AUTH: 85-15-110, MCA

IMP: 85-15-212, MCA

85-15-213, MCA

RULE XXVII. OPERATION PERMIT APPLICATION - GENERAL

REQUIREMENTS (1) Applications, including applications for renewal, of a permit to operate high-hazard dams must include:

(a) an operation plan pursuant to Rule XXVIII, and

(b) an inspection report pursuant to Rule XXXIX, except for a new dam for which a construction permit has been issued.

(2) The investigation and inspection report must be of the dam in its condition and configuration at the time of the application, and the investigation must have been conducted within 90 days of the date of submitting the application.

(3) Within 30 days of receipt of a permit application, the department shall notify the applicant of any errors or omissions, and request any additional information necessary to properly evaluate the application. The department shall establish a reasonable time frame for the applicant to submit the necessary information. After receipt of all required information, the department shall issue or deny the permit within 90 days, but not before approval of any construction pursuant to a construction permit.

AUTH: 85-15-110, MCA

IMP: 85-15-212, MCA

85-25-213, MCA

RULE XXVIII. APPLICATION CONTENT - RESERVOIR OPERATION PLAN

(1) Any application for a permit to operate a high-hazard dam must include a documented plan of the dam and reservoir operation for normal conditions, flood events, and emergency conditions. This plan must include:

(a) the operation procedures;

(b) maintenance procedures; and

(c) emergency procedures and warning plan.

AUTH: 85-15-110, MCA

IMP: 85-15-212, MCA

RULE XXIX. OPERATION PLAN - RESERVOIR OPERATION PROCEDURES

(1) The reservoir operation procedures must describe the method and schedule of operation of the high-hazard dam and reservoir, which must include:

(a) procedures for safe drawdown rate of the reservoir;

(b) a description of the capabilities and limitations of the outlet facilities, spillways, and other dam appurtenances;

(c) a description of the authority granted to the dam

tender and the training and direction or instruction necessary to properly and safely operate the gates and other dam appurtenances during normal, flood, and emergency conditions;

(d) a description of the availability of the dam tender, means of communication between the dam tender and his supervising authority, and method of gate operation, for example, manual, automatic, or remote control;

(e) a plan to monitor and anticipate unusual weather and hydrologic conditions and incorporate these conditions into the operation plan;

(f) a plan including the method and frequency for routine inspections conducted by an engineer, as well as the owners or dam tender, at least once per year as well as inspections after critical events, for example, during and after heavy runoff, a severe rainstorm, or a severe wind storm, after an earthquake, and during periods of high storage. The plan must identify an inspection checklist and other directions to complete the required inspections. These inspections must be performed by an engineer, who may also be the owner or the dam tender, experienced in dam inspection. The completed inspection checklist and any other report must be maintained in the owner's records;

(g) a plan for permanent monitoring of the dam, for example, instrument installations, seepage collection systems, and water levels necessary to ensure the safe operation of the dam. The plan must identify the frequency of the data collection and the data value(s) that would constitute an unsafe or watch condition. If no monitoring is considered necessary, the reasons for this judgment must be stated; and

(h) a plan for interaction with operations of other dams and reservoirs, upstream and downstream, that may affect or be affected by the dam or reservoir operations during normal and emergency releases.

AUTH: 85-15-110, MCA

IMP: 85-15-212, MCA

RULE XXX OPERATION PLAN - MAINTENANCE PROCEDURES (1)

Maintenance procedures of the high-hazard dam and its appurtenant works must include:

(a) the method and frequency of routine inspections and maintenance of the dam necessary to:

(i) remove and prevent the growth of trees or brush on the embankment of the dam and on the spillway system;

(ii) remove and prevent the accumulation of debris, obstructions, or other deleterious materials from upstream face of the dam and the spillway system;

(iii) ensure that all gates, orifices, dissipators, trash racks, and other appurtenances--including monitoring devices--that affect the proper operation of the dam and reservoir are kept in good repair and working order;

(iv) maintain adequate and suitable vegetation to prevent the erosion of the embankment and earth spillway for the dam; and

(v) determine that any seepage on the downstream slopes of the dam does not present a situation indicative of potential dam failure; and

(b) a plan for a detailed record of all maintenance required, including dates and results of inspections and complete information on all maintenance, rehabilitation, and improvements. This record must also include data, including photographic documentation, on the structural behavior of the dam embankment and spillway system for all major flood and seismic events.

AUTH: 85-15-110, MCA

IMP: 85-15-212, MCA

RULE XXXI. OPERATION PLAN - EMERGENCY PROCEDURES AND WARNING PLANS (1) All operation plans must contain emergency procedures and warning plans to be used in the event of an emergency.

(2) The plan must be developed in cooperation with those designated by the owner for carrying out the plan in an emergency, such as county disaster emergency coordinators, county sheriff, city police, engineer, and others. A written statement of agreement to participate in the plan must be signed by those responsible and be attached to the plan.

(3) The owner shall file the plan with the appropriate disaster and emergency services coordinator after approval by the department, and the owner shall provide certification of its filing to the department.

(4) The plan must include but not be limited to:

(a) a map of the evacuation area downstream of the dam based on the estimated inundation caused by a sudden breach of the dam during the design flood and non-flooding failure conditions. The evacuation area must be depicted on a USGS quadrangle map with the approximate travel time indicated at significant locations;

(b) a description of:

(i) wind direction and speed and duration that would exceed the allowable freeboard during flood and full-pool, non-flood conditions;

(ii) the basin-wide precipitation over a 12-, 24-, and 72-hour period that would exceed the emergency spillway capacity and cause failure; and

(iii) the earthquake magnitude at known faults that would cause the dam to fail;

(c) an up-to-date notification directory with phone numbers of key county or municipal and emergency management officials, an engineer familiar with the dam's characteristics, downstream residents within the inundation area (listed in order by those affected first), and the department;

(d) the current name of the owner or representative responsible for giving notification of a threat of failure;

(e) the availability of suitable materials for emergency repairs of erosion gullies and control of seepage; and

(f) a list of contractors and others that could provide assistance before, during, and after a dam failure or reference that the county resource book for disaster and emergency services has been examined and contains the necessary contractors and others.

(5) The owner shall annually review and update the emergency procedures and warning plan.

AUTH: 85-15-110, MCA

IMP: 85-15-212, MCA

RULE XXXII OPERATING PERMIT - CONDITIONS AND TERMS (1)

Each operating permit issued or renewed by the department may contain terms relating to the inspection, evaluation, operation, maintenance, alteration, repair, use, or control of a dam or reservoir as determined necessary for the safe operation of the high-hazard dam and include:

(a) The owner of the dam or reservoir shall at all times follow the operation plan of the dam or reservoir, including the reservoir operation procedure, maintenance procedure for the dam and appurtenant works, and emergency procedures and warning plans as approved by the department;

(b) the initial filling of a completed new dam or repaired dam must be controlled by the owner and observed by the engineer at frequent intervals;

(c) a copy of the current and approved operation plan must be provided to the dam tender or operator;

(d) except in an emergency, no construction other than that necessary for the normal operation, maintenance, investigation, and monitoring of the dam and reservoir must be allowed on the dam or its appurtenant works unless a construction permit for such work has been approved by the department;

(e) an application for renewal of an operation permit must be submitted to the department before the operation permit lapses;

(f) the sale or conveyance of a permitted dam or the land on which the dam is located must not affect the validity of the permit. The owner in whose name the permit is granted must notify the department in writing of such change of ownership within the 30 days of such transfer; and

(g) permits must not be transferred from one dam to another.

(2) The department may cancel an operating permit whenever it determines that the dam or reservoir constitutes a danger to life. Whenever the department deems it is necessary to safeguard life, the department may amend the terms and conditions of any permit by issuing a new permit containing the revised terms and conditions. Such modifications are effective 90 days following issuance by the department of a revised permit, except when the department finds that a state of emergency exists, and that life would be endangered by delay. In case of an emergency declared by the department, the new conditions are effective immediately.

(3) Operating permits are renewed for a definite period of time, not to exceed 5 years, as determined by the department. In determining each period of approval, the department shall consider the circumstances pertinent to the situation, including the size and type of dam, hydraulic appurtenances, topography, geology, soil conditions, hydrology, climate, use of reservoir and the lands lying in the floodplains downstream from the dam, and results of the inspection reports.

(4) The department may issue or renew an operation permit if there is reasonable assurance that remedial measures identified in the periodic inspection report be completed within a period of time established in the operation permit or renewal.

(5) The department may amend the terms and conditions of an existing operating permit whenever the department, as a result of an inspection or construction, finds that the dam does not conform to current safety standards.

AUTH: 85-15-110, MCA

IMP: 85-15-212, MCA
85-15-213, MCA
85-15-216, MCA

RULE XXXIII HIGH-HAZARD DAM DESIGN CRITERIA (1) Designs for construction of high-hazard dams must conform to accepted practices and procedures of the engineering profession.

(2) Design as well as preparation of the construction plans and specifications must be prepared by or under the direction of an engineer experienced in dam design and construction.

(3) An earthfill dam must be safe and stable during all phases of construction and operation of the reservoir. To accomplish this, the following criteria must be met:

(a) the embankment must be safe against overtopping during occurrence of the inflow design flood by the provision of sufficient spillway and outlet works capacity;

(b) the slopes of the embankment must be stable during construction and under all conditions of reservoir operation, including rapid drawdown of the reservoir;

(c) the embankment must be designed so as not to impose excessive stresses upon the foundation;

(d) seepage flow through the embankment, foundation, and abutments must be controlled so that no internal erosion or piping takes place and so there is no sloughing in the area where the seepage emerges;

(e) the embankment must be safe against overtopping by wave action;

(f) the upstream slope must be protected against erosion by wave action, and the crest and downstream slope must be protected against erosion due to wind and rain;

(g) the design must be such that the most severe earthquake that can be reasonably anticipated will not cause catastrophic failure and loss of life; and

(h) construction of the dam and its appurtenants must be constructed utilizing proper methods and control.

(4) Except as otherwise specified in Rules XXXIII to XXXVI, concrete dams must be designed and constructed in accordance with principles at least equivalent to United States bureau of reclamation Design of Small Dams to its specified limits, or Design of Gravity Dams and Design of Arch Dams.

(5) Except as otherwise specified in Rules XXXIII to XXXVI, earth dams retaining a flood water capacity of less than 12,500 acre-feet or a total capacity of less than 25,000 acre-feet measured to the primary emergency spillway must be designed and constructed in accordance with principles at least equivalent to United States soil conservation service TR-60, Earth Dams and Reservoirs. In this paragraph, total capacity means the total volume of space available for water and sediment upstream from a dam below the elevation at which discharge begins in the primary emergency spillway. In this paragraph, floodwater detention capacity is the capacity between the crest of the principal spillway and the elevation at which discharge begins in the primary emergency spillway minus any capacity between these two elevations reserved for sediment.

(6) Except as otherwise specified in Rules XXXIII to XXXVI, earth dams greater than the limits specified in (5) must be designed and constructed at least equivalent to the United States bureau of reclamation Design of Small Dams to its limit of a 50-foot dam height, and to the corps standards beyond a 50-foot dam height.

AUTH: 85-15-110, MCA

IMP: 85-15-210, MCA

RULE XXXIV HYDROLOGIC STANDARD FOR EMERGENCY AND PRINCIPAL SPILLWAYS (1) Spillways for high-hazard dams must safely pass the flood calculated from the inflow design flood. The minimum inflow design flood is expressed as a fraction of the probable maximum flood or as otherwise indicated in table A.

(2) However, the spillway capacity may be smaller if an analysis shows that there is no additional loss of life expected from the dam failure flood. The minimum inflow design flood shall be the 100-year, 24-hour flood.

(3) As a minimum, routing of the inflow design flood through the reservoir shall assume storage contents to be at the emergency crest elevation prior to flood routing.

(4) The breach area below the high-hazard dam is designated as Category A if the dam is to be a new dam or an existing dam to be enlarged or a major repair or alteration of the emergency spillway is to be performed, where the downstream hazard area contains more than 20 residences and the failure flood wave is less than 4 hours from the dam to the first residence.

The breach area below the high-hazard dam is designated as Category B if the dam is an existing dam not meeting the

criteria for a Category A dam.

(5) TABLE A

EMERGENCY SPILLWAY INFLOW DESIGN FLOOD

<u>Capacity to the Emergency Crest/Height to Dam Crest</u>	<u>Breach Area Category A</u>	<u>Breach Area Category B</u>
Dams less than 100 acre-feet & less than 20 feet in height	2Q ₁₀₀	Q ₁₀₀
Dams less than 500 acre-feet & less than 35 feet in height	.2 PMF	.1 PMF
Dams less than 1,000 acre-feet & less than 50 feet in height	.3 PMF	.15 PMF
Dams 12,500 acre-feet or less & less than 50 feet in height	.5 PMF	.5 PMF
Dams less than 50,000 acre-feet & less than 100 feet in height	.75 PMF	.75 PMF
Dams 50,000 acre-feet or greater & 100 feet or greater in height AUTH: 85-15-110, MCA	1.0 PMF IMP: 85-15-210, MCA	1.0 PMF

RULE XXXV INSTRUMENTATION (1) A means to measure the reservoir water level to within one-tenth of a foot is required for all dams. The measurements must be correlated with the capacity of the reservoir.

(2) Any dam that exceeds 50 feet in height must have a sufficient number of piezometers to adequately monitor the piezometric surface within the dam.

(3) All dams must have an adequate seepage monitoring and collection system.

(4) The department shall specify any other necessary instrumentation in the permit based upon the design being implemented and the information acquired during an investigation.

AUTH: 85-15-110, MCA

IMP: 85-15-210, MCA
85-15-213, MCA

RULE XXXVI BREACH OR REMOVAL OF AN EARTH DAM (1) The breach of an earth dam must be excavated down to the level of the natural ground and be able to pass the 100-year, 24-hour flood at a depth and velocity equivalent to the natural channel. However, the maximum width required may be the total removal of the dam.

(2) The sides of the breach must be excavated to a slope that is stable and consistent with the natural angle of repose

of adjacent material abutting the dam or as determined by the engineer.

AUTH: 85-15-110, MCA

IMP: 85-15-210, MCA

85-15-213, MCA

RULE XXXVII PERIODIC OWNER INSPECTIONS - GENERAL

REQUIREMENTS (1) The owner of a high-hazard dam shall have periodic inspections conducted by a qualified engineer.

(2) Periodic inspections must be made and a report completed on a frequency of at least once every 5 years or within the period stated in the terms of an operation permit for a high-hazard dam.

(3) The frequency of periodic inspections shall be set by the department after considerations including the condition of the dam, proximity to population centers, current design technology, and type of construction.

(4) The owner shall retain records of all inspections, including records of actions taken to correct conditions found in such inspections.

(5) Within 90 days of the periodic inspection, the owner shall deliver a copy of the report to the department, together with a statement of the owner's intent in regard to any deficient or unsafe items identified by the report, and a time schedule to remedy the items. The original copy of the report shall be retained by the owner.

(6) The owner shall bear the cost of the inspection.

AUTH: 85-15-110, MCA

IMP: 85-15-213, MCA

RULE XXXVIII PERIODIC OWNER INSPECTIONS - INSPECTION ITEMS

(1) The inspection must include, but not be limited to:

(a) review and analysis of previous inspection reports and available data on the design, construction, operation, and maintenance of the dam and its appurtenances;

(b) visual inspection of the dam, its appurtenances, the downstream area, and all other areas affected by the structure;

(c) evaluation or plan for a full evaluation over no more than a 5-year period of the general conditions of the dam, spillways, and other appurtenances, including an assessment of the hydrologic and hydraulic capabilities, structural stability, and any other conditions that constitute or could constitute a hazard to the integrity of the structure;

(d) evaluation of operation, maintenance, emergency, and inspection procedures employed by the owner;

(e) analysis of piezometric levels or other data from any instrumentation or monitoring of the dam;

(f) review and analysis of the rate and volume of seepage and condition and maximum flow capability of any seepage collection system;

(g) review and documentation of the condition of surfaces and vegetation on the crest and slopes of the dam and area beyond the downstream toe of the dam;

(h) review of maximum operating water surface elevation and amount of freeboard;

(i) review and documentation of the condition of spillways and water level control structures, including all conduits exiting the dams; and

(j) other items the engineer determines are necessary to document and determine the safety of the dam.

AUTH: 85-15-110, MCA

IMP: 85-15-213, MCA

RULE XXXIX ENGINEER'S REPORT OF PERIODIC INSPECTION (1)

The engineer shall prepare a written report and photographic record of the inspection. The report must contain the following:

(a) the date and findings of the inspection and an assessment of the conditions of the dam and reservoir based on the visual observations, available data on the design, construction, operation, and maintenance of the structure, and hydrologic, hydraulic, stability, and other evaluations;

(b) recommendations for any critical or emergency measures or actions;

(c) recommendations for corrective measures or actions relating to design, construction, operation, maintenance, and inspection of the structure;

(d) recommendations for time periods appropriate for implementing any necessary emergency or corrective measures or actions to improve the safety of the dam to an acceptable level;

(e) recommendations for additional detailed studies, investigations, and analyses;

(f) recommendations for the safe storage level of the dam or reservoir; and

(g) recommendations for the time of the next inspection by an engineer.

(2) The engineer shall deliver the report and discuss it with the owner within 60 days of the investigation.

AUTH: 85-15-110, MCA

IMP: 85-15-213, MCA

RULE XL EMERGENCY CONDITIONS (1) The following constitute emergency conditions on any dam or reservoir:

(a) failure of the dam; or

(b) the occurrence of a critical condition such that the integrity of the dam or any of its appurtenances is immediately threatened, including for example:

(i) excessive and unusual seepage on the outer slope or downstream from the toe of the dam or near or around a conduit through the dam as indicated by damp areas, boils, cones, and deltas;

(ii) bulging of the downstream slope of the dam;

(iii) subsidence or cracking of the crest on either slope of the dam and slopes in the reservoir area;

(iv) substantial or threatening surface erosion, gullying, or wave erosion on the upstream or downstream slope

of the dam, including berms and the area beyond the downstream toe of the dam and below or around conduits exiting the dam or spillways; and

(v) an inflow that equals or exceeds the maximum inflow design flood.

AUTH: 85-15-110, MCA

IMP: 85-15-215, MCA

RULE XLI EMERGENCY ACTIONS - OWNER (1) If at any time it is discovered that an emergency or an immediate hazard condition exists, the owner or his representative shall:

(a) immediately take remedial measures, notify the local sheriff, and notify the department of the emergency action or repairs or breaching to be instituted by the owner; and

(b) for dams being operated under an operation permit, the owner shall immediately implement the emergency action plan.

AUTH: 85-15-110, MCA

IMP: 85-15-215, MCA

RULE XLII EMERGENCY ACTIONS - DEPARTMENT (1) The department shall immediately notify the Montana disaster and emergency services in Helena, and employ any or additional remedial measures, or enter into and immediately take such actions, necessary to protect human life or property if, in the department's opinion:

(a) the condition of a dam or reservoir or appurtenant work is so dangerous to the safety of human life or property as not to allow time for the issuance and enforcement of an order; or

(b) the owner fails to comply with an emergency order or emergency action plan or it cannot be ascertained if the owner has complied with the order or if the owner can't be found.

(2) The department may enter and conduct such investigations, tests, and analyses and take such corrective action as required to carry out the purposes of the act and this chapter.

(3) In applying emergency measures, the department shall direct the owner by order or, if conditions warrant it, the department may perform any of the following:

(a) lower the water level by releasing water from any impoundment or reservoir;

(b) completely empty the impoundment or reservoir;

(c) remove the dam; or

(d) take other steps as may be essential to safeguard human life or property.

(4) The department may continue to control such dam, impoundment, reservoir, and appurtenant works until they are rendered safe or the emergency occasioning the action has ceased.

(5) Orders must be sent to a dam owner by certified mail or served personally.

AUTH: 85-15-110, MCA

IMP: 85-15-215, MCA

RULE XLIII JURISDICTIONAL SIZE OF THE DAM OR RESERVOIR (1) For the purposes of 85-15-214, MCA, and this sub-chapter, the department's authority extends to dams or reservoirs having an impoundment capacity of 50 acre-feet or greater, regardless of the hazard classification.

AUTH: 85-15-110, MCA IMP: 85-15-106, MCA
85-15-214, MCA

RULE XLIV AFFIDAVIT OF COMPLAINT (1) A written affidavit must be submitted alleging that the person or property of the complainant is endangered by the maintenance, operation, or condition of a dam or reservoir, including the following sworn facts:

- (a) name, address, and telephone number of the owner of the dam or reservoir;
 - (b) estimated capacity of the reservoir in acre-feet or dam crest height and surface area of the full pool;
 - (c) factual description of the complaint and any supporting information or data;
 - (d) location of the dam or reservoir;
 - (e) name, address, and telephone number of complainant;
- and
- (f) notarized signature of the complainant.

AUTH: 85-15-110, MCA IMP: 85-15-214, MCA

RULE XLV INVESTIGATION AND INSPECTION (1) If an emergency condition does not exist, the department shall submit the affidavit of complaint to the owner for review and response within a reasonable time set by the department.

(2) If an emergency condition pursuant to Rule XL exists, the department shall proceed pursuant to Rule XLIII if the owner fails to immediately act.

(3) Upon review of the affidavit of complaint, owner's response, and all other pertinent department records, the department may conduct or order an inspection. If the department has insufficient data or information, the department shall conduct an inspection.


(4) Prior to the department-ordered inspection, notification must be given to the dam owner and complainant of the date and estimated cost of the inspection. Within a reasonable time, the owner shall provide all readily available engineering design and performance data to the department or inspector. The owner shall allow access and operate the dam and its facilities as directed by the inspector or the department for the inspection.

(5) If upon inspection the department finds the dam to be defective, the department shall order the necessary remedial action to eliminate the defect and make the dam, reservoir, or appurtenant works safe. The order must be in writing and delivered to the owner by certified mail or personally.

AUTH: 85-15-110, MCA IMP: 85-15-214, MCA
85-15-215, MCA

4. The department, pursuant to 85-15-110, MCA, may adopt rules for the administration of the Montana Dam Safety Act established by Senate Bill 369, which was passed and approved in the 1985 legislative session. The proposed rules establish the classification methods and procedures for high-hazard dams, the process for review, approval and issuance of construction and operation permits, and the requirements for inspections of dams. The rules also identify the safety standards for design, construction, operation and maintenance of high-hazard dams and reservoirs. The rules identify the requirements for emergency preparedness and warning procedures as well as establish fees to cover the cost of department inspections for hazard classification.

5. Interested parties may submit data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Laurence Siroky, Assistant Administrator, Water Resources Division, Department of Natural Resources and Conservation, 1520 East Sixth Avenue, Helena, Montana 59620-2301, no later than July 29, 1988. Mr. Siroky has been designated to preside over the hearing.


Larry Fashbender, Director
Department of Natural
Resources and Conservation

Certified to the Secretary of State May 31, 1988.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND-	)	NOTICE OF PROPOSED AMENDMENT
MENT of ARM 42.25.515 and the)		of ARM 42.25.515 and the
ADOPTION of Rules I, II and)		ADOPTION of Rules I, II, and
III relating to Coal Gross)		III relating to Coal Gross
Proceeds.	)	Proceeds.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 18, 1988, the Department of Revenue proposes to amend ARM 42.25.515 and adopt rules I, II and III relating to Coal Gross Proceeds.

2. The rule as proposed to be amended or adopted provide as follows:

42.25.515 IMPUTED VALUATION FOR REFINED COAL (1) For purposes of the ~~coal-severance tax and the~~ coal gross proceeds tax, the department may, or shall at the request of the taxpayer, impute the value of coal which has been refined by drying, cleaning, or other processing designed to improve the quality of the coal. Refined or refining does not include transportation of the coal from the point of extraction to the point of shipment or to the boiler, nor any normal preparation process leading to shipment of coal.

(2) Remains the same.

(a) An Example: ~~is~~-when Refined coal is sold for \$12/ton. The FOB price of similar type coal where drying, cleaning, or further processing has not occurred is \$10/ton. The imputed value is \$10/ton. AUTH, 15-23-108 MCA; IMP, 15-23-701 MCA.

RULE I - IMPUTED VALUATION FOR REFINED COAL (1) For purposes of the coal severance tax, the department may, or shall at the request of the taxpayer, impute the value of coal which has been refined by drying, cleaning, or other processing designed to improve the quality of the coal. Refined or refining does not include transportation of the coal from the point of extraction to the point of shipment or to the boiler, nor any normal preparation process leading to shipment of coal.

(2) The imputed value of refined coal will approximate market value FOB mine of similar type coal after primary and secondary crushing where drying, cleaning, or other further processing has not occurred. The FOB mine price of similar type coal means the price of such coal as established by the market price will reflect the selling price of coal with like characteristics within the region, as determined by spot sales or other methods which reliably reflect the market value of unrefined coal at the time the sale of refined coal occurs.

(a) Example: Refined coal is sold for \$12/ton. The FOB

price of similar type coal where drying, cleaning, or further processing has not occurred is \$10/ton. The imputed value is \$10/ton. AUTH, 15-35-111 MCA; IMP, Sec. 15-35-107 MCA.

RULE II - DETERMINATION OF CONTRACT SALE PRICE (1) The department shall consider the date the coal is loaded for final transportation to the purchaser as the time for determining the contract sales price of coal. To arrive at F.O.B. mine price any shipping or any other expenses incurred after the coal is prepared for shipment may be excluded from the contract revenue. The contract sales price will be determined by deducting from the coal sales value (a) the allowance for federal, state, and Indian royalties, (b) the processing allowance resulting from imputing value according to 42.25.515, and (c) the amounts charged to the purchaser to pay taxes on production.

(2) In computing production taxes the operator may include that amount which he expects to pay or the amount charged to the purchaser. If the taxes actually paid on the production are more or less than the production taxes deducted and affect the contract sales price, the difference shall be an adjustment in production taxes deducted for the following year.

(3) The above formula should be applied to each contract individually with the exception of those contracts for which the department must impute value. The resource indemnity trust tax and the gross proceeds tax deductions shall be the actual amount charged to the purchaser. AUTH, 15-35-122 MCA; IMP, 15-35-102 MCA.

RULE III - IMPUTED VALUATION (1) When coal is sold or used under the following circumstances, the department may impute the value:

(a) the operator of a coal mine is using the produced coal in an energy conversion or other manufacturing process;

(b) a person sells coal under a contract which is not an arm's length agreement, and the transaction price is less than market value,

(c) the person neglects or refuses to file a statement.

(2) The department will consider market value to mean the FOB mine price of a similar ton of coal, as established by the marketplace. In determining said FOB mine prices, the department will consider the contract term, tonnage, quality, Btu rating, and any other appropriate comparability criteria.

(3) The department will not impute a value according to (1)(b) unless the price differential is more than 10 cents/ton or 1% of FOB mine price, whichever is higher.

(4) The department will maintain the confidentiality of all comparable contract data and will use contract data provided by the producer in question whenever possible.

AUTH, 15-35-122 MCA; IMP, 15-35-107 MCA.

3. ARM 42.25.515 is proposed to be amended because originally the rule pertained to both the coal severance and coal gross proceeds. In order to facilitate any future statute

changes that may effect one tax but not the other this rule is being modified and Rule I adopted to apply separately to each of the two taxes.

Rule II is necessary to inform taxpayers of the proper method for calculating contract sales price for coal severance tax purposes.

Rule III is necessary to inform taxpayers of the conditions that will be considered to determine whether coal values require imputation. Subsection (2) establishes the definition of value that will be used for valuing coal sold under non-arms length transactions and (4) informs taxpayers that the department will protect proprietary contract information used to establish sales prices of comparables.

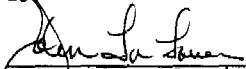
4. Interested parties may submit their data, views, or arguments concerning the proposed adoption in writing to:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than July 8, 1988.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than July 8, 1988.

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


JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 5/31/88

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND-	)	NOTICE OF PUBLIC HEARING on
MENT of ARM 42.23.403 relat-	)	ARM 42.23.403 relating to
ing to Treatment of Foreign	)	Treatment of Foreign Taxes.
Taxes.)	

TO: All Interested Persons:

1. On June 30, 1988, at 10:00 a public hearing will be held in the 4th Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.23.403 relating to Treatment of Foreign Taxes.

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

42.23.403 TREATMENT OF OTHER TAXES PAID (1) through (1)(c) remain the same.

(d) taxes imposed by any other state or country upon or measured by net income or profits. These taxes are not allowable as deductions irrespective of how characterized by regulations adopted by the Internal Revenue Service for purposes of foreign tax credit calculations. (i.e. 26 CFR 1.901 through 1.903.)

(i) A tax based on or measured by net income is a tax which is based on the residual of gross revenues less expenses.

(e) To the extent any portion of the tax paid to foreign governments is imposed upon or measured by the difference between the posted price and the market price for a barrel of oil, then the tax attributable to this increment is not a tax based upon or measured by net income or profits and is therefore deductible.

(2) remains the same. AUTH, 15-31-501 and 15-31-313 MCA; IMP, 15-31-114 MCA.

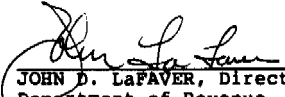
3. ARM 42.23.403 is proposed to be amended because a further clarification is needed as to what constitutes a tax measured by net income or profit. Over the last several years many foreign countries have raised the rate on their taxes to extremely high levels. This has resulted in many oil companies incurring large tax expenses which are not deductible on the Montana return. Many taxpayers have raised the argument that these foreign taxes are not taxes based on income but a form of a production tax.

The proposed rule implements the findings of the Mobil Oil vs. The Department of Revenue decision by the State Tax Appeal Board issued on February 5, 1985. The department has followed these findings of the case since that time.

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:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620
no later than July, 8 1988.

5. Eric Fehlig, Tax Counsel, Department of Revenue,
Office of Legal Affairs, has been designated to preside over and
conduct the hearing.


JOHN D. LAFAVER, Director
Department of Revenue

Certified to Secretary of State 5-31-88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND-) NOTICE OF PROPOSED AMENDMENT
MENT of ARM 42.22.1311 relat-) of ARM 42.22.1311 relating to
ing to Industrial Machinery) Industrial Machinery and Equip-
and Equipment Trend Factors) ment Trend Factors

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 18, 1988, the department of revenue proposes to amend ARM 42.22.1311 relating to Industrial Machinery and Equipment Trend Factors.

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

42.22.1311 INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS (1) The department of revenue will utilize the machinery and equipment trend factors which are set forth on the following tables. The trend factors will be used to value industrial machinery and equipment for ad valorem tax purposes pursuant to ARM 42.22.1306. The department uses annual cost indexes from Marshall Valuation Service. The current index is divided by the annual index for each year to arrive at a trending factor. Industries with similar trending factors are grouped. The schedules in the rule reflect an average of trend factors for each industry group. Where no index existed in the Marshall Valuation Service for a particular industry, that industry was grouped with other industries using similar equipment.

INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS

1986 = 100% 1987 = 100%

YEAR	TABLE 1	TABLE 2	TABLE 3	TABLE 4	TABLE 5	TABLE 6
1986	1.000	1.000	1.000	1.000	1.000	1.000
1985	1.007	1.004	1.013	1.005	1.006	1.007
1984	1.022	1.019	1.033	1.023	1.021	1.021
1983	1.047	1.042	1.058	1.052	1.049	1.049
1982	1.062	1.058	1.073	1.075	1.065	1.072
1981	1.113	1.110	1.124	1.126	1.115	1.117
1980	1.233	1.243	1.243	1.249	1.233	1.227
1979	1.367	1.371	1.373	1.386	1.365	1.344
1978	1.491	1.498	1.503	1.519	1.484	1.472
1977	1.603	1.612	1.617	1.636	1.593	1.596
1976	1.687	1.703	1.705	1.724	1.675	1.689
1975	1.786	1.806	1.811	1.832	1.773	1.821
1974	2.003	2.055	2.033	2.075	1.992	1.982
1973	2.359	2.408	2.356	2.426	2.336	2.244
1972	2.431	2.494	2.422	2.523	2.427	2.314
1971	2.512	2.585	2.538	2.619	2.524	2.391

1970	2-672	2-745	2-713	2-756	2-695	2-533
1969	2-641	2-924	2-904	2-949	2-885	2-696
1968	2-958	3-052	3-044	3-085	3-024	2-806
1967	3-068	3-173	3-179	3-175	3-158	2-905

YEAR	TABLE 1	TABLE 2	TABLE 3	TABLE 4	TABLE 5	TABLE 6
1987	1.000	1.000	1.000	1.000	1.000	1.000
1986	1.007	1.006	1.012	1.008	1.007	1.010
1985	1.016	1.012	1.029	1.016	1.015	1.019
1984	1.031	1.026	1.048	1.034	1.030	1.034
1983	1.057	1.050	1.073	1.063	1.059	1.061
1982	1.071	1.066	1.089	1.086	1.075	1.085
1981	1.123	1.126	1.141	1.137	1.125	1.131
1980	1.244	1.253	1.262	1.261	1.244	1.242
1979	1.379	1.380	1.394	1.400	1.377	1.361
1978	1.504	1.509	1.526	1.535	1.498	1.490
1977	1.617	1.622	1.642	1.653	1.607	1.617
1976	1.702	1.715	1.731	1.741	1.690	1.710
1975	1.799	1.819	1.849	1.849	1.786	1.840
1974	2.023	2.070	2.064	2.096	2.009	2.007
1973	2.373	2.435	2.392	2.450	2.357	2.272
1972	2.455	2.511	2.479	2.550	2.448	2.343
1971	2.535	2.603	3.577	2.643	2.544	2.420
1970	2.690	2.769	2.754	2.783	2.718	2.565
1969	2.860	2.949	2.949	2.977	2.910	2.730
1968	2.978	3.078	3.090	3.114	3.049	2.841

TABLE 1:

Chemical Mfg. (12)
Fertilizer Mfg. (12)
Oxygen Generation Plant (20)
Sulfur Mfg. (12)
Flour, Cereal, Feed (16)
Seed Plant (16)
Grain Elevator (16)
Wood Pellet Plant (16)
Printing (12)

TABLE 2:

Industrial Shop (10)
Cement Manufacturing (20)
Stationary Asphalt Plant (15)
Bentonite (20)
Concrete Products (20)
Concrete Ready-Mix Plant (18)
Gypsum Products Mfg. (20)
Lime & Calcium
Benefication (20)
Talc Benefication (20)
Sugar Refinery (20)
Petroleum Refinery (16)
Natural Gas Refinery (16)

TABLE 4:

Vulcanizing (15)
Foundry (15)
Metal Machining & Milling (15)
Metal Fabrication (20)
Plastic Products Mfg. (20)
Polystyrene (20)
Rifle Manufacturing (15)

TABLE 5:

Refrigeration Equip. Mfg. (12)
Paint Manufacturing (12)
Steam Power (16)
Hydraulic Generation (20)
Brewing & Distilling (20)
Alcohol Plant (15)
Gasohol Plant (15)
Vegetable Oil Extraction (20)

TABLE 6:

Fruit Packing (12)
Egg Packing (20)
Sawmill Equipment (10)
Wood Furniture Mfg. (20)

TABLE 3:

Creamery & Dairy (12)
Meat Packing (12)
Fruit Cannery (12)
Honey Processing (12)
Candy & Confectionary (20)
Bakery (12)

YEAR	TABLE 7	TABLE 8	TABLE 9	TABLE 10	TABLE 11
1986	1-000	1-000	1-000	1-000	1-000
1985	1-004	1-005	1-004	1-005	1-009
1984	1-017	1-017	1-010	1-017	1-023
1983	1-039	1-040	1-046	1-045	1-053
1982	1-063	1-052	1-063	1-063	1-071
1981	1-122	1-099	1-105	1-113	1-121
1980	1-245	1-216	1-214	1-220	1-237
1979	1-367	1-324	1-347	1-350	1-354
1978	1-495	1-444	1-475	1-470	1-473
1977	1-614	1-555	1-578	1-587	1-583
1976	1-711	1-641	1-660	1-673	1-663
1975	1-830	1-774	1-756	1-780	1-772
1974	2-091	1-932	1-957	2-005	1-965
1973	2-410	2-183	2-270	2-331	2-274
1972	2-492	2-236	2-354	2-409	2-350

YEAR	TABLE 7	TABLE 8	TABLE 9	TABLE 10	TABLE 11
1987	1.000	1.000	1.000	1.000	1.000
1986	1.006	1.009	1.007	1.008	1.010
1985	1.012	1.016	1.013	1.015	1.022
1984	1.025	1.028	1.026	1.027	1.036
1983	1.047	1.051	1.054	1.055	1.067
1982	1.071	1.064	1.069	1.074	1.085
1981	1.131	1.111	1.112	1.125	1.135
1980	1.255	1.230	1.221	1.241	1.253
1979	1.378	1.339	1.356	1.363	1.372
1978	1.506	1.460	1.484	1.485	1.492
1977	1.627	1.572	1.580	1.603	1.603
1976	1.724	1.659	1.659	1.689	1.685
1975	1.845	1.793	1.738	1.797	1.795
1974	2.108	1.954	1.945	2.025	1.990
1973	2.429	2.207	2.329	2.354	2.304

1971	2-569	2-320	2-422	2-489	2-420
1970	2-726	2-471	2-579	2-642	2-577
1969	2-900	2-610	2-734	2-810	2-741
1968	3-020	2-700	2-840	2-926	2-854
1967	3-131	2-798	2-936	3-035	2-959

1972	2.505	2.261	2.408	2.433	2.380
1971	2.588	2.346	2.478	2.514	2.460
1970	2.746	2.499	2.625	2.669	2.611
1969	2.921	2.639	2.781	2.838	2.777

<u>1968</u>	<u>3.042</u>	<u>2.730</u>	<u>2.877</u>	<u>2.955</u>	<u>2.891</u>
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TABLE 7:

Clay Products (15)
 Nonferrous Smelting (15)
 (10)
 Coal Brushing & Handling (20)
 Graphite Products (20)
 Heap Leach: Pads (5), Mech. (20)
 Open Pit Mining & Quarrying (15)
 Ore Milling & Concentrating (15)
 Phosphate Benefication (20)
 Stone Products (15)
 Underground Mining (10)
 Vermiculite Benefication (15)

TABLE 9:

Electrical Equip. Mfg. (16)
 Electronic Component Mfg.
 Laundry & Cleaning (10)

TABLE 10:

Pulp & Paper Mfg. (13)
 Cardboard Container
 Fabrication (20)

TABLE 11:

Textile Fabrication (10)
 Leather Fabrication (20)

TABLE 8:

Warehousing (10)
 Peat Moss Bagging Plant (20)
 Fertilizer Distribution (10)

Note: 1. The number in each parenthesis above indicates assigned economic expectancies.

Note: 2. Lab equipment is to be included in its related industry's table at 10-year life expectancy.

(2) The application of the trend factors set forth in subsection (1) will be as reflected in the following example:

EXAMPLE

The Trending/Depreciation Procedure

In order to use the economic age-life method to value machinery and equipment, several steps must be followed:

- (1) Determine the economic life of the subject industry.
- (2) Acquire a set of reasonable trends for that economic life.
- (3) Acquire the original installed cost (direct and indirect) for the subject equipment.
- (4) Apply the appropriate trend factor to the original installed cost to determine replacement cost new (RCN).
- (5) Depreciate the RCN on the basis of age to arrive at sound value.

3. ARM 42.22.1311 is proposed to be amended to update our existing table to include 1987. This amendment to the rule is merely to update the trend factor tables used in valuation of all industrial machinery and equipment within the state to include 1987 at 100%.

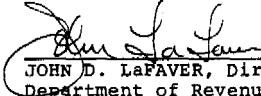
4. Interested parties may submit their data, views, or arguments concerning the proposed adoption in writing to:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than July 7, 1988.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than July 7, 1988.

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


JOHN D. LAFAYER, Director
Department of Revenue

Certified to Secretary of State 5/31/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)	NOTICE OF PUBLIC HEARING on
of Rules I through III relat-)	the PROPOSED ADOPTION of Rules
ing to Corporation License Tax)	I through III relating to
Nexus Standards.)	Corporation License Tax Nexus
)	Standards.

TO: All Interested Persons:

1. On June 30, 1988, at 2:30 p.m., a public hearing will be held in the 4th Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the adoption of rules I through III, relating to Corporation License Tax Nexus Standards.

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

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

RULE I NATURE OF PROPERTY BEING SOLD (1) Only the sale of tangible personal property is afforded immunity under P.L. 86-272. Therefore, the selling or providing of services, and the selling, leasing, renting, licensing or other disposition of real estate, personal property, intangibles or any other type of property are not immune from taxation by reason of P.L. 86-272. The definition of tangible personal property for this purpose is that to be found under ARM 42.26.255. AUTH, 15-31-313 and 15-31-501 MCA; IMP, 15-31-301 and 15-31-303 MCA.

RULE II SOLICITATION OF ORDERS (1) For the in-state activity to be immune, it must be limited solely to solicitation (except for that activity conducted by independent contractors described in Section iii below). If there is any other activity unrelated to solicitation, the immunity shall be lost. Examples of activities presently treated as either non-immune or immune are as follows:

(a) Non-immune activities the following in-state activities will cause otherwise immune sales to lose their immunity:

- (i) making repairs or providing maintenance;
- (ii) collecting delinquent accounts;
- (iii) investigating credit worthiness;
- (iv) installation or supervision of installation;
- (v) conducting training courses, seminars or lectures;
- (vi) providing engineering functions;
- (vii) handling customer complaints;
- (viii) approving or accepting orders;
- (ix) repossessing property;
- (x) securing deposits on sales;
- (xi) picking up or replacing damaged or returned

property;

- (xii) hiring, training, or supervising personnel;
- (xiii) providing shipping information and coordinating deliveries;
- (xiv) maintaining sample or display room in excess of two weeks (14 days) during the tax year;
- (xv) carrying samples for sale, exchange or distribution in any manner for consideration or other value;
- (xvi) owning, leasing, maintaining or otherwise using any of the following facilities or property in-state:

- (A) repair shop;
- (B) parts department;
- (C) purchasing office;
- (D) employment office;
- (E) warehouse;
- (F) meeting place for directors, officers, or employees;
- (G) stock of goods;
- (H) telephone answering service;
- (I) mobile stores, i.e., trucks with driver salesmen; or
- (J) real property or fixtures of any kind;
- (xvii) consigning tangible personal property to any person, including an independent contractor;

(xviii) maintaining, by either an in-state or an out-of-state resident employee, of an office or place of business (in-home or otherwise); or

(xix) conducting any activity in addition to those described in (b) below which is not an integral part of the solicitation of orders;

(b) immune activities - the following in-state activities will not cause the loss of immunity for otherwise immune sales:

- (i) advertising campaigns incidental to missionary activities;
- (ii) carrying samples only for display or for distribution without charge or other consideration;
- (iii) owning or furnishing autos to salesmen;
- (iv) passing inquiries and complaints on to home office;

(v) incidental and minor advertising, i.e., notice in newspaper that a salesman will be in town at a certain time;

(vi) missionary sales activities;

(vii) checking of customers' inventories (for re-order, but not for other purposes);

(viii) maintaining sample or display room for two weeks (14 days) or less during the tax year; or

(ix) soliciting of sales by an in-state resident employee of the taxpayer; provided the employee maintains no in-state sales office or place of business (in-home or otherwise).

AUTH, 15-31-313 and 15-31-501 MCA; IMP, 15-31-301 and 15-31-303

MCA.

RULE III INDEPENDENT CONTRACTORS (1) Public Law 86-272 provides immunity to certain in-state activities if conducted by

an independent contractor that would not be afforded if performed by the taxpayer directly. Independent contractors may engage in the following limited activities in the state without the taxpayer's loss of immunity:

- (a) Soliciting sales;
- (b) Making sales;
- (c) Maintaining a sales office;

(2) Sales representatives who represent a single principal are not considered to be independent contractors and are subject to the same limitations as employees. Maintenance of a stock of goods in the state by the independent contractor under consignment or any other type of arrangement with the principal shall remove the immunity. AUTH, 15-31-313 and 15-31-501 MCA; AUTH, 15-31-301 and 15-31-303 MCA.

4. The Department is proposing rules I through III for the following reasons.

Rule I sets forth the types of sales that may be afforded immunity from taxation in Montana under Public Law 86-272. This rule is necessary to clarify what type of sales may or may not be subject to immunity and is in complete conformity with Public Law 86-272.

Rule II is necessary because it gives detailed information on both those activities which constitute non-immune and immune activities relating to sales. The distinctions developed between immune and non-immune activities have been well established through numerous court cases and accepted by most states.


Rule III addresses the situation where a company employs the use of an independent contractor to perform services for that company in Montana. The rule states that if the independent contractor is employed solely by the company, the contractor will be considered an employee of the company and subject to the same limitations regarding immune activities as any other employee. This rule is necessary because it emphasizes substance over form.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than July 8, 1988.

6. Eric Fehlig, Tax Counsel, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.


JOHN D. LAFAVER, Director
Department of Revenue

Certified to Secretary of State 5/31/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)	NOTICE OF PUBLIC HEARING on
of Rules I and II and the)	the PROPOSED ADOPTION of Rules
AMENDMENT of ARM 42.26.251)	I and II and the AMENDMENT of
relating to Sales Factor)	ARM 42.26.251 relating to
Computations.)	Sales Factor Computations.

TO: All Interested Persons:

1. On June 30, 1988, at 1:30 p.m., a public hearing will be held in the 4th Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the adoption of rules I and II and the amendment of ARM 42.26.251 relating to Sales Factor Computation.

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

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

RULE I SALES FACTOR DEFINITIONS (1) The following definitions apply to Rule II:

(a) "Net receipts" means gross receipts minus the basis of the asset in the hands of the taxpayer.

(b) "Gross receipts" means the total receipts received by the taxpayer less any expenses attributable to the sale.

(c) "Basis in the hands of the taxpayer" means the taxpayer's federal income tax basis in the asset at the time of sale. AUTH, 15-31-313 and 15-31-501 MCA; IMP, 15-31-310, 15-31-311 and 15-31-312 MCA.

RULE II SALE OF TANGIBLE AND INTANGIBLE PROPERTY COMPUTATION OF THE SALES FACTOR (1) If a taxpayer derives

receipts from the sale of tangible property or the sale or redemption of intangible property not held primarily for sale to customers in the ordinary course of its trade or business such receipts will constitute sales for inclusion in the sales factor to the following extent:

(a) Only the net receipts from the sale of tangible or the sale or redemption of intangible property shall be included in the sales factor.

(b) In the case where the taxpayer has multiple transactions from the sale of tangible or the sale or redemption of intangible property only the net gains in excess of net losses will be included in the sales factor.

(c) Before the net receipts from the sale of tangible property or the sale or redemption of intangible property may be included in the sales factor the sales transactions must be part of the taxpayer's regular trade or business operations. AUTH, 15-31-313 and 15-31-501 MCA; IMP, 15-31-310, 15-31-311 and 15-31-312 MCA.

ARM 42.26.251 SALES FACTOR IN GENERAL (1) through (2) (e) remain the same.

(2)(f) ~~---If a taxpayer derives receipts from the sale of equipment used in its business, such receipts constitute "sales". For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks are included in the sales factor---~~

(3) through (4) remain the same.

AUTH, 15-1-201, 15-31-313, and 15-31-501 MCA; IMP, 15-1-601 MCA and 15-31-310, 15-31-311, and 15-31-312 MCA.

4. Rule I is needed to define several terms used in connection with Rule II.

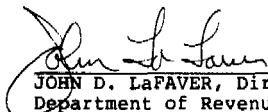
Rule II is needed to describe the department's practice in computing the sales factor when a taxpayer has receipts from the sale of tangible or intangible property. The department believes the inclusion of the gross receipts from the sale of tangible or the sale or redemption of intangible property will cause a severe distortion of the sales factor and thereby not properly reflect a taxpayer's operation in Montana.

The amendment to ARM 42.26.251 is needed to correct a conflict which will result when Rule II is enacted.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620
no later than July 8, 1988.

6. Eric Fehlig, Tax Counsel, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.


JOHN D. LAFAVER, Director
Department of Revenue

Certified to Secretary of State 5/31/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)	NOTICE OF PUBLIC HEARING on
of Rules I through V relat-)	the PROPOSED ADOPTION of Rules
ing to Contractor Regulations,) I through V relating to Con-	
Corporations License Tax.)	tractor Regulations, Corpora-
)	tion License Tax.

TO: All Interested Persons:

1. On June 30, 1988, at 11:00 a.m., a public hearing will be held in the 4th Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the adoption of rules I through V, relating to Contractor Regulations.

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

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

RULE I LONG-TERM CONSTRUCTION CONTRACTS (1) When a taxpayer elects to use the percentage of completion method of accounting, or the completed contract method of accounting for long-term contracts (construction contracts covering a period in excess of one year from the date of execution of the contract to the date on which the contract is finally completed and accepted), and has income from sources both within and without this state from a trade or business, (for purposes of determining whether a taxpayer's operations are within or without, the test shall be for each separate entity in a combined group electing the completed contract method, rather than the combined group as a whole), the amount of business income derived from such long-term contracts from sources within this state shall be determined pursuant to this regulation. In such cases, the first step is to determine which portion of the taxpayer's income constitutes "business income" and which portion constitutes "nonbusiness income" pursuant to ARM 42.26.206 and 42.26.207. Nonbusiness income is directly allocated to specific states pursuant to the provisions of ARM 42.26.221 inclusive. Business income is apportioned among the states in which the business is conducted pursuant to the property, payroll, and sales apportionment factors set forth in this regulation. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income attributable to this state constitutes the amount of the taxpayer's entire net income which is subject to tax by this state. AUTH, 15-31-313 and 15-31-501 MCA; IMP, 15-31-301 and 15-31-312 MCA.

RULE II BUSINESS AND NONBUSINESS INCOME (1) For definitions, rules and examples for determining business and nonbusiness income see ARM 42.26.206 and 42.26.207. AUTH, 15-31-313 and 15-31-501 MCA; IMP, 15-31-301 and 15-31-312 MCA.

RULE III APPORTIONMENT OF BUSINESS INCOME (1) In general - business income is apportioned to this state by a three-factor formula consisting of property, payroll and sales regardless of the method of accounting for long-term contracts elected by the taxpayer. The total of the property, payroll and sales percentages is divided by three to determine the apportionment percentage. The apportionment percentage is then applied to business income to determine the amount apportioned to this state.

(2) Percentage of completion method - under this method of accounting for long-term contracts, the amount to be included each year as business income from each contract, is the amount by which the gross contract price which corresponds to the percentage of the entire contract which has been completed during the income years exceeds all expenditures made during the income year in connection with the contract. In so doing, account must be made of the material and supplies on hand at the beginning and end of the income year for use in each such contract.

(3) Completed contract method - under this method of accounting business income derived from long-term contracts is reported for the income year in which the contract is finally completed and accepted. Therefore, a special computation is required to compute the amount of business income attributable to this state from each completed contract. Thus, all receipts and expenditures applicable to such contracts whether complete or incomplete as of the end of the income year are excluded from business income derived from other sources, as for example, short-term contracts, interest, rents, royalties, etc., which is apportioned by the regular three-factor formula of property, payroll and sales.

(4) Property factor - in general the numerator and denominator of the property factor shall be determined as set forth in ARM 42.26.231 through 42.26.237 and 42.26.262. However, the following special rules are also applicable:

(a) The average value of the taxpayer's cost (including materials and labor) of construction in progress, to the extent such costs exceed progress billings (accrued or received depending on whether the taxpayer is on the accrual or cash accounting method) shall be included in the denominator of the property factor. The value of any such construction costs attributable to construction projects in this state shall be included in the numerator of the property factor.

(b) Rent paid for the use of equipment directly attributable to a particular construction project is included in the property factor at eight times the net annual rental rate even though such rental expense may be capitalized into the cost of construction.

(c) The property factor is computed in the same manner for all long-term contract methods of accounting and is computed for each income year even though under the completed contract method of accounting, business income is computed separately.

(5) Payroll factor - in general the numerator and denominator of the payroll factor shall be determined as set

forth in ARM 42.26.243 and 42.26.244. However, the following special rules are also applicable:

(a) Compensation paid to employees attributable to a particular construction project is included in the payroll factor even though the costs maybe capitalized into the cost of construction.

(b) Compensation paid to employees who in the aggregate perform most of their services in a state in which their employer does not report them for unemployment tax purposes, shall nonetheless be attributed to the state where the services are actually performed.

(c) The payroll factor is computed in the same manner for all long-term contract methods of accounting and is computed for each income year even though under the completed contract method of accounting, business income is computed separately.

(6) Sales factor - in general the numerator and denominator of the sales factor shall be determined as set forth in ARM 42.26.253 and 42.26.254. However, the following special rules are also applicable:

(a) Gross receipts derived from the performance of a contract are attributable to this state if the construction project is located in this state. If the construction project is located partly within and partly without this state, the gross receipts attributable to this state are based upon the ratio of construction costs for the project in this state incurred during the income year to the total construction costs for the entire project during the income year or any other method, such as engineering cost estimates, which will provide a reasonable apportionment.

(b) If the percentage of completion method is used, the sales factor includes only that portion of the gross contract price which corresponds to the percentage of the entire contract which was completed during the income year.

(c) If the completed contract method of accounting is used, the sales factor includes the portion of the gross receipts (progress billings) received or accrued, whichever is applicable, during the income year attributable to each contract.

(d) The sales factor, except as noted above in subparagraphs (b) and (c), is computed in the same manner, regardless of which long-term method of accounting the taxpayer has elected, and is computed for each income year even though under the completed contract method of accounting, business income is computed separately.

(7) Apportionment percentage - the total of the property, payroll and sales percentages is divided by three to determine the apportionment percentage. The apportionment percentage is then applied to business income to establish the amount apportioned to this state. AUTH, 15-31-313 and 15-31-501 MCA; IMP, 15-31-301 and 15-31-312 MCA.

RULE IV COMPLETED CONTRACT METHOD - SPECIAL COMPUTATION

(1) The completed contract method of accounting requires that the reporting of income (or loss) be deferred until the

year the construction project is completed or accepted. Accordingly, a separate computation is made for each such contract completed during the income year regardless of whether the project is located within or without this state, in order to determine the amount of income which is attributable to sources within this state. The amount of income from each contract completed during the income year apportioned to this state, plus other business income apportioned to this state by the regular three-factor formula such as interest income, rents, royalties, income from short-term contracts, etc., plus all nonbusiness income allocated to this state is the measure of income for the income year.

The amount of income (or loss) from each contract which is derived from sources within this state using the completed contract method of accounting is computed as follows:

(2) In the income year the contract is completed the income (or loss) therefrom is determined.

(3) The income (or loss) determined at (2) is apportioned to this state by the following method:

(a) A fraction is determined for each year the contract was in progress. The numerator is the amount of construction costs paid or accrued each year the contract was in progress and the denominator is the total of all such construction costs for the project.

(b) Each percentage determined in (a) is multiplied by the apportionment formula percentage for that particular year as determined in Rule III(7).

(c) The percentages determined in (b) for each year the contract was in progress are totaled. The amount of total income (or loss) from the contract is multiplied by the total percentage. The resulting income (or loss) is the amount of business income from such contract derived from sources within this state. AUTH, 15-31-313 and 15-31-501 MCA; IMP, 15-31-301 and 15-31-312 MCA.

RULE V COMPUTATION FOR YEAR OF WITHDRAWAL, DISSOLUTION OR CESSATION OF BUSINESS - COMPLETED CONTRACT METHOD (1) Use of the completed contract method of accounting for long-term contracts requires that income derived from sources within this state from incomplete contracts in progress outside this state on the date of withdrawal, dissolution or cessation of business in this state be included in the measure of tax for the taxable year during which the corporation withdraws, dissolves or ceases doing business in this state.

(2) The amount of income (or loss) from each such contract to be apportioned to this state by the apportionment method set forth in Rule IV of this regulation shall be determined as if the percentage of completion method of accounting were used for all such contracts on the date of withdrawal, dissolution or cessation of business. The amount of business income (or loss) for each such contract shall be the amount by which the gross contract price from each such contract which corresponds to the percentage of the entire contract which has been completed from the commencement thereof to the date of withdrawal, dissolution

or cessation of business exceeds all expenditures made during such period in connection with each such contract. In so doing account must be taken of the material and supplies on hand at the beginning and end of the income year for use in each such contract. AUTH, 15-31-313 and 15-31-501 MCA; IMP, 15-31-301 and 15-31-312 MCA.

4. The preceding rules are based on the Multistate Tax Commission's Contractor's Regulations for use in determining the taxable income of Multistate Contractors with activity in Montana.

Rule I is necessary to insure that a contractor electing either the completed contract method or the percentage of completion method apportions correctly the income attributable to Montana.

Rule II will insure that business income is not allocated as nonbusiness income.

Rule III describes the methods that will be used to apportion business income from long-term construction projects. It is necessary to insure that business income will be correctly apportioned regardless of the accounting method used by the taxpayer.

Rule IV is necessary to address the special computation for the completed contract method. This method requires that the income (loss) be deferred until the year in which the construction project is completed or accepted. This rule will insure that a separate computation is made for each contract completed during the year.


Rule V addresses the computations necessary for the year in which a corporation either withdraws, dissolves, or ceases to do business in this state when reporting under the completed contract method of accounting. This rule is necessary to insure that the full amount of income earned in the state is reported and subject to tax.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than July 8, 1988.

6. Eric Fehlig, Tax Counsel, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.


JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 5/31/88.

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

In the matter of the amend-	)	NOTICE OF PROPOSED AMEND-
ment of Rules 46.11.101 and	)	MENT OF RULES 46.11.101 AND
46.11.131 pertaining to the	)	46.11.131 PERTAINING TO THE
food stamp program	)	FOOD STAMP PROGRAM. NO
	)	PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On July 29, 1988, the Department of Social and Rehabilitation Services proposes to amend Rules 46.11.101 and 46.11.131 pertaining to the food stamp program.

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

46.11.101 FOOD STAMP PROGRAM (1) The department of social and rehabilitation services hereby adopts and incorporates by reference 7 CFR 271 through 276 275, as amended through June 1, 1988, which are the food stamp program regulations as adopted by the food and nutrition services, United States department of agriculture. These federal regulations set forth the food stamp program and include general information and definitions, requirements for participating state agencies, certification of eligible households, issuance and use of food coupons, performance reporting system and state agency liabilities and federal sanctions. A copy of 7 CFR 271 through 276, as amended through June 1, 1988, may be obtained from the Department of Social and Rehabilitation Services, 111 Sanders, Box 4210, Helena, MT 59604.

AUTH: Sec. 53-2-201 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87
IMP: Sec. 53-2-306 MCA

46.11.131 FOOD STAMP EMPLOYMENT AND TRAINING PROGRAM
(1) The department of social and rehabilitation services hereby adopts and incorporates by reference 7 CFR 271, 7 CFR 272, and 7 CFR 273, and--7--CFR--277, as amended through December-31--1986, June 1, 1988, which are the food stamp employment and training program regulations as adopted by the food and nutrition services, United States department of agriculture. These federal regulations set forth the food stamp employment and training program components, participation requirements, and penalties for non-compliance. A copy of 7 CFR 271, 7 CFR 272, and 7 CFR 273, and--7--CFR--277, as amended through December-31--1986, June 1, 1988, may be obtained from the Department of Social and Rehabilitation Services, 111 Sanders, Box 4210, Helena, Montana 59604.

11-6/9/88

MAR Notice No. 46-2-540

AUTH: Sec. 53-2-201 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87
IMP: Sec. 53-2-306 MCA


3. The Code of Federal Regulations sections incorporated in ARM 46.11.101 and 46.11.131 have been amended substantially since the last update. It is necessary to incorporate these amendments to keep the state rules current with the federal regulations.

References to 7 CFR 276 and 277 have been deleted because it is not specifically relevant to food stamp eligibility or the employment and training program.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Office of Legal Affairs, Department of Social and Rehabilitation Services, 111 Sanders, P.O. Box 4210, Helena, Montana 59604, no later than July 7, 1988.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a 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 July 7, 1988.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed 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 5,957 persons based on 59,579 food stamp recipients.



Director, Social and Rehabilitation Services

Certified to the Secretary of State May 27, 1988.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF THE AMENDMENT OF
of ARM 2.21.1301 through)	ARM 2.21.1301 THROUGH
2.21.1306 and the adoption of)	2.21.1306 AND THE ADOPTION
ARM 2.21.1307 relating to the)	OF ARM 2.21.1307 RELATING
sexual harassment prevention)	TO THE SEXUAL HARASSMENT
policy)	PREVENTION POLICY

TO: All Interested Persons.

1. On March 10, 1988, the department of administration published notice of the proposed amendment of ARM 2.21.1301 through 2.21.1306 and the adoption of ARM 2.21.1307 relating to the sexual harassment prevention policy at page 446 of the 1988 Montana Administrative Register, issue number 5.

2. The new rule has been adopted as proposed. The rules have been amended as proposed with the following changes.

2.21.1302 POLICY AND OBJECTIVES (1) (a-c) Same as proposed rule.

(d) to prohibit retaliation against any employee because he or she has made a report of alleged sexual harassment or against any employee who has testified, assisted, or participated in any manner in an investigation of a report.

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

2.21.1303 DEFINITIONS (1) - (3) Same as proposed rule.

(4) "Management" means, for purposes of receiving, investigating, and resolving reports of sexual harassment, the immediate supervisor, or the first level supervisor who is not involved in the alleged harassment and other managers in the direct line of authority above these supervisors.

2.21.1305 REPORTING PROCEDURES (1) - (2a) Same as proposed rule.

(i) an employee who believes he or she has been the victim of sexual harassment is encouraged to report the incident(s) or action(s) as soon as possible after the alleged harassment occurs. Early reporting is encouraged, because management's ability to investigate and act on reports diminishes with time. Employees may bring the problem reports to the attention of any or all of the following:

(A) - (C) Same as proposed rule.

(ii) the employee shall ~~assist~~ cooperate with the EEO officer or other designated management representative in investigating and verifying the report.

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

(4) Management is not obligated to investigate and respond to a report of alleged sexual harassment, if the incident or action occurred more than three years prior to the report.

3. A public hearing was conducted on April 5, 1988. No testimony was offered. The following written comments were received.

COMMENT: Amendments to ARM 2.21.1301 and 2.21.1302 are supported, because it is important to have the state committed to an on-going sexual harassment prevention program and to encourage early reporting and confidential, prompt resolution. Addition of a statement to ARM 2.21.1302 is recommended prohibiting retaliation against victims of alleged sexual harassment and against employees who participate in investigations.

RESPONSE: The department agrees and has added a section to ARM 2.21.1302, prohibiting retaliation.

COMMENT: The amendment of the definition of sexual harassment in ARM 2.21.1303 and the proposed definition of "intimidating, hostile, or offensive working environment" are supported. The commenter notes the changes incorporate key elements of the U.S. Supreme Court decision in Meritor Savings Bank, FSB v. Vinson.

RESPONSE: The department agrees.

COMMENT: The use of the term management in the body of the policy is too vague.

RESPONSE: The department agrees and has added a definition of "management" to ARM 2.21.1303, for purposes of this policy.

COMMENT: Because of the findings in the Vinson case and because there is some confusion as to what constitutes sexual harassment, all agencies should use the definition in ARM 2.21.1303(1), should encourage early reporting and should inform employees about the reporting procedure.

RESPONSE: The department agrees.

COMMENT: Two comments were received regarding time frames for bringing reports of sexual harassment. One comment suggested adding a provision encouraging employees to bring reports within 30 days of the alleged occurrence. The second comment supports amending ARM 2.21.1305 to remove the current 10-day deadline for bringing reports. The commenter feels the 10-day limit is unrealistic, because of the nature of sexual harassment and because failure to report in 10 days does not remove management's potential liability if it does not investigate and resolve complaints. This comment supports encouraging early reporting, but not placing a suggested time limit in the rule.

RESPONSE: The department agrees with the need to remove the 10-day reporting deadline and with adding language encouraging early reporting by employees. This will allow agencies to conduct a more timely and effective investigation and to take any appropriate action. Even though the first comment would "encourage" reporting in 30 days, the appearance of any time limit for filing could be misinterpreted as an absolute deadline. Failure to pursue an investigation, because the

report was made on the 31st day leaves management open to future liability. Language encouraging early reporting without a time limit will be added to ARM 2.21.1305(2).

COMMENT: ARM 2.21.1305(2)(ii), as proposed, provides that the employee making a report of sexual harassment would assist in the investigation. The commenter believes this is inappropriate.

RESPONSE: The department intended "assist" to be synonymous with "cooperate with." This wording will be substituted to clarify the intent of this section.

COMMENT: The reporting procedure should not be open-ended.

RESPONSE: The department agrees. A section will be added to ARM 2.21.1305 limiting management's obligation to investigate to three years.

COMMENT: The commenter feels ARM 2.21.1305(c) and (b) assume the employee bringing the complaint is "always right and honest." The commenter also feels the policy does not address due process rights for either party.

RESPONSE: The department disagrees. Management has an obligation to investigate all reports of sexual harassment. The procedure provides for an investigation to be conducted by an impartial management representative. If the investigation shows the employee has made a false report intentionally, disciplinary action could be taken against the employee. According to employees who have investigated complaints of sexual harassment in state government, reports of harassment which are not supported usually result from a misunderstanding about what constitutes sexual harassment, rather than from any malicious motive. ARM 2.21.1306, Violations of Policy, provides due process rights required in the Discipline Handling and Grievance policies.

BY: W. David P. Goshley

Ellen Feaver, Director
Department of Administration

Certified to the Secretary of State May 31, 1988.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF LANDSCAPE ARCHITECTS

In the matter of the amendment) NOTICE OF AMENDMENT OF 8.
of a rule pertaining to exam-) 24.405 EXAMINATIONS
inations)

TO: All Interested Persons:

1. On April 28, 1988, the Board of Landscape Architects published a notice of proposed amendment of the above-stated rule at page 785, 1988 Montana Administrative Register, issue number 8.

2. The Board has amended the rule exactly as proposed.

3. No comments or testimony were received.

BOARD OF LANDSCAPE ARCHITECTS
VALERIE TOOLEY, CHAIRPERSON

BY:



GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, May 31, 1988.

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

In the matter of the amendment of)	NOTICE OF THE
16.20.603, 16.20.604, 16.20.605,)	AMENDMENT OF RULES AND
16.20.607, 16.20.608, 16.20.616 -)	THE ADOPTION
16.20.624, 16.20.633, 16.20.641,)	OF NEW RULES
and 16.20.642, and the adoption of)	
NEW RULE I, all concerning surface)	
water quality standards and the)	
classification of surface waters)	(Surface Water Quality
in the state)	Standards)

To: All Interested Persons

1. On April 14, 1988, at page 651 of issue number 7 of the 1988 Montana Administrative Register, the Board published notice of proposed adoption of New Rule I and proposed amendments to the above-captioned rules regarding surface water quality standards.

2. The Board has postponed adoption of the definition for "reasonable land, soil, and water conservation practices" (section (19) of rule 16.20.603) until the Board's July 15, 1988, meeting in Billings to give the department time to modify the definition in response to comments made at the public hearing on May 20, 1988. It is anticipated that the Board will adopt the amended definition on July 15, 1988.

3. The Board has adopted the new rule and the amendments as proposed, with the following changes (new matter is capitalized and underlined; matter to be stricken is interlined):

16.20.603 DEFINITIONS In this subchapter the following terms have the meanings indicated below and are supplemental to the definitions given in section 75-5-103, MCA:

(1)-(18) Same as proposed.

~~(19)--"Reasonable land, soil, and water conservation practices" means methods, measures, or practices--that will protect present--and--reasonably--anticipated--beneficial--uses--These practices include but are not limited to structural--and--non-structural controls--and operation--and maintenance procedures. These practices may be applied before, during, or after pollution-producing activities to prevent impacts to beneficial uses.~~

(to be adopted in amended form later)

(20)-(25) Same as proposed, but renumbered.

16.20.604 WATER-USE CLASSIFICATIONS -- CLARK FORK-COLUMBIA RIVER DRAINAGE EXCEPT THE FLATHEAD AND KOOTENAI RIVER DRAINAGES The water-use classifications adopted for the Clark Fork of the Columbia River drainage are as follows:

(1) Clark Fork River drainage except waters listed in subsections (1)(a) through (1)(n) . . . B-1

(a)-(b) Same as proposed.

(The Anaconda Company concentrator tailings pond and Silver Bow Creek drainage from this pond downstream to Blacktail Deer

Creek and the tailings ponds at Warm Springs have no classification.)

(c)-(n) Same as proposed.

16.20.605 WATER-USE CLASSIFICATIONS -- FLATHEAD RIVER DRAINAGE Same as proposed.

16.20.607 WATER-USE CLASSIFICATIONS -- MISSOURI RIVER DRAINAGE EXCEPT YELLOWSTONE, BELLE FOURCHE, AND LITTLE MISSOURI RIVER DRAINAGES Same as proposed.

16.20.608 WATER-USE CLASSIFICATION -- YELLOWSTONE RIVER DRAINAGE Same as proposed.

NEW RULE I [to be codified as 16.20.612] WATER USE CLASSIFICATIONS -- INDIAN RESERVATIONS Same as proposed.

16.20.616 A-CLOSED CLASSIFICATION Same as proposed.

16.20.617 A-1 CLASSIFICATION Same as proposed.

16.20.618 B-1 CLASSIFICATION Same as proposed.

16.20.619 B-2 CLASSIFICATION Same as proposed.

16.20.620 B-3 CLASSIFICATION Same as proposed.

16.20.621 C-1 CLASSIFICATION Same as proposed.

16.20.622 C-2 CLASSIFICATION Same as proposed.

16.20.623 I CLASSIFICATION Same as proposed.

16.20.624 C-3 CLASSIFICATION Same as proposed.

16.20.633 PROHIBITIONS Same as proposed.

16.20.641 RADIOLOGICAL CRITERIA Same as proposed.

16.20.642 BIOASSAYS Same as proposed.

4. Nine people presented written or oral testimony on the proposed changes to the surface water quality standards. The cities of Billings and Kalispell supported the changes as proposed, as did the Flathead Basin Commission. The comments and responses follow:

a. Comment: The Administrative Code Committee commented that the authority for these rules should also include section 75-5-201, MCA.

Response: This change will be reflected in the rule histories in the ARM replacement pages.

b. Comment: The Montana Environmental Information Center felt that the definition of "reasonable land, soil, and water conservation practices" in rule 16.20.603 was not in agreement with the federal anti-degradation requirements, and suggested changes which would make the definition more restrictive. On the other hand, the Northern Region of the Forest Service, United States Department of Agriculture, testified that this definition was not clear, and suggested changes which would make the definition less restrictive. Testimony from the Montana Wood Products Association supported the definition as proposed by the department.

Response: The board requested that the department modify the definition after consultation with the commentators, and have a revised definition ready for consideration at the board's July meeting.

c. Comment: Anaconda Minerals Company pointed out that the quality of the upper Clark Fork River does not meet the requirements of the current classifications (C-1, C-2, and B-1) regarding metal concentrations that exceed Gold Book criteria. They suggested that these stream segments be reclassified or that the classifications be modified. The Montana Department of Fish, Wildlife and Parks testified that any changes to the classification of the upper Clark Fork River be made with caution and that they wished to be involved with any such efforts.

Response: The department will work with the interested parties to develop changes for the board's consideration at a future date.

d. Comment: The Montana office of the U.S. Environmental Protection Agency (EPA) presented testimony regarding several areas they feel should be considered for changes in the future, and some editorial changes that they feel should be made.

Response: The department will work with EPA to develop changes for the board's consideration at a future date.

HOWARD TOOLE, Chairman
BOARD OF HEALTH AND ENVIRONMENTAL
SCIENCES

by 
JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State May 31, 1988.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the Matter of the repeal	)	NOTICE OF THE REPEAL OF
of rules 24.9.214, 24.9.227,	)	RULES 24.9.214, 24.9.227,
24.9.229, and 24.9.232-	)	24.9.229, and 24.9.232-
24.9.248, the amendment of	)	24.9.248, THE AMENDMENT OF
rules 24.9.206 and 24.9.210,	)	RULES 24.9.206 AND
and the adoption of	)	24.9.210, AND THE
Rules I-XXXI (procedures	)	ADOPTION OF RULES 24.9.301-
for contested case hearings)	)	24.9.331 (RULES I-XXXI)
	)	(PROCEDURES FOR
	)	CONTESTED CASE HEARINGS)

TO: All Interested Persons

1. On April 14, 1988, at page 669 of the 1988 Montana Administrative Register, Issue No. 7 the human rights commission proposed to repeal rule 24.9.214, found on page 24-366, Administrative Rules of Montana, rule 24.9.227, found on page 24-373, Administrative Rules of Montana, rule 24.9.229, found on page 24-374, Administrative Rules of Montana, and rules 24.9.232 through 24.9.248, found on pages 24-383 through 24-393, Administrative Rules of Montana.
2. The commission has repealed the rules as proposed.
3. The commission received no comments in opposition to the proposed repeal of these rules.
4. The authority of the commission to repeal the rules is based on sections 49-2-204 and 49-3-106, MCA. The rules implement sections 2-4-104, 2-4-602, 2-4-603, 2-4-611, 2-4-612, 2-15-1706, 49-2-201, 49-2-203, 49-2-205, 49-2-401, 49-2-402, 49-2-404, 49-2-502, 49-2-504, 49-2-505, 49-2-506, 49-2-507, 49-2-508, and 49-3-308, MCA.
5. On April 14, 1988, the human rights commission published notice of proposed amendments to rules 24.9.206 and 24.9.210 at page 669 of the 1988 Montana Administrative Register, Issue No. 7. These rules relate to class actions and amendment of complaints.
6. The commission has amended the rules as proposed.
7. The commission received no comments in opposition to the proposed amendment of these rules.
8. The authority of the commission to amend the rules is based on sections 49-2-204 and 49-3-106, MCA. The rules as amended implement sections 49-2-501 and 49-3-304, MCA.
9. On April 14, 1988, the human rights commission published notice of the proposed adoption of rules governing contested case hearings at page 669 of the 1988 Montana Administrative Register, Issue No. 7.
10. The commission has adopted the rules as proposed.
11. The commission received formal written comments only from the office of legal affairs of the department of revenue. The comments state that proposed rules VII, VIII, IX, X and XII unnecessarily repeat statutory language, rules XIV, XXI, XXIV, XXVII and XXIII may not be necessary, rule XXV may not be

supported by statutory authority, and rule I(3) may eliminate the need for other rules. The comments also question whether the rules have been checked for compliance with "the plain language requirements" and suggested that agencies should adopt the existing model rules or district court rules with as few changes as possible. The commission considered each comment and reviewed each rule cited in light of those comments. The commission overrules the comments. The contested case format is designed to give attorneys, unrepresented parties and the public a comprehensive, and inclusive reference to commission contested case procedures. Because of this, some elements of the Montana administrative procedure act were integrated into the rules. The commission considers any resulting incorporation of statutory language to be necessary to the goal of establishing a comprehensive, consolidated procedural guide. Many of the proposed rules address recurring problems which have arisen in contested cases in the experience of the commission and its staff. Rule XXV is founded upon the principle that adjudicatory tribunals must, at times, enforce procedural orders through hearing sanctions. In some cases, sanctions may constitute an appropriate alternative to subpoena enforcement in the courts. Rule I(3) is a requirement of due process, and is based upon language which is commonly found in many federal and state agency adjudicatory rules. Commission staff research shows there is no "plain language" requirement as such, but the rules state procedures in understandable English. The revenue department made several additional comments but the commission was unable to determine how the comments specifically related to the rules as proposed.

12. The authority of the commission to adopt the rules is based on sections 49-2-204 and 49-3-106, MCA. The rules implement sections 2-4-104, 2-4-106, 2-4-602 through 2-4-604, 2-4-611 through 2-4-614, 2-4-621, 2-4-623, 2-15-1706, 49-2-101, 49-2-201, 49-2-203, 49-2-501, 49-2-505 through 49-2-507, 49-3-101, 49-3-304 and 49-3-308 through 49-3-310, MCA.

MONTANA HUMAN RIGHTS COMMISSION
MARGERY H. BROWN, CHAIR

By: Anne L. MacIntyre
ANNE L. MACINTYRE
ADMINISTRATOR
HUMAN RIGHTS DIVISION


Certified to the Secretary of State May 31, 1988.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF CORRECTION Rule II
CORRECTION of the Adoption of	)	(42.25.1026) and Rule IV
Rule II (42.25.1026) and Rule	)	(42.25.2518) relating to
IV (42.25.2518) relating to	)	Net Proceeds Rules for the
Net Proceeds Rules for the	)	Natural Resource & Corpora-
Natural Resource and Corpora-	)	tion Tax Division.
tion Tax Division.)	

TO: All Interested Persons:

PLEASE NOTE: The Department of Revenue's adoption notice published at page 980, 1988 Montana Administrative Register, issue number 10, adopted new rules, relating to Net Proceeds. The rules were numbered (Rule II) 42.25.1026 and (Rule IV) 42.25.2518, however the rules should have been numbered (Rule II) 42.25.1027 and (Rule IV) 42.25.1018.


JOHN D. LAFAVER, Director
Department of Revenue

Certified to Secretary of State 5/31/88

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

In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rule 46.2.302 per-	)	RULE 46.2.302 PERTAINING TO
taining to civil rights	)	CIVIL RIGHTS COMPLAINTS
complaints)	

TO: All Interested Persons

1. On April 14, 1988, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.2.302 pertaining to civil rights complaints at page 693 of the 1988 Montana Administrative Register, issue number 7.

2. The Department has amended Rule 46.2.302 as proposed with the following changes:

46.2.302 CIVIL RIGHTS Subsections (1) through (3) remain as proposed.

(4) Individuals who feel they have been discriminated against pursuant to Section 49-2-308 MCA ~~are--entitled--to--a hearing--in--accordance--with--the--rules--promulgated--by--the Department--for--fair--hearings--and--contested--cases--as--stated--in ARM-46-2-201--through--ARM-46-2-214.~~ may file a complaint with the Montana Commission for Human Rights, the appropriate federal agency or the appropriate department division administrator or their designee, HAVING GENERAL SUPERVISORY AUTHORITY OVER THE PROGRAM OR SERVICES INVOLVED.

(A) IF A WRITTEN COMPLAINT IS FILED WITH THE DEPARTMENT, THE APPROPRIATE DIVISION STAFF WILL CONDUCT AN INVESTIGATION AND PROVIDE A WRITTEN DECISION WHICH EITHER ADMITS OR DENIES THE COMPLAINT OR SUGGESTS AN ALTERNATE MEANS OF RESOLVING THE DISPUTE.

(B) FILING OF A COMPLAINT WITH THE DEPARTMENT DOES NOT PRECLUDE THE SIMULTANEOUS FILING OF COMPLAINTS WITH OTHER FEDERAL OR STATE AGENCIES INVOLVED WITH THE INVESTIGATION OF DISCRIMINATION.

AUTH: Sec. 53-2-201 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87
IMP: Sec. 53-2-201 MCA

3. The Department has thoroughly considered all commentary received:

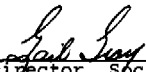
COMMENT: How does filing of a complaint with the Department effect filing of a complaint with the Human Rights Commission or the federal agency?

RESPONSE: Persons filing with the state or federal human rights agency should be aware that the filing must occur

within the appropriate statute of limitations. Timely filing of a complaint with the Department does not toll the appropriate statutes of limitation for federal agencies or the State Commission. Consequently, wording has been added to the rule to emphasize the exclusivity of the filings.

COMMENT: What procedure is to be followed when a complaint is filed with the state agency?

RESPONSE: Wording has been added to clarify the Department response to a discrimination complaint.



Director, Social and Rehabilitation Services

Certified to the Secretary of State May 25, 1988.

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

In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rules 46.12.503 and	)	RULES 46.12.503 AND
46.12.505 pertaining to	)	46.12.505 PERTAINING TO
diagnosis related groups	)	DIAGNOSIS RELATED GROUPS
(DRGs)	)	(DRGS)

TO: All Interested Persons

1. On April 28, 1988, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.503 and 46.12.505 pertaining to diagnosis related groups (DRGs) at page 820 of the 1988 Montana Administrative Register, issue number 8.

2. The Department has amended Rule 46.12.503 as proposed.

3. The Department has amended the following rule as proposed with the following changes:

46.12.505 INPATIENT HOSPITAL SERVICES, REIMBURSEMENT

Subsections (1) through (2)(b) remain as proposed.

(c) The department computes a Montana average base price per case. This average budget neutral base price per case is ~~\$1,240.10~~ \$1,320.68 \$1,368.19 for fiscal year ending June 30, 1989.

Subsections (2)(d) through (11)(b) "473" remain as proposed.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-141 MCA

4. The Department has thoroughly considered all commentary received:

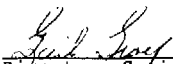
COMMENT: The base price is set in ARM 46.12.505 at \$1,320.68. It should be recalculated to reflect correction of the base year discharge counts and neutrality with a Tax Equity Fiscal Responsibility Act (TEFRA) cost-based system.

RESPONSE: The Department has recalculated the base price and is adjusting the price for the State fiscal year ending June 30, 1989 to \$1,368.19.

COMMENT: Issues regarding reimbursement for intensive care nurseries, future analysis of the base rate, cost report preparation and processing of claims should be considered by the Department.

RESPONSE: These issues are outside the scope of the current rule but will be considered by the department in future amendments to rules regarding hospital services.

5. These rule changes will be effective July 1, 1988.



Director, Social and Rehabilitation Services

Certified to the Secretary of State May 27, 1988.

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

In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rules 46.12.530,	)	RULES 46.12.530, 46.12.531
46.12.531 and 46.12.532	)	AND 46.12.532 PERTAINING TO
pertaining to speech therapy	)	SPEECH THERAPY SERVICES
services)	

TO: All Interested Persons

1. On April 28, 1988, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.530, 46.12.531 and 46.12.532 pertaining to outpatient speech therapy services at page 810 of the 1988 Montana Administrative Register, issue number 8.

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

46.12.530 SPEECH PATHOLOGY THERAPY SERVICES, DEFINITION

Subsection (1) remains as proposed.

(A) SPEECH THERAPY SERVICES MEAN SPEECH THERAPY SERVICES PROVIDED OTHER THAN BY A HOSPITAL.

Subsections (2) and (3) remain as proposed.

AUTH: Sec. 53-6-113 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87
IMP: Sec. 53-6-101 and 53-6-141 MCA

46.12.531 OUTPATIENT SPEECH PATHOLOGY THERAPY SERVICES,

REQUIREMENTS Subsections (1) through (5)(a) remain as proposed.

(16) Outpatient--speech pathology therapy service is limited to a maximum of 200-hours 70 hours and an additional 30 hours with prior approval by the department or its designee per fiscal year.

(27) All diagnostic, evaluative outpatient speech pathology services therapy must be prescribed by a physician, referred.

(a) Written physician's prescriptions must be obtained before outpatient speech evaluation or therapy is provided.

(b) Written physician's prescriptions for outpatient speech therapy are valid only for 90 180 days.

(3) All therapy services must be reviewed and renewed by the referring physician at a minimum of 90-day intervals.

(4c) Written physicians' orders, diagnostic, evaluative prescriptions and speech therapy reports case notes must be current within five (5) days of the service and available upon request of the department or its designated representative.

(8) THERAPY CASE NOTES MUST BE CURRENT AND WITHIN FIVE (5) DAYS OF THE SERVICE.

(589) ~~Outpatient-s~~Speech pathology-services therapy will be subject to review by the designated review organization or the department's designee.

~~(6)--Speech-pathology--services-provided--through-a-home health--care--agency-shall-be-part-of-the--agency's-200-visit limitation.~~

(10) AUGMENTATIVE SPEECH DEVICES ARE A BENEFIT OF THE PROGRAM WHEN MEDICALLY NECESSARY AND PRIOR AUTHORIZED BY THE DEPARTMENT. WRITTEN NOTIFICATION OF AUTHORIZATION WILL BE WITHIN THIRTY (30) DAYS OF RECEIPT OF REQUEST.

(A) THE DETERMINATION OF MEDICAL NECESSITY WILL BE BASED ON THE FOLLOWING:

(I) PHYSICIAN'S DIAGNOSIS AND RECOMMENDATION;

(II) RECIPIENT'S SOCIAL STUDY BY A QUALIFIED SOCIAL WORKER;

(III) RECIPIENT'S ABILITY TO COMMUNICATE;

(IV) OTHER MEDICAL CONDITIONS THE RECIPIENT HAS THAT AFFECT HIS USE OF AN AUGMENTATIVE SPEECH DEVICE;

(V) RECIPIENT'S PREVIOUS EXPERIENCE WITH AUGMENTATIVE SPEECH DEVICES;

(VI) THE EXTENT, OR DEGREE, THE RECIPIENT WILL USE THE AUGMENTATIVE SPEECH DEVICE;

(VII) HOW THE AUGMENTATIVE SPEECH DEVICE WILL BE USED TO TREAT THE RECIPIENT'S CONDITION; AND

(VIII) AN OCCUPATIONAL THERAPIST'S OR HABILITATION PLANNING TEAM'S RECOMMENDATION;

(IX) ALL OTHER REIMBURSEMENT RESOURCES HAVE BEEN EXPLORED.

(11) GROUP SPEECH THERAPY SERVICES SHALL CONSIST OF ONE AND ONE-HALF HOUR SESSIONS WITH NO MORE THAN EIGHT INDIVIDUALS PARTICIPATING IN THE GROUP.

(12) IF A HOME HEALTH AGENCY IS PROVIDING SPEECH THERAPY SERVICES TO A RECIPIENT, THAT RECIPIENT IS RESTRICTED FROM RECEIVING SERVICES UNDER THIS RULE.

AUTH: Sec. 53-6-113 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87
IMP: Sec. 53-6-101 and 53-6-141 MCA

46.12.532 OUTPATIENT SPEECH PATHOLOGY THERAPY SERVICES,

REIMBURSEMENT Original subsection (1) remains deleted as proposed.

(2) The department will pay the lowest of the following for outpatient speech pathology therapy services; which are also covered by medicare.

Subsections (1)(a) and (1)(b) remain as proposed.

(2) ~~(3) Outpatient-s~~Speech pathology-fee-schedule: therapy services which are reimbursable under the Montana medical

program are limited to the following:

Subsections (2) (3)(a) and (2) (3)(b) remain as proposed.

(c) 992508 - SPEECH group ~~treatment~~ THERAPY SESSIONS PER ONE AND ONE-HALF HOUR ... ~~\$13.00~~ \$15.00

AUTH: Sec. 53-6-113 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87
IMP: Sec. 53-6-101 and 53-6-141 MCA

3. The Department has thoroughly considered all commentary received:

COMMENT: A Department staff person commented that "outpatient" is an inappropriate and confusing term in these rules in view of "outpatient services" offered by hospitals.

RESPONSE: The Department agrees and the term "outpatient" has been removed.

COMMENT: A private provider complained that her services would not be reimbursed under the proposed ARM 46.12.531(12), as announced by the Department at the hearing, if home health services were already being rendered. An exemption should be considered to allow providers to use services of home health professionals for specific cases.

RESPONSE: Home health services are comprehensive and include speech therapy. Speech therapy services rendered by a home health agency to a recipient preclude reimbursement of services under this rule.

COMMENT: The proposed 90-day limit on prescriptions creates undue hardships for pathologists and is not practical in every day practice.

RESPONSE: The Department agrees and the limit has been changed to 180 days.

COMMENT: ARM 46.12.531 speaks of an "initial evaluation" of the individual's needs. This should be defined more clearly.

RESPONSE: The Department agrees and appropriate wording has been added.

COMMENT: Provider requests for augmentative speech devices should be required to be responded to verbally within a specific time to avoid long waits.

RESPONSE: The Department agrees that a specific period for reply is advisable and has inserted an appropriate time frame.

However, written, not verbal, response is more pragmatic and will be included in the rule.

COMMENT: Can the Department notify the provider when the 70-hour limit is being approached?

RESPONSE: Notification would present an unwieldy administrative burden. The Department suggests that providers contact the fiscal intermediary at its toll free number (1-800-624-3958) when it is suspected the 70-hour limit may be close.

COMMENT: The rule should be amended to prevent interruption of services by allowing application for the additional 30 hours at the outset of potentially long-term cases than wait until the initial 70 hours are used.

RESPONSE: The Department agrees. However, this provision is more appropriately placed in the provider manual.

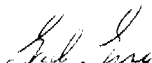
COMMENT: The proposed changes to ARM 46.12.532 should parallel the standard language for Medicaid reimbursement.

RESPONSE: The Department agrees and has inserted appropriate wording.

COMMENT: What criteria will be used to decide when the additional 30 hours will be authorized?

RESPONSE: The criteria are outlined under the standards of "medically necessary" and "reasonable" as defined in the ARM. Institutionalization was inadvertently mentioned in the rationale of the first notice, but is not a criteria.

4. These rule changes will be effective July 1, 1988.



Director, Social and Rehabilitation Services

Certified to the Secretary of State May 27, 1988.

11-6/9/88

Montana Administrative Register

VOLUME NO. 42

OPINION NO. 84

COUNTIES - Responsibility for indemnifying fire district employees;
COUNTY COMMISSIONERS - Responsibility for indemnifying fire district employees;
COUNTY OFFICERS AND EMPLOYEES - Responsibility for indemnifying fire district employees;
EMPLOYEES, PUBLIC - Responsibility for indemnifying fire district and fire service area employees;
FIRE DISTRICTS - Responsibility for indemnifying employees in fire districts and fire service areas;
INSURANCE - Responsibility for indemnifying fire district employees;
MONTANA TORT CLAIMS ACT - Indemnification of fire district and fire service area employees;
MONTANA CODE ANNOTATED - Sections 2-9-101(2), (3), (5), 2-9-102, 2-9-305, 7-33-2104, 7-33-2109, 7-33-2403;
OPINIONS OF THE ATTORNEY GENERAL - 35 Op. Att'y Gen. No. 71 (1974).

- HELD: 1. Fire district employees in a district operated by trustees must be indemnified under the Montana Comprehensive State Insurance Plan and Tort Claims Act of 1973 by the fire district, rather than the county in which the fire district is located. 35 Op. Att'y Gen. No. 71 (1974) is overruled insofar as it conflicts with the holding of this opinion.
2. Employees of a fire service area operated by trustees must be indemnified under the Montana Comprehensive State Insurance Plan and Tort Claims Act of 1973 by the fire service area, rather than the county in which the fire service area is located.

18 May 1988

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

Dear Mr. Hanser:

You have requested my opinion concerning the relation of the Montana Comprehensive State Insurance Plan and Tort Claims Act, particularly section 2-9-305, MCA, to fire districts and fire service areas operated by trustees pursuant to sections 7-33-2104(2) and 7-33-2403, MCA. I have phrased your questions as follows:

1. In light of 35 Op. Att'y Gen. No. 71 (1974) which held that salaried employees of a fire district are county employees, are the county commissioners or the fire district trustees responsible for indemnifying fire district employees under the Montana Comprehensive State Insurance Plan and Tort Claims Act of 1973?
2. Would the answer be the same regarding indemnification of employees of a fire service area?

Under the Montana Comprehensive State Insurance Plan and Tort Claims Act of 1973 (hereinafter the Act), all governmental entities in Montana became liable for the tortious conduct of their employees "acting within the scope of their employment or duties." § 2-9-102, MCA. As an incident to this waiver of sovereign immunity, the Legislature provided for the indemnification of governmental employees as follows:

- (2) In any noncriminal action brought against any employee of a state, county, city, town, or other governmental entity for a negligent act, error, or omission, including alleged violations of civil rights pursuant to 42 U.S.C. 1983, or other actionable conduct of the employee committed while acting within the course and scope of the employee's office or

11-6/9/88

Montana Administrative Register

employment, the governmental entity employer ... shall defend the action on behalf of the employee and indemnify the employee.

....

(4) In any noncriminal action in which a governmental entity employee is a party defendant, the employee shall be indemnified by the employer for any money judgments or legal expenses, including attorney fees either incurred by the employee or awarded to the claimant, or both, to which the employee may be subject as a result of the suit

§ 2-9-305, MCA. (Emphasis added.)

In determining which governmental entity is responsible for indemnifying fire district employees, it is helpful to consider the following definitions from the Act:

(2) "Employee" means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting on behalf of the governmental entity in any official capacity temporarily or permanently in the service of the governmental entity whether with or without compensation, but the term employee shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity

(3) "Governmental entity" means and includes the state and political subdivisions as herein defined.

....

(5) "Political subdivision" means any county, city, municipal corporation, school district, special improvement or taxing district, or any other political subdivision or public corporation.

§ 2-9-101, MCA. Although the definition of "political subdivision" does not specifically mention "fire district," the plain language of the definition evinces

a legislative intent to distinguish between counties and taxing districts as distinct types of political subdivisions, and therefore, as distinct types of governmental entities. Fire districts are taxing districts in the contemplation of section 7-33-2109, MCA, which provides in pertinent part:

[T]he board ... may levy a special tax upon all property within such [fire] districts for the purpose of buying or maintaining fire protection facilities and apparatus for such districts or for the purpose of paying to a city, town, or private fire service the consideration provided for in any contract with the council of such city, town, or private fire service for the purpose of furnishing fire protection service to property within such district.

In addition, section 7-33-2105(3), MCA, provides that "[t]he [fire district] trustees shall prepare annual budgets and request special levies therefor." It follows that fire districts operated by trustees are political subdivisions distinct from counties, and are thus governmental entities as those terms are used in the Act.

However, because the county commissioners have authority to establish, divide, annex, dissolve, and appoint the trustees of a fire district, a question arises as to which governmental entity is liable for indemnifying fire district employees. See §§ 7-33-2101 to 2104, 7-33-2122, 7-33-2123, 7-33-2125, 7-33-2126, 7-33-2128, MCA. In other words, are the employees employed by the county or the fire district within the meaning of the Montana Comprehensive State Insurance Plan and Tort Claims Act?

That question is best answered by determining which governmental entity, the county or the fire district, would more likely be held liable for the tortious conduct of a fire district employee. Courts and commentators alike have focused that inquiry on the existence of a master-servant relationship between the government employer and government employee, and in particular on the right of the government employer to exercise control over the conduct of the government employee.

The test generally, however, narrows down to the power to control. The right to control the action of the person doing the alleged wrong, at the time of and with reference to the matter out of which the alleged wrong sprung, which is a general test of the relationship of master and servant, governs, at least to a very great extent, in determining whether a municipality is liable under the rule of respondeat superior; and the right to discharge or terminate the relationship is important.

18 McQuillin, Municipal Corporations § 53.66 (3d ed. 1984).

The Montana Supreme Court employed a similar analysis in a 1976 case involving a suit brought under the Act against both the City of Billings and the State of Montana for the allegedly negligent conduct of several Billings police officers. State v. District Court, 170 Mont. 15, 550 P.2d 382 (1976). In concluding that the City, and not the State, was liable for the action of the officers, the Court stated:

The power in the City to control its policemen in both broad and detailed affairs related to their work brings the policemen squarely within the definition of "employee" and subjects the City to liability under the terms of [the Act] for torts of its employees acting within the scope of their employment or duties.

While the police officers are the servants of the City, it cannot be said that they are servants or agents of the State. The State exercises no direct, detailed or daily supervision over City policemen; it is powerless to avoid or prevent negligent acts by them. It cannot pay, hire or fire City policemen, and it does not provide police services for the City. In short, the State does not control the activities of City police officers and cannot be held responsible for their negligence.

State v. District Court, 170 Mont. at 19-20, 550 P.2d at 384. See also Orser v. State, 178 Mont. 126, 131-32, 582 P.2d 1227, 1231 (1978).

In the case of a fire district operated by trustees, it is the trustees who "govern and manage the affairs of the fire district." § 7-33-2104(2), MCA. The trustees are required to "prepare and adopt suitable bylaws," and have authority to provide the district with various firefighting equipment and facilities. § 7-33-2105(1), (2), MCA. The responsibility of hiring fire district personnel devolves upon the trustees, § 7-33-2105(2), MCA; the trustees are charged with managing fire district budgets, § 7-33-2105(3), MCA; and they have authority to contract for various equipment and services, § 7-33-2107, MCA. Clearly, it is the trustees who "govern and manage the affairs" of the fire district, and not the county commissioners. Thus, the government entity responsible for the indemnification of fire district employees is the fire district itself, rather than the county in which the district is located.

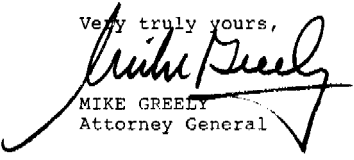
My conclusion is the same regarding your second question. When a fire service area is operated by trustees under section 7-33-2403(1)(b), MCA, then the fire service area must indemnify its own employees. It should be noted that fire service areas and fire districts can be governed either by trustees or by the county commission. §§ 7-33-2403, 7-33-2104, MCA. If the county commissioners opt to govern the fire service area or fire district themselves, then the responsibility for indemnification would rest with the county.

THEREFORE, IT IS MY OPINION:

1. Fire district employees in a district operated by trustees must be indemnified under the Montana Comprehensive State Insurance Plan and Tort Claims Act of 1973 by the fire district, rather than the county in which the fire district is located. 35 Op. Att'y Gen. No. 71 (1974) is overruled insofar as it conflicts with the holding of this opinion.
2. Employees of a fire service area operated by trustees must be indemnified under the Montana Comprehensive State Insurance Plan and Tort

Claims Act of 1973 by the fire service area,
rather than the county in which the fire
service area is located.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 42

OPINION NO. 85

COUNTIES - Adjustment to salaries of county officials due to county reclassification;
COUNTY ATTORNEYS - Salary adjustment due to county reclassification;
COUNTY COMMISSIONERS - Salary adjustment due to county reclassification;
COUNTY OFFICERS AND EMPLOYEES - Salary adjustment due to county reclassification;
MONTANA CODE ANNOTATED - Sections 7-1-2111, 7-4-2107, 7-4-2503, 7-4-2504(2);
OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 6 (1985), 40 Op. Att'y Gen. No. 81 (1984).

- HELD: 1. When a county's classification under section 7-1-2111, MCA, changes, the salaries of county commissioners, the county attorney, and county officials listed in section 7-4-2503(1), MCA, must be adjusted as of July 1 of the following year.
2. When a county's classification under section 7-1-2111, MCA, changes, the adjustment to salaries of county commissioners is computed according to section 7-4-2107, MCA; of a part-time county attorney, according to section 7-4-2503(3), MCA; and of county officials listed in section 7-4-2503(1), MCA, according to the provisions in that section.
3. Section 7-4-2504(2), MCA, is not applicable to salary adjustments due to reclassifications of counties. A county official's base salary established under this section on July 1, 1981, lasts only until county reclassification necessitates a salary adjustment in accordance with section 7-4-2503, MCA.

18 May 1988

Daniel L. Schwarz
Powder River County Attorney
Powder River County Courthouse
Broadus MT 59317

Dear Mr. Schwarz:

You have requested my opinion concerning the following questions:

11-6/9/88

Montana Administrative Register

1. At what date, if any, should the salaries of county commissioners, part-time county attorneys, and elected officials be adjusted to reflect a change in county classification?
2. How are the salaries of the county commissioners and elected officials to be computed upon the county's reclassification?
3. How does section 7-4-2504(2), MCA, affect adjustments in salaries made pursuant to county reclassification?

Your request arises from the decreasing taxable valuation of property in Powder River County and the resulting reclassification of the county. Under section 7-1-2111, MCA, counties are classified from first-class to seventh-class counties depending on the taxable valuation of the property therein. Counties with the highest taxable valuation of property are classified as first class, and those with the lowest as seventh class. In fiscal year 1986-87, Powder River County was a Class 2 county. In 1987-88, the county was reclassified as Class 4, and in fiscal year 1988-89, it is projected that the county will be reclassified as Class 5.

With respect to your first question, I held in 40 Op. Att'y Gen. No. 81 at 324 (1984) that when a county's classification changes, the salaries of the county officials listed in section 7-4-2503(1), MCA, must be adjusted as of July 1 of the following year, with the onset of the county's new fiscal year. In 41 Op. Att'y Gen. No. 6 (1985) I applied the same holding to adjustments of county commissioners' salaries, because the statute governing county commissioners' salaries is substantively connected to sections 7-1-2111, MCA (governing county classification), and 7-4-2503, MCA (governing salaries for certain county officers). The rationale of those opinions applies to adjustments in county attorneys' salaries under section 7-4-2503(3), MCA. Therefore, the date of adjustment to the salaries of county commissioners, a part-time county attorney, and elected officials listed in section 7-4-2503(1), MCA, is July 1, the onset of the fiscal year following the county's reclassification.

With respect to your second question, the salary of county commissioners is governed by section 7-4-2107, MCA, which provides:

Compensation of county commissioners.

(1) Each member of the board of county commissioners in counties of the first, second, third, and fourth class shall receive an annual salary equal to the annual salary established in 7-4-2503 for the clerk and recorder plus \$2,000, but the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set their salaries at the prior fiscal year level if that level is lower than the level required by this subsection.

(2) Each member of the board in all other counties is entitled to a salary for each day in which he is actually and necessarily engaged in the performance of board duties as set by resolution of the board. For the fiscal year beginning July 1, 1985, the salary is \$60 a day. Thereafter, on or before July 1 of each year, the county commission shall fix a cost-of-living adjusted daily salary by adding to the amount of \$60 an increment calculated as provided in 7-4-2504, but the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set their salaries at the prior fiscal year level if that level is lower than the level required by this subsection.

(3) This section does not apply to counties that have adopted a charter form of government.

Since Powder River County has not adopted a charter form of government, the county commissioners' salaries must be computed in accordance with this section. Thus, after the county was classified as Class 4, the commissioners' salaries remained the same as when the county was classified as Class 2. § 7-4-2107(1), MCA. If the county is reclassified as Class 5, on July 1 of the next fiscal year, the commissioners' salaries must

be adjusted according to subsection (2) of section 7-4-2107, MCA.

With respect to county officers listed in section 7-4-2503(1), MCA, their salary computations remain the same for Classes 1 through 5. § 7-4-2503(1), (2), MCA.

The salary for a part-time county attorney is governed by section 7-4-2503(3), MCA, which provides in pertinent part:

In counties with a population less than 30,000, the county attorney who is a part-time official for a county of the first, second, or third class is entitled to receive an annual salary equal to 60% of the annual salary of a full-time county attorney. A county attorney who is a part-time official for a county of the fourth, fifth, sixth, or seventh class is entitled to receive an annual salary equal to 50% of the annual salary of a full-time county attorney.

§ 7-4-2503(3)(a), MCA. Thus, when the county's classification changed from Class 2 to Class 4, the part-time county attorney's salary was required to be adjusted from 60 percent of the annual salary of a full-time county attorney to 50 percent. The salary of the county attorney will not be changed by the reclassification if the county is reclassified from a fourth- to a fifth-class county. § 7-4-2503(3)(a), MCA.

In your third question, you asked whether section 7-4-2504(2), MCA, applies to the salaries if they decrease as the result of a county reclassification.

Section 7-4-2504(2), MCA, states:

If the application of 7-4-2503 does not qualify a county official for a salary increase of at least 7% on July 1, 1981, his salary on that date shall be increased by an amount sufficient to provide him total salary equal to 7% more than during the previous year. [Emphasis added.]

The language of this section confines its application to the initial computation of salaries in accordance with

the 1981 amendments to the county officers' compensation statutes, §§ 7-4-2503 to 2505, MCA; the salary increase under section 7-4-2504(2), MCA, occurred on July 1, 1981. A statute must be interpreted according to the clear meaning of the words used therein. Rierson v. State, 188 Mont. 522, 614 P.2d 1020, 1023, on rehearing, 622 P.2d 195 (1980). Moreover, the statute was part of a lengthy bill that was recommended to the 1981 Legislature by a County Compensation Board, established by the 46th Legislative Assembly. In its written report to the Legislature, the Board referred to this portion of the bill as a "grandfather clause" to protect some of the counties from taking salary cuts. The report stated that the provision was only to be in effect for one fiscal year. Report of County Compensation Board, hearing on S.B. 50 before the Senate Committee on Local Government (1/17/81).

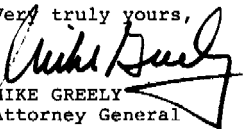
Section 7-4-2504(2), MCA, thus created a new salary base on July 1, 1981, for those county officials whose salaries would not have increased by 7 percent on July 1, 1981, under the formulas provided in section 7-4-2503, MCA. However, that salary base lasts only until county reclassification necessitates a salary adjustment in accordance with section 7-4-2503, MCA. Section 7-4-2504(2), MCA, has no application to the current situation where county reclassification results in a decrease in a county official's salary.

THEREFORE, IT IS MY OPINION:

1. When a county's classification under section 7-1-2111, MCA, changes, the salaries of county commissioners, the county attorney, and county officials listed in section 7-4-2503(1), MCA, must be adjusted as of July 1 of the following year.
2. When a county's classification under section 7-1-2111, MCA, changes, the adjustment to salaries of county commissioners is computed according to section 7-4-2107, MCA; of a part-time county attorney, according to section 7-4-2503(3), MCA; and of county officials listed in section 7-4-2503(1), according to the provisions in that section.

3. Section 7-4-2504(2), MCA, is not applicable to salary adjustments due to reclassifications of counties. A county official's base salary established under this section on July 1, 1981, lasts only until county reclassification necessitates a salary adjustment in accordance with section 7-4-2503, MCA.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 42

OPINION NO. 86

ADMINISTRATIVE LAW AND PROCEDURE - Applicability of Montana Administrative Procedure Act to school districts and local governments;
SCHOOL DISTRICTS - Disqualification of county school superintendent in school controversy, timeliness of affidavit;
SUPERINTENDENT OF PUBLIC INSTRUCTION - Authority to promulgate rules concerning timeliness of disqualification affidavits under section 20-3-211(3), MCA;
MONTANA CODE ANNOTATED - Sections 2-4-102(2)(b), 2-4-611(4), 20-3-210, 20-3-211;
ADMINISTRATIVE RULES OF MONTANA - Title 10, chapter 6.

- HELD: 1. The affidavit of disqualification of a county school superintendent in a school controversy is peremptory under the plain meaning of the statute.
2. The timeliness of an affidavit of disqualification in a school controversy may be regulated by the presiding officer in such a hearing.

25 May 1988

David G. Rice
Hill County Attorney
Hill County Courthouse
Havre MT 59501

Dear Mr. Rice:

You have requested my opinion on the following question:

Must a county superintendent of schools automatically disqualify himself or herself from hearing a school controversy under section 20-3-210, MCA, when an affidavit alleging that the county superintendent is biased or prejudiced is filed pursuant to section 20-3-211(3), MCA?

The disqualification statute, in pertinent part, states:

11-6/9/88

Montana Administrative Register

A county superintendent may not hear or decide matters of controversy pursuant to 20-3-210 when:

....

(3) either party to the controversy makes and files with the county superintendent of schools an affidavit that he has reason to believe and does believe that he cannot have a fair and impartial hearing before the county superintendent by reason of the bias or prejudice of the county superintendent[.]

§ 20-3-211, MCA.

By the terms of the statute, disqualification is peremptory; that is, the allegation itself is sufficient to cause the disqualification. I am not, of course, allowed to go beyond the plain and clear meaning of the statute to substitute my view of good policy. Dunphy v. Anaconda, 151 Mont. 76, 438 P.2d 660 (1968); Keller v. Smith, 170 Mont. 399, 533 P.2d 1002 (1976). I am aware that there is a potential for abuse in this procedure and that frequent substitution can become costly for the county. However, any remedy will have to come in the form of statutory change by the Legislature.

You have referred to the disqualification of a hearing examiner under the Montana Administrative Procedure Act. According to section 2-4-611(4), MCA, such an affidavit must be both timely and sufficient. However, any application of the Montana Administrative Procedure Act to a school controversy is foreclosed by the negative definition of "agency" provided in section 2-4-102(2)(b), MCA: "'Agency' does not include a school district, unit of local government, or any other political subdivision of the state." Thus, although the Montana Administrative Procedure Act requires that an affidavit of disqualification be both timely and sufficient, the Act's requirement cannot be read into the proceeding conducted by the county superintendent of schools in Title 20.

The county superintendent can exercise some control over the timeliness of an affidavit of disqualification. While the statute is silent on a time requirement for the affidavit, a judicial officer typically has the

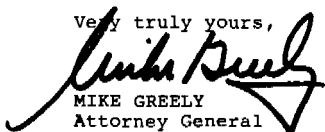
discretion to require timely submission of motions for the orderly disposition of the matters before it. It would not be unreasonable for the county superintendent to require either party to file a disqualification affidavit by a certain date or forgo that right.

The Superintendent of Public Instruction, who is the appellate authority for these matters, has adopted some procedures and rules for the handling of school controversies. Tit. 10, ch 6, ARM. The rules do not currently address the timeliness of the disqualification affidavit, but they could appropriately do so.

THEREFORE, IT IS MY OPINION:

1. The affidavit of disqualification of a county school superintendent in a school controversy is peremptory under the plain meaning of the statute.
2. The timeliness of an affidavit of disqualification in a school controversy may be regulated by the presiding officer in such a hearing.

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.
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, 1988. This table includes those rules adopted during the period March 31, 1988 through June 30, 1988 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, 1988, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1987 or 1988 Montana Administrative Register.

ADMINISTRATION, Department of, Title 2

2.5.505	Mistakes in Bids, p. 916
2.21.605	and other rules - Holidays for State Employees, p. 1848, 2369
2.21.810	and other rule - Sick Leave Fund - Structure of Fund - Eligibility to Receive Grants, p. 1, 472
2.21.1301	and other rules - Sexual Harassment Prevention, p. 446
(Teachers' Retirement Board)	
I-IX	and other rules - Teachers' Retirement System, p. 1600, 2233
2.44.517	Formula for Determining Contributions Due on Termination Pay, p. 2277, 473
(State Tax Appeal Board)	
2.51.307	and other rule - Appeals from Real and Personal Property Tax Appraisals - Orders of the Board - Decision by the Board, p. 154, 474

AGRICULTURE, Department of, Title 4

I-VII	Administration of the Honey Bee Program, p. 1855
4.4.302	and other rules - Administration of Claims Against State Hail Insurance, p. 1861, 267
4.5.110	and other rules - Regulation of Noxious Weed Seeds and Seed Merchandising Licenses, p. 1859, 268

STATE AUDITOR, Title 6

- I-VII Independent Liability Funds, p. 1864, 2372
- I-IX Periodic Payment of Quarterly Premium Taxes, p. 1868, 2373
- 6.6.1502 and other rules - Crop Hail Insurance Rate Filings, p. 631, 917
- 6.10.101 and other rules - Securities - Whole Mortgages and Certificates of Deposit, p. 918

COMMERCE, Department of, Title 8

- (Board of Architects)
- 8.6.413 Fee Schedule, p. 2213, 166
- (Board of Chiropractors)
- 8.12.603 Examinations, p. 2122, 44
- 8.12.607 and other rules - Unprofessional Conduct - Code of Ethics - Disciplinary Actions - Independent Medical Evaluations - Consultations, p. 2215, 3, 475
- (Board of Cosmetology)
- 8.14.601 and other rules - Schools - Instructors - Applications - Examinations - Electrology - Sanitary Standards - Salons - Licenses, p. 2278, 4, 704
- (State Electrical Board)
- 8.18.402 and other rules - Applications - Fees - Examinations - Continuing Education, p. 5, 567
- (Board of Horse Racing)
- 8.22.502 and other rules - Licenses Issued for Conducting Parimutuel Wagering on Horse Racing - General Provisions - General Requirements - General Rules - Definition of Conduct Detrimental to the Best Interests of Racing, p. 217, 569, 709
- (Board of Landscape Architects)
- 8.24.405 and other rule - Examinations - Renewals, p. 2124, 167
- 8.24.405 Examinations, p. 785
- 8.24.409 Fee Schedule, p. 9
- (Board of Medical Examiners)
- I-VII Licensing, Conduct and Fees for Nutritionists, p. 453, 823
- 8.28.420 Fee Schedule, p. 2127, 45, 385
- (Board of Nursing Home Administrators)
- 8.34.414 Examinations, p. 2129, 710
- (Board of Occupational Therapists)
- 8.35.407 Fees, p. 633, 972
- (Board of Optometrists)
- 8.36.406 General Practice Requirements, p. 551
- 8.36.409 and other rules - Fee Schedule - Therapeutic Pharmaceutical Agents, p. 1718, 2234
- (Board of Outfitters)
- 8.39.101 and other rules - Outfitters and Professional

- 8.39.401 Guides, p. 553
- 8.39.401 and other rules - Board Organization - Procedural Rules - Public Participation - Outfitters Standards and Requirements, p. 1870, 46
- (Board of Pharmacy)
- 8.40.404 and other rule - Examination Fee - Rescheduling of Dangerous Drugs, p. 2294, 271
- (Board of Physical Therapy Examiners)
- 8.42.403 Fees, p. 2220, 168
- (Board of Psychologists)
- 8.52.401 and other rules - Psychology - Applications - Examination - Reciprocity - Licensing - Fees - Standards - Unprofessional Conduct - Ethical Practice, p. 2296, 570
- (Board of Realty Regulation)
- I-XVI Licensure of Timeshare Brokers and Salespersons - Registration of Timeshare Offerings, p. 332, 887
- 8.58.411 Fee Schedule - Late Renewals, p. 1720, 2236
- (Board of Social Work Examiners and Professional Counselors)
- 8.61.402 and other rules - Licensure Requirements - Applications - Hours, Credits and Carry Over - Noncompliance - Fees, p. 1721, 169
- (Board of Veterinary Medicine)
- 8.64.402 Fee Schedule, p. 939
- (Building Codes Bureau)
- 8.70.101 and other rules - Incorporation by Reference of Building Codes - Extent of Local Programs - Plumbing Fixtures - Permits - Standards - Fees - Recreational Vehicles, p. 1725, 2237
- 8.70.1401 Application for Fireworks Wholesaler Permit, p. 1735, 171
- (Milk Control Bureau)
- 8.79.301 Licensee Assessments, p. 338, 712
- (Board of Milk Control)
- Notice of Public Hearing for a Statewide Pooling Arrangement With a Quota Plan as a Method of Payment of Milk Producer Prices, p. 1737, 481, 713
- 8.86.301 Class I Price Formula, p. 846
- 8.86.301 Class I Price Formula, p. 849
- 8.86.301 Transportation of Class I Bulk Milk Between Plants, p. 851
- 8.86.301 Emergency Amendment - Pricing Rules - Class I Price Formula, p. 2238, 48
- 8.86.301 Pricing Rules - Class I Price Formula, p. 2318, 973
- (Local Government Assistance Division)
- I Administration of the 1988 Federal Community Development Block Grant Program (CDBG), p. 635
- 8.94.101 Minimum Contents of Local Subdivision Regulations Adopted Under the Montana Subdivision and Platting Act, p. 1742, 50

- (Montana Economic Development Board)
8.97.802 and other rules - Definitions - Applications -
Tax Credits, p. 1874, 2241
(Aeronautics Division)
8.106.602 Liability Insurance Requirements, p. 812, 1344
(Montana Health Facility Authority)
8.120.206 Fees, p. 2327, 272
(Montana Science and Technology Development Board)
8.122.101 and other rules - Investments by the Board,
p. 2018, 494
(Montana State Lottery Commission)
8.127.610 License Renewal Fee, p. 2330, 274
8.127.1201 Prizes, p. 1279, 51

EDUCATION, Title 10

- (Superintendent of Public Instruction)
I-IV Definitions and Tuition Rates for Special
Education, p. 221, 714
I-IX Establishment of Clearing Accounts for Use in
School Districts, p. 1745, 2375
10.6.101 and other rules - School Controversies, p. 2331
10.43.101 and other rules - Operation of Postsecondary
Vocational-Technical Centers, p. 1743, 2377
(Board of Public Education)
I Student Assessment, p. 340, 976
10.55.303 and other rules - Teaching Assignments -
Definitions - Endorsement Information, p. 941
10.57.301 and other rule - Endorsement Information - Class
3 Administrative Certificate, p. 2131, 52
10.58.101 Advisory Group, p. 11, 637
10.65.201 and other rule - Policy Statement on Kindergarten
Accreditation and Schedule Variances - Local
District Participation, p. 639
10.66.104 Fees for GED Test Battery, p. 637

FAMILY SERVICES, Department of, Title 11

- I-II and other rule - Recovery of Foster Care or Day
Care Overpayments, p. 457, 825
I-VIII Confidentiality of Case Records Containing
Reports of Child Abuse and Neglect, p. 949, 1980,
2378
I-XIII Procedures for Rulemaking - Declaratory Rulings -
Contested Case Hearings, p. 1374, 1782, 2378
I-XXVI Licensing Requirements for Youth Detention
Facilities, p. 2037, 2379
11.5.407 and other rule - Defining Supplemental Payment
Eligibility Based on Living Arrangement - Setting
Standards for Supplemental Payments, p. 642, 978
11.6.104 Eligibility Requirements for Adoptive
Applicants, p. 644, 979

- 11.7.306 and other rules - Requests for Fair Hearings, p. 854
- 11.12.101 and other rule - Substitute Care Placement Budgets, p. 2133, 172
- 11.12.104 Youth Care Facility Licensing Criteria, p. 646
- 11.14.102 Defining Group Facilities Established Chiefly for Educational Purposes, p. 342

FISH, WILDLIFE AND PARKS, Department of, Title 12

- I Prerequisites for Special Elk Permit, p. 225, 879
- I-V Administration of the Pheasant Enhancement Program, p. 16, 720
- I-VI Guidelines for the Sale of Excess Fish Eggs, p. 19, 497, 575
- I-VII Establishing Procedures for Wildlife Habitat Acquisition, p. 13, 880
- 12.3.101 and other rules - Licenses and License Agents, p. 227, 716
- 12.6.201 and other rules - Field Trial Regulations, p. 28, 496
- 12.6.901 Water Safety Regulations - Closing Crystal Lake in Fergus County to Motor-Propelled Water Craft and to Establish a No-Wake Speed Limit on Portions of Lake Kookanusa on Cripple Horse Bay, p. 955, 2242
- 12.6.1406 Allowing for the Sale of the Progeny of Raptors Under Certain Conditions, p. 344, 718
- 12.8.202 and other rules - Public Use Regulations for Department's Designated Recreation Areas, p. 21, 498
- 12.8.504 Cultural Resource Coordinator, p. 29, 499

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

- I-XII Procedures for Administration of the WIC Supplemental Food Program, p. 346
- 16.8.701 and other rules - Air Quality - Definitions of PM-10 - PM-10 Emissions and Total Suspended Particulate - High-Volume Measurement Method for Lead - Ambient Air Quality Standards for PM-10 - Significant Emission Rates for PM-10 - Ambient Air Increments for Total Suspended Particulate, p. 463, 826
- 16.8.937 and other rules - Air Quality Models - Fuel Burning Equipment - New Source Performance Standards - Emission Standards for Hazardous Air Pollutants - Lewis & Clark County Clean Air Ordinance, p. 2135, 500
- 16.20.603 and other rules - Surface Water Quality Standards - Classification of Surface Waters in the State, p. 651
- 16.29.101 and other rules - Dead Human Bodies - Embalming

- 16.32.101 and Transporting Dead Human Bodies, p. 648
and other rules - Review of Certificates of Need
for Health Care Facilities, p. 641, 1074, 725
- 16.32.501 Reportable Tumors, p. 358, 726
- 16.44.102 and other rules - Hazardous Waste Management -
Federal Regulatory Changes Pertaining to Closure
and Post-closure Requirements - Access to Public
Records - Transfer Facilities - Commercial
Transfer Facilities Holding Hazardous Wastes for
Ten Days or Less, p. 1881, 53
- 16.44.303 and other rules - Hazardous Wastes - Definition
of Hazardous Wastes - Requirements for Recyclable
Materials - Reclassification as a Boiler -
Regulation of Certain Recycling Activities -
Information Statement Pertaining to ARM Title 16,
Chapter 10, Regarding the Availability of
Information, p. 459

HIGHWAYS, Department of, Title 18

- I Certifying Drivers of Special Vehicle
Combinations, p. 31, 386

INSTITUTIONS, Department of, Title 20

- 20.2.201 Contested Cases, General Authority, p. 2341, 387
- 20.3.401 Certification of Chemical Dependency Counselor,
Costs of Re-examination, p. 156, 576

JUSTICE, Department of, Title 23

- I-II Exemption from the Seatbelt Use Act, p. 2058, 173
- 23.3.118 and other rule - Vision Tests - Vision Standards
for Driver Licenses, p. 1002, 1611, 503
- 23.3.133 and other rules - Licensing of Commercial Motor
Vehicle Operators, p. 1399, 62
- 23.3.301 and other rules - Highway Patrol Qualifications
and Procedures, p. 1748, 72
- 23.4.101 and other rules - Alcohol Analysis, p. 2138, 275

LABOR AND INDUSTRY, Department of, Title 24

- 24.12.204 Establishing Qualifications of Daycare Providers
for the New Horizons Program, p. 33, 388
(Human Rights Commission)
- 24.9.214 and other rules - Procedures for Contested Case
Hearings, p. 669
(Workers' Compensation Division)
- I Rates for Hospital Services, p. 1918, 2388
- 24.29.702A and other rules - Self-Insurers, p. 1549, 1920,
2385

STATE LANDS, Department of, Title 26

- I and other rules - Federal Farm Compliance Program
 - Fee Schedule - Definitions - Rental Rates -
 Lease and License Reports and Renewal -
 Assignments - Subleasing - Pasturing Agreements -
 Cancellation of Lease or License - Mortgages and
 Pledges, p. 1281, 73

LIEUTENANT GOVERNOR, Title 30

(Statehood Centennial Office)

- 30.3.102 and other rule - Changing of Royalties for
 Exclusive Licenses - Fees for Project Licenses,
 p. 2222

LIVESTOCK, Department of, Title 32

- I Establishment of a State Meat and Poultry
 Inspection Program, p. 2342, 390
32.3.104 Subject Diseases or Conditions, p. 1293, 83
32.3.216 Equine Quarantine Stations, p. 1288, 84
32.3.220 Importation of Bovine Semen, p. 2345, 389
32.3.401 and other rules - Clarifying Authority for
 Control of Brucellosis - Affected Herd Owner'
 Rights and Obligations, p. 1295, 85
32.3.1203 and other rules - Updating Rabies Procedures,
 p. 1930, 86

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

(Board of Natural Resources and Conservation)

- I-XXII Procedures and Policy for the Reclamation and
 Development Grants Program, p. 2347, 727
36.15.216 Minimum Standards for Granting a Permit for the
 Establishment or Alteration of an Artificial
 Obstruction or Nonconforming Use in a Designated
 Floodway, p. 691
36.16.101 and other rules - Policy and Purpose of Rules -
 Definitions - Forms - Applications - General -
 Application Content - Analysis of Need -
 Determination of Amount - Management Plans -
 Processing Applications and Monitoring
 Reservations - Department Responsibilities -
 Action on Applications and Monitoring
 Reservations - Board Responsibilities - Action on
 Applications - Board Decision Criteria -
 Individual Users - Fees and Costs - Applications
 in Missouri River Basin, p. 787

PUBLIC SERVICE REGULATION, Department of, Title 38

- I Allowing All Motor Carriers Registered with the

- Montana Public Service Commission to Purchase a
Temporary Vehicle Trip Permit in Lieu of a
Vehicle Identification Stamp, p. 2224, 276
I-IV Ratemaking Treatment of Contribution in Aid of
Construction, p. 2356, 731

REVENUE, Department of, Title 42

- I "Point of Beneficiation" Mines Net Proceeds,
p. 949
I Limitation on Charitable Contribution Deduction
for Corporations, p. 965
I Metalliferous Mines Tax - Average Price
Quotations, p. 971
I Partial Payment of Taxes - Rules on Waiver of
Penalty and Interest, p. 565, 882
I Clarification of Exception to Tax Levy Limit for
the Property Assessment Division, p. 2071, 396
I Small Business Liability Funds, p. 1750, 2390
I Definition of Earned Income, p. 1943, 2243
I Surtax on Corporations, p. 1951, 277
I and other rule - Residences of Disabled Veterans,
p. 243, 737
I-II Installment Gains - Corporations, p. 963
I-II Low Income Residential Property Tax Benefit,
p. 238, 734
I-II New and Expanding Industry and Class Twenty
Property, p. 264, 742
I-III Partnerships in Apportionment Formula, p. 947
I-VI Sales Assessment Ratio Studies to Adjust Real
Property Values, p. 158, 577
I-VII Airline Regulations for Corporation License Tax,
p. 2073, 401
I-VIII Purchasing and Distribution of Liquor and Table
Wine Products, p. 1932, 87
I-XI Accommodations Tax for Lodging, p. 1020, 1637
I-XI Water's Edge Election for Multinational
Corporations for Corporation Taxes, p. 1945,
2226, 278
42.6.101 and other rules - Scale of Suggested Minimum
Contributions for Child Support, p. 1941, 2391
42.6.121 and other rule - Child Support Collection Fees,
p. 360, 733
42.15.311 and other rule - Withholding from Retirement Plan
Benefits, p. 1430, 1752, 392
42.17.105 Computation of Withholding - Income Tax, p. 1953,
2244
42.21.101 and other rule - Aircraft and Watercraft
Taxation, p. 236, 746
42.21.106 and other rules - Trending and Depreciation for
Personal Property for Taxation Purposes,
p. 249, 747
42.21.114 Abstract Record Valuation, p. 247, 748

- 42.21.120 and other rules - Taxation of Livestock, p. 232, 751
- 42.22.101 and other rule - Taxation of Airlines, p. 229, 752
- 42.25.503 Failure to File Coal Gross Proceeds Returns, p. 961
- 42.25.511 Coal Gross Proceeds on Processing, Refining, Royalties for Contract Sales Price, p. 943
- 42.25.512 Imputed Valuation of Coal, p. 957
- 42.25.1001 and other rules - Net Proceeds Rules for the Natural Resource and Corporation Tax Division, p. 361, 980
- 42.25.1101 and other rule - Scoria and Travertine for RITT and Net Proceeds, p. 955
- 42.25.1112 Machinery Expense Deduction for Mines Net Proceeds, p. 953
- 42.25.1115 Deduction for New Reduction Equipment Related to Mines Net Proceeds, p. 945
- 42.25.1116 Mines Net Proceeds - Transportation Expenses, p. 959
- 42.26.236 Exclusion of Royalties From Property Factor, p. 951
- 42.26.236 Valuation of Rented Property, p. 967
- 42.28.324 Motor Fuels Tax - Failure to Maintain Records, p. 969

SECRETARY OF STATE, Title 44

- I and other rules - Fees for Filing Federal Tax Liens - Fees for Filing Documents, p. 470, 828
- I-II and other rule - Fees and Format for Filing Notice of Agricultural Lien and Certificate of Information Obtained by Public Access, p. 1553, 2163, 2392
- 1.2.419 1988 Scheduled Dates for Filing and Publication of the Montana Administrative Register, p. 2080, 2392
- 1.2.421 and other rules - Subscription to the ARM - Cost - Agency Filing Fees, p. 1956, 2357A, 282
- 44.9.202 and other rules - Procedures for Conducting Elections by Mail Ballot, p. 1753, 2394
(Commissioner of Political Practices)
- 44.10.331 and other rules - Limitations on Receipts from Political Committees to Legislative Candidates - Uniform System of Accounts - Mass Collections at Fundraising Events, p. 161, 595

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

- I-VII and other rule - Reporting and Handling of Incidents Relating to Recipients of Developmental Disability Services, p. 39, 381
- 46.2.210 and other rule - Administrative Fair Hearings,

- p. 2082, 2395
- 46.2.302 Civil Rights Complaints, p. 693
- 46.8.102 and other rules - Individual Habilitation Plans for Developmentally Disabled Persons, p. 695, 1007
- 46.8.501 Quarterly Reports Required of the Developmental Disabilities Division, p. 2358, 285
- 46.12.102 Medicaid Reimbursement for Multi-source Drugs, p. 1958, 753
- 46.12.201 Eligibility Requirements for Medical Assistance, p. 35, 404
- 46.12.204 and other rules - Medicaid Optional Services, p. 377, 758
- 46.12.315 Prohibition of Certain Provider Fee Increases, p. 2142, 91
- 46.12.502 and other rules - Reimbursement for Physician Services, p. 814
- 46.12.503 and other rules - Diagnosis Related Groups, p. 820
- 46.12.530 and other rules - Outpatient Speech Therapy Services, p. 810
- 46.12.541 Hearing Aids, p. 36, 596
- 46.12.555 and other rules - Personal Care Services, p. 872
- 46.12.602 and other rule - Dental Services, p. 2359, 286
- 46.12.1201 Nursing Home Reimbursement - Transition From Rules in Effect Since July 1, 1987, p. 803
- 46.12.1204 Nursing Home Payment Rates, p. 164, 506
- 46.12.1401 and other rules - Home and Community Services Program, p. 856
- 46.12.3803 Cost of Living Increases in Medically Needy Income Standards, p. 2084, 2397
- 46.13.301 and other rules - Establishment of a Percentage of Income Plan (PIP) In Ravalli County, p. 1757, 2245
- 46.14.301 and other rules - Low Income Weatherization Assistance Program, p. 2227, 289