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ISSUE NO. 14

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION,
BOARD OF LAND COMMISSIONERS,
AND
DEPARTMENT OF STATE LANDS

In the matter of the repeal of A.R.M. 4.2.301 through 311, 8.2.301, 12.2.401 through 427, 16.2.110, 16.2.601 through 621, 16.2.701 through 705, 18.2.101 through 234, 26.2.601 through 633, 36.2.501 through 520, 36.2.601 through 604, and 36.2.606 and the adoption of New Rules I through XXVI providing standards and procedures for implementation of the Montana Environmental Policy Act	NOTICE OF PUBLIC HEARINGS ON THE REPEAL OF EXISTING MONTANA ENVIRONMENTAL POLICY ACT RULES AND ADOPTION OF NEW MONTANA ENVIRONMENTAL POLICY ACT RULES

To: All Interested Persons

1. On August 23, 1988 at 7:00 P.M., a public hearing will be held in Room 104, State Capitol Building, Helena, Montana, to consider the repeal of most existing Montana Environmental Policy Act (MEPA) rules for all executive agencies under the Governor that currently have MEPA rules and the adoption of new uniform MEPA rules for those agencies. On August 24, 1988 at 7:00 P.M., a public hearing will be held in the Lewis Room, Student Union Building, Eastern Montana College, Billings, Montana, for the same purpose.

2. The proposed new rules replace the existing uniform MEPA rules, which are being repealed. The process would have the overall effect of amending the existing uniform MEPA rules. However, because of the extensive nature of the changes, the existing rules are being proposed for repeal. The rules proposed to be repealed can be found on pages 4-17 through 4-28, 8-41, 12-22 through 12-37, 16-17 and 16-18, 16-23 through 16-38, 18-24 through 18-36, 26-44 through 26-77, and 36-35 through 36-50 of the Administrative Rules of Montana.

3. The proposed rules provide as follows:

"I. POLICY STATEMENT CONCERNING MEPA RULES The purpose of [these rules] is to implement Title 75, chapter 1, MCA, the Montana Environmental Policy Act (MEPA), through the establishment of administrative procedures. MEPA requires that state agencies comply with its terms "to the fullest extent possible."In order to fulfill the stated policy of that act, the agency shall conform to the following rules prior to reaching a final decision on proposed actions covered by MEPA."

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

"II. DEFINITIONS (1) 'Action' means a project, program or activity directly undertaken by the agency; a project or activity supported through a contract, grant, subsidy, loan or other form of funding assistance from the agency, either singly or in combination with one or more other state agencies; or a project or activity involving the issuance of a lease, permit, license, certificate, or other entitlement for use or permission to act by the agency, either singly or in combination with other state agencies.

(2) 'Alternative' means:

(a) an alternate approach or course of action that would appreciably accomplish the same objectives or results as the proposed action;

(b) design parameters, mitigation, or controls other than those incorporated into a proposed action by an applicant or by an agency prior to preparation of an EA or draft EIS;

(c) no action or denial; and

(d) for agency-initiated actions, a different program or series of activities that would accomplish other objectives or a different use of resources than the proposed program or series of activities. The agency is required to consider only alternatives that are realistic, technologically available, and that represent a course of action that bears a logical relationship to the proposal being evaluated.

(3) 'The agency' means [agency adopting rules].

(4) 'Applicant' means a person or any other entity who applies to the agency for a grant, loan, subsidy, or other funding assistance, or for a lease, permit, license, certificate, or other entitlement for use or permission to act.

(5) 'Categorical exclusion' refers to a type of action which does not individually, collectively, or cumulatively have a significant impact on the quality of the human environment as determined by rulemaking or programmatic review adopted by the agency.

(6) 'Compensation' means the replacement or provision of substitute resources or environments to offset an impact on the quality of the human environment. The agency may not consider compensation for purposes of determining the significance of impacts (see Rule III(4)(b)).

(7) 'Cumulative impact' means the collective impacts on the human environment of the proposed action when considered in conjunction with other past and present actions related to the proposed action by location or generic type. Related future actions must also be considered when these actions are under concurrent consideration by any state agency through pre-impact statement studies, separate impact statement evaluation, or permit processing procedures.

(8) 'Emergency actions' include, but are not limited to:

(a) projects undertaken, carried out, or approved by the

agency to repair or restore property or facilities damaged or destroyed as a result of a disaster when a disaster has been declared by the governor or other appropriate government entity;

(b) emergency repairs to public service facilities necessary to maintain service; and

(c) projects, whether public or private, undertaken to prevent or mitigate immediate threats to public health, safety, welfare, or the environment.

(9) 'Environmental assessment' (EA) means a written analysis of a proposed action to determine whether an EIS is required or to serve one or more of the other purposes described in Rule III(2).

(10) 'Environmental impact statement' (EIS) means the detailed written statement required by section 75-1-201, MCA, which may take several forms:

(a) "Draft environmental impact statement" means a detailed written statement prepared to the fullest extent possible in accordance with 75-1-201(1)(b)(iii), MCA, and [these rules];

(b) "Final environmental impact statement" means a written statement prepared to the fullest extent possible in accordance with 75-1-201, MCA, and Rules X or XI and which responds to substantive comments received on the draft environmental impact statement;

(c) "Joint environmental impact statement" means an EIS prepared jointly by more than one agency, either state or federal, when the agencies are involved in the same or a closely related proposed action.

(11) 'Environmental quality council' (EQC) means the council established pursuant to Title 75, chapter 1, MCA, and 5-16-101, MCA.

(12) 'Human environment' includes, but is not limited to biological, physical, social, economic, cultural, and aesthetic factors that interrelate to form the environment. As the term applies to the agency's determination of whether an EIS is necessary (see Rule III(1)), economic and social impacts do not by themselves require an EIS. However, whenever an EIS is prepared, economic and social impacts and their relationship to biological, physical, cultural and aesthetic impacts must be discussed.

(13) 'Lead agency' means the state agency that has primary authority for committing the government to a course of action or the agency designated by the governor to supervise the preparation of a joint environmental impact statement or environmental assessment.

(14) 'Mitigation' means:

(a) avoiding an impact by not taking a certain action or parts of an action;

(b) minimizing impacts by limiting the degree or magnitude of an action and its implementation;

(c) rectifying an impact by repairing, rehabilitating, or restoring the affected environment; or

(d) reducing or eliminating an impact over time by

preservation and maintenance operations during the life of an action or the time period thereafter that an impact continues.

(15) 'Programmatic Review' means an analysis (EIS or EA) of the impacts on the quality of the human environment of related actions, programs, or policies.

(16) 'Scope' means the range of reasonable alternatives, mitigation, issues, and potential impacts to be considered in an environmental assessment or an environmental impact statement.

(17) 'Secondary impact' means a further impact to the human environment that may be stimulated or induced by or otherwise result from a direct impact of the action.

(18) 'State agency', means an office, commission, committee, board, department, council, division, bureau, or section of the executive branch of state government."

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

"III. GENERAL REQUIREMENTS OF THE ENVIRONMENTAL REVIEW PROCESS Section 75-1-201 requires state agencies to integrate use of the natural and social sciences and the environmental design arts in planning and in decision-making, and to prepare a detailed statement (an EIS) on each proposal for projects, programs, legislation, and other major actions of state government significantly affecting the quality of the human environment. In order to determine the level of environmental review for each proposed action that is necessary to comply with 75-1-201, MCA, the agency shall apply the following criteria:

(1) The agency shall prepare an EIS as follows:

(a) whenever an EA indicates that an EIS is necessary; or

(b) whenever, based on the criteria in Rule IV, the proposed action is a major action of state government significantly affecting the quality of the human environment.

(2) An EA may serve any of the following purposes:

(a) to ensure that the agency uses the natural and social sciences and the environmental design arts in planning and decision-making. An EA may be used independently or in conjunction with other agency planning and decision-making procedures;

(b) to assist in the evaluation of reasonable alternatives and the development of conditions, stipulations or modifications to be made a part of a proposed action;

(c) to determine the need to prepare an EIS through an initial evaluation and determination of the significance of impacts associated with a proposed action;

(d) to ensure the fullest appropriate opportunity for public review and comment on proposed actions, including alternatives and planned mitigation, where the residual impacts do not warrant the preparation of an EIS; and

(e) to examine and document the effects of a proposed action on the quality of the human environment, and to provide the basis for public review and comment, whenever statutory requirements do not allow sufficient time for an agency to prepare an EIS. The

agency shall determine whether sufficient time is available to prepare an EIS by comparing statutory requirements that establish when the agency must make its decision on the proposed action with the time required by Rule XII to obtain public review of an EIS plus a reasonable period to prepare a draft EIS and, if required, a final EIS.

(3) The agency shall prepare an EA whenever:

(a) the action is not excluded under (4) and it is not clear without preparation of an EA whether the proposed action is a major one significantly affecting the quality of the human environment;

(b) the action is one that might normally require an EIS, but effects which might otherwise be deemed significant appear to be mitigable below the level of significance through design and committed, enforceable controls or stipulations imposed by the agency or other government agencies. For an EA to suffice in this instance, the agency must determine that all of the impacts of the proposed action have been accurately identified, that they will be mitigated below the level of significance, and that no significant impact is likely to occur. The agency may not consider compensation for purposes of determining that impacts have been mitigated below the level of significance. Extensive public review must be provided for in such instances (see Rule VI);

(c) the action is not excluded under (4) and although an EIS is not warranted, the agency has not otherwise implemented the interdisciplinary analysis and public review purposes listed in (2) (a) and (d) through a similar planning and decision-making process; or

(d) statutory requirements do not allow sufficient time for the agency to prepare an EIS.

(4) The agency is not required to prepare an EA or an EIS for the following categories of action:

(a) actions that qualify for a categorical exclusion as defined and justified by rule or a programmatic review. In the rule or programmatic review, a department shall identify any extraordinary circumstances in which a normally excluded action may have a significant environmental effect and therefore require further evaluation under [these rules];

(b) administrative actions: routine, clerical or similar functions of a department, including but not limited to administrative procurement, contracts for consulting services, and personnel actions;

(c) minor repairs, operations, or maintenance of existing equipment or facilities;

(d) investigation and enforcement: data collection, inspection of facilities or enforcement of environmental standards;

(e) ministerial actions: actions in which the agency exercises no discretion, but rather acts upon a given state of facts in a prescribed manner; and

(f) actions that are primarily social or economic in nature

and that do not otherwise affect the human environment."
AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

"IV. DETERMINING THE SIGNIFICANCE OF IMPACTS In order to implement 75-1-201, MCA, the agency shall determine the significance of impacts associated with a proposed action. This determination is the basis of the agency's decision concerning the need to prepare an EIS and also refers to the agency's evaluation of individual and cumulative impacts in either EAs or EISs. The agency shall consider the following criteria in determining the significance of each impact on the quality of the human environment:

(1) the severity, duration, geographic extent, and frequency of occurrence of the impact;

(2) the probability that the impact will occur if the proposed action occurs; or conversely, reasonable assurance in keeping with the potential severity of an impact that the impact will not occur;

(3) growth-inducing or growth-inhibiting aspects of the impact, including the relationship or contribution of the impact to cumulative impacts;

(4) the quantity and quality of each environmental resource or value that would be affected, including the uniqueness and fragility of those resources or values;

(5) the importance to the state and to society of each environmental resource or value that would be affected;

(6) any precedent that would be set as a result of an impact of the proposed action that would commit the department to future actions with significant impacts or a decision in principle about such future actions; and

(7) potential conflict with local, state, or federal laws, requirements, or formal plans."
AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

"V. PREPARATION AND CONTENTS OF ENVIRONMENTAL ASSESSMENTS (1) The agency shall prepare an EA, regardless of its length or the depth of analysis, in a manner which utilizes an interdisciplinary approach.

(2) For a routine action with limited environmental impact, the contents of an EA may be reflected on a standard checklist format. At the other extreme, whenever an action is one that might normally require an EIS, but effects that otherwise might be deemed significant are mitigated in project design or by controls imposed by the agency, the analysis, format, and content must all be more substantial. The agency shall prepare the evaluations and present the information described in section (3) as applicable and in a level of detail appropriate to the following considerations:

(a) the complexity of the proposed action;

(b) the environmental sensitivity of the area affected by the

proposed action;

(c) the degree of uncertainty that the proposed action will have a significant impact on the quality of the human environment;

(d) the need for and complexity of mitigation required to avoid the presence of significant impacts.

(3) To the degree required in (2) above, an EA must include:

(a) a description of the proposed action, including maps and graphs;

(b) a description of the benefits and purpose of the proposed action;

(c) a listing of any state, local, or federal agencies that have overlapping or additional jurisdiction or environmental review responsibility for the proposed action and the permits, licenses, and other authorizations required;

(d) an evaluation of the impacts, including cumulative and secondary impacts, on the physical environment. This evaluation may take the form of an environmental checklist and/or, as appropriate, a narrative containing more detailed analysis of topics and impacts that are potentially significant, including, where appropriate: terrestrial and aquatic life and habitats; water quality, quantity, and distribution; geology; soil quality, stability, and moisture; vegetation cover, quantity and quality; aesthetics; air quality; unique, endangered, fragile, or limited environmental resources; historical and archaeological sites; and demands on environmental resources of land, water, air and energy;

(e) an evaluation of the impacts, including cumulative and secondary impacts, on the human population in the area to be affected by the proposed action. This evaluation may take the form of an environmental checklist and/or, as appropriate, a narrative containing more detailed analysis of topics and impacts that are potentially significant, including where appropriate, social structures and mores; cultural uniqueness and diversity; access to and quality of recreational and wilderness activities; local and state tax base and tax revenues; agricultural or industrial production; human health; quantity and distribution of employment; distribution and density of population and housing; demands for government services; industrial and commercial activity; locally adopted environmental plans and goals; and other appropriate social and economic circumstances;

(f) a description and analysis of reasonable alternatives to a proposed action whenever alternatives are reasonably available and prudent to consider and a discussion of how the alternative would be implemented;

(g) a listing and appropriate evaluation of mitigation, stipulations, and other controls committed to and enforceable by the agency or another government agency;

(h) a listing of other agencies or groups that have been contacted or have contributed information;

(i) the names of persons responsible for preparation of the EA; and

(j) a finding on the need for an EIS and, if appropriate, an explanation of the reasons for preparing the EA. If an EIS is not required, the EA must describe the reasons the EA is an appropriate level of analysis.

(4) The agency may initiate a process to determine the scope of issues to be addressed in an EA. If the agency elects to initiate this process, it shall follow the procedures contained in Rule VII."

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

"VI. PUBLIC REVIEW OF ENVIRONMENTAL ASSESSMENTS (1) The level of analysis in an EA will vary with the complexity and seriousness of environmental issues associated with a proposed action. The level of public interest will also vary. The agency is responsible for adjusting public review to match these factors.

(2) An EA is a public document and may be inspected upon request. Any person may obtain a copy of an EA by making a request to the agency. If the document is out-of-print, a copying charge may be levied.

(3) The agency is responsible for providing additional opportunities for public review consistent with the seriousness and complexity of the environmental issues associated with a proposed action and the level of public interest. Methods of accomplishing public review include publishing a news release or legal notice to announce the availability of an EA, summarizing its content and soliciting public comment; holding public meetings or hearings; maintaining mailing lists of persons interested in a particular action or type of action and notifying them of the availability of EAs on such actions; and distributing copies of EAs for review and comment.

(4) For an action with limited environmental impact and little public interest, no further public review may be warranted. However, where an action is one that normally requires an EIS, but effects that otherwise might be deemed significant are mitigated in the project proposal or by controls imposed by the agency, extensive public involvement must be employed. The agency is responsible for determining appropriate methods to ensure adequate public review on a case by case basis.

(5) The agency shall maintain a log of all EAs completed by the agency and shall submit a list of any new EAs completed to the office of the governor and the environmental quality council on a quarterly basis. In addition, the agency shall submit a copy of each completed EA to the EQC.

(6) The agency shall consider the substantive comments received in response to an EA and proceed in accordance with one of the following steps, as appropriate:

(a) determine that an EIS is necessary;

(b) determine that the EA did not adequately reflect the issues raised by the proposed action and issue a revised document; or

(c) determine that an EIS is not necessary and make a final decision on the proposed action, with appropriate modification resulting from the analysis in the EA and analysis of public comment."

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

"VII. DETERMINING THE SCOPE OF AN EIS (1) Prior to the preparation of an EIS, the agency shall initiate a process to determine the scope of the EIS.

(2) To identify the scope of an EIS, the agency shall:

(a) invite the participation of affected federal, state, and local government agencies, Indian tribes, the applicant, if any, and interested persons or groups;

(b) identify the issues related to the proposed action that are likely to involve significant impacts and that will be analyzed in depth in the EIS;

(c) identify the issues that are not likely to involve significant impacts, thereby indicating that unless unanticipated effects are discovered during the preparation of the EIS, the discussion of these issues in the EIS will be limited to a brief presentation of the reasons they will not significantly affect the quality of the human environment; and

(d) identify those issues that have been adequately addressed by prior environmental review, thereby indicating that the discussion of these issues in the EIS will be limited to a summary and reference to their coverage elsewhere; and

(e) identify possible alternatives to be considered."

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

"VIII. ENVIRONMENTAL IMPACT STATEMENTS--GENERAL REQUIREMENTS The following apply to the design and preparation of EISs:

(1) The agency shall prepare EISs that are analytic rather than encyclopedic.

(2) The agency shall discuss the impacts of a proposed action in a level of detail that is proportionate to their significance. For other than significant issues, an EIS need only include enough discussion to show why more study is not warranted.

(3) The agency shall prepare with each draft and final EIS a brief summary that is available for distribution separate from the EIS. The summary must describe:

(a) the proposed action being evaluated by the EIS, the impacts, and the alternatives;

(b) areas of controversy and major conclusions;

(c) the tradeoffs among the alternatives; and

(d) the agency's preferred alternative, if any."

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

"IX. PREPARATION AND CONTENTS OF DRAFT ENVIRONMENTAL IMPACT STATEMENTS If required by these rules, the agency shall prepare a draft environmental impact statement using an interdisciplinary approach and containing the following:

(1) a description of the proposed action, including its purpose and benefits;

(2) a listing of any state, local, or federal agencies that have overlapping or additional jurisdiction and a description of their responsibility for the proposed action;

(3) a description of the current environmental conditions in the area significantly affected by the proposed action, including maps and charts, whenever appropriate;

(4) a description of the impacts on the quality of the human environment of the proposed action including:

(a) the factors listed in (3)(d) and (e) of Rule V, whenever appropriate;

(b) primary, secondary, and cumulative impacts;

(c) potential growth-inducing or growth-inhibiting impacts;

(d) irreversible and irretrievable commitments of environmental resources, including land, air, water and energy;

(e) economic and environmental benefits and costs of the proposed action; and

(f) the relationship between local short-term uses of man's environment and the effect on maintenance and enhancement of the long-term productivity of the environment;

(5) an analysis of reasonable alternatives to the proposed action, including the alternative of no action and other reasonable alternatives that may or may not be within the jurisdiction of the agency to implement, if any;

(6) a discussion of mitigation, stipulations, or other controls committed to and enforceable by the agency or other government agency;

(7) a discussion of any compensation related to impacts stemming from the proposed action;

(8) an explanation of the tradeoffs among the reasonable alternatives;

(9) the agency's preferred alternative on the proposed action, if any, and its reasons for the preference;

(10) a section on consultation and preparation of the EIS that includes the following:

(a) the names of those individuals or groups responsible for preparing the EIS;

(b) a listing of other agencies, groups, or individuals who were contacted or contributed information; and

(c) a summary list of source materials used in the preparation of the draft EIS;

(11) a summary of the EIS as required in Rule VIII; and

(12) other sections that may be required by other statutes in a comprehensive evaluation of the proposed action, or by the National Environmental Policy Act or other federal statutes governing a cooperating federal agency."

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

"X. ADOPTION OF DRAFT ENVIRONMENTAL IMPACT STATEMENT AS FINAL (1) Depending upon the substantive comments received in response to the draft EIS, the draft statement may suffice. In this case, the agency shall notify the governor, EQC, the applicant, if any, and all commentors of its decision to adopt the draft EIS as a final EIS and provide a statement describing its proposed course of action. This notification must be accompanied by a copy of all comments or a summary of a representative sample of comments received in response to the draft statement, together with, at minimum, an explanation of why the issues raised do not warrant the preparation of a final EIS.

(2) The agency shall provide public notice of its decision to adopt the draft EIS as a final.

(3) The agency shall determine whether a final EIS is necessary within 30 days of the close of the comment period on the draft EIS.

(4) If the agency decides to adopt the draft EIS as the final EIS, it may make a final decision on the proposed action no sooner than 15 days after complying with subsections (1) and (2) above."

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

"XI. PREPARATION AND CONTENTS OF FINAL ENVIRONMENTAL IMPACT STATEMENT A final environmental impact statement must include:

(1) a summary of major conclusions and supporting information from the draft EIS and the responses to substantive comments received on the draft EIS, stating specifically where such conclusions and information were changed from those which appeared in the draft;

(2) a list of all sources of written and oral comments on the draft EIS, including those obtained at public hearings, and, unless impractical, the text of comments received by the agency (in all cases, a representative sample of comments must be included);

(3) the agency's responses to substantive comments, including an evaluation of the comments received and disposition of the issues involved;

(4) data, information, and explanations obtained subsequent to circulation of the draft; and

(5) the agency's recommendation, preferred alternative, or proposed decision on the proposed action, together with an explanation of the reasons for the decision."

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

"XII. TIME LIMITS AND DISTRIBUTION OF ENVIRONMENTAL IMPACT STATEMENTS (1) Following preparation of a draft EIS, the agency shall distribute copies to the governor, EQC, appropriate state and federal agencies, the applicant, if any, and persons who have requested copies.

(2) The listed transmittal date to the governor and the EQC must not be earlier than the date that the draft EIS is mailed to other agencies, organizations, and individuals. The agency shall allow 30 days for reply, provided that the agency may extend this period up to an additional 30 days at its discretion or upon application of any person for good cause. When preparing a joint EIS with a federal agency or agencies, the agency may also extend this period in accordance with time periods specified in regulations that implement the National Environmental Policy Act. However, no extension which is otherwise prohibited by law may be granted.

(3) In cases involving an applicant, after the period for comment on the draft EIS has expired, the agency shall send to the applicant a copy of all written comments that were received. The agency shall advise the applicant that he has a reasonable time to respond in writing to the comments received by the agency on the draft EIS and that the applicant's written response must be received before a final EIS can be prepared and circulated. The applicant may waive his right to respond to the comments on the draft EIS.

(4) Following preparation of a final EIS, the agency shall distribute copies to the governor, EQC, appropriate state and federal agencies, the applicant, if any, persons who submitted comments on or received a copy of the draft EIS, and other members of the public upon request.

(5) Except as provided by Rule X(4), a final decision must not be made on the proposed action being evaluated in a final EIS until 15 days have expired from the date of transmittal of the final EIS to the governor and EQC. The listed transmittal date to the governor and EQC must not be earlier than the date that the final EIS is mailed to other agencies, organizations, and individuals.

(6) All written comments received on an EIS, including written responses received from the applicant, must be made available to the public upon request.

(7) Until the agency reaches its final decision on the proposed action, no action concerning the proposal may be taken that would:

(a) have an adverse environmental impact; or

(b) limit the choice of reasonable alternatives, including the no-action alternative."

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

"XIII. SUPPLEMENTS TO ENVIRONMENTAL IMPACT STATEMENTS (1) The agency shall prepare supplements to either draft or final environmental impact statements whenever:

(a) the agency or the applicant makes a substantial change in a proposed action;

(b) there are significant new circumstances, discovered prior to final agency decision, including information bearing on the proposed action or its impacts that change the basis for the decision; or

(c) following preparation of a draft EIS and prior to completion of a final EIS, the agency determines that there is a need for substantial, additional information to evaluate the impacts of a proposed action or reasonable alternatives.

(2) A supplement must include, but is not limited to, a description of the following:

(a) the proposed action; and

(b) any impacts, alternatives or other items required by Rule IX for a draft EIS or Rule XI for a final EIS that were either not covered in the original statement or that must be revised based on new information or circumstances concerning the proposed action.

(3) The same time periods applicable to draft and final EISs apply to the circulation and review of supplements."

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

"XIV. INCORPORATION BY REFERENCE AND ADOPTION (1) The agency shall adopt and incorporate by reference as part of a draft EIS all or any part of the information, conclusions, comments, and responses to comments contained in an existing EIS that has been previously or is being concurrently prepared pursuant to MEPA or the National Environmental Policy Act if the agency determines:

(a) that the existing EIS covers an action paralleling or closely related to the action proposed by the agency or the applicant;

(b) on the basis of its own independent evaluation, that the information contained in the existing EIS has been accurately presented; and

(c) that the information contained in the existing EIS is applicable to the action currently being considered.

(2) A summary of the existing EIS or the portion adopted or incorporated by reference and a list of places where the full text is available must be circulated as a part of the EIS and treated as part of the EIS for all purposes, including, if required, preparation of a final EIS.

(3) Whenever all or any part of an existing EIS is adopted or incorporated by reference, the agency must include the information required by Rule IX. The agency shall prepare a description of the proposed action and any other information requested by Rule IX.

(4) The same time periods applicable to draft and final EISs apply to the circulation and review of EISs that include material adopted or incorporated by reference from an existing EIS.

(5) The agency shall take full responsibility for the portions of a previous EIS adopted or incorporated. If the agency disagrees with certain portions of the previous EIS, it shall specifically discuss the points of disagreement.

(6) No material may be adopted or incorporated by reference unless it is reasonably available for inspection by interested persons within the time allowed for comment.

(7) Whenever part of an existing EIS or concurrently prepared EIS is incorporated by reference, the part incorporated must include sufficient material to allow the part incorporated to be considered in the context in which it was presented in the original EIS."

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

"XV. INTERAGENCY COOPERATION (1) Whenever it is the lead agency responsible for preparation of an EIS, the agency may:

(a) request the participation of other governmental agencies which have special expertise in areas that should be addressed in the EIS;

(b) allocate assignments, as appropriate, for the preparation of the EIS among other participating agencies; and

(c) coordinate the efforts of all affected agencies.

(2) Whenever participation of the agency is requested by a lead agency, the agency shall make a good-faith effort to participate in the EIS as requested, with its expenses for participation in the EIS paid by the lead agency or other agency collecting the EIS fee if one is collected. "

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

"XVI. JOINT ENVIRONMENTAL IMPACT STATEMENTS AND EA'S (1) Whenever the agency and one or more other state agencies have jurisdiction over an applicant's proposal or major state actions that individually, collectively, or cumulatively require an EIS and another agency is clearly the lead agency, the agency shall cooperate with the lead agency in the preparation of a joint EIS. Whenever it is clearly the lead agency, the agency shall coordinate the preparation of the EIS as required by this rule. Whenever the agency and one or more agencies have jurisdiction over an applicant's proposal or major state actions and lead agency status cannot be resolved, the agency shall request a determination from the governor.

(2) The agency shall cooperate with federal and local agencies in preparing EISs when the jurisdiction of the agency is involved. This cooperation may include, but is not limited to: joint environmental research studies, a joint process to determine the scope of an EIS, joint public hearings, joint EISs, and, whenever appropriate, joint issuance of a record of decision.

(3) Whenever the agency proposes or participates in an action that requires preparation of an EIS under both the National Environmental Policy Act and MEPA, the EIS must be prepared in compliance with both statutes and associated rules and regulations. The agency may, if required by a cooperating federal agency, accede to and follow more stringent requirements, such as additional content or public review periods, but in no case may it accede to less than is provided for in these rules.

(4) The same general provisions for cooperation and joint issuance of documents provided for in this rule in connection with EISs also apply to EAs."

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

"XVII. PREPARATION, CONTENT, AND DISTRIBUTION OF A PROGRAMMATIC REVIEW (1) Whenever the agency is contemplating a series of agency-initiated actions, programs, or policies which in part or in total may constitute a major state action significantly affecting the human environment, it shall prepare a programmatic review discussing the impacts of the series of actions.

(2) The agency may also prepare a programmatic review whenever required by statute, whenever a series of actions under the jurisdiction of the agency warrant such an analysis as determined by the agency, or whenever prepared as a joint effort with a federal agency requiring a programmatic review.

(3) The agency shall determine whether the programmatic review takes the form of an EA or an EIS in accordance with the provisions of Rules III and IV, unless otherwise provided by statute.

(4) A programmatic review must include, as a minimum, a concise, analytical discussion of alternatives and the cumulative environmental effects of these alternatives on the human environment. In addition programmatic reviews must contain the information specified in Rule IX for EISs or Rule V for EAs, as applicable.

(5) The agency shall adhere to the time limits specified for distribution and public comment on EISs or EAs, whichever is applicable.

(6) While work on a programmatic review is in progress, the agency may not take major state actions covered by the program in that interim period unless such action:

(a) is part of an ongoing program;

(b) is justified independently of the program; or

(c) will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program if it tends to determine subsequent development or foreclose reasonable alternatives.

(7) Actions taken under subsection (6) must be accompanied by an EA or an EIS, if required."

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

"XVIII. RECORD OF DECISION FOR ACTIONS REQUIRING ENVIRONMENTAL IMPACT STATEMENTS (1) At the time of its decision concerning a proposed action for which an EIS was prepared, the agency shall prepare a concise public record of decision. The record, which may be integrated into any other documentation of the decision that is prepared by the agency, is a public notice of what the decision is, the reasons for the decision, and any

special conditions surrounding the decision or its implementation.

(2) The agency may include in the final EIS a statement of its proposed decision, preferred alternative, or recommendation on the proposed action, the other items required by (1), and additional explanation as provided for in (3) below. If the final decision and the reasons for that final decision are the same as set forth in the final EIS, the agency may comply with (1) by preparing a public notice of what the decision is and adopting by reference the information contained in the final EIS that addresses the items required by (1). If the final decision or any of the items required by (1) are different from what was presented in the final EIS, the agency is responsible for preparing a separate record of decision.

(3) There is no prescribed format for a record of decision, except that it must include the items listed in (1). The record may include the following items as appropriate:

(a) brief description of the context of the decision;

(b) the alternatives considered;

(c) advantages and disadvantages of the alternatives;

(d) the alternative or alternatives considered environmentally preferable;

(e) short and long-term effects of the decision;

(f) policy considerations that were balanced and considered in making the decision;

(g) whether all practical means to avoid or minimize environmental harm were adopted, and if not, why not; and

(h) a summary of implementation plans, including monitoring and enforcement procedures for mitigation, if any.

(4) This rule does not define or affect the statutory decisionmaking authority of the agency."

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

"XIX. EMERGENCIES (1) The agency may take or permit action having a significant impact on the quality of the human environment in an emergency situation without preparing an EIS. Within 30 days following initiation of the action, the agency shall notify the governor and the EQC as to the need for the action and the impacts and results of it. Emergency actions must be limited to those actions immediately necessary to control the impacts of the emergency."

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

"XX. CONFIDENTIALITY (1) Information declared confidential by state law or by an order of a court must be excluded from an EA and EIS. The agency shall briefly state the general topic of the confidential information excluded."

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

"XXI. RESOLUTION OF STATUTORY CONFLICTS (1) Whenever a conflicting provision of another state law prevents the agency from fully complying with [these rules] the agency shall notify the governor and the EQC of the nature of the conflict and shall suggest a proposed course of action that will enable the agency to comply to the fullest extent possible with the provisions of MEPA. This notification must be made as soon as practical after the agency recognizes that a conflict exists, and no later than 30 days following such recognition.

(2) The agency has a continuing responsibility to review its programs and activities to evaluate known or anticipated conflicts between [these rules] and other statutory or regulatory requirements. It shall make such adjustments or recommendations as may be required to ensure maximum compliance with MEPA and these rules."

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

"XXII. CONTRACTS AND DISCLOSURE (1) The agency may contract for preparation of an EIS or portions thereof. Whenever an EIS or portion thereof is prepared by a contractor, the agency shall furnish guidance and participate in the preparation, independently evaluate the statement or portion thereof prior to its approval, and take responsibility for its scope and content.

(2) A person contracting with the agency in the preparation of an EIS must execute a disclosure statement, in affidavit form prepared by the agency, specifying that he has no financial or other interest in the outcome of the proposed action other than a contract with the agency."

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

"XXIII. PUBLIC HEARINGS (1) Whenever a public hearing is held on an EIS or an EA, the agency shall issue a news release or legal notice to newspapers of general circulation in the area to be affected by the proposed action prior to the hearing. The news release or legal notice must advise the public of the nature of testimony the agency wishes to receive at the hearing. The hearing must be held after the draft EIS has been circulated and prior to preparation of the final EIS. A hearing involving an action for which an EA was prepared must be held after the EA has been circulated and prior to any final agency determinations concerning the proposed action. In cases involving an applicant, the agency shall allow an applicant a reasonable time to respond in writing to comments made at a public hearing, notwithstanding the time limits contained in Rule XII, the applicant may waive his right to respond to comments made at a hearing.

(2) In addition to the procedure in (1) above, the agency shall take such other steps as are reasonable and appropriate to promote the awareness by interested parties of a scheduled hearing.

(3) The agency shall hold a public hearing whenever requested

within 20 days of issuance of the draft EIS by either:

(a) 10% or 25, whichever is less, of the persons who will be directly affected by the proposed action;

(b) by another agency which has jurisdiction over the action; or

(c) an association having not less than 25 members who will be directly affected by the proposed action.

(4) In determining whether a sufficient number of persons have requested a hearing as required by subsection (3), the agency shall resolve instances of doubt in favor of holding a public hearing.

(5) No person may give testimony at the hearing as a representative of a participating agency. Such a representative may, however, at the discretion of the hearing officer, give a statement regarding his or her agency's authority or procedures and answer questions from the public.

(6) Public meetings may be held in lieu of formal hearings as a means of soliciting public comment on EAs (see Rule VI(2)) and on an EIS where no hearing is requested under (3) above. However, the agency shall provide adequate advance notice of the meeting; and, other than the degree of formality surrounding the proceedings, the objectives of such a meeting are essentially the same as those for a hearing."

AUTH: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA.

"XXIV. FEES: DETERMINATION OF AUTHORITY TO IMPOSE (1) Whenever an application for a lease, permit, contract, license or certificate is expected to result in the agency incurring expenses in excess of $2,500 to compile an EIS, the applicant is required to pay a fee in an amount the agency reasonably estimates, as set forth in this rule, will be expended to gather information and data necessary to compile an EIS.

(2) The agency shall determine within 30 days after a completed application is filed whether it will be necessary to compile an EIS and assess a fee as prescribed by this rule. If it is determined that an EIS is necessary, the agency shall make a preliminary estimate of the costs to compile the statement. This estimate must include a summary of the data and information needs and the itemized costs of acquiring the data and information, including salaries, equipment costs and any other expense associated with the collection of data and information for the EIS.

(3) Whenever the preliminary estimated costs of acquiring the data and information to prepare an EIS total more than $2,500, the agency shall notify the applicant that a fee must be paid and submit an itemized preliminary estimate of the cost of acquiring the data and information necessary to compile an EIS. The agency shall also notify the applicant that a notarized and detailed estimate of the cost of the project being reviewed in the EIS must be submitted within 15 days after receipt of the request. In addition, the agency shall request the applicant to describe the

data and information available or being prepared by the applicant which can possibly be used in the EIS. The applicant may indicate which of the agency's estimated costs of acquiring data and information for the EIS would be duplicative or excessive. The applicant must be granted, upon request, an extension of the 15-day period for submission of an estimate of the project's cost and a critique of the agency's preliminary EIS data and information accumulation cost assessment."

AUTH: Sec. 75-1-202, MCA; IMP: Sec. 75-1-202, 203, 205, 206 and 207, MCA.

"XXV. FEES: DETERMINATION OF AMOUNT (1) After receipt of the applicant's estimated cost of the project and analysis of an agency's preliminary estimate of the cost of acquiring information and data for the EIS, the agency shall notify the applicant within 15 days of the final amount of the fee to be assessed. The fee assessed must be based on the projected cost of acquiring all of the information and data needed for the EIS. If the applicant has gathered or is in the process of gathering information and data that can be used in the EIS, the agency shall only use that portion of the fee that is needed to verify the information and data. Any unused portion of the fee assessed may be returned to the applicant within a reasonable time after the information and data have been collected or the information and data submitted by the applicant have been verified, but in no event later than the deadline specified in these rules. The agency may extend the 15-day period provided for review of the applicant's submittal but not to exceed 45 days if it believes that the project cost estimate submitted is inaccurate or additional information must be obtained to verify the accuracy of the project cost estimate. The fee assessed must not exceed the limitations provided in 75-1-203(2), MCA.

(2) If an applicant believes that the fee assessed is excessive or does not conform to the requirements of this rule or Title 75, chapter 1, part 2, MCA, the applicant may request a hearing pursuant to the contested case provisions of the Montana Administrative Procedure Act. If a hearing is held on the fee assessed as authorized by this subsection, the agency shall proceed with its analysis of the project wherever possible. The fact that a hearing has been requested is not grounds for delaying consideration of an application except to the extent that the portion of the fee in question affects the ability of the department to collect the data and information necessary for the EIS."

AUTH: Sec. 75-1-202, MCA; IMP: Sec. 75-1-202, 203, 205, 206 and 207, MCA.

"XXVI. USE OF FEE (1) The fee assessed hereunder may only be used to gather data information necessary to compile an EIS. No fee may be assessed if an agency intends only to compile an EA or a programmatic review. If a department collects a fee and later determines that additional data and information must be

collected or that data and information supplied by the applicant and relied upon by the agency are inaccurate or invalid, an additional fee may be assessed under the procedures outlined in these rules if the maximum fee has not been collected.

(2) Whenever the agency has completed work on the EIS, it shall submit to the applicant a complete accounting of how any fee was expended. If the cost of compiling an EIS is less than the fee collected, the remainder of the fee shall be refunded to the applicant without interest within 45 days after work has been completed on the final EIS."

AUTH: Sec. 75-1-202, MCA; IMP: Sec. 75-1-202, 203, 205, 206 and 207, MCA.

4. The proposed rules are necessary to codify in the MEPA rules certain practices, such as public hearings, meetings, other public notice, scoping, and records of decision, that give the public a greater opportunity to participate in the agency's decision-making process. The new rules are also necessary to bring the MEPA rules into closer conformance with the federal National Environmental Policy Act rules and federal practice and to make the MEPA rules more readable and easily understood.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearings. Written data, views, or arguments may also be submitted to Brace Hayden, Office of the Governor, Capitol Station, Helena, Montana 59620, no later than August 29, 1988. To be ensured consideration, mailed comments must be postmarked no later than August 29, 1988.

6. Brace Hayden has been designated to preside over and conduct the hearings.

7. The authority of the agencies to make the proposed rules is based on sections 2-3-103, 2-4-201, and 75-1-202, MCA. The rules implement sections 2-3-104, and 75-1-201, 202, 203, 205, 206, and 207, MCA.

Keith A. Kelly, Director
Department of Agriculture

Keith L. Colbo, Director
Department of Commerce

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

Dr. John J. Dryhan, Director
Department of Health and
Environmental Sciences

Howard Toole, Chairman
Board of Health and Environmental
Sciences

Gary Wicks, Director
Department of Highways

W. David Darby, Deputy Director
Department of Natural Resources
and Conservation and for the
Board of Natural Resources and
Conservation

Dennis Hemmer, Commissioner
for Department of State Lands and
Board of Land Commissioners

Certified to the Secretary of State July 18, 1988.

STATE OF MONTANA
DEPARTMENT OF AGRICULTURE
BEFORE THE WHEAT RESEARCH AND
MARKETING COMMITTEE

In the matter of the proposed amendment of the rule relating to the annual assessment on wheat and barley	)))	NOTICE OF PUBLIC HEARING OF THE PROPOSED AMENDMENT OF RULE 4.9.401 RELATING TO THE ANNUAL ASSESSMENT ON WHEAT AND BARLEY

TO ALL INTERESTED PERSONS:

1. On August 23rd, 1988, at 10 a.m. in room 225, Agriculture/Livestock Building, Sixth and Roberts, Helena, a public hearing will be held to consider the proposed amendment of rule 4.9.401 concerning the wheat and barley assessment.

2. The proposed amendment provides as follows: (Deleted matter interlined, new matter underlined)

4.9.401 WHEAT AND BARLEY ASSESSMENT AND REFUNDS (1) There shall be levied an annual assessment of:

(a) ~~6~~ 10 mills per bushel upon all wheat grown in the State of Montana;

(b) ~~12~~ 15 mills per hundredweight on all barley grown in the State of Montana.

(2) All assessments are subject to refund provided the following criterium are met:

(a) application for assessment refund shall be in writing on forms provided by the committee.

(i) Forms will be furnished upon application to the Wheat Research and Marketing Committee, P. O. Box 3024, Great Falls, Montana 59403.

(b) Written application for refund of the wheat or barley assessments must be submitted by the first seller of the wheat or barley or by an individual with the first seller's power of attorney.

(c) Refund application forms shall be submitted subsequently to thirty (30) days from the date of first sale and no later than ninety (90) days from the date of the first sale of wheat or barley for which a refund is filed.

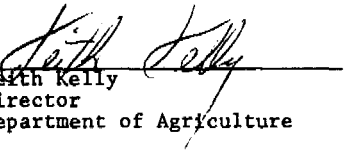
AUTH: 80-11-205 MCA; IMP: 80-11-206 MCA

3. The Montana Wheat Research and Marketing Committee established its budget and entered into contractual obligations in the spring of 1988 based upon previous years' revenue and revenue estimates for fiscal year 1989. As a result of unforeseen disastrous drought conditions, and insect infestations, the 1988 grain crop will be one of the worst crops in recent years. This will have a serious negative impact on the revenue collected by levies on grain sold in fiscal year 1989. The Committee, in order to meet is financial obligations and to discharge its research and marketing duties, must increase the levy assessed upon grain.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment either orally at the hearing, or in writing, submitted to Jim Christianson, Montana Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana, 59620, no later than August 25, 1988.

5. The committee or its designee will preside over and conduct the hearing.

Wheat Research and Marketing
Committee
Ernest Bahnmiller, Chairman

By 
Keith Kelly
Director
Department of Agriculture

CERTIFIED TO THE SECRETARY OF STATE JULY 18, 1988

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to educational requirements, licensure, conduct, disciplinary procedures, and standards and the repeal of rules pertaining to general welfare, reports, and definitions	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT AND REPEAL OF RULES PERTAINING TO THE PRACTICE OF NURSING

TO: All Interested Persons:

1. On August 24, 1988, at 10:00 a.m., a public hearing will be held in the downstairs conference room of the Department of Commerce, 1424 - 9th Avenue, Helena, Montana, to consider the proposed amendment of 8.32.305, 8.32.402, 8.32.413, 8.32.504, 8.32.901, 8.32.902, 8.32.903, 8.32.904, 8.32.905, 8.32.906, 8.32.907, 8.32.909, 8.32.910, 8.32.911, 8.32.913, and the proposed repeal of 8.32.912, 8.32.914, and amendment of 8.32.1002(2).

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

"8.32.305 EDUCATIONAL REQUIREMENTS AND OTHER QUALIFICATIONS APPLICABLE TO SPECIALTY AREAS OF NURSING

(1) Applicants for recognition in a specialty area of nursing shall possess the following educational and certification qualifications:

~~(a)--Before-December-31,-1985---~~

~~(i)~~ (a) Successful completion of a post-basic professional nursing education program in the specialty area with the minimum length of one academic year consisting of at least four months of didactic instruction and the remainder under a preceptor; and individual certification from a board approved certifying body; or

~~(ii)~~ (b) A master's degree from an accredited nursing education program which prepares the nurse for a specialty role; and individual certification from a board approved certifying body.

~~(b)--After-December-31,-1985----new-recognitions-will require:~~

~~(i)--A-minimum-of-a-baccalaureate-degree-with-an upper-division-major-in-nursing;-successful-completion-of a-post-basic-professional-nursing-education-program-in-the specialty-area-with-the-minimum-length-of-one-academic-year consisting-of-at-least-four-months-of-didactic-instruction and-the-remainder-under-a-preceptor;-and-individual certification-from-a-board-approved-certifying-body;-or~~

~~(11)--A-master's-degree-from-an-accredited-nursing education-program-which-prepares-the-nurse-for-a-specialty role;-and-individual-certification-from-a-board-approved certifying-body;~~"

AUTH: 37-8-202, MCA IMP: 37-8-202, MCA

REASON: The board proposes to amend this rule to conform to a contested case decision that ARM 8.32.305(1)(b) imposed an additional requirement upon some registered nurses that was not contemplated by the legislature.

"8.32.402 LICENSURE BY EXAMINATION (1) through (3) will remain the same.

(4) The application for licensure, by examination and the examination fee, ~~and all credentials must~~ shall be submitted to the ~~executive secretary~~ board office no later than eight weeks prior to the examination date.

(5) Applicants shall have completed all educational requirements of the program 14 days prior to the examination date and all credentials shall be received in the board office ten days prior to the examination date.

(5) through (8) will remain the same but will be renumbered as (6) through (9).

(10) Beginning in October, 1988, the examination score will be reported to the applicant as pass or fail.

~~(9)~~ (11) Candidates ~~who pass~~ shall be notified in writing only regarding the examination ~~scores~~ results ~~in writing only~~.

(10) and (11) will remain the same but will be renumbered as (12) and (13).

~~(12)~~ (14) Each school of nursing in Montana shall receive a summary ~~statistical~~ report of the test results of candidates from that school.

~~(13)~~ (15) ~~Scores~~ Results of the examination shall not be released to anyone unless release is otherwise authorized by the candidate in writing.

~~(14)~~ (16) The candidate's examination ~~score~~ results will be maintained in his/her application file in the bureau of professional and occupational licensing, department of commerce."

Auth: 37-8-202, MCA Imp: 37-8-406, 37-8-416, MCA

REASON: The amendments are proposed to clarify the current licensing examination process and to implement the policy change of the National Council of State Boards of Nursing in regard to reporting test results of the national nursing licensing examinations. The reporting change will eliminate the inappropriate use of examination scores as criteria for decision-making by employers and nursing programs.

"8.32.413 CONDUCT OF NURSES (1) through (w) will remain the same.

(x) having a nursing license denied, revoked, ~~or~~ suspended, placed on probation or voluntarily surrendered in another state for any one or more of the above; ~~and~~

(y) having a license or certificate in a related health care discipline in Montana or another state denied,

revoked, ~~or~~ suspended, placed on probation or voluntarily surrendered for any one or more of the above~~.~~;

(z) violation of a disciplinary order from the board; and

(aa) having been found guilty of a crime that relates adversely to the licensee's practice of nursing or to the ability of the licensee to practice nursing."

Auth: 37-1-136, 37-8-202, MCA
Imp: 37-8-136, 37-8-202, 37-8-441(5), MCA

REASON: The amendments to this rule are being proposed to more explicitly encompass the disciplinary actions which are taken against licensees in other states. States vary widely in the disposition of cases involving the practice of nursing, and, as the mobility of disciplined nurses from state to state continues to increase, there is a need to be more definitive. Expansion of the unprofessional conduct components to include criminal acts relating adversely to the licensee's practice of nursing will in turn provide greater protection of the public's health and safety.

"8.32.504 DISCIPLINARY PROCEDURES IN ANOTHER STATE (1) When the board has knowledge that a person licensed in Montana or applying for a license has had a license to practice revoked, suspended, ~~or~~ restricted, placed on probation or voluntarily surrendered in another state, the board shall:

(a) through (c) will remain the same."

Auth: 37-8-202, MCA
Imp: 37-1-136, 37-8-202, 37-8-441(5), MCA

REASON: This amendment is being proposed to make the rule consistent with the changes proposed in 8.32.413 and to describe more definitively the disciplinary actions taken against licensees in other states.

"8.32.901 ~~INTRODUCTION~~ STATEMENT OF PURPOSE (1) These standards ~~are the result of years of study and cooperative planning between the Montana state board of nursing and faculty of Montana schools of nursing. The statements are viewed as serving several~~ serve the following purposes:

(a) will remain the same.

(b) they ~~may~~ shall be ~~used as a guide~~ the basis and format ~~in the self evaluation of school programs by the faculty criteria~~ in the approval process of Montana schools of nursing; and

(c) they will be used by the board of nursing as an the evaluation ~~tool~~ criteria in the approval process of Montana schools of nursing.

(2) ~~The standards~~ These criteria ~~are to be used in appraising the quality and specific nature of nursing education programs~~ represent acceptable minimal standards. ~~They have been largely formulated by the joint efforts of faculty members in schools of nursing in Montana. Therefore, the statements represent acceptable goals at a~~

~~minimum-level-of-desirability.--They-are-not-intended-to-be ideals-or-maximum-goals.--The-board-has-attempted-to-state the-criteria-in-general-terms-so-that-schools-may-set-forth several-approaches-in-meeting-them.~~ The board ~~expects-to interpret-these~~ will interpret the standards in terms which will insure ~~the~~ that these minimum requirements ~~set-forth~~ are met but which ~~will-leave~~ allow faculty ~~in-each-school free-to-determine~~ flexibility in determining the scope, limits and direction ~~of-the-program-offered-to-its-students~~ of the nursing program. ~~Since-the-practice-of-nursing-is an-integral-part-of-the-changing-social-scene,-these~~ These standards for schools of professional nursing shall ~~will also-change~~ be revised from time to time to meet ~~the demands-for-programs-which-prepare-practitioners-of-nursing competent-to-serve-the-nursing~~ the ever changing health care needs of society and the continuing development of nursing education."

Auth: 37-8-202, MCA Imp: 37-8-301, 37-8-302, MCA

"8.32.902 PHILOSOPHY, PURPOSE, CONCEPTUAL FRAMEWORK AND TERMINAL OBJECTIVES ~~AND-CURRICULUM~~ (1) ~~Each-school~~ The nursing education program shall ~~be-expected-to-have-a clearly-and-realistically-stated-educational~~ have statements of philosophy, purpose, conceptual framework and terminal objectives that are consistent with those of the parent institution and with the law governing the practice of nursing. ~~This-statement-shall-recognize-the-characteristics of-good-education-and-the-competencies-essential-for-safe nursing-practice-in-the-development-of-the-individual-as-a person,-citizen,-and-a-professional-nurse.--There-shall-be no-attempt-to-standardize-schools.~~

(2) ~~Each-school~~ The statements of philosophy, purpose, conceptual framework and terminal objectives shall be ~~expected-to-show-that-its~~ utilized in planning, implementing and evaluating the total program. ~~is-designed-to-achieve-the purposes-stated-and-that-the-faculty-is-competent-to-carry out-the-program.--The-purposes-shall-be-available-to-the students-in-writing.~~"

Auth: 37-8-202, MCA
Imp: 37-8-202, 37-8-301, 37-8-302, MCA

"8.32.903 ~~DEFINITION~~ CURRICULUM (1) A curriculum ~~is planned-for-action.--It-is-a-guide-for-the-student-in learning-and-for-the-teacher-in-directing-and-teaching students,-as-well-as-a-guide-to-persons-responsible-for-the selection-of-students,-teachers-and-educational-resources. It-is-also-a-guide-for-understanding-the-physical,-social and-environmental-conditions-most-conducive-to-specific types-of-learning~~ the content and learning experiences designed to facilitate student achievement of the objectives of the program.

(2) The curriculum shall reflect the philosophy, conceptual framework, purpose and objectives of the nursing education program and shall be consistent with the law governing the practice of nursing.

(3) The ratio between nursing and non-nursing

courses shall be based on a rationale to ensure sufficient preparation for the safe and effective practice of nursing.

(4) Learning experiences and methods of instruction shall be selected to fulfill curriculum objectives.

(5) For each clinical credit hour, there shall be at least two hours of applied laboratory experience."

Auth: 37-8-202, MCA
Imp: 37-8-202, 37-8-301, 37-8-302, MCA

"8.32.904 CURRICULUM PLANNING (1) Curriculum planning shall be based on objectives which reflect the philosophy and ~~theory~~ theories of learning of the school and shall include faculty and student participation.

(2) ~~Instructional methods~~ Educational methodologies shall assure that prerequisite concepts and understandings are used and further developed as the program progresses.

(3) will remain the same.

(4) The curriculum shall reflect current nursing practice and ~~it~~ it shall be flexible to meet present and changing health care needs."

Auth: 37-8-202, MCA
Imp: 37-8-202, 37-8-301, 37-8-302, MCA

"8.32.905 ~~LENGTH AND~~ AREAS OF CURRICULUM CONTENT ~~(1)--The length of the program will be determined by the philosophy and objectives of the school;--The major area of concentration shall be in nursing;~~

~~(2)~~ (1) ~~The allocation of content is an arbitrary selection and will be organized by the school;~~ The areas and identified content need not designate specific courses to be included in the curriculum. ~~The recommended areas of content are as follows:~~ The following areas shall be considered in accordance with the philosophy, objectives and type of program:

(a) scientific ~~understanding~~ concepts from chemistry, anatomy, ~~and~~ physiology, microbiology, ~~and~~ nutrition and diet therapy, mathematics, physics, pharmacology, pathophysiology and research. Instruction focused on understanding and use of scientific principles should extend throughout the ~~course~~ program~~;~~;

(b) human and cultural ~~understanding~~ concepts from: positive health concepts~~,~~ including wellness and preventative ~~medicine~~, health care, ~~human~~ growth and development in all age groups, rehabilitation, communications, interpersonal relationships, group dynamics, socio-cultural-economic and legal aspects, ~~and~~ psychological principles, the humanities, social organization of family and community, ethical, cultural and spiritual world wide values~~,~~, leadership and management. Instruction on understanding and application of these concepts should be extended throughout the program;

(c) nursing concepts; nursing courses shall be based on ~~theoretical concepts~~ nursing theory and ~~their~~ its clinical application~~,~~ through the use of the nursing process. These courses should draw from the scientific and human and cultural concepts and facilitate the student's

ability to integrate the concepts into nursing. ~~This should be focused~~ Nursing courses shall focus on the fundamental core of professional nursing care needed by ~~all~~ patients in all age groups, and on developing ~~a reasonable degree of~~ competency in areas of medical, surgical, maternal, child, gerontology, community health and psychiatric/mental health nursing ~~with integration of pharmacology and diet therapy~~. The professional nursing curriculum ~~should~~ must provide for understanding and application of ~~public health, mental health and~~ rehabilitation concepts and skills in teaching patients. ~~The learning experiences should include the giving of safe nursing care to patients of all age groups with a variety of health problems.~~ Nursing care is provided through the application of the nursing process.

~~(i) Nursing and current trends in health and disease, principles of leadership and citizenship, legal aspects of nursing, team concepts and contributions to allied disciplines, current nursing problems, historical development as it shows the origin of our present professional problems.~~

~~(ii) Practice in assuming professional responsibilities may be achieved through participation in student organizations and by working with allied disciplines.~~

~~(iii) Development of the team concept broadens understanding of the nurse's place and responsibility as a citizen, practitioner, and member of the profession of nursing.~~

~~(iv) Laboratory shall provide at least 2 hours of clinical experience for each theory hour.~~

~~(v)~~ (2) The contribution of research ~~process and it's contribution~~ to nursing practice shall be an integral part of the curriculum. The use of the research process itself shall be determined according to each school's objectives."

Auth: 37-8-202, MCA
Imp: 37-8-202, 37-8-301, 37-8-302, MCA

"8.32.906 EVALUATION (1) Provisions shall be made for periodic evaluation of ~~curriculum~~ the program and of student progress. ~~Adequacy of performance should be evaluated.~~ Provisions ~~should~~ shall be made for student participation in evaluation and for student-instructor conferences.

(2) There ~~should~~ shall be provision for continuous or periodic review of the following areas:

(a) the philosophy, conceptual framework, objectives and curriculum of the school;

(b) policies governing recruitment, admissions, promotion, graduation and other matters effecting education, health and welfare of the students;

(c) and (d) will remain the same.

~~(3) Instruction. The school shall be expected to show that it utilizes a variety of instructional procedures which contribute to the effectiveness of the preparation of the students.~~"

Auth: 37-8-202, MCA
Imp: 37-8-202, 37-8-301, 37-8-302, MCA

"8.32.907 ORGANIZATION AND ADMINISTRATION OF THE SCHOOLS OF NURSING (1) A clearly defined statement of the philosophy and objectives of the ~~school~~ program shall be included in the school's catalogue or otherwise available to the students. ~~This statement identifies the beliefs which the faculty accepts about nursing and education.~~ ~~--The philosophy shall be in agreement with that of the controlling institution and recognizes that the primary purpose of the school is the development of the student as a nurse, a person, and a citizen.~~

(2) The curriculum of the ~~school will~~ program shall be a reflection ~~on~~ of the philosophy and objectives and provide for the accomplishment of the stated objectives. The philosophy and objectives ~~shall~~ must be accepted by the ~~governing board, the officers,~~ faculty, ~~and students~~ of the department/school of nursing.

~~(3) --The school of nursing or the institution of which it is a part shall be incorporated.~~

~~(4)~~ (3) ~~Educational institutions.~~ Institutions conducting a nursing program shall be ~~accredited~~ approved by the appropriate ~~state, regional or national accrediting~~ agencies. ~~Hospitals and other~~ All agencies with which the school maintains cooperative agreements shall have licensure, approval or accreditation appropriate to the ~~hospital and to those~~ each agencies agency.

~~(5)~~ (4) Any type of cooperative relationship between the school and ~~another education, health or welfare institution or~~ any agency used for educational experiences shall be ~~stated~~ current, in writing and signed by the responsible officers of each. ~~The~~ Any agreement ~~may provide~~ shall clearly identify responsibility for instruction, as lying with the faculty in areas including clinical practice, and supervision, ~~or~~ and other student experience in a variety of settings. Such instruction, practice, and other learning opportunities offered in participating agencies shall meet the stated purposes of the educational program and the standards required by the board.

~~(6) --Instruction, practice, and/or other opportunities for learning which are provided by participating agencies shall meet the stated purposes of the educational program and the standards required by the board.~~

~~(7)~~ (5) ~~When the school is in a college or university,~~ the The organizational pattern of the school shall be comparable to other like units in the college or university and shall be to achieve the purposes stated.

(a) ~~Such department or school~~ The nursing education program shall be administered by a registered nurse director with appropriate rank, position, and authority. The nurse director shall be currently licensed to practice as a registered nurse in the state of Montana with qualifications including:

(i) in a program offering the associate degree in nursing: a minimum of a master's degree in nursing from an approved program with preparation in education and administration, and have at least two years of experience

in clinical nursing and at least two years of experience in nursing education, inclusive of teaching in didactic and clinical areas;

(ii) in a program offering the baccalaureate degree in nursing, a master's degree in nursing and a doctoral degree in nursing or a related field from approved programs, with preparation in education and administration, and have at least two years of experience in clinical nursing and at least two years of experience in nursing education, inclusive of teaching in didactic and clinical areas.

(b) Organizational ~~e~~charts showing the structure of the department/school, its relationship to administration and other units, shall be developed.

(c) The budget of the school shall be a part of the budget of the college or university. The nurse director shall be responsible for the preparation, presentation, and administration of the budget ~~for~~ of the department/school of nursing.

(d) Policies governing departments of the schools of nursing shall be ~~the same as~~ consistent with those policies governing other educational departments of the controlling institution, including the establishment of committees to carry out tasks of administration and ~~shall~~ be constructed in a manner consistent with ~~along the same lines as~~ those of the controlling institution.

(6) The titles of faculty members shall be consistent with their functions and the same as those of faculty of other departments of the parent institution.

(7) The faculty and administrative salary levels shall support recruitment and retention of prepared nursing faculty.

(8) Policies governing faculty employment, promotion and tenure shall be in written form and consistent with those of the parent institution.

(a) Faculty and administration shall participate in governance of parent institution in accordance with bylaws of the parent institution.

(b) Faculty and administration shall participate in central councils and committees of parent institution.

(c) Faculty representation shall be present on policy making committee of the program.

(d) The faculty must have primary responsibility for the development and conduct of the academic program(s).

(e) The faculty shall participate in policy development at the department/school and institution level, including policies dealing with appeals and grievances of faculty.

(9) The number of students shall be determined by the educational and clinical resources and faculty sufficient to meet the goals of the program and requirements of the Board of Nursing."

Auth: 37-8-202, MCA
Imp: 37-8-202, 37-8-301- 37-8-302, MCA

"8.32.909 FACULTY (1) ~~The best single index of ability to prepare adequate practitioners of professional~~

~~nursing-is-the-competency-of-the-faculty-in-providing-a program-of-recognized-quality.--Each-faculty-member-shall devote-full-time-to-instructional-responsibilities-and-be qualified-by-academic-preparation-and-experience-in-the teaching-area-to-which-assigned.--Teachers-of-nursing practice-shall-be-responsible-for-all-instruction-in-the area-assigned-including-laboratory-practice-in-the-clinical field.~~ There shall be a sufficient number of qualified faculty to meet the purposes and objectives of the nursing program.

~~(2)--The-director-of-the-school-shall-have-a-minimum-of a-masters-degree-in-nursing-and-at-least-2-years-experience teaching-in-a-nursing-education-program.~~

~~(3)~~ (2) All ~~N~~nursing faculty members, including part-time and substitute nursing faculty in all areas of the nursing education program, ~~members-shall-be-graduates of-approved-schools-of-professional-nursing,~~ shall hold at least a master's degree, in nursing from an approved program, have ~~advanced~~ preparation for teaching in their respective area of responsibility and shall be licensed as registered nurses in Montana. ~~Personal,-academic-and professional-qualifications-shall-be-appropriate-to-the area-of-assignment.~~ An exemption to the requirement for a master's degree in nursing may be granted to faculty hired prior to 1977. Exempted faculty members must have a master's degree in a related field which included advanced nursing courses or have additional graduate level nursing education.

(a) Faculty must provide evidence of continuing professional development in areas of didactic and clinical responsibility and serve as role models for the students.

~~(4)--The-titles-of-faculty-members-shall-be-consistent with-their-functions.~~

~~(5)--There-shall-be-secretarial-and-clerical-staff sufficient-to-meet-routine-requirements-for-administration of-the-school-and-assistance-to-the-instructional-staff.~~

~~(6)--Policies-governing-faculty-employment,-promotion, and-tenure-shall-be-in-written-form.~~

(3) Faculty members shall be responsible and accountable for all instruction in assigned areas including laboratory and clinical practice to meet program objectives.

~~(7)~~ (4) ~~The-faculty-work-load-includes-all-activities related-to-instruction-curriculum-development,-student advisement,-extra-curricular-activities,-research-and other-scholarly-endeavors.~~ Faculty responsibilities shall include, but not be limited to the following:

(a) Development, implementation, and evaluation of the purpose, philosophy, objectives and curriculum of the nursing program(s);

(b) Development and evaluation of student admission, progression, retention, and graduation policies within the framework of the policies of the sponsoring institution;

(c) Participation in academic guidance of students;

(d) When indicated, referral of students to the appropriate health care provider(s);

(e) Provision for student and peer evaluation of

teaching effectiveness;

(f) Evaluation of student achievement in terms of curricular objectives;

(g) Participation in:

(i) research and other scholarly activities to advance nursing knowledge;

(ii) academic activities of the institution;

(iii) professional and health-related community activities;

(iv) the selection, promotion and tenure of faculty."

Auth: 37-8-202, MCA
Imp: 37-8-202, 37-8-301, 37-8-302, MCA

"8.32.910 EDUCATIONAL FACILITIES (1) ~~The controlling body shall provide a physical plant or facility designed to serve effectively the accomplishment of the defined purposes of the educational program.~~ The physical facilities should shall be accessible and shall promote safety, and health, ~~and recreation~~ of the student, faculty, clients and ~~The physical facilities of the institution~~ shall be adequate to meet the educational needs of the program.

(2) Classrooms, laboratories, conference rooms and clinical sites shall be adequate in size, number and type according to the number of students and the educational purposes for which these rooms areas are to be used.

~~(a) All rooms must be suitably located, lighted, ventilated and equipped.~~

~~(b) Provision shall be made for class or conference rooms in the clinical area.~~

~~(c) Adequate chalk board space shall be provided as well as bulletin boards or other facilities for exhibits, posters and other visual display.~~

~~(d)~~ (a) Equipment and supplies must shall be adequate. ~~Provision should be made for~~ and controlled by ongoing inventory and for ease in procurement and replacement.

(3) ~~A library is essential to a program in nursing education.~~ ~~library holdings~~ Library resources shall be commensurate with the needs of the program, containing Ssufficient titles, periodicals, and other materials such as audiovisual aids, catalogues, and pamphlets ~~must be included in the library holdings.~~

(a) ~~The administration of the library should~~ Library services shall provide for:

(i) a sound system of acquisitions;

~~(ii)~~ (ii) a sound system of sound accessioning, classification, and cataloging;

~~(iii)~~ (iii) a periodic review of holdings leading to deletion and accessions; and

~~(iii)~~ (iv) the maintenance of a reserve section.;

(v) a provision for faculty input into purchases; and

(vi) sufficient hours to consistently permit student and faculty accessibility.

(b) ~~C~~continuing financial support should be such as to insure books, materials and services adequate to meet the needs of the school's announced programs. ~~The budget shall provide for~~ including audiovisual ~~equipment and collection.~~

materials, and

(c) ~~Office~~ space ~~shall be provided for administrative and instructional personnel that is adequate in size, equipped to permit effective functioning, accessible to the area of activity, and conducive to uninterrupted work and conference~~ conducive to scholarly work for faculty and students.

(4) Clinical resources shall be selected which will provide the learning experiences ~~implied~~ identified in the stated ~~purposes~~ objectives of the school.

(a) Planned ~~l~~learning experiences in the ~~actual~~ clinical situation shall be ~~planned and controlled by~~ under the control and supervision of the clinical faculty ~~of the school~~. The adequacy of the facilities for student experience in each area is dependent on course of objectives, nursing needs of patients, ~~the daily average number of patients~~, the variety of conditions, ~~the quality of care~~, the level of nursing care required and the physical set-up and equipment needed. Therefore, faculty/student ratio may vary from one instructor for one student or up to ten students;

(b) The nursing service department in any health care facility must be under competent nursing directors and there must be a qualified nursing staff on all shifts ~~with a standard of nursing care of such caliber that students may observe as well as give~~ who will serve as role models to students in giving quality nursing care;

(c) The duties and responsibilities for the various positions in ~~the nursing department~~ any agency used for clinical experiences shall be defined ~~and a good in service education program maintained~~.

(d) A collaborative policy between the school any agency used for educational experiences regarding the health status of nursing students shall be defined and implemented.

~~(5) If residence facilities are provided they shall be comfortably and attractively furnished and under the supervision of a residence director.~~"

Auth: 37-8-202, MCA
Imp: 37-8-202, 37-8-301, 37-8-302, MCA

"8.32.911 SELECTION AND ADMISSION OF STUDENTS (1) ~~The selection and a~~Admission, readmission, progression, retention, dismissal and graduation requirements ~~of students shall be based on established criteria~~ available to the students in written form and shall be consistent with those of the sponsoring institution. Where necessary, policies specific to nursing students may be adopted if justified by the nature and purposes of the nursing program(s).

~~(2) The number of students shall be determined by clinical and teaching facilities available and the number and preparation of the faculty.~~

~~(3)~~ (2) Students must be graduates of an accredited senior high school or its equivalent~~, for example, General Education Development Score~~, as determined by the office of the superintendent of public instruction. A transcript must be on file in the department/school records.

~~(4) --Admission-tests-for-each-applicant-which-are useful-as-an-evaluation-tool,-should-be-utilized.~~

~~(5) --Students-requesting-readmission-or-admission-by transfer-from-another-school-shall-meet-the-standards-for regularly-enrolled-students.--Advanced-placement-in-nursing may-be-given-only-when-the-school-of-previous-enrollment is-state-approved.--A-school-shall-establish-policies-for transfer-of-credit.--Such-credits-are-based-on-evaluation of-the-details-of-previous-education-and-granted-only-for comparable-instruction-and-educational-practice-within-its own-education-program.~~

~~(6)~~ (3) ~~Qualified-applicants-are~~ Students shall be admitted without discrimination ~~in-regard~~ as to age, ~~creed,~~ religion, ~~ethnic~~ national origin, marital status, race, sex, sexual preference or life style.

(4) Student rights and responsibilities shall be available in written form.

(5) In the interest of client welfare, students are expected to follow personal health practices which will protect the client and the student and be in compliance with the written policy of the school/agency."

Auth: 37-8-202, MCA
Imp: 37-8-202, 37-8-301, 37-8-302, MCA

"8.32.913 PROMOTION AND GRADUATION (1) Promotion is the result of students ongoing effort to meet program objectives and to graduate after having successfully completed the school's program.

~~(1)~~ (2) Policies shall be established ~~governing promotion-of-students~~ in relation to achievement of the objectives of the program, including:

(a) provision of written materials detailing student's responsibilities for academic and professional participation in the parent institution's and the school's academic and professional activities;

(b) provision of academic advice to students through faculty or other qualified persons;

(c) provision of information at stated intervals of student progress and remaining obligations toward the completion of the program.

~~(2) --Graduation-is-completion-of-the-school's-program. To-qualify-for-graduation-a-student-must-meet-the-academic requirements-for-graduation-established-by-the-school.~~

~~(3) --Policies-governing-dismissal-of-students-shall-be established.--These-policies-must-provide-the-student-right of-appeal.--These-policies-should-be-written-and-available to-the-students.~~

(3) Students should be provided the opportunity to give input or serve on appropriate institution and department/school committees according to by-laws of parent institution.

(4) Schools should maintain permanent, complete and current records of student achievement in the program which shall be accessible to the student.

(5) Schools should provide students with information regarding process of obtaining licensure."

Auth: 37-8-202, MCA
Imp: 37-8-202, 37-8-301, 37-8-302, MCA

REASON: The board is proposing the amendment to 8.32.901 through 8.32.911 and 8.32.913 to provide more effective and updated standards for the development and evaluation of nursing education programs in accordance with current educational standards and to assure graduates of these programs will be prepared to meet society's needs for quality care. Amendments have also been made to delete obsolete statements, re-group the standards under more appropriate major headings, consolidate several single statements and to extend and clarify other statements.

"8.32.912 GENERAL WELFARE OF STUDENTS is being proposed for repeal. (Full text of the rule is located at page 8-1003, Administrative Rules of Montana.)"
Auth: 37-8-202, MCA
Imp: 37-8-202, 37-8-301, 37-8-302, MCA

REASON: The proposed repeal of this rule is being proposed to remove unnecessary duplication, as the intent of the rule is incorporated in a more appropriate section.

"8.32.914 REPORTS is being proposed for repeal. (Full text of the rule is located at page 8-1004, Administrative Rules of Montana.)"
Auth: 37-8-202, MCA
Imp: 37-8-202, 37-8-301, 37-8-302, MCA

REASON: The board is proposing the repeal of this rule to remove unnecessary duplication, as the intent of the rule is incorporated in a more appropriate section.

"8.32.1002 DEFINITIONS (1) will remain the same.
~~(2)--The-practice-of-practical-nursing,-is-the performance-for-compensation-in-the-care-of-the-ill,-injured or-infirm,-of-acts-selected-by-and-performed-under-the direction-of-a-registered-nurse,-or-a-person-licensed-in this-state-to-prescribe-such-medications-and-treatments,-and not-requiring-the-substantial-specialized-skill,-judgement and-knowledge-required-in-professional-nursing.--(section 37-8-102-(3)-(b),-MCA)~~
(3) through (10) will remain the same but will be renumbered as (2) through (9).
Auth: 37-8-202, MCA
Imp: 37-8-202, 37-8-301, 37-8-302, MCA

REASON: The Board is proposing the amendment of this rule as it repeats statutory language.

3. Interested persons 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 Board of Nursing, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than September 1, 1988.

4. Geoffrey L. Brazier has been designated to preside over and conduct the hearing.

BOARD OF NURSING
DONNA MAE SNODGRASS, RN
PRESIDENT

BY: 
GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, July 18, 1988.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

In the matter of the proposed amendment of a rule pertaining to fees) NOTICE OF PROPOSED AMENDMENT OF 8.48.1105 FEE SCHEDULE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Person:

1. On August 29, 1988, the Board of Professional Engineers and Land Surveyors proposes to amend the above-stated rule.

2. The proposed amendment of 8.64.402 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1331, Administrative Rules of Montana)

8.48.1105 FEE SCHEDULE (1) through (4)(a) will remain the same.

(b)	PE application and test (Original)	~~$100.00~~ 120.00
(c)	PE app. and test for out-of-state EIT	~~120.00~~ 140.00
(d)	will remain the same.	
(e)	LSIT application and test	~~50.00~~ 60.00
(f)	through (1) will remain the same.	

Auth: 37-67-202, MCA Imp: 37-67-303, MCA

REASON: The fee increases are necessary because of an increase in cost of examinations.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Professional Engineers and Land Surveyors, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than August 27, 1988.

4. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Professional Engineers and Land Surveyors, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than August 27, 1988.

5. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be

directly affected, a 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 based on the licensees in Montana.

BOARD OF PROFESSIONAL ENGINEERS
AND LAND SURVEYORS
NANCY MOE, CHAIRMAN

BY: Geoffrey L. Brazier
GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, July 18, 1988.

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

In the matter of the amendment of rules 16.29.101, 16.29.102, 16.29.103, and 16.29.106, concerning embalming & transporting dead human bodies	)))))	NOTICE OF WITHDRAWAL OF PROPOSED RULEMAKING (Dead Human Bodies)

To: All Interested Persons

1. On May 10, 1988, the department held a public hearing concerning proposed changes in the department's rules on embalming and transportation of dead bodies.

2. In view of the substantial testimonial and documentary comment received on the proposals, and in view of the broad social and technical policies that the rules raise, the department has determined to rescind its proposal in order to allow for further informal consideration of whether and, if so, how the existing rules should be modified in light of current concepts of epidemiology, mortuary science, and public health policy.

3. In the event the agency determines that one or more modifications are necessary, then appropriate rulemaking will be initiated.

4. A formal response by the department in the Montana Administrative Register to the Board of Mortician's petition for rulemaking is not necessary, since such Board has recently withdrawn its petition in favor of the informal department consideration described in paragraph 2 above.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State July 18, 1988.

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 18.6.251 relating to the maintenance of outdoor advertising signs	))))))	NOTICE OF PROPOSED AMENDMENT OF RULE 18.6.251 RELATING TO THE MAINTENANCE OF OUTDOOR ADVERTISING SIGNS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 29, 1988, the Department of Highways proposes to amend rule 18.6.251 relating to the maintenance of outdoor advertising signs.

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

18.6.251 REPAIR OF SIGNS

(1)(a) through (e) remain the same.

(f) The department shall cancel the permit for any sign which has been maintained in violation of the above limitations and such sign shall be subject to removal as an illegal sign. The department may allow a permittee who has increased the dimensions of a sign in violation of subsection (e) to restore the sign to its original dimensions and then obtain a new permit for the restored sign. If the dimensions of the sign are increased a second time, the permit will be immediately canceled by the department.

(2) remains the same.

AUTH, 75-15-121, MCA; IMP, 75-15-113 and 75-15-121, MCA.

3. The amendment of Rule 18.6.251 is proposed because the rule currently provides that the Department of Highways shall cancel a sign permit whenever the size and dimensions of the sign have been increased in violation of Rule 18.6.251(e). The proposed amendment will allow the sign owner an opportunity to reduce the sign's size and dimensions to conform to Rule 18.6.251(e) before the department must cancel the permit.

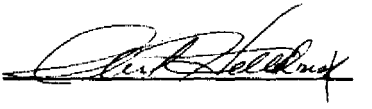
4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to Michael G. Garrity, Attorney, Department of Highways, Legal Division, 2701 Prospect Avenue, Helena, Montana 59620, no later than August 25, 1988.

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 hearing and submit this request along with any written comments he has to Michael G. Garrity at the above address no later than August 25, 1988.

6. If the commission receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

7. The authority and implementing sections are listed at the end of the amended rule.

ILERT HELLEBUST, Chairman
Montana Highway Commission

By: 

Certified to the Secretary of State July 18, 1988

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.3.136 relating to certification of pseudorabies negative herds and ARM 32.3.401 relating to definitions and disease control.	)))))	NOTICE OF PROPOSED AMENDMENTS OF RULES RELATED TO DISEASE CONTROL INVOLVING PSEUDORABIES NEGATIVE HERDS AND DEFINITIONS.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 1, 1988, the board of livestock proposes to amend the above-stated rule(s).

2. The proposed amendment of 32.3.136 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 32-83, Administrative Rules of Montana).

32.3.136 ~~RELEASE FROM PSEUDORABIES QUARANTINE~~ Subsection (1) remains the same.

(2) The Montana department of livestock will certify and recertify a swine breeding herd as qualified pseudorabies negative upon determination of compliance with the provisions 9CFR85, subsection 1.

(a) Copies of the current 9CFR are on file with the department of livestock and may be reviewed at the offices located at 6th Avenue and North Roberts in Helena, Montana. Copies are available from the Superintendent of Public Documents, Government Printing Office, Washington, D.C. upon payment of a fee and identification by rule number.

(3) The Montana department of livestock will certify and recertify a breeding swine herd as pseudorabies monitored for feeder pig production when sampled and tested negative in compliance with the current Uniform Methods and Rules for pseudorabies eradication or the provisions of the National Pseudorabies Control Board criteria for monitored herds.

(a) Copies of the Uniform Methods and Rules for pseudorabies eradication and the criteria of the National Pseudorabies Control Board are available from the department of livestock upon request.

AUTH: 81-2-102, & 81-2-103, MCA IMP: 81-2-102, & 81-2-103, MCA

REASON: This will facilitate the swine industry in the state of Montana in qualifying live animals for export to other states.

3. 32.3.401 DEFINITIONS Subsections (1) through (19) remain the same.

(20) ~~"Emergency circumstances" means events or situations which, in the opinion of the board of livestock, pose an immediate or impending economic or livestock health danger to the livestock industry.~~ A Brucella Ovis Free Ram Flock is:

(a) The department of livestock will designate a ram flock as Brucella Ovis free for one (1) year when:

(i) All rams six (6) months of age and older are subjected to an approved Brucella Ovis serologic test and all rams are found to be negative, and

(ii) A second test of these same rams is performed 45 to 60 days after the first test and all rams are again found to be negative.

(b) The department of livestock will renew the designation of this flock on an annual basis when all rams six (6) months of age and older are once officially tested negative for Brucella Ovis and if

(c) While this flock is recognized as Brucella Ovis free, all reactor rams on the premises are castrated or identified as prescribed by the department and removed to slaughter, and

(d) All additions of rams to the flock except for natural increase progeny are officially tested negative for Brucella Ovis and retested 45 days later and prior to entry into the flock or originate from another Brucella Ovis free flock.

(e) All official tests used for qualifying rams for interstate shipment must be done by a licensed veterinarian. The blood samples must be submitted to an approved laboratory for testing. Individual identification of tested rams must be recorded and accompany the blood samples to the laboratory. Costs for veterinary service and laboratory test fees are to be borne by the owner.

(21) "Emergency circumstances" means events or situations which, in the opinion of the board of livestock, pose an immediate or impending economic or livestock health danger to the livestock industry.

AUTH: 81-2-102 & 81-2-103, MCA IMP: 81-2-102 & 81-2-103, MCA

REASON: This will facilitate the sheep industry in the state of Montana in qualifying live animals for export to other states.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment(s) in writing to the Board of Livestock, Capitol Station, Helena, Montana 59620, no later than August 27, 1988.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Department of Livestock, Capitol Station, Helena, Montana 59620, no later than August 27, 1988.

6. If the board receives requests for a public hearing on the proposed amendment(s) from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 50 based upon the number of individuals and organizations conducting business in the state of Montana.

NANCY ESPY, Chairman
Board of Livestock

BY: LON MITCHELL, Staff Attorney
Department of Livestock

Certified to the Secretary of State, July 18, 1988.

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
BEFORE THE BOARD OF NATURAL RESOURCES AND CONSERVATION

In the matter of proposed adoption of new rules under sub-chapter 8 outlining new appropriation verification procedures.	))))	NOTICE OF PROPOSED ADOPTION OF NEW RULES UNDER SUB-CHAPTER 8, ESTABLISHING NEW APPROPRIATION VERIFICATION PROCEDURES

NO PUBLIC HEARING CONTEMPLATED

To All Interested Persons:

1. On September 19, 1988, the Board of Natural Resources and Conservation proposes to adopt new rules relating to the verification of permits to appropriate water and authorizations to change.

2. The proposed adoptions will read as follows:

"RULE I. PURPOSE OF RULES AND SUMMARY OF NEW APPROPRIATION VERIFICATION PROCESS (1) The department is authorized under 85-2-315, MCA and 85-2-402(8), MCA, to determine whether new appropriations are completed in substantial accordance with their permits and whether changes in water rights are completed in compliance with the terms, conditions and restrictions as authorized. The department shall issue a certificate of water right to the permittee if the appropriation is completed in substantial accordance with the permit. If the appropriation of water is not completed and prosecuted according to the permit or authorization, the department, after notice and opportunity for hearing, may modify or revoke the permit or authorization. These determinations of substantial accordance and any action to modify or revoke a permit or authorization shall be conducted according to these rules.

(2) The department shall use the following verification process in making its determination:

(a) after receipt of the notice of completion on a permit or authorization, the department will schedule the verification;

(b) the appropriator must be informed of the verification process and a field investigation date set;

(c) the field investigation must be conducted;

(d) interviews may be conducted with the current and original appropriator;

(e) the appropriator must be notified of the department's findings and recommendations;

(f) if the appropriator agrees with its findings and recommendations, the department's records must be updated to reflect the department's findings;

(g) when the appropriator disagrees with the department's findings and recommendations, a pre-hearing meeting must be held to allow the appropriator to present further information that refutes the department's recommendation;

(h) if the appropriator requests a hearing, the hearing must be conducted and a final order issued;

(i) the department's records must be updated according to the final order; and

(j) if the records justify it a certificate of water right issued to the permittee pursuant to 85-2-315, MCA, upon final adjudication of existing rights in the basin in which the permit is located."

Auth: 85-2-113, MCA; Auth. Extension, Sec. 22, Ch. 573, L. 1985, Eff. 7/1/85; Imp: 85-2-314, 315, 402, MCA

"RULE II. DEFINITIONS Unless the context requires otherwise, the following definitions apply in these rules.

(1) 'Appropriator' means a person who diverts, impounds or withdraws water under a permit or authorization.

(2) 'Authorization' means an authorization issued by the department pursuant to 85-2-402, MCA, to change the place of diversion, place of use, place of storage, or purpose of use of an appropriation right.

(3) '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.

(4) 'Notice of completion' means a notice filed with the department by the appropriator on or before the deadline specified in the permit or authorization. Filing of the notice signifies the project works are completed and the water is being appropriated in substantial accordance with the terms of the permit or authorization.

(5) 'Permit' means a permit to appropriate water issued by the department pursuant to Title 85, chapter 2, part 3, MCA.

(6) 'Substantial accordance' means compliance with the terms of a permit or change authorization, allowing for minor variations from those terms if the variation will not cause injury to other appropriators or otherwise does not warrant changing the department's water use records.

(7) 'Verification' means the process used by the department to determine whether an appropriation of water is in substantial accordance with the terms, conditions, and restrictions of the permit or change authorization."

Auth: 85-2-113, MCA; Auth. Extension, Sec. 22, Ch. 573, L. 1985, Eff. 7/1/85; Imp: 85-2-314, 315, 402, MCA

"RULE III. NOTICE OF FIELD INVESTIGATION (1) After receipt of the appropriators notice of completion, the department shall notify the appropriator in writing of the need to field verify the completed permit or authorization.

(2) The notice shall include a description of the verification process, an explanation of the permit or authorization modification and revocation procedures, and an estimated time frame for the process.

(3) The appropriator has a right to attend the field verification investigation.

(4) If an appropriator declines to accompany the department

during the field investigation, an interview with the appropriator may be conducted to gather additional facts concerning the appropriation of water."

Auth: 85-2-113, MCA; Auth. Extension, Sec. 22, Ch. 573, L. 1985, Eff. 7/1/85; Imp: 85-2-314, 315, 402, MCA

"RULE IV. INVESTIGATION AND DOCUMENTATION (1) The department shall conduct an on-site field investigation to gather facts or information concerning the development of and compliance with a permit or authorization.

(2) The department shall view the development including the source, point of diversion, conveyance facilities, and place of use to gather facts and information and may take measurements.

(3) When the current appropriator is not the original appropriator, the department shall interview the original appropriator, if reasonably available, to gather facts and data on the development as it was perfected when the notice of completion was filed.

(4) Details of the current appropriation works, operation and beneficial use shall be documented and made a part of the permanent application file record. Facts and information obtained by the department concerning the historically perfected appropriation shall be made a part of the permanent record."

Auth: 85-2-113, MCA; Auth. Extension, Sec. 22, Ch. 573, L. 1985, Eff. 7/1/85; Imp: 85-2-314, 315, 402, MCA

"RULE V. RECOMMENDATIONS (1) Upon completion of the field investigation and interviews, the department will determine whether the appropriation is in substantial accordance with the permit or authorization considering all of the record including, but not limited to the following:

(a) the application as filed;

(b) the public notice;

(c) the notice of completion;

(d) any previous field investigations or reports by the department;

(e) the policies and procedures in place throughout the application process; and

(f) all facts and data collected through verification field investigation and interviews.

(2) The department shall formalize a recommendation based on its determination as to whether the appropriation is in substantial accordance with the permit or authorization. The recommendation must be:

(a) to leave the permit or authorization unchanged,

(b) to modify the permit or authorization according to the department's findings, or

(c) to revoke the permit or authorization.

(3) The department shall notify the appropriator in writing of any recommendation to modify or revoke. The notice shall include documentation of the data and information gathered during the department's field verification investigation and interviews

supporting the modification or revocation.

(4) If the appropriator agrees with the recommendation, the department shall update its records accordingly."

Auth: 85-2-113, MCA; Auth. Extension, Sec. 22, Ch. 573, L. 1985, Eff. 7/1/85; Imp: 85-2-314, 315, 402, MCA

"RULE VI. INFORMAL CONFERENCE (1) If an appropriator disagrees with the departments recommendation he may request an informal conference to discuss the items in disagreement and to present further information that supports his position. The water resources division administrator or his designee shall conduct the conference.

(2) If the appropriator presents information that adequately supports his position and refutes the departments recommendation, the department may alter its recommendation accordingly.

(3) If no additional information by the appropriator rebuts the recommendation, the department shall advise the appropriator of the formal administrative hearing process and allow the appropriator to request a formal hearing."

Auth: 85-2-113, MCA; Auth. Extension, Sec. 22, Ch. 573, L. 1985, Eff. 7/1/85; Imp: 85-2-314, 315, 402, MCA

"RULE VII. REASONS FOR MODIFICATION (1) The reasons for a department recommendation to modify a permit or authorization include but are not limited to:

(a) to clarify the legal descriptions, ownership, means of diversion, or other details of the completed permit or authorization;

(b) to lower the volume or flow rate to amounts actually applied to beneficial use during the period for completion of the permit or authorization;

(c) to lower the volume or flow rate when evidence shows that the appropriator intends to appropriate water at a lesser amount than was perfected during the completion period;

(d) to lower the total number of acres irrigated to those acres that were perfected during the completion period.

(e) to lower the volume or flow rate when evidence that could not have been discovered at the time a permit was issued shows that the amounts permitted are wastefully excessive.

(2) A modification action cannot expand the appropriation or its operation, nor can it adversely affect the rights of other appropriators."

Auth: 85-2-113, MCA; Auth. Extension, Sec. 22, Ch. 573, L. 1985, Eff. 7/1/85; Imp: 85-2-314, 315, 402, MCA

"RULE VIII. REASONS FOR REVOCATION The reasons for a department recommendation to revoke a permit or authorization include but are not limited to:

(1) failure to perfect the permit or authorization within the completion period;

(2) failure to apply the water to the permitted use or

authorized change;
(3) failure to comply with any condition of the permit or authorization."
Auth: 85-2-113, MCA; Auth. Extension, Sec. 22, Ch. 573, L. 1985, Eff. 7/1/85; Imp: 85-2-314, 315, 402, MCA

"RULE IX. ADMINISTRATIVE HEARING AND FINAL ACTION (1) When the appropriator requests a hearing, the hearing shall be scheduled and the notice mailed certified to the appropriator 30 days prior to the hearing date or as otherwise provided in ARM 36.12.204(2).
(2) Upon issuance of the final order, the department's records shall be updated according to the final order.
(3) Certificates of water right shall be issued on completed and verified permits after the final adjudication of existing water rights in the basin in which the permits are located."
Auth: 85-2-113, MCA; Auth. Extension, Sec. 22, Ch. 573, L. 1985, Eff. 7/1/85; Imp: 85-2-314, 315, 402, MCA

3. The board is proposing the adoptions for the following reasons:
Rule I is necessary to clarify the intent of new appropriation verification and to summarily describe the verification process.
Rule II is needed to explain several terms used in the rules.
Rule III describes when and how an appropriator will be notified of the verification process. It is important the appropriator understands the verification process and his participation in it.
Rule IV explains how facts and information concerning the appropriation of water will be gathered and documented. It allows for a field investigation which is necessary to gather these facts.
Rule V is necessary to describe what information the department will use to make a determination on substantial accordance and what recommendations the department may make based on the determination.
Rule VI is required to provide for an informal meeting between the appropriator and the department to discuss the items of the departments recommendation with which the appropriator disagrees.
Rule VII identifies for appropriators the most common reasons the department may recommend modification of a permit or authorization.
Rule VIII identifies for appropriators the main reasons department may recommend revocation of a permit or authorization.
Rule IX provides for the administrative hearing and describes when the final action of issuing certificates of water rights will take place.
4. Interested persons may submit their data, views or

arguments concerning the proposed adoption in writing to Teresa McLaughlin, Administrative Officer, Water Rights Bureau, 1520 E. 6th Ave., Helena, MT. 59620-2301 no later than August 29, 1988.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Teresa McLaughlin, Administrative Officer, Water Rights Bureau, 1520 E. 6th Ave., Helena, MT. 59620-2301 no later than August 29, 1988.

6. If the Board receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the legislature; from a governmental agency or subdivision; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

BOARD OF NATURAL RESOURCES AND CONSERVATION

WILLIAM A. SHIELDS, CHAIRMAN

BY: 

W. DAVID DARBY, Deputy Director
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Certified to the Secretary of State on July 18, 1988.

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

In the matter of the proposed amendment of Rule 36.22.1306 pertaining to reentry of plugged oil and gas wells.	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 36.22.1306

TO: All Interested Persons:

1. On August 25, 1988, at 9:00 a.m., a public hearing will be held in the Billings Petroleum Club, Sheraton Hotel, Billings, Montana to consider the proposed amendment to rule 36.22.1306 concerning the requirements for reentering a plugged oil or gas well.

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

"36.22.1306 APPROVAL FOR PULLING CASING AND RE-ENTERING WELLS (1) No casing shall be pulled from any well regardless of its status without first filing Form No. 2 and securing approval of the Petroleum Engineer or his authorized agent.

(2) No oil or gas well which has been plugged in accordance with these rules shall be reentered for any purpose without first filing Form No. 2 and securing approval of the Petroleum Engineer or his authorized agent."

AUTH: 82-11-111, MCA; IMP: 82-11-123, MCA

3. The Board proposes to amend the rule because the present drought conditions in Montana have apparently caused some persons to consider reentering plugged oil or gas wells in a search for water. It is the clear intention of the statutes and rules requiring abandoned oil and gas wells to be plugged that such plugging be permanent. Unauthorized reentry into plugged wells by unqualified persons could result in the escape of oil or gas from one stratum into another, the intrusion of water into oil or gas stratum, or the pollution of fresh water supplies.

4. Interested persons may present oral or written comments at the hearing. Written comments may also be submitted to Dee Rickman, 1520 East Sixth Avenue, Helena, Montana, 59620 no later than August 25, 1988.

5. James C. Nelson has been designated to preside over and conduct the hearing.

Dee Rickman, Executive Secretary
Board of Oil and Gas Conservation

Certified to the Secretary of State, July 18, 1988.

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

In the Matter of Proposed Amendment of Rules for Permissible Utility Charges for Line Raising and Pole Moves, Associated with the Movement of Structures.	)	NOTICE OF PROPOSED AMENDMENT OF RULE 38.5.2405, PERMISSIBLE UTILITY CHARGES FOR THE PURPOSE OF ACCOMMODATING HOUSE AND OTHER STRUCTURE MOVES NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 29, 1988 the Department of Public Service Regulation proposes to amend rule 38.5.2405 which sets forth the average costs for time and materials expended in line raising and pole moves associated with the movement of structures.

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

38.5.2405 AVERAGE COSTS (1) Average costs for time and materials expended are determined to be:

(a) $40 for each telephone wire moved; except that the cost shall decrease $7 for each successive wire moved on the same pole or support structure. (Example: The average cost of moving four wires located on the same support structure is $118.),

(b) $70 for each telephone wire cut. For purposes of this provision only, a telephone wire is deemed to consist of 25 pairs; for each increment of 25 pairs, or part thereof, contained within the same cable, the average cost shall increase by $3.75. (Example: The average cost of cutting a 75 pair telephone cable is $77.50.),

(c) $40 for each electric wire moved; except that the cost shall decrease $7 for each successive wire moved on the same pole or support structure,

(d) ~~$70~~ $52 for each electric wire cut, and

(e) ~~$105~~ $147 for each telephone or electric pole moved. AUTH: Sec. 69-3-103, MCA; IMP, Sec. 69-4-603, MCA.

3. The Commission is proposing this amendment to Rule 38.5.2405 in order to discharge its duty, pursuant to § 69-4-603, MCA, to determine the necessary and reasonable expense of raising or cutting the wires or of removing the poles of utilities subject to Commission jurisdiction, based upon the average cost per line or pole for time and materials expended. These costs and expenses must be reviewed biennially pursuant to § 69-4-603, MCA, and the last such review was completed on December 11, 1985.

Upon review of the actual cost data submitted pursuant to ARM 38.5.2403, it appears that the actual cost adjustments, contained in the proposed amendment, should be made for electric pole moves, wire moves and wire cuts [subsections (c), (d) and (e)]. However, the telephone utilities have failed to

provide sufficient information on average costs, as required by ARM 38.5.2407 and 38.5.2403. In the absence of this necessary data, the Commission lacks sufficient information upon which to base any review of telephone wire moves or wire cut average costs. For this reason only, the Commission is not proposing amendment of ARM 38.5.2405(a) or (b) at this time. However, without further information, the Commission will base its revision of telephone pole move costs, upon the information provided by the electric utilities, based on the presumption that such costs are equivalent for both electric and telephone utilities.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Chuck Evilsizer, Public Service Commission, 2701 Prospect Avenue, Helena, Montana 59620-2601, no later than August 26, 1988.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally, he must make written request for a public hearing and submit this request along with any written comments he has to Chuck Evilsizer, Public Service Commission, 2701 Prospect Avenue, Helena, Montana 59620-2601, no later than August 26, 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 amendment or adoption; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons based on the number of customers in Montana.

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

CLYDE JARVIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE JULY 11, 1988.

Reviewed by

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.22.1311 relating to Industrial Machinery and Equipment Trend Factors.	AMENDED NOTICE OF PROPOSED AMENDMENT OF ARM 42.22.1311 relating to Industrial Machinery and Equipment Trend Factors.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

The notice of proposed agency action published in the Montana Administrative Register on June 9, 1988, is amended because the Authority was inadvertantly omitted.

1. On August 29, 1988, the department of revenue proposes to amend ARM 42.22.1311 relating to Industrial Machinery and Equipment Trend Factors.

2. The language of the rules proposed to be amended and adopted can be found in the 1988 Montana Administrative Register Issue No. 11, page 1170. (AUTH, 15-1-201; IMP, 15-6-138 and 15-8-111.)

3. The purpose of the proposed amendment can be found in the 1988 Montana Administrative Register Issue No. 11, page 1170.

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 August 25, 1988.

5. Paul VanTricht, 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 7/18/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.25.515 and the ADOPTION of Rules I, II and III relating to Coal Gross Proceeds.	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT of ARM 42.25.515 and ADOPTION of Rules I, II, and III relating to Coal Gross Proceeds.

TO: All Interested Persons:

The notice of proposed agency action published in the Montana Administrative Register on June 9, 1988, is amended as follows because the required number of persons has requested a public hearing.

1. On August 17, 1988 at 1:30 p.m., a public hearing will be held in the Fourth Floor Conference Room, Mitchell Building, Helena, Montana to consider the amendment of the above referenced rule and adopt rules I, II and III relating to Coal Gross Proceeds.

2. The language of the rules proposed to be amended and adopted can be found in the 1988 Montana Administrative Register Issue No. 11, page 1165.

3. The purpose of the proposed amendment and adoptions can be found in the 1988 Montana Administrative Register Issue No. 11, page 1165.

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 August 25, 1988.

5. Paul VanTricht, 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 7/18/88.

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

In the matter of the amendment of Rules 46.12.602 and 46.12.605 pertaining to dental services	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.602 AND 46.12.605 PERTAINING TO DENTAL SERVICES

TO: All Interested Persons

1. On August 17, 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 amendment of Rules 46.12.602 and 46.12.605 pertaining to dental services.

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

46.12.602 DENTAL SERVICES, REQUIREMENTS Subsections (1) through (5)(h) remain the same.

(6) The following oral surgery services are benefits of the medicaid program; including extensive oral surgery which must be prior authorized by the designated review organization:

~~(a) --general--anesthesia, which must be prior--authorized by the designated review organization;~~

~~(b) --nitrous oxide, when prior--authorized--by-the-designated-review-organization--for-specific--reasons such as disability or age of patient, etc.;~~

~~(c) --oral premedication for--sedation of patient for whom dental treatment--under normal--circumstances is not possible, but who--does not--require general--anesthesia, --or parenteral premedication, when prior authorized by the designated--review organization;~~

~~(d) --parenteral premedication for sedation of patient for whom dental treatment under normal circumstances is not possible, but who--does not--require general anesthesia, when prior authorized by the designated review organization;~~

(ea) hospital dental treatment, when prior authorized by the designated review organization;

(~~f~~b) I and D of extra-oral abscess;

(~~g~~c) removal of tooth (includes shaping of ridge bone);

(~~h~~d) surgical removal of tooth, soft tissue impaction;

(~~i~~e) surgical removal of tooth, partial bone impaction;

(~~j~~f) surgical removal of tooth, complete bone impaction;

(~~k~~g) alveolectomy, not in conjunction with extractions;

(~~l~~h) excision of hyperplastic tissue when caused by medication reaction;

(~~m~~i) removal of retained or residual roots, foreign bodies in bony tissue;

(~~n~~j) removal of cyst;

(ek) removal of retained or residual roots, foreign bodies in maxillary sinus;
(el) frenectomy;
(em) removal of exostosis, torus, maxillary or mandibular;
(en) biopsy;
(eo) maxilla, open reduction;
(ep) fracture, simple, maxilla, treatment and care;
(eq) mandible, open reduction;
(er) fracture, simple, mandible, treatment and care;
(es) oral surgery procedures not listed in this rule are covered if they are:
(i) listed in ARM 46.12.2003 ~~through 46.12.2000~~;
(ii) performed by a dentist;
(iii) provided in a medical emergency arising out of trauma; and
(iv) authorized by the review organization designated by the department.
Subsections (7) through (14) remain the same.

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

46.12.605 DENTAL SERVICES, REIMBURSEMENT Subsections (1) through (12)(a) remain the same.
(b) 07110 - removal of tooth (includes shaping of ridge bone) - ~~19.64~~ 17.40;
Subsection (12)(c) remains the same.
(d) 07230 - surgical removal of tooth, partial bone impaction - ~~35.70~~ 64.35;
(e) 07240 - surgical removal of tooth, complete bone impaction - ~~35.70~~ 107.25;
Subsections (12)(f) through (13)(d) remain the same.
~~(14) 09220 Anesthesia includes:~~
~~(a) general anesthesia administered in office 42.90 per hour;~~
~~(b) 29230 nitrous oxide 4.40;~~
~~(c) 20090 oral premedication 11.00;~~
~~(d) 09240 parenteral premedication 42.90~~
Subsections (15) and (16) remain the same in text but will be renumbered (14) and (15).

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 proposed amendments are necessary to maintain the level of savings made earlier this year in the dental portion of the Medicaid program while providing cost increases for two procedures. Those two procedures had earlier been

reduced to a level which experience proved was too low to provide necessary services for Medicaid recipients.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than August 25, 1988.

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

6. These rule changes are proposed to be effective September 9, 1988. However, the fee increases in ARM 46.12.605(12)(d) and (e) will be applied retroactively for appropriate services performed since March 1, 1988.

/s/ Benjamin E. Johns
By
Director, Social and Rehabilitation Services

Certified to the Secretary of State July 18, 1988.

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

In the matter of the amendment of rules pertaining to crop hail insurance rate filings	))))	NOTICE OF AMENDMENT OF ARM 6.6.1502 AND 6.6.1503

TO: All Interested Persons

1. On May 26, 1988, the State Auditor and Commissioner of Insurance (Commissioner) published notice of public hearing on the proposed amendment of ARM 6.6.1502 and ARM 6.6.1503 pertaining to crop hail insurance rate filings at page 631, 1988 Montana Administrative Register, issue no. 7. The commissioner published an amended notice of public hearing at page 917, 1988 Montana Administrative Register, issue no 10.

2. The commissioner has adopted the rules as follows:

6.6.1502 CROP HAIL INSURANCE RATE FILINGS same as proposed rule.

6.6.1503 CROP HAIL INSURANCE RATE DEVIATION FILINGS same as proposed rule.

3. The commissioner received an oral comment regarding the proposed rules. The comment is as follows.

(a) Gary L. Steuck, National Agriculture Underwriters, Inc. stated his support for the amendment of ARM 6.6.1502 and ARM 6.6.1503.

Andrea "Andy" Bennett
State Auditor and
Commissioner of Securities

Certified to the Secretary of State this 18th day of July, 1988.

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of proposed amendment, repeal, and adoption of rules pertaining to outfitters and professional guides	NOTICE OF AMENDMENT TO RULES 8.39.101, 8.39.201, AND 8.39.202, REPEAL OF RULES 8.39.401 THROUGH 8.39.417, AND THE ADOPTION OF NEW RULES I (8.39.501), II (8.39.502), III (8.39.503), IV (8.39.504), V (8.39.505), VI (8.39.509), VII (8.39.510), VIII (8.39.508), IX (8.39.514), X (8.39.515), XI (8.39.518), XII (8.39.703), XIII (8.39.702), XIV (8.39.701), XV (8.39.706), XVI (8.39.705), AND XVII (8.39.707)

TO: All Interested Persons

1. On March 24, 1988, the Board of Outfitters published notice of proposed amendment, repeal, and adoption of rules concerning outfitters and professional guides at pages 553 through 564 of the 1988 Montana Administrative Register, issue number 6.

2. The agency has amended the rules with the following changes:

"8.39.101 BOARD ORGANIZATION AND POLICY (1) and (2)" shall remain the same as proposed for amendment.

"8.39.201 PROCEDURAL RULES (1)" shall remain the same as proposed for amendment.

"8.39.202 PUBLIC PARTICIPATION RULES (1) through (3)" shall remain the same as proposed for amendment.

"(4) In addition to any other means provided by law or rule, a person wanting to receive notice of board activities of significant interest to that person may contact the board office, in writing, and request that his or her name, address, and phone number be placed on the board's "mailing list" and designate those activities of interest. The request shall be effective until January 1 of the following year, at which time it may be renewed by written request annually."

Auth: 2-3-103, 2-4-201, 37-47-201, MCA Imp: 2-3-103, 2-4-201, 37-47-201, MCA

3. The agency has repealed the rules as proposed.

4. The agency has adopted the new rules with the following changes:

"8.39.501 LICENSURE--OUTFITTER LICENSES (1) through (2)" shall remain the same as proposed.

"(a) hunting services~~;~~ ,

(b) ~~fishing services;~~ small game hunting services, or,

(c) ~~both hunting and fishing services~~ fishing services;

and, shall include, if applicable to the services provided in (a) through (c) above and qualified for, one or more of the following:

(i) saddle or pack animal~~;~~ ,

(ii) personal guiding services~~;~~ ,

(iii) camping equipment~~;~~ ,

(iv) transportation (vehicles or other conveyance)~~;~~ ,

(v) boat or other floating craft~~;~~ , ~~and~~ or,

(vi) lodging."

Auth: 37-1-131, 37-47-201, MCA Imp: 37-47-101, 37-47-201, 37-47-301, 37-47-302, 37-47-307, 37-47-308, MCA

"8.39.502 LICENSURE--OUTFITTER QUALIFICATIONS (1) In addition to meeting all of the qualifications contained in section 37-47-302, MCA, outfitter qualifications, each applicant for an outfitter license shall:

(a) have three seasons of experience in Montana or bordering states as a licensed outfitter or a licensed professional guide working for a licensed outfitter; and,"

"(b)" will remain the same as proposed.

"(2) The experience required in this part shall be in the field ~~of hunting for an outfitter that is applying for an outfitter license that authorizes hunting; fishing for a license authorizing fishing; and both for a license authorizing both hunting and fishing~~ pertaining to the license function applied for.

(3) One season of experience shall mean experience, for a hunting or small game hunting outfitter applicant, of not less than six weeks hunting as a licensed outfitter or licensed professional guide and, for a fishing outfitter applicant, of not less than eight weeks fishing as a licensed outfitter or licensed professional guide, except:

(a) if ~~the board determines~~ it is not possible ~~or practical~~ for an applicant to obtain the required experience for the particular ~~species~~ type of game that an applicant intends to provide services for, the board may determine other appropriate experience qualifications;

(b) one season of experience may be waived by the board for an applicant who has completed training at an outfitter or guide school licensed by a state and approved by the board; and,"

"(c) through (4)" shall remain the same as proposed.

Auth: 37-1-131, 37-47-201, MCA Imp: 37-47-201, 37-47-302, 37-47-304, 37-47-307, 37-47-308, MCA

"8.39.503 LICENSURE--OUTFITTER EXAMINATION (1) Application to take the outfitter examination shall be by completed license application accompanied by the required fee no later than ~~thirty~~ seven days prior to the examination date."

"(2) through (4)" shall remain the same as proposed.

"8.39.504 LICENSURE--APPROVED OUTFITTER OPERATIONS PLAN (1) through (9)" shall remain the same as proposed.

"(10) A new applicant's equipment, livestock, and facilities shall be inspected before final approval of an operations plan. An existing outfitter's equipment, livestock, and facilities may be inspected at any appropriate time. All inspections shall be in Montana."

"(11) through (12)" shall remain the same as proposed.

Auth: 37-1-131, 37-47-201, MCA Imp: 37-47-201, 37-47-301, 37-47-302, 37-47-304, 37-47-307, 37-47-308, MCA

"8.39.505 LICENSURE--OUTFITTER APPLICATION (1) through (3)" shall remain the same as proposed.

"8.39.508 LICENSURE--RENEWAL (1)" shall remain the same as proposed.

"(2) If an outfitter does not renew his or her license ~~during a~~ by January 1 of the new license year, the license will be deemed to have lapsed, and he or she shall then be treated as a new applicant for all purposes."

"(3)" shall remain the same as proposed.

"(4) By January 1 of the new license year, or 60 days thereafter for good cause shown, an outfitter license may be placed on inactive status for a period not to exceed one license year, by written request and payment of the required fee."

Auth: 37-1-131, 37-47-201, MCA Imp: 37-47-201, 37-47-302, 37-47-307, 37-47-312, MCA

"8.39.509 LICENSURE--AMENDMENT TO OUTFITTER LICENSE (1) through (2)" shall remain the same as proposed.

Auth: 37-1-131, 37-47-201, MCA Imp: 37-47-201, ~~37-47-310~~, MCA

"8.39.510 LICENSURE--AMENDMENT TO OPERATIONS PLAN (1)" shall remain the same as proposed.

"8.39.514 LICENSURE--PROFESSIONAL GUIDE LICENSE (1) through (4)" shall remain the same as proposed.

"8.39.515 LICENSURE--PROFESSIONAL GUIDE QUALIFICATIONS (1) In addition to the requirements contained in section 37-47-303, MCA, professional guide's qualifications, an

applicant for a professional guide license shall have:

(a) not less than one season of experience~~,-as-defined in-(Rule-II),~~ of hunting or fishing for the ~~species~~ type of game ~~that~~ for which he will be guiding ~~for~~, or have worked for the outfitter that signs the license for a period of at least six weeks and in the area to be guided in, or have successfully completed a school licensed by a state, approved by the board, and that trains persons to be professional guides;"

"(b)" shall remain the same as proposed.

"(c) knowledge of equipment, terrain, and hazards~~,~~ ~~sufficient~~ to competently provide a safe experience for those persons he or she guides.

(2) ~~An-applicant-shall-not-have-held-an-outfitter-or professional-guide-license-that-is-currently-suspended-or revoked~~ An outfitter whose license is currently suspended or revoked shall not be qualified for a professional guide license."

Auth: 37-1-131, 37-47-201, MCA Imp: 37-47-201, 37-47-303, 37-47-307, MCA

"8.39.518 LICENSURE--FEES FOR OUTFITTER, OPERATIONS PLAN, AND PROFESSIONAL GUIDE (1) through (c)(ii)" shall remain the same as proposed.

"(iii) inactive status..... 100"

"(d) through (i)" shall remain the same as proposed.

"(2) New applicants for an outfitter license shall include with application for licensure, payment in the amount of $375 (this does not include fees related to operation plan), which shall be nonrefundable, except:

"(a) through (6)" shall remain the same as proposed.

Auth: 37-1-131, 37-1-134, 37-47-201, 37-47-306, MCA Imp: 37-47-306, 37-47-307, MCA

"8.39.701 CONDUCT--STANDARDS OF OUTFITTER AND PROFESSIONAL GUIDE (1) All outfitters and professional guides shall:

(a) ~~in-addition-to-avoiding-the-prohibitions-contained in-37-47-301(3),-MCA,~~ insure that no outfitter or employee of an outfitter shoots, kills, or takes any big game animal while the outfitter is providing guiding services for clients;"

"(b) through (g)" shall remain the same as proposed;

"(h) shall certify only those non-residents he or she intends to provide the functions of an outfitter for, as defined in section 37-47-101(5), MCA, definition of outfitter, and from whom he or she has received a ~~minimum of-a-$400-deposit~~ full deposit as listed in his or her outfitter's printed materials, as required by rule 8.39.702(1);"

"(i)" shall remain the same as proposed;

"(j) not conduct any services on private or public land, except legal transportation across such lands, without first

having obtained written permission from the landowner or written authorization from the agency administering public land, unless the agency does not require and does not provide such permission;"

"(k) through (o)" shall remain the same as proposed;

"(p) not harass-or abuse livestock ~~or-wildlife~~;"

"(q)" shall remain the same as proposed.

Auth: 37-1-131, 37-47-201, MCA Imp: 37-47-201, 37-47-301, 37-47-302, 37-47-341, 37-47-402, 37-47-404, MCA

"8.39.702 CONDUCT--ADDITIONAL REQUIRED OUTFITTER PROCEDURES (1) through (2)" shall remain the same as proposed.

"8.39.703 OUTFITTER RECORDS (1) Outfitters shall maintain current, true, complete, and accurate records at all times, submit the records to the board with application to renew license, and make the records available at all times at the outfitter's main base camp or business office to enforcement or investigative personnel authorized or appointed by the board."

"(2) through (b)" shall remain the same as proposed.

"(c) ~~big~~ game animals, except fish, ~~and-fish~~ taken by clients;

(d) clients' hunting and fishing license numbers; and,

(e) districts hunted and rivers and lakes fished by clients~~;-and~~ .

~~(f)--unusual-incidents-involving-participants;~~

(3) Submitted outfitter records shall be maintained as confidential information and shall not be released to any person or organization without approval of the board, permission of the outfitter, or being otherwise required by subpoena or other order of a court."

Auth: 37-1-131, 37-47-201, MCA Imp: 37-47-301, MCA

"8.39.705 CONDUCT--OUTFITTER RESPONSIBILITY FOR PROFESSIONAL GUIDE (1)" shall remain the same as proposed.

"8.39.706 CONDUCT--ADDITIONAL RESTRICTIONS ON PROFESSIONAL GUIDE (1)" shall remain the same as proposed.

"8.39.707 CONDUCT--REVOCATION OR SUSPENSION OF OUTFITTER OR PROFESSIONAL GUIDE LICENSE (1) The license of an outfitter or professional guide may be suspended or revoked for any of the grounds listed in section 37-47-341, MCA, grounds for suspension or revocation; Title 37, chapter 47, MCA, outfitter and guide laws; rule 8.39.706, conduct; other rules in this chapter of the Administrative Rules of Montana~~;~~ ; ~~and~~ or any statute or rule of a state or federal agency referenced~~;-specifically-or-generally;~~-therein."

"(2) through (3)" shall remain the same as proposed."

Auth: 37-1-131, 37-1-136, 37-47-201, MCA Imp: 37-47-201, 37-47-302, 37-47-341, 37-47-342, MCA

5. Comments received on the proposed amendment, repeal and adoption of rules are as follows:

PRELIMINARY NOTE: The comments of all persons are appreciated. Because of your comments, the rules are better. Comments overruled required much thought. Your input has had a significant impact and your efforts are commended. Thank you.

COMMENT: General comments were made requesting an extension of time to receive further and additional comments and to reach a decision on the new rules. All persons attending the hearing did agree that this would be a good idea--they all favored more study. The reasons for the extension request included the public not being informed, the shortness of the time allowed, the present time is busy for outfitters, and the major importance and scope of the new rules. At least one comment recommended each board member hold a meeting in his district for comments. General comments were also received expressing disappointment in the board not attending the hearing.

RESPONSE: The board agreed at the March 24, 1988, board meeting to study the comments and not take any action on the rules until the June 7, 1988, board meeting. Several comments were received after the deadline, during that time, and were considered. Publication of the rules was further extended pending the July 18, 1988, meeting of the Administrative Code Committe. The board has reviewed all written comments received and has reviewed a summary of the hearing. The board has considered and discussed each comment received. The board did not agree with holding a meeting in each district because of time and cost involved. However, informal discussions were held at the Montana Outfitters and Guides Association Convention in Billings, at the Professional Wilderness Outfitters meeting, in Lincoln, and at the board elections in both Bozeman and Missoula. The board was advised not to attend the hearing by legal staff, because, with the board present, the exchange would have been one of time expended in argument, debate, and justification of the rules, or mere discussion, rather than to collect comments on the rules, which is the lawful purpose of, and true reason for, the hearing.

COMMENT: James Kehr, D.D.S., comments; the new rules do more to protect the industry than the public and questions some of the provisions in general; in regard to protection of the industry, three seasons' experience is a large deviation from the existing requirements, will inhibit entry into the field, and is discriminatory unless all presently licensed outfitters are required to meet the same qualifications; the phrase "be qualified to provide all services and use all equipment" is vague and must be spelled out more clearly; the one season experience waiver for

school should include rules on certification of curriculum, length of training, and be otherwise more specific, or the knowledge gained from schools may be vastly different, and what this will allow is each outfitter to become a school teacher to supplement income; by forcing experience to be gained by a guide will provide cheap labor to outfitters and is unfair as the old rule allowed general hunting and fishing experience; the idea that a good outfitter will be produced by three years guide experience is not valid, a good outfitter will be one from the beginning and many persons guiding for ten years will not have the necessary experience; the standards should be set high and all present outfitters and future applicants should have to meet the same qualifications, and the new rules set up qualifications that grandfather everybody in and make it difficult for new people to enter the field; the phrase "in order to determine if the intended use will cause conflicts with the existing use the board may serve notice" is discriminatory, against free trade, and against competition, especially on public land, existing leases should be on a bid basis only/annually, and the idea that new business could be kept out is anti-American and runs contrary to the anti-trust regulations of the Federal Trade Commission; the board is supposed to protect the public first and, instead, the new rules create a monopoly to enhance the present participants and exclude further competiton; the phrase "on the day after the postmarked date of the application the license applied for will be considered valid and will remain so until the actual license is issued or the board denies the license" is unprofessional and will allow someone who is not qualified to practice, a professional organization should respond to applications promptly, an ethical outfitter will have guides lined-up well in advance and should not be allowed to simply hire a guide off the street; protection of the public should include some rules on supervision of the guides, including number supervised at one time and whether it is direct or indirect supervision; licensed guides should have a current CPR certification and renew it annually, an outfitter should have advanced first aid training and be available within hours to any camp or the guide should have this type of training, if not within timely access to a medical facility, and this would produce a more professional guide; all back country camps should have shortwave communication to allow for evacuation; the phrase "not excessively use any narcotic drug, alcohol, or any other drug or substance to the extent that the use impairs the user physically or mentally, while engaged by a client" is astounding as the use of any narcotic drug, except by prescription, is strictly illegal and should be grounds for revocation, and the same for any illegal drug; the phrase "reasonable degree of supervision" is so vague that an outfitter may never have to go into camp with the guides, supervision means on the premises at all times that services are rendered, and the phrase should be

better defined; and, landowner outfitters do not fit into the classification and are not tested or regulated.

RESPONSE: The board probably spent more time on the experience qualification than any other in order to be sure the qualification was right. The board's decison did take into consideration the deviation from present, inhibiting entry into the field, and discrimination. Discrimination does not exist. To the extent that the others may exist, they could not be alleviated and still fulfill the legislative directive of writing qualifications that would assure that licensees would have the ability to provide for the health, safety, and welfare of the persons using the services of outfitters and for the protection of landowners and the general public. The board's decision was based on the legislative directive to require experience, section 37-47-201(5)(b), MCA. Furthermore, the board agrees that experience is an important qualification. The outfitter board members' combined experience is nearly 100 years of outfitting, and during those years the members have probably employed around 150 people as guides. Each board member agreed that in his individual experience it took the vast majority of his guides three seasons of experience before they had the knowledge and competence and insight to provide services of an outfitter, with no supervision. The board does not agree that reference to "being qualified to provide all services and use all equipment" is vague. The means of determining this qualification is by use of the examination. The examination tests the applicant's ability to perform services he or she has applied to be licensed to perform and knowledge of equipment that he or she will be using in the services he is applying for. The board made a change in the rule allowing one season of experience waiver after considering the comment. The board added that the school must be a state licensed school. The state licensing requirements are expensive, time consuming, and rigid, therefore, eliminating the concern of "each outfitter becoming a school teacher to supplement income." If the rule creates more state licensed schools, it will be a valuable asset to the state and to the outfitting industry. Approval of a school will take into consideration the other concerns expressed. The board overrules the comment that forcing experience to be gained by a guide will provide cheap labor to outfitters and is unfair. The natural progression of events is that someone enters the field as a guide and then progresses up to becoming an outfitter. This experience requirement closely parallels the requirements of other professions where the appropriate skills cannot be learned entirely in schools. Please compare real estate brokers. The board would agree that an idea that a good outfitter will be absolutely and at all times produced by three years' guide experience is not valid. However, the board never asserted this.-- This qualification, in addition to the examination, investigations, and inspections of

equipment will provide a good outfitter the majority of the time. The board finds nothing in the rules that sets separate qualifications for existing and new outfitters. A concern about the ease or difficulty in entering the profession is a consideration, but not the focal point for the rules--providing qualified outfitters and guides as required by statute is. The comment concerning the phrase "in order to determine if the intended use will cause conflicts with the existing use the board may serve notice" is discriminatory, anti-American, illegal, and creates monopolies, is overrruled. The board determined that this phrase only tells how the board will determine if intended use will cause conflicts. It is not discriminatory, as it will apply to all equally, it is not anti-American as it is the American way to insure that professions operate in a fashion that protects the public, it cannot be contrary to the law, anti-trust or otherwise, because it is based on clearly articulated legislation. Mr. Kehr comments on a rule pertaining to a guide license being valid on the day after it is postmarked, and does not approve of the guide licensing system in general. The board believes that the guide licensing system is written according to statute, and the problem Mr. Kehr has is probably one of not having a clear understanding of the system. Simply stated, an outfitter endorsement of a guide license is a statement by the outfitter that the guide is qualified. It is the outfitter's responsibility to certify these qualifications. Issuance of a guide license is simply an administrative function verifying the outfitter has certified the guide's qualifications. The comment that protection of the public should include some rules on supervision of the guides, including number supervised at one time and whether it is direct or indirect supervision is adequately covered by rule, except that the rule does not include numbers of guides required. Because of the many different services outfitters offer it would be impossible to determine a proper number of guides one could supervise. Mr. Kehr thinks the board should require first aid cards for outfitters and guides. The board decided against a requirement that outfitters and guides need CPR and first aid certification, at this time, after much consideration and mixed feelings. It is the board's determination that outfitters are first aid trained--outfitter examinations have always been heavy on first aid, guide schools all teach first aid, and the kind of persons that work in the profession tend to be knowledgeable of survival techniques which include first aid. Probably the board's biggest concern was need. We could not verify that there was a need for the rule from our experience. The board overrules the comment that all back country camps should have shortwave radio communications. Most backcountry areas are administered by the U.S. Forest Service, and it provides emergency communications at ranger stations that are

strategically located in backcountry areas. Again, the board could not verify a need from past experiences. Mr. Kehr comments that the use of a narcotic drug is strictly illegal and should be grounds for revocation. The board agrees, but does not believe additional rules need to be written, as rules and statutes already address felony convictions and the use of drugs. The rule cannot reasonably be interpreted to allow use of illegal drugs, it is designed to apply to legal drug use, such as prescription or alcohol. Concerning reasonable degree of supervision being vague, the board points out that the outfitter is responsible for all his or her guides' activities. In being responsible, it is up to the outfitter to decide the degree of supervision necessary. If a guide violates standards, the board will determine whether the outfitter is responsible because he or she did not provide a reasonable degree of supervision. Mr. Kehr's last remark addresses landowner outfitters. These are exempt from outfitter and guide licensing by statute.

COMMENT: Dale Neal, professional guide, comments: he is against the increase in fees for an outfitter license and the examination and believes the move is made to monopolize; he believes that the board wants complete control and regulation over all guides, which is against the free enterprise system and borders on anarchy; guides have no representation on the board; the examination is a farce, half the material is not applicable, is designed to fail people, most of the material was not recommended for study, was purposely misleading, its legality is in doubt, and will only cause illegal outfitting; it is doubtful that existing outfitters could pass the test; all existing outfitters should take the test; the responsibility and control of professional guides should be taken away from the board and given to the department of commerce and the guides; an outfitter should not have to sign a guide license to validate it, except when working for an outfitter; outfitters should have nothing to do with issuing or revoking guide licenses, it should be done by the department and a guide board; equal representation is needed; outfitters and the board have purposely held down wages of guides and have used the board for monetary gain; outfitters can get a licensed guide with no qualifications just by applying and sending money with no investigation, the result being unqualified guides; some outfitters are not as professional or responsible as the guides hired and yet are in complete control of them and this is a conflict of interest; some outfitters are competent and this is what should be strived for; regulations for professional guides should be the same as stated in state fish and game laws, except regulation should be given to the department of commerce and a board of Montana guides; the section 87-4-101, MCA, definition of guide is inadequate because

a guide is more than an employee of an outfitter, the definition of guide by the forest service is more accurate and has no qualification that a guide must work for an outfitter; and, five new rules should be included--half of the board be professional guides for equal representation, outfitter livestock should be inspected at the end of every season and abuse should be grounds for revocation, the exam will contain only material pertaining to guiding or outfitting and exclude material such as livestock treatment for illness as it encourages unqualified persons to diagnose and treat and other irrelevant material such as the exact name of knots in leaders, the test will be only on material provided by the department, and no person may buy an outfitter business without first being licensed and the seller shall be liable if the sale is prior to licensure. Mr. Neal also commented: that the rules are discriminatory to guides and persons trying to become guides and outfitters; somebody should oversee outfitters and the board of outfitters; outfitters are not in the field, guides are in the field; the rules are a total monopoly with no protection of the public, and no policing of the outfitters; there were no forest service regulations on the examination; and, it is unfair to require applicants to obtain their own study material because it is difficult to learn where to start to study. Mr. Neal also made some comments after others had made presentations. He comments that the delay in issuing a guide license is a problem because the guide is usually in the field already with no proof of licensure and that, therefore, there should be some annual type license or immediate issuance. He comments that the Montana definitions of outfitter and professional guide seem to be vague and overlap. He commented that the test will cause illegal outfitting. He commented that outfitter equal responsibility is unconstitutional.

RESPONSE: It is the boards' opinion that most of Mr. Neal's comments pertain to legislation and are not properly a subject of the rulemaking process. Pertaining to rules, Mr. Neal commented he is against the increase in fees for outfitter licenses. The statutes require the board to establish fees commensurate with costs. In establishing fees, the board did its best to determine the actual cost of services provided and to make those costs the fees. Concerning the examination, all prior examinations have been based on the old rules and have been discussed and amended to take into account problems that did exist. Mr. Neal also commented that the delay in issuing a guide license is a problem because the guide is usually in the field before the proof of licensure, and that there should be some annual type license. This is primarily statutory. The board notes that guide licenses are annual and may be applied for any time. Mr. Neal made considerable comments about guides and their relationship to outfitters and how guide licenses should be handled. Again, these remarks all require

changes in statutes and cannot be done by the board in this rulemaking process. Concerning equal responsibility, the board believes that given the supervisory nature of the outfitter in relation to the guide, such is not unconstitutional.

COMMENTS: Lloyd Neal, professional guide, comments: he is against the proposal to raise fees for new applicants, it is a discriminatory act aimed at removing free enterprise and equal rights from the outfitting profession, the reason being to eliminate competition; competition cleans up corruption, without it the board and the profession will rate number one in organized crime in Montana; possibly the existing outfitters should have to pay more for renewals, plus $200 for the equipment and stock inspection before receiving a license; new applicants have equipment as good as present outfitters and their stock is in better shape than many existing outfitter's; the exam could not be passed by 95% of the existing outfitters, it did not pertain, it was designed to bottleneck all outfitting to existing outfitters; this is not the right approach to weed out the system, let new ones in and competition will take care of the problems; the good ones will stay and the bad ones will fade out; the fees should be left as is; the exam should be abolished or taken by all outfitters; and if the board does not improve its procedures, it will encourage illegal outfitting and criminal activities, it will put and undue burden on law enforcement agencies, and all that is being asked for is fairness.

RESPONSE: Mr. Neal comments on the proposal to raise fees for new applicants. The law says the board shall establish fees commensurate with cost. Concerning enforcement and investigations, the Fish, Wildlife, and Parks absorbed that cost through the department and there was never a direct cost to the outfitters nor was a warden or administration cost ever separated. He also made the comment that existing outfitters should pay more for renewals. We felt that the $100.00 fee is sufficient at the present time to cover annual costs. It may require a request for increase at a later time. Most of the cost of an individual's licensure is in issuing a license, this is reflected in the fees. The law also states that the board will inspect equipment of new applicants. The Fish, Wildlife, and Parks, again, did not charge the applicant. The law says the fees will be set by the board and charged to the applicant, commensurate with the cost. Mr. Neal also made the statement that new outfitters have better equipment and stock than existing outfitters. This is sometimes true but, again, the inspection requirement was made to determine that. As far as Mr. Neal's comment on 95% of the existing outfitters not being able to pass the exam, we cannot answer that precentage-wise, but we do believe that the good and serious outfitter or person testing to become an outfitter

can pass the exam with a high score. The law says the exam shall test the applicants knowledge of subjects which shall apply to the type of license applied for in the following subjects: fish and game laws of the state and United States; practical woodsmanship; general knowledge of big game; field preparation of trophy; care of game meat; use of outfitter gear as listed on application; knowledge of area and terrain; knowledge of firearms; federal and state regulations as applicable to outfitter; first aid; boat safety; water safety; care and safety of livestock; this type of test has been given since 1965, so most outfitters in the state have taken the test.

COMMENT: Richard Parks, former president of Fishing and Floating Outfitters Association of Montana, representing 200 plus members, comments: small game hunting, particularly upland bird and waterfowl, is a developing field and should be incorporated into the rules as a separate type of function of an outfitter and require independent qualifications and examination; there is no need for the function of "both hunting and fishing services" as it is covered by existing separate functions of hunting and fishing; the term "personal services" needs clarification; the rules make it impossible to market a business to anyone from out of state, there must be a rule amendment which provides that a person has met all requirements for licensure and purchased and existing outfitting business; an adequate testing procedure could replace the three year experience requirement; much experience may mean nothing to some and little experience may mean a lot; the board should provide that it may provide a practical field examination, in addition to or instead of the written examination, administered by a qualified licensed outfitter, not a board member or interested financially, and under the supervision of board staff; he is uncomfortable with a process which allows issuance of license to people who will not be performing the services because the applicant can pass the exam, but the person that will be performing the services, no matter how qualified, cannot, therefore, the board should retain an option to go to a direct examination and this would allow for a more rigorous exam of re-entry applicants; the operations plan rule is marginally justifiable on the basis of health, safety, and welfare of anyone but existing outfitters and the board should be up front with the intent which is to limit the areas of operation for outfitting businesses; the operation plan rule may cause massively detailed and unbearable documentation or be so general as to be worthless and the standards need to be spelled out for making determinations; existing operation plan equipment inspections should be limited and not be redundant; a broad spectrum of outfitters should be involved in the operations plan formatting and the work should proceed concurrently with the rulemaking process; there may be uncontrollable

reasons for dropping out of the business for a period of one year and the renewal rule should allow this; if it is not the intent of the rules to prohibit a guide from being an independent contractor by requiring a new license each time there is a shift from outfitters, a new part should state that it is the responsibility of the new employer to complete the requirements for original license, and if it is the intent the rules should specifically state that; possibly the independent contractor should be required to have an outfitter license; the first aid section of the examination should be replaced with a requirement that each outfitter and guide have a reasonably current red cross card, hunting outfitters should have a first aid card, and every guide and outfitter should have a CPR card issued within two years of the application date; if guides are going to be allowed to act as an independent contractor there should be a written examination for them, which could be a subset of the outfitter exam; outfitters should be entitled to work as a guide under the conditions of the outfitter license, without additional applications, fees, or examinations--outfitters may trade services during slack times; the fees need justification and equipment inspections should not be conducted at will; the requirement that outfitters report unusual circumstances should be deleted; the rules concerning standards of conduct appear to be a species of double jeopardy, specifying activities already illegal and some are mutually exclusive, redundant, or inappropriate; a proposal for the rules on conduct is submitted; and, there needs to be an understanding about the guide and outfitter relationship.

RESPONSE: The board agrees that small-game hunting should be a separate category. We may consider adding a charter boat section eventually. You stated no need for function of both hunting and fishing services and we agree. We also changed "personal services" to read "personal guiding services." We did change the experience requirement to add "in Montana or bordering states." The board does not agree with your statement "being impossible to market an outfitting business to anyone out of state." Forest Service camp transfers require a 2 year temporary probation period before priority use will be assigned. A person acquiring an existing business may meet all qualifications in a 2 year time period. We believe this experience requirement protects the general public from inexperienced or unqualified persons. The board does not agree with a testing procedure to replace the three year experience requirement. The board does not agree that a field or practical exam would be practical. It is true that some licenses are issued to people who will not be performing the service, this has always existed and we do not forsee an immediate resolution to this as license holders cannot always accompany their guides in boats and in hunting camps. The operation plan has nothing to do with a limit

of operation--it may limit an area of operation. The only territorial limits are established by private ownership or state and federal agencies. The operation plan will reveal information that the public has the right to know. The law states the board will monitor the activities of the outfitter and guides. The main purpose of the operation plan is to establish the number of commercial operations that exist in any area including rivers, lakes, and streams. We did change 8.39.508 to allow for an inactive license. For guides, the board did amend the rule to incorporate "working for an outfitter" as qualifying experience. First aid and CPR are addressed under comment by Mr. Kerh. Guides are not allowed to act as an independent contractor or collect fees in their name. They may collect fees in the name of, or on behalf of, the endorsing outfitter. In other words, your guide may accept payment in your name or go to sport shows with you and solicit monetary considerations or services for and on your behalf. Outfitters can work as a guide, if properly licensed. The board did justify the fee to commensurate with the cost. The board feels they need the authority to inspect equipment at any time as the time will come when reports of faulty equipment will come up. An equipment inspection costs the board $200.00 and is commensurate with the inspection fee. Inspections for original licensure and amendment to licensure will be charged to the licensee. Other inspections, if required, will be indirectly paid through the annual license fee. We did delete reporting of unusual circumstances in the report system. We do not see any species of double jeopardy and we maintain that a reminder of illegal activities is not out of line and those that you think are exclusive, redundant, or inappropriate are authorized by statue.

COMMENT: Woodside Wright, attorney, representing Yellowstone Enterprises, commented: he adopts the foregoing comments and the comments of the Administrative Code Committee; regulation is a proper function of the board, but some of the rules appear to be in excess of authority; the rules appear to create "blue sky," value in business, through limiting access, and the authority of the board to do this should be scrutinized and anti-trust aspects should be studied; and, certain terms need clarification, such as "personal services" and "sufficient." Mr. Wright comments that a provision for a mailing list should be included in the rules; that the wholesale repeal of rules is a waste of the time and effort expended in establishing them; the application requirements are not set forth in the rules; there is no statutory authority for an operations plan and it is an unwarranted intrusion into business operations; certain licensing functions designated are not within the board's authority; the experience requirement is in excess of authority and make it impossible to become an outfitter; the operations plan requirement of approved use has no

authority and is in violation of anti-trust; the fees have not been supported; greater protection should be granted for outfitter records; the amounts of liability insurance should be reviewed as each business is unique in need; the rule pertaining to use of drugs seems to imply that the board authorizes certain use; and the wording "any statute or rule of a state or federal agency referenced, specifically or generally therein" is too broad and vague.

RESPONSE: Mr. F. Woodside Wright commented that the terms "personal services" and "sufficient" need to be clarified. The board did make changes or additions to both in order to clarify their meanings. The comment Mr. Wright made regarding provisions for a mailing list of interested persons was also incorporated into the rules. Wholesale repeal of rules is not a waste of the time or effort expended in establishing them. The board believes quite the opposite. After first attempting to change or make additions to the old rules, it soon became very obvious that it would be very time consuming and very difficult to make the rules blend together in a way that the reader could easily understand them. The comment that there is no statutory authority for an operations plan and it is an intrusion into business operations is overruled. The cited Bick case and its quoted Bell case do not apply to the proposed rules--the statutory authority for outfitters is much more broad and specific. Although the board realizes there is no statutory mention of the phrase "operations plan," all elements of the plan are authorized and the operations plan is a logical way to collect and compile information that the statutes do authorize. The comment that certain licensing functions designated are not within the board's authority resulted in change to clarify that not all functions designated were licensing functions. The comment that the experience requirement is in excess of authority and makes it impossible to become an outfitter is overruled. The board notes that statute directs the board to adopt rules prescribing all requisite qualifications, including training and experience. The board not only has the authority, but also is mandated to establish a qualification for experience. The board does not agree that it has made it impossible to become an outfitter. The board's position on fees is stated in our answer to comments by Dale Neal. We did make change to the records rule, but believe that further restriction would render the records useless. Mr. Wright comments that the insurance needs should be reviewed for each individual business. However, the board feels this would be an impossible task to accomplish and that it is best for the rules to prescribe a minimum amount rather than to take the chance that an individual's choice in amounts would not be sufficient. The limits written in the rules are minimums and everyone can determine their own need as long as they are above the minimums. The comment that the rule pertaining to use of

drugs seems to imply that the board authorizes certain use is overruled. Please see response to comments by Mr. Kehr. The comment that "any statute or rule of a state or federal agency referenced, specifically or generally therein--is too vague and broad is agreed with, to a certain extent. The phrase "specifically or generally" has been deleted. The board does not believe this statement is otherwise is too vague or broad.

COMMENT: Virgil Burns, outfitter, representing Bob Marshall Wilderness Ranch, comments: there should be a provision to allow a family to continue an operation temporarily if something happens to the licensee; the rules make it better for outfitting, but existing outfitters should not be required to demonstrate experience or take an examination; outfitters should sign the guide license because the outfitter is responsible; there should be a pre-examination booklet, the questions do not have to be answered, but the information should be there; the rules should be clarified to indicate who furnishes the guide license and where the guide obtains applications; if a guide is serious the guide should have a license and have it signed by the outfitter when working; there should be a provision that guides cannot hunt in an area of previous guiding for an outfitter for a period of time; the rule on experience should be stricken because there are numerous persons who have hunted for years that are fully capable of outfitting and yet have never guided; apptitude is what is important and that cannot be taught in school; the outfitter should be the one with the discretion for qualifying the guide, the board cannot do this; a proposal for rewriting is submitted; who approves the schools should be clarified; the outfitter record process should be clarified so that an outfitter does not have have physical possession of the records at all times and places, but should make them available within a number of days; deposits are individual outfitter concerns, it is cumbersome if agreements cannot be made orally, and the client that abuses the certification should be the responsible person; the "hunting while providing services" prohibition should be revised as it is too restrictive; whether the outfitter is equally responsible for guide acts needs to be clarified; and the board should print items applicable to guides so that the outfitter may hand the guide a copy.

RESPONSE: Your comment on provision to allow a family to continue an operation temporarily in case of injury or death is provided by statute and is subject to board approval. Some outfitters have been operating over 25 years and we do not doubt their expertise--we agree that a rule requiring them to re-qualify would be unfair and unnecessary. The outfitter must sign the guide license and include the dates under supervision. From other sources, there is pre-exam study material that you can obtain which

includes fish and game laws, standard first aid books, health and care of horses, and animal information can be purchased, packing instruction books can be obtained, federal regulations are available. Guide license application will be sent to you upon request, and you, the outfitter, must sign the application. Our rule states that an outfitter or guide cannot hunt or take animals while being employed by a client. Section 37-47-304 in the statutes states the applicant will furnish the board with experience requirements that identifies knowledge of area to provide the service in. We must make the rules to fit everyone and not one individual. The outfitter does qualify the guide and is responsible for his activities and experience. The outfitter also signs the guide application which lets the board know he is qualified for the service he is to provide. Guide schools are licensed and controlled by another agency in the department of commerce. The board is responsible for licensing the outfitting industry. The outfitter records are to be kept at the base of operation or the place which you receive mail or advertise and do business from. The board did write a requirement stating each outfitter will provide a rate sheet that includes all charges, mode of payments acceptable, a deposit and refund policy, and deposit refund policy for all services offered. We are not telling you what to charge. We did take the $400.00 minimum deposit amount out. The board did not change the rule pertaining to no hunting while employed as an outfitter or guide. Some states will not let the guide or outfitter pack a rifle while providing guiding services. The equal responsibility law applies to the outfitter and guide relationship. To change this will take legislation. We agree the outfitter should provide the guides with outfitting and guide laws.

COMMENT: Donna MacDonald commented that there needs to be a clarification as to when and outfitter license is required for renting horses, providing stock, and providing scenic trips.

RESPONSE: The board made changes in the functions of an outfitter section to accommodate this comment.

COMMENT: Ty Throup, outfitter, comments; the operations plan concept is objectionable, the board is attempting to manage the outfitter's business, no other profession has this; the board's satisfaction should be secondary to the customer's satisfaction; only if an outfitter is complained against, should the board supervise the operation; some outfitters are not packers and if they require packing they can hire it done; an off-duty guide should be able to hunt; making it hard to get into the business will encourage illegal outfitting; and, a competitive system will weed out the bad ones because people will not pay for bad services.

RESPONSE: The operation plan is authorized in section 37-47-304. See also responses to Mr. Parks and Mr. Wright. The law also states the board will monitor the activities of the outfitter and guides. The operation plan will contain what the outfitter is licensed to do and where the services are conducted. The board must know and general public has the right to know the information contained. This information has never before been compiled in this fashion, that is true. The end result will readily allow the board to fulfill its responsibility is to protect the general public. This is true with all licensing boards under the department of commerce. You are right, some outfitters are not packers, but they do hire guides and personnel that can pack, but in order to fulfill responsibilities as an outfitter--supervision, primarily--some knowledge of these things is required. Not all outfitters can cook either and they are responsible to hire someone that can. It is part of business management. Off-duty guides can hunt they are only prohibited from hunting while employed by a client or in competition with a client. We do not believe we have made it hard to get a license at all if a person is serious about it. The law says we, the board, will establish under law the qualifications and requirements for guides and outfitters in order to protect the general public.

COMMENT: Steve Copenhaver, outfitter, commented: the definition of outfitter needs clarification as to whether any type service at all, for consideration, requires a license; experience standards are needed, but experience in other geographical areas should be allowed; there must be a clarification of the guide relationship to the outfitter and define what a guide is--employee or subcontractor; guides should not be allowed to do outfitting in this regard--provide services of an outfitter; a guide should not hunt in competition with clients and should not be allowed to go in and hunt after guiding in the area competitively; schools do not produce presence of mind to put education to use; one year experience is too strenuous, it is the desire and the ability that counts; the requirements stop interested persons from trying; there is a 60% turn-over in guides; fees are agreeable, except amendment to operations plan--a license allows service in any part of the state--approval by board to change a plan is a limitation and there are already many limitations and this is just one more and requires a fee; the board should not intervene in the deposit requirement, a notarized statement noting the booking of the client is sufficient; there should be a provision allowing a licensee operation to be operated, through tragedy exception, by a family member familiar with the business without applying anew; and, if qualifications for licensure is too stiff, businesses cannot be sold.

RESPONSE: Steve Copenhaver comments about a clarification of outfitter services and the board made

changes to accomplish this. The board made changes to broaden the area of experience, in part, as requested. The board agrees that there must be an understanding of the guide and outfitter relationship and a better understanding of the definition of guide, but the board feels that the definition and relationship are both very clear in the rules and statutes and that the problem lies in that past enforcement did not reflect the intent of the laws. The board made changes in the guide experience rules to clarify what was meant by the old rules, and also made the rules less restrictive. Mr. Copenhaver did not agree with the rule allowing guide school training rather than actual hunting or fishing experience for guides. The board overruled this comment because it wanted to allow outfitters the option of hiring from schools as the outfitter is ultimately responsible for the guide in any event. The comment Mr. Copenhaver made about changes to the operations plan being too limiting was overruled by the board because the operations plan contains information required by law and there is no reason to require the information if you do not also require that it be updated and kept current. The board agreed with Mr. Copenhaver's comments about the deposit requirement, and changed rule accordingly. Mr. Copenhaver made some comments about license transfer to a family member in the event of death of the outfitter. This is covered in the statutes and does not require board rulemaking action. The last comment by Mr. Copenhaver was that if qualifications for licensure are too stiff, businesses cannot be sold. It is unclear if the comment means that Mr. Copenhaver thought the qualfications were too stiff or not. Regardless, the board is not primarily charged with the saleability of businesses, but only with the job of seeing that licensed outfitters are qualified.

COMMENT: Monty McLane, outfitter, commented: possibly there could be two categories of guides and, in any event, persons should be responsible for their own actions; the rules should be based on the ability to serve the public, not to make it too tough and eliminate competition, the free enterprise system will take care of it; guide schools may create a problem if school is an exception to experience--school is not as important as personality or the nature of the person; the exam is tough, but can be passed; and, an information packet should be supplied, but the information is available.

RESPONSE: Maybe there could be two classes of guides, but we feel it would only make the system more complicated. Each licensee is responsible for his or her own actions, but because of the supervision requirement, outfitters are also responsible for guide actions--if related to supervision. We feel that the new rule is directing the requirements and qualifications to mandate the ability to serve the public. We do not feel our rule makes it tough to get into business.

A guide school does stress the importance of personality and nature of the students. A guide school provides the student with the basic knowledge that an outfitter does not always have time to conduct. Study material to obtain will be listed on the cover sheet that accompanies the application. Some of the basic knowledge cannot be found in books, that is the reason for the practical experience needed.

COMMENT: Dave Cogley, staff attorney, Administrative Code Committee, comments: the proposed function "lodging" is not included in the definition of outfitter and may be exceeding the authority of the board; requiring a license exclusively for lodging may also unduly entangle commercial providers not catering to hunters or fishermen; the three year experience requirement results in those persons not having been licensed before having to reach the age of 20, with schooling, and 21, without, before being licensed and this conflicts with statute providing a person may be licensed at age 18; the results of the rule requiring experience for guides is that the only way to obtain a license, unless having been licensed before, is by school and some other option should be provided; the operations plan has questionable authority and the use of the plan to grant or deny a license is questioned; the operation plan does not contain specific criteria for outright rejection of a license application--an example being the meaning of "be sufficient;" the operation plan review of proposed area of operation is questionable in authority for rejection of a license; written authorization may be required if the agency with authority has a means whereby such may be reasonably obtained; a board determination on its own concerning the use of an area may be in excess of authority, may give rise to conflict of interest and protectionism charges, and, at the least, should require specific criteria; and, section 37-47-201 is the proper section being implemented in the rule providing for amendment to functions on the license.

RESPONSE: The board made a change in the rules to clarify that only hunting and fishing are functions that require licensing. The other functions, such as lodging, which we believe is "facilities," will be listed on the license to denote what functions the outfitter has the proper equipment, facilities, experience, and knowledge to perform. Mr. Cogley indicated that requiring 3 years experience is in conflict with the statutes because it would mean that an outfitter could not be licensed until age 20. The statutes state an applicant must be "at least 18 years of age". The statute does not require that persons 18 or older shall be licensed, but rather only sets a minimum of "at least 18 years". Mr. Cogley comments about the experience to become a guide. The comments here reflect a misunderstanding of the intended rule because of some confusing language. The board made changes to clear this up and to answer Mr. Cogley's concerns. The operation plan

concept has created some disagreement. The board believes that the disagreement is, in part based on the total absence of the term "operation plan" in legislation--this means absence of the term, not absence of authority. Although the statutes do not call for an operations plan, the board feels the plan is a necessary, authorized, effective, and efficient way to compile information required by statute, and also to collect statistical information required by statute that the board feels it needs in order to properly serve its functions.

Mr. Cogley questions the board's proposed use of the information in the plan to grant or deny a license. The statutes do require the board to grant or deny licenses based on some information required in the operations plan. For instance, section 37-47-302 says that an outfitter must own or lease equipment and facilities necessary to provide the services he advertises. The operations plan details what equipment and facilities the outfitter has and also what services he or she will advertise to provide. Section 37-47-301 requires a permit to operate on public lands. The operations plan will verify that the applicant has these proper permits. Section 37-47-304 requires the applicant state the maximum number of guests to be served at one time. The operations plan requires this information. The intent of the board for requiring the operations plan was simply to separate the outfitter application in two parts. One part requires information necessary to verify an individual is qualified to perform the functions of an outfitter. The second part of the application, the operations plan, requires information necessary to verify that an individual or business owns the proper equipment, facilities, land use permits, etc., to provide the services the outfitter will be licensed for. One reason for the separation is that outfitters in more and more instances do not own businesses, but rather are employees of companies or corporations that own equipment, facilities, permits, etc., and that contract with clients and provide services. These companies may provide the information required on the operations plan. When a proper operations plan is combined with a valid license application, a license could be issued to the outfitter "for the use and benefit of the named partnership or corporation." In further comments, Mr. Cogley has concerns where "sufficient" is used in the requirements for the operations plan. The board further defined "sufficient" and added that definition to the rules. Mr. Cogley questions the board's authority to deny a license based on it's determination that the area is already "filled up". It is not the board's intention that the proposed rule would apply in cases where the intended use would adequately provide "for the health, safety and welfare of those persons using the services of outfitters and for the protection of landowners and the general public." Overly congested areas may be a danger. Depleted game may destroy the industry

entirely. The administration of this provision will be with extreme care. The concern that the rule requiring written permission by land use agencies might not be valid because some agencies do not require written permission was considered by the board and the rule changed to accommodate the point brought out in this comment. The comment on the proposed rules requesting a change in the authorizing statute was agreed to by the board and changed.

COMMENT: Max Barker, outfitter, comments that the proposed amount of deposit for certification of hunters is excessive and a lesser amount or percentage should be stated.

RESPONSE: We did change the $400.00 deposit requirement for certification requirement and now reads as advertised in rates as the deposit required.

COMMENT: John Stuver, outfitter, comments that the rules are excellent and that, if it is within the board's power, non-resident outfitter licenses should be limited or eliminated, to keep resources within the state.

RESPONSE: It is not within the authority of the board to limit or eliminate non-resident outfitter licenses or any license if the qualifications are met and the safety and welfare of all concerned can be protected.

COMMENT: D.L. Tennant, outfitter, comments: the review and processing fee for existing outfitters is too high; outfitters should be allowed to hunt with clients, particularly when hunting birds over dogs; the deposit requirement is objectionable; and obligations entered should not be subject to the new rules.

RESPONSE: The law requires a fee to be charged to be commensurate with the cost and the annual renewal fee is set in this fashion. The $75.00 fee for the operation plan is a one-time charge and only a major change in the plan will result in an additional charge. If we made the rule to read that it is legal to hunt with the employing hunter, it would result in a large amount of abuse and hardship, as in our experience, outfitters and guides like to hunt, but clients are protective of their chances to bag game and expect that the chance is not interfered in by skilled competition. The rule is changed insofar as bird hunting is concerned. We did delete the $400.00 minimum deposit for certification purposes.

COMMENT: Sandra Cahill, outfitter, comments: the outfitter records should be completely confidential or a different record book should be kept with the statistics and no reference to names; and, the number of outfitters should be limited.

RESPONSE: Ms. Cahill felt the outfitter records should be more confidential. The board has made these records as

confidential as it can under the law. The board proposes to delete client names upon release of the records unless a subpoena is produced. Ms. Cahill also felt the number of outfitters should be limited. This is not within the authority of the board.

COMMENT: Jack Hutchison, outfitter, comments: the $400 deposit is too high for fishing; the board should have a fishing outfitter advisory committee; fishing outfitters cannot directly supervise guides; the rules are confusing if a person has never been a hunting outfitter; the board directors of FFOAM may be a good fishing outfitter advisory committee; and, guide license forms should apply to fishing guide concerns.

RESPONSE: There was never a rule written about a $400.00 minimum for fishing deposits. The $400.00 minimum for use of certification for the B-10 license was removed and now reads as advertised as a minimum deposit. As far as an advisory committee for fishing outfitters is concerned, the board will gladly accept your comments as a group or individually. You are right, the outfitter cannot absolutely control fishing guides because of the nature of the operation, but it is the responsibility of the outfitter to hire competent guides and, if not directly supervisable, be of such competence to perform adequately under indirect supervision. The board will accept that. If the rule is confusing to anyone who has never been a hunting outfitter, the board will gladly explain any portion. You may write any board member or the board office.

COMMENT: Lee Carlbom, outfitter, comments: the outfitter only has the resources to check the guide's physical and mental abilities, the board should conduct the investigation into the guide's background; and, the definition of guide needs to be clarified insofar as camp cooks and packers being included or not.

RESPONSE: Mr. Lee Carlbom commented that an outfitter should not be responsible for investigating a guide's background. The board does not believe that the rules require this. The outfitter will only be responsible for information he has knowledge or should have knowledge of upon reasonable inquiry. The board will provide information that it has available. In part, it will be up to the guide to certify that his background does qualify him for licensure. Mr. Carlbom also feels that the definition needs to be clear. The board believes past enforcement practices confused the meaning rather than the definition itself.

COMMENT: Allan Gadoury, outfitter, comments: the operations plan contains provisions that will not allow a business to grow, some useless regulation, some unnecessary regulation, and existing outfitter equipment does not need to be inspected; all licensed guides and outfitters should

have a red cross first aid and CPR certification; the rule on reporting does not specify whether fish caught and released need to be reported and "unusual incidents" is vague; in bird hunting, clients prefer the outfitter to hunt; the deposit required is too high for float trips; and, written permission to hunt and fish on private land is useless regulation.

RESPONSE: The board does not agree that the operations plan will limit growth of a business. The regulation, if useless, would be contrary to the board's function. The same is true if unnecessary. Existing outfitter equipment may need inspection. The response to the comment pertaining to CPR and first aid is the same as to Mr. Kehr's, above. Fish taken has been deleted from the reporting requirement. Outfitters may hunt with clients while bird hunting. The deposit policy of the outfitter now dictates the amount required for certification. Written permission to hunt and fish on private land is a necessary regulation.

COMMENT: Rick Pasquale, outfitter, comments: when government attempts to control a business it only results in slowdown, increased costs, and taxes; the rules negate the reasons stated for the rules; a basic tenant of business is to leave the operational decisions to the operating head, when this is not done the business suffers to extinction; oversight should be accomplished through testing, inspections, and spot checks by appropriate officials, the rules expand the function with requirements that are nebulous, if a rule cannot be clearly stated to avoid misinterpretation it should not be adopted; outfitting is a hospitality business, no different than a hotel, motel, restaurant, or casino, yet these businesses are not regulated to require employees to comply with a list of prerequisites or to require approval of an operations plan prior to implementing a business decision; terms such as camping equipment, personal services, transportion, boats, and lodging need to be clarified; experience in marketing, advertising, food service, supervision, communications, and other things should be a consideration; the outfitter should be responsible for determining the qualifications of the guide; other skills, besides hunting and fishing, such as camp help, cooking, wrangling are just as important; under the rules an outfitter cannot train a guide; an additional fee should not be required to comply with the new rules, an existing outfitter knows what needs to be done or the public will not continue with retaining the outfitter; confidentiality cannot be assured and the rules should provide for damages and remuneration if broken in this competitive business; counts of big game is understandable, but redundant because of tagging, fish counts are ridiculous and require accounting that will take away from providing services, also fish taken may mean catch and release; and, "unusual incidents" is unclear.

RESPONSE: Basically, Mr. Pasquale is opposed to any rules, feels business should be left alone to compete, and that the proposed rules are unnecessary. With all respect, this philosophy is debatable. The board's action on these rules was taken to abide by the statutes and to improve the quality of outfitters and guides and the services they provide--any resulting slowdown will be temporary, the increase in costs is minimal, and the outfitter industry, hopefully, will greatly benefit. We believe these rules accomplish positive things. Mr. Pasquale comments that under the new rules, an outfitter cannot train his own guides. The board has changed the rule. Mr. Pasquale states that additional fees should not be required to comply with the new rules. The board overruled this comment because statutes require that fees be commensurate with costs. Mr. Pasquale states, "confidentiality cannot be assured and the rules should provide for damages and remuneration." The board overrules this comment because the board does not have authority to assess damages and remuneration. A further comment from Mr. Pasquale, referring to records, infers Mr. Pasquale does not agree with recording big game or fish taken. The board believes that records are necessary on big game taken in order to abide by the law. The board agreed on the "fish taken", and removed it from the required records. "Unusual incidents", as noted by Mr. Pasquale, were also removed from the required records rule.

COMMENT: Allen Schallenberger, outfitter, comments: the rules on experience requirements should specify "new" applicants and should be expanded to include options such as university training, experience as a fish and wildlife biologist, game warden experience, and forest service experience, and the Montana only requirement is not proper; and, the operations plan concept cost is excessive and inhibits plans to improve.

RESPONSE: The rule does say "each applicant for an outfitter license shall." This applies to new applicants and not renewal applicants. Experience as a guide is the only experience that so closely relates to that required to be an outfitter, that it is the preferred experience. Other types would cause judgment on an individual basis, which places discretion in the board, which, in turn, is more easily challenged by each applicant than a single, set requirement. The board did change the Montana only requirement. The cost of $75.00 to file an application for operation plan was reviewed in detail and the result is that this amount is a fee commensurate with cost. The plan inhibits nothing, it is only a part of the record keeping and statutory obligations that the board will use to monitor the services of the outfitter and guides.

COMMENT: Gael Larr, outfitter, comments that the guide

license should be sent to the outfitter because it is the outfitter's responsibility.

RESPONSE: The guide license will be sent to the outfitter.

COMMENT: Dennis LeVeque, outfitter, comments: the procedures, qualifications, plans, and fees have good merit, however, concerning the rules on conduct, the board is stepping out of its jurisdiction; outfitters should not be told how to run a business--written policies, although good business, should not be mandated by law; the competitive taking of game rule is too broad, certain provisions are impossible, duplicates of other laws, not acceptable, mandate business practices, and against free enterprise, and, judgmental and difficult to enforce.

RESPONSE: The board did make some changes in the conduct rule, but clearly has authority to make such rules. The board does not view the rules as telling outfitters how to run their businesses, but some guidelines by regulation are reasonably necessary and some are mandated by statute. The taking of fish or game in competition with clients was too broad and difficult to enforce. Change was made, but the remaining rule is necessary to protect the general public and, hopefully, is clear to identify and enforceable. Some duplication of other laws is needed as a reminder that it is also outfitter and guide law. Some business practices are mandated and very necessary to protect the general public.

COMMENT: Ray Brubaker, acting state director, BLM, comments: the operations plan should allow a notice of intent in lieu of holding a permit prior to licensure; outfitter records should include a copy of the public land use permit; conduct provisions should require the licensee to send copies of letters from land use agencies pertaining to permit status; and, the revocation rule should contain a mandatory "will be suspended or revoked" for suspension or revocation of land use permits. Other BLM officials made similar comments and added: private land bordering public land creates a problem with permitting enforcement; and, the equipment inspection and fee is confusing in part of the rules.

RESPONSE: The board found no reason why a letter of intent could not be approved under the existing rule with no change necessary. Mr. Brubaker also comments that outfitter records should include a copy of the land agency permit. The board overruled this because they felt it would be cumbersome to handle and possibly not necessary. The board will work with land use agencies to verify permit status. Requiring the outfitter to provide letters to the board about permit status would be unworkable, except on the renewal form, the board determined. The board will continue to work with the agencies to try to get the information

directly from the agencies to the board. Although, under suspension and revocation, the rules do not make it mandatory, it is a requirement, and is clearly stated in regard to the operations plan, to have the land use agency permit. Other BLM officials made a comment about private land bordering public land being a problem for BLM enforcement. If an outfitter uses the public land without a permit, the outfitter is in violation of the law and rules. These officials also felt that the fee schedule was confusing in regard to inspections. The inspection fee is not included in the application for licensure because it is part of the operations plan. See response to Mr. Parks, above.

COMMENT: Brian Nelson, outfitter, commented: overall the rules are good; the exam should test on law and regulations of outfitters and game; enforcement and control of pirate outfitters should be made clear; and, a means of learning of potential guide infractions should be made available to outfitters.

RESPONSE: The exam does test fish and game and outfitter laws, rules, and regulations. Enforcement and control of pirate outfitters cannot be extended into outfitter and guide rules, but is adequately dealt with by statute. Matters pertaining to guide infractions may be obtained through the board office.

COMMENT: John Bartlett, protests the rules and comments: three seasons of experience as required is absurd and smacks of blatant abuse of power and allows a regulatory body to derive a direct benefit by stifling free enterprise; and, what was good enough for present outfitters is good enough for future outfitters.

RESPONSE: A rule establishing experience is required by legislative directive. Furthermore, it is a good idea and may significantly improve the quality of a licensee. As explained in the response to Mr. Kehr's comments above, this was considered, at length, by the board.

COMMENT: Lyle Bainbridge comments: it is unfair to require the stated three seasons experience, particularly when it applies to someone with sufficient other experience; testing and personal interview should be the criteria; and, the proposal will deter good people.

RESPONSE: There may be well-qualified persons with practical experience. But, to design a rule that allows the board to determine qualifications solely on personal interview, allows too much discretion and opens the door for challenge by those denied licenses. The board believes a set criteria is adequate and fair and will create less problems than individual determination.

COMMENT: Richard Wayman comments: the six-month waiting

period for examination should be reconsidered, possibly after two failures a waiting period should be required; there is room for more specialized licenses; different or more consideration should be placed on experience; the test could be replaced by verified references, employers, agencies, and oral examination; and, some people do not take examinations well, but are qualified in all respects.

RESPONSE: Mr. Richard Wayman comments that the 6 month waiting period after failing the examination should be reconsidered. The board overrules this comment because the board believes that the examination would no longer be a valid measure of knowledge if a person could take it so often it could be memorized. Mr. Wayman made the comment that there is room for a more specialized license. The board feels with the proposed rules the licenses can be very specific and adequately specialized. Mr. Wayman also felt different or more consideration should be placed on experience. The board overruled this idea based on reasons stated in answering the comments by Mr. Kehr, above. The rest of Mr. Wayman's comments are relative to the examination, and are changes the board is not authorized by statute to make.

COMMENTS: Tony Schoonen, president, Montana Wildlife Federation, comments: the efforts of the board to raise qualifications is supported and the concerns about outfitters and the general public hunter are justified; it appears that the board is soliciting and encouraging an oversupply of outfitters and the numbers should be based on a demonstrated need; the rules should read "a license may be issued" instead of "shall be issued;" the operations plan should be filed and approved by the board annually; the experience standard should be definite minimum standards and qualifications should be fixed and firm; a one-year waiting period should be required after failure of an exam; an upper limit should be placed on the number of outfitters and guides; the operations plan should require a description of the overall size of the area to be serviced, boundaries, and a state-set capacity and outfitter density, an analysis to support the amount of intended use, number of guides, and size of camps; the quality and quantity of equipment is a proven criteria and the overall capital investment should be adequate to provide the services; leased equipment should represent no more than 5% of the overall equipment and should be used rarely and on a one-time basis not regularly; public land use leases should be limited by qualitative and quanitative needs; number of employees should be adequate for a quality and safe operation; liability should protect from all classes of legal action and cover the state and federal agencies from liability; there should be a proven demonstrated need for outfitter services prior to licensure in areas previously unused by outfitters, no competing uses should be licensed where there is an adequate amount of

public use, and a license should not be issued to compete with an existing use; the determination whether intended use will conflict should apply to seasonal and day use also; safely guided experiences require persons trained in first aid, CPR, and Heimlich maneuver; horses should not be allowed to compete with wild ungulate grazing animals, not over 40% of the available feed should be used by horses, supplemental horse feed should be carried, and there should be no deterioration of vegetation or soil by horses; a knowledgeable horse expert representing the board should inspect equipment and livestock and facilities; a new applicant should provide ownership proof for all equipment and brands should be in the name of the outfitter; the amount of use applied for should be commensurate with the proven use for the past three years and the rules applicable should be amended accordingly; the annual fee should include 3% of the gross income, the state would then have a true appraisal of the operation and eliminate the outlaw outfitter; the number of guest days provided should be supplemented by the number of guest days applied for; the actual number of animal months of forage use and the amount of supplemental feed should be reported; all accidents, the causes, and insurance claims should be reported; sufficient insurance should be carried to free public and private landowners from liability; it should be illegal to operate on private land that inhibits public access to public lands; camps should be located away from high elevation critical big game feeding areas, away from trail junctions and public road trail junctions; camps should be screened from public view; tent poles, corral poles, and tent floors should be stacked; evidence of camps should be obliterated on public lands; unused horse feed, cans, and garbage should be packed out; the license should not be interpreted as an exclusive or preferred use of lands, waters, and resources above other public uses; and, subleasing equipment and site locations, transfers of permits and licenses should not be transferrable.

RESPONSE: It is not the intent of the board to solicit or encourage an over-supply of outfitters, but, at the same time, it is not the intent of the board to discourage qualified persons from licensing. The board has no authority to determine a general, statewide, number of licenses based on supply or demonstrated need, but, may, if the situation warrants it for public safety, limit operations in a particular area. Although the rules touch on the concern that there should be a proven demonstrated need for a licensee, the board does not believe it has authority to write rules for unused areas that would correspond to this comment. The word "shall" in the rule is the correct word, as the board does not have any discretion to deny a license if the qualifications and other requirements have been met. The board does not agree that an operations plan should be filed annually, because if

there is to be a change in the plan, the outfitter must apply for an amendment and, otherwise, the information would remain the same and only lead to multiple filings of the same documentation. The board agrees that the experience standard should be definite and minimum qualifications should be fixed, but believes the proposed rules reflect this adequately. The board believes that a six month waiting period for retaking the examination is sufficient to protect the credibility of the examination and that a one year waiting period is not necessary for such purpose. The board believes the rules adequately provide for all the items mentioned by Mr. Schoonen that should be included in the operations plan. A limit on leased equipment would be contrary to statute. The board has addressed the stated concerns pertaining to first aid and CPR in addressing comments of Mr. Kehr, above. The board agrees that a knowledgable person representing the board should inspect livestock, equipment, and facilities and already is providing this type of inspection. Proof of ownership of stock and equipment is already required by statute. It is true that the rules do not address proven use levels for a period of years to establish prior use, but, records available to the board will adequately demonstrate this, if a question arises. In regard to a fee including a 3% of gross income requirement, the board does not have authority to assess fees on this basis. The board can see no need that all accidents, causes, and insurance claims be reported beyond that required by renewal application. The board agrees that sufficient insurance should be carried, but believes that it is prescribed by proposed rule already. The comment that it should be illegal to operate on private land that inhibits public access to public lands is overruled, because an outfitter operating legally on private land may have a lawful right to deny access across that land to any adjoining lands. The board agrees that a license should not be interpreted as an exclusive or preferred use of the lands, water, and resources, but believes that the rules enforce this concept. Mr. Schoonen's comments that refer to outfitter use of the land, including such things as camp locations, grazing, trash removal, camp removal, limits of use, setting capacities, etc., are all items that can be, and are, handled by public land use agencies.

COMMENT: David Decker, comments that there should be a higher fee for non-resident outfitters because non-residents do not make a financial contribution, through taxes or otherwise, to the costs of operating state government.

RESPONSE: Mr. Decker's comment is overruled. The costs of licensing non-resident outfitters is the same as for residents. Fees are required to be commensurate with costs.

6. No other comments or testimony were received.

RON CURTISS, CHAIRMAN
BOARD OF OUTFITTERS

BY: 
GEOFFREY BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State July 18, 1988.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE LOCAL GOVERNMENT ASSISTANCE DIVISION

In the matter of the proposed adoption by reference of new rules for the administration of the 1988 federal community development block grant program	)))))	NOTICE OF ADOPTION OF 8.94.3704 INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE 1988 FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM

TO: All Interested Persons:

1. On April 14, 1988, the Department of Commerce published a notice of a public hearing on the proposed adoption of the above-stated rule at page 635, 1988 Montana Administrative Register, issue number 7.

2. The hearing was held on May 5, 1988, at 1:30 p.m., in Room C-209 of the Cogswell Building in Helena, Montana.

3. The Department has adopted rule 8.94.3704 exactly as proposed.

4. It is reasonably necessary to adopt the rule because the federal regulations governing the states' administration of the 1988 CDBG program and section 90-1-103, MCA, require the Department to adopt rules to implement the program.

5. One person presented oral testimony at the hearing. In addition the Department received four written comments during the comment period provided by the Administrative Procedure Act. Summaries of the principal negative comments regarding the 1987 Application Guidelines and Grant Administration Manual, and the Department's responses is contained in a memorandum dated May 25, 1988, which is available from the Local Government Assistance Division, Department of Commerce, Capitol Station, Helena, Montana 59620.

COMMENT: With respect to housing and neighborhood revitalization projects the proposed guidelines (page 62) state that the applicants proposing project areas considered to be facing the highest need for housing improvements and neighborhood revitalization will receive the highest score. This provision favors small communities that have a high percentage of substandard housing on a city-wide basis and discriminates against larger communities whose substandards housing stock is proportionately not as large as that of smaller communities.

RESPONSE: Contrary to the assumption underlying this comment, the CDBG ranking process for the housing and neighborhood revitalization category compares the condition of housing stock within proposed project areas rather than on a community-wide basis. The final guidelines have been revised to make this very clear. There is nothing in the guidelines

to preclude or discourage a larger city from targeting two or three areas within its jurisdictional area with high concentrations of substandard housing stock. Ultimately, however, the program is intended to favor those communities that demonstrate the greatest severity and extent of need.

COMMENT: The proposed guidelines specify that in order to receive an "above average" or higher score under the "Need for CDBG Assistance" ranking criterion applicants for public facilities grants must contribute local funds equal to 25 percent of the non-administrative CDBG funds requested (page 81). This requirement will unfairly favor large communities over smaller communities because, all things being equal, the more users there are, the smaller will be the financial burden to be borne by each user.

RESPONSE: Because the cost of meeting the infrastructural needs of large communities is normally greater than it is for smaller communities, the advantage of numbers described in the comment is ordinarily offset by increased project costs. Also, the 25 percent match provision is one of several ranking criteria, rather than an absolute requirements, and will be waived when a applicant can demonstrate that local residents are providing a reasonable level of financial effort, in the form of either user fees or assessments to repay bonded indebtedness.

COMMENT: The CDBG guidelines provide only for grants to communities. They should be rewritten so as to allow for seed money grants to nonprofit associations involved in efforts to develop and market new products in Montana.

RESPONSE: Under the federal statute establishing the CDBG program only general purpose units of local government may receive grants, and the activities described in the comment are not fundable activities.

6. No other comments or testimony were received.

7. The reasons for and against adopting the rules are embodied in the comments and responses contained in item 5, above.

DEPARTMENT OF COMMERCE

BY: Geoffrey L. Brazier
GEOFFREY L. BRAZIER
STAFF ATTORNEY

Certified to the Secretary of State, July 18, 1988

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the repeal of Rules 11.7.101, 11.7.102 and 11.7.104 and the adoption of Rules 11.7.103, 11.7.110, 11.7.111, 11.7.112, and 11.7.113 pertaining to foster care placement of children	))))))	NOTICE OF THE REPEAL OF RULES 11.7.101, 11.7.102 AND 11.7.104 AND THE ADOPTION OF RULES 11.7.103, 11.7.110, 11.7.111, 11.7.112 AND 11.7.113 PERTAINING TO FOSTER CARE PLACEMENT OF CHILDREN

TO: All Interested Persons

1. On June 9, 1988, the Department of Family Services, published notice of the proposed adoption of rules and the repeal of Rules 11.7.101, 11.7.102 pertaining to foster care placement of children at page 1052 of the 1988 Montana Administrative Register, issue number 11.

2. The department has repealed Rules 11.7.101, 11.7.102 and 11.7.104 as proposed.

3. The department has adopted the following rules as proposed with the following changes in Authority and Implementation.

RULE I 11.7.103 DEFINITIONS

AUTH: Sections 41-3-1103 and 52-1-103, MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87
IMP: Sections 41-3-1103 and 52-1-103, MCA

RULE II 11.7.110 GENERAL REQUIREMENTS

AUTH: Sections 41-3-1103 and 52-1-103, MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87
IMP: Sections 41-3-1103 and 52-1-103, MCA

RULE III 11.7.111 VOLUNTARY PLACEMENT

AUTH: Sections 41-3-1103 and 52-1-103, MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87
IMP: Sections 41-3-1103 and 52-1-103, MCA

RULE IV 11.7.112 CRITERIA FOR PLACEMENT

AUTH: Sections 41-3-1103 and 52-1-103, MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87
IMP: Sections 41-3-1103 and 52-1-103, MCA

RULE V 11.7.113 PLACEMENT IN RESIDENTIAL TREATMENT

AUTH: Sections 41-3-1103 and 52-1-103, MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87
IMP: Sections 41-3-1103 and 52-1-103, MCA

4. No written comments or testimony was received.

Director, Department of Family Services

Certified to the Secretary of State July 18, 1988.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

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

TO: All Interested Persons

1. On June 9, 1988, the Department of Family Services, published notice of 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 at page 1057 of the 1988 Montana Administrative Register, issue number 11.

2. The department has amended Rule 11.7.401 as proposed with the following changes in Authority and Implementation.

11.7.401 DEFINITIONS

AUTH: Section 52-1-103, MCA
IMP: Sections 41-5-527 through 41-5-529 and 52-1-103, MCA

3. The department has adopted the following rules as proposed wit the following changes in Authority and Implementation.

RULE I 11.7.409 CRITERIA FOR APPROVING RECOMMENDATIONS

AUTH: Section 52-1-103, MCA
IMP: Sections 41-5-527 through 41-5-529 and 52-1-103, MCA

RULE II 11.7.411 RECOMMENDATIONS FOR RESIDENTIAL TREATMENT

AUTH: Section 52-1-103, MCA
IMP: Sections 41-5-527 through 41-5-529 and 52-1-103, MCA

4. No written comments or testimony was received.

Director, Department of Family Services

Certified to the Secretary of State July 18, 1988.

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

In the matter of the amendment of Rule 12.7.501 pertaining to Fish Disease Certification	)))	NOTICE OF AMENDMENT OF RULE 12.7.501 PERTAINING TO FISH DISEASE CERTIFICATION

TO: All interested persons

1. On June 9, 1988, the Montana Department of Fish, Wildlife, and Parks gave notice of proposed amendment to Rule 12.7.501 pertaining to fish disease certification, on page 1060 of the Montana Administrative Register, issue number 11.

2. No public hearing was held nor was one requested. The department has received no written or oral comments concerning these rules.

3. Based on the foregoing, the department hereby adopts the rule as proposed.

Ron Marcoux

Ronald G. Marcoux
Associate Director
Montana Department of
Fish, Wildlife and Parks

Certified to the Secretary of State July 18, 1988.

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the adoption, amendment, and repeal of rules in Title 18, Chapter 8 (Highways, Gross Vehicle Weight)	)))))	NOTICE OF THE ADOPTION OF 18.8.509A, 18.8.510A, 18.8.510B, 18.8.511A, 18.8.519, 18.8.602, 18.8.1008; AMENDMENT AND REPEAL OF RULES IN CHAPTER 8

TO: All Interested Persons:

1. On June 9, 1988, the Department of Highways published a notice to revise Chapter 8, Gross Vehicle Weight Division, at pages 1065 through 1116, 1988 Montana Administrative Register, issue number 11.

2. The department has adopted, amended, and repealed the rules as proposed in the notice, with the following changes in Rule V:

18.8.519 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.~~ ITS PLACE OF BUSINESS OR OPERATOR'S YARD IF IT IS WITHIN 100 MILES OF THE EMERGENCY SCENE AND PROPER PERMITS HAVE BEEN OBTAINED. 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~~. TOW VEHICLE'S PLACE OF BUSINESS OR OPERATOR'S YARD IF IT IS WITHIN 100 MILES OF THE EMERGENCY SCENE.

(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.

(E) PERMIT RESTRICTIONS REGARDING HOURS OF OPERATION SHALL NOT APPLY IN EMERGENCY MOVE SITUATIONS. ALL FLAG CAR AND SIGNING REQUIREMENTS SHALL APPLY.

(F) PERMITS ARE REQUIRED WHEN A TOW VEHICLE EXCEEDS STATUTORY WEIGHT REQUIREMENTS. PERMITS ARE ALSO REQUIRED IF THE TOW VEHICLE IS LEGAL BUT STATUTORY WEIGHTS ARE EXCEEDED ON THE VEHICLE BEING TOWED. OVERWEIGHT PERMITS

SHALL BE VALID FOR ALL KINDS OF LOADS INCLUDING BUILT UP LOADS. ONLY ONE PERMIT IS REQUIRED FOR BOTH THE TOW VEHICLE AND THE VEHICLE PLUS ANY LOAD BEING TOWED. ALL PERMITS MUST BE OBTAINED AND CARRIED IN THE TOW VEHICLE PRIOR TO ITS OPERATION EXCEEDING STATUTORY LIMITS.

(G) FOR MOVES IN EXCESS OF 100 MILES FROM THE EMERGENCY SCENE, THE TOW VEHICLE MAY TOW VEHICLES OR VEHICLE COMBINATIONS TO THE NEAREST CITY OR TOWN FROM THE EMERGENCY SCENE WHERE THE LOAD MAY SAFELY BE ADJUSTED TO CONFORM TO MAXIMUM STATUTORY LIMITS.

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

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

3. Comments were received from the Montana Tow Truck Association addressing the problems of responding to emergencies at night with permit restrictions on oversized vehicles or loads, problems with the use of permits for overweight loads and the need for an operating area in which the oversize load need not be adjusted in an emergency situation. The above changes to the rule were made to alleviate the problems raised by the association.

By: John J. Wicks
Gary J. Wicks
Director of Highways

Certified to the Secretary of State July 18, 1988.

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

In the matter of the amendment of Rules 46.11.101 and 46.11.131 pertaining to the food stamp program	))))	NOTICE OF THE AMENDMENT OF RULES 46.11.101 AND 46.11.131 PERTAINING TO THE FOOD STAMP PROGRAM

TO: All Interested Persons

1. On June 9, 1988, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.11.101 and 46.11.131 pertaining to the food stamp program at page 1185 of the 1988 Montana Administrative Register, issue number 11.

2. The Department has amended Rules 46.11.101 and 46.11.131 as proposed.

3. No written comments or testimony were received.

/s/ Benjamin E. Hall
For Director, Social and Rehabilitation Services

Certified to the Secretary of State July 13, 1988.

VOLUME NO. 42 OPINION NO. 94

COUNTY COMMISSIONERS - Serving as county commissioner and county high school trustee simultaneously;
PUBLIC OFFICE - Serving as county commissioner and county high school trustee simultaneously;
SCHOOL BOARDS - Serving as county commissioner and county high school trustee simultaneously;
MONTANA CODE ANNOTATED - Sections 7-4-2110, 7-5-2103, 7-8-2216, 20-3-310, 20-6-213, 20-6-217, 20-6-309;
MONTANA CONSTITUTION - Article VII, section 10;
OPINIONS OF THE ATTORNEY GENERAL - 8 Op. Att'y Gen. at 402 (1920).

HELD: 1. The offices of county commissioner and county high school trustee are incompatible, and one individual may not hold both offices simultaneously.

2. Although an individual may not simultaneously hold the offices of county commissioner and county high school trustee, state law does not prevent an individual from holding one of these offices while seeking the other.

8 July 1988

John T. Flynn
Broadwater County Attorney
Broadwater County Courthouse
Townsend MT 59644

Dear Mr. Flynn:

You have asked my opinion on the following questions:

1. May an individual simultaneously hold the offices of county commissioner and county high school trustee?

2. What is the procedure to be followed when a person holding one position files and runs for an incompatible office?

The general rule is that public offices may not be held concurrently by the same person if those offices are

incompatible in nature. State ex rel. Klick v. Wittmer, 50 Mont. 22, 144 P. 648 (1914). The Klick opinion sets forth a number of factors that should be considered in determining whether offices are incompatible.

As you note in your opinion request, in 8 Op. Att'y Gen. at 402 (1920) it was held that the office of county commissioner was incompatible with the office of school trustee. Citing the Klick opinion, the 1920 Attorney General's Opinion concluded that the nature and duties of the two offices were such that it would be improper for one person to retain both offices. Crucial to the opinion's conclusion was the fact that under state law a county commissioner had certain supervisory powers over a school trustee.

The reasoning followed in 8 Op. Att'y Gen. at 402 (1920) is still persuasive. Existing state statutes continue to give county commissioners some supervision over school trustees. County commissioners also have other responsibilities with respect to school districts. See, e.g., §§ 7-4-2110, MCA (county commissioners supervise the official conduct of all county officers and officers of districts and other subdivisions of the county charged with assessing, collecting, safekeeping, managing, or disbursing the public revenues); 7-5-2103, MCA (county commissioners divide counties into school districts); 7-8-2216 (county commissioners may sell county property to school district); 20-3-310, MCA (county commissioners may suspend a school trustee when charges are preferred against that trustee); 20-6-213, 20-6-217, 20-6-309, MCA (county commissioners hear appeals on decisions by school superintendents on transfers of territory from one elementary district to another, creation of new elementary districts, and organization of a joint high school district). There are also several statutes concerning the duties of a board of county commissioners to levy taxes to finance local education.

For the above-stated reasons, I believe that the conclusion reached in 8 Op. Att'y Gen. at 402 (1920) remains valid, in spite of the fact that many of the duties of the two offices in 1920 have since been amended or repealed. The current nature and duties of the offices of county commissioner and county high school trustee could give rise to possible conflicts of

governmental interest if one person were to retain both offices simultaneously.

Your second question concerns the effect of the filing by an officeholder for a second office that is incompatible. As a rule, Montana law does not prevent an officeholder from seeking an incompatible office, but rather from holding incompatible offices. See Committee for an Effective Judiciary v. State of Montana, 41 St. Rptr. 581, 679 P.2d 1223 (1984), in which the Court recognized the existence of a general constitutional scheme declaring indirectly the rights of all officeholders in all branches of government to seek other office while still holding office. 41 St. Rptr. at 587, 679 P.2d at 1228.

An exception to this general scheme is found in Article VII, section 10 of the Montana Constitution, which requires that one who holds a judicial position must forfeit the office by filing for an elective public office other than a judicial position. By contrast, there is no comparable prohibition for the offices of county commissioner or county high school trustee.

THEREFORE, IT IS MY OPINION:

1. The offices of county commissioner and county high school trustee are incompatible, and one individual may not hold both offices simultaneously.

2. Although an individual may not simultaneously hold the offices of county commissioner and county high school trustee, state law does not prevent an individual from holding one of these offices while seeking the other.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 42 OPINION NO. 95

LIENS - Delinquent taxes, mobile homes;
PROPERTY, PERSONAL - Delinquent taxes, mobile homes;
PROPERTY, REAL - Delinquent taxes, mobile homes;
REVENUE, DEPARTMENT OF - Delinquent taxes, mobile homes;
TAXATION AND REVENUE - Delinquent taxes, mobile homes;
MONTANA CODE ANNOTATED - Sections 15-1-101(1)(g), 15-1-101(1)(k), 15-6-134, 15-16-102, 15-16-111, 15-16-113, 15-16-401 to 15-16-403, 15-17-911, 15-24-202 to 15-24-204, 15-24-208, 70-1-105, 70-1-108;
OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 80 (1984), 36 Op. Att'y Gen. No. 69 (1976).

HELD: 1. A lienholder must pay the delinquent real property taxes on a mobile home classified as an improvement before repossessing and moving the mobile home.

2. A lienholder must pay the delinquent personal property taxes on a mobile home which is not classified as an improvement before repossessing and moving the mobile home.

3. If the owner of a mobile home which is not classified as an improvement fails to make the first-half payment of personal property taxes and the first-half taxes become delinquent, the penalty and interest provisions of section 15-16-102, MCA, apply and the mobile home may be seized and sold for delinquent taxes pursuant to sections 15-17-911 and/or 15-16-113, MCA.

12 July 1988

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

Dear Mr. Hanser:

You have requested my opinion on three questions I have phrased as follows:

1. When a mobile home is classified as an improvement to real property, may a lienholder repossess the mobile home and move it off the land without paying the deliquent taxes owed on the mobile home?

2. When a mobile home which is not classified as an improvement is repossessed by a lienholder, may the lienholder repossess and move the mobile home without paying the delinquent property taxes owed on the mobile home?

3. If the owner of a mobile home which is not classified as an improvement fails to make the first-half payment of personal property taxes and the first-half taxes become delinquent, may penalty and interest be assessed pursuant to section 15-16-102, MCA, and may the county treasurer levy upon and take into possession the mobile home and proceed to sell it as provided in section 15-16-113, MCA?

Your first question concerns mobile homes classified as improvements to real property. Pursuant to section 15-1-101(1)(g), MCA, when the Department of Revenue or its agent determines that the permanency of location of a mobile home has been established, the mobile home is presumed to be an improvement to real property. "A mobile home or housetrailer may be determined to be permanently located only when it is attached to a foundation which cannot feasibly be relocated and only when the wheels are removed." § 15-1-101(1)(g), MCA. Under the state's property classification system, improvements which are not "classified otherwise" are taxed as class four property. § 15-6-134, MCA. A mobile home considered an improvement is not "classified otherwise" and is therefore class four property.

Section 15-16-403, MCA, provides:

> Every tax due upon real property is a lien against the property assessed, and every tax due upon improvements upon real estate assessed to other than the owner of the real estate is a lien upon the land and

> improvements, which several liens attach as of January 1 in each year.

A tax lien on personal or real property is superior to other liens. United States v. Christensen, 218 F. Supp. 722 (D. Mont. 1963); 40 Op. Att'y Gen. No. 80 at 320 (1984).

The statutory sections which specifically concern taxation of mobile homes, Title 15, chapter 24, part 2, MCA, include provisions concerning payment of personal property taxes on mobile homes not taxed as improvements, and the display of tax-paid stickers on such homes. § 15-24-202, MCA. Section 15-24-202, MCA, also provides in part:

> (4) The tax-paid sticker and receipt are not required for mobile homes which are classified as improvements to land, but payment of the assessed property taxes and display of a mobile home movement declaration of destination are required before moving the mobile home.

The statutes also provide that moving a mobile home on which property taxes are unpaid is a misdemeanor. § 15-24-208, MCA.

The statutes requiring payment of property taxes prior to moving a mobile home classified as an improvement provide no exception for lienholders. It is therefore my opinion that a lienholder who wishes to repossess and move a mobile home classified as an improvement to real property must pay the delinquent property taxes owed on the mobile home prior to moving it. As stated above, the tax lien is superior to other liens.

Your second question concerns whether a lienholder must pay personal property taxes due on a mobile home which is not classified as an improvement before repossessing it. Personal property includes a mobile home which is not classified as an improvement. §§ 15-1-101(1)(k), 70-1-105, 70-1-108, MCA. § 15-16-113, MCA. Pursuant to section 15-16-401, MCA, every tax has the effect of a judgment against the person, and every lien created by Title 15 has the force and effect of an execution duly levied against all personal property in the possession of the person assessed from and after the date the

assessment is made. "The judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof." § 15-16-401, MCA. See also Ford Motor Company v. Linnane, 102 Mont. 325, 335, 57 P.2d 803, 806 (1936).

Section 15-16-402, MCA, provides in part:

> (1) Every tax due upon personal property is a prior lien upon any or all of such property, which lien shall have precedence over any other lien, claim, or demand upon such property, and except as hereinafter provided, every tax upon personal property is also a lien upon the real property of the owner thereof on and after January 1 of each year.

The lien on personal property provided for in section 15-16-402, MCA, is not extinguished when the property against which the tax was assessed is transferred to a third party. 36 Op. Att'y Gen. No. 69 at 456 (1976).

Additionally, as I noted in my response to your first question, the statutes that specifically concern taxation of mobile homes provide for issuance of tax-paid stickers to the owners of mobile homes which are not improvements when the personal property taxes and any interest and penalty owed are paid in full. § 15-24-202(3), MCA. No mobile home is to be moved unless the taxes have been paid in full to the county treasurer. §§ 15-24-202(3), 15-24-203, 15-24-204, 15-24-208, MCA. Again, there is no exception provided for lienholders.

It is my opinion that a lienholder who wishes to repossess and move a mobile home which is not classified as an improvement must pay off the prior lien, i.e., the personal property taxes on the mobile home, before moving it.

Your third question concerns whether the penalty and interest provisions in section 15-16-102, MCA, or the seizure and sale provisions in section 15-16-113, MCA, apply in a situation where the owner of a mobile home fails to make the first-half payment of personal property taxes and those taxes become delinquent.

Section 15-24-202, MCA, provides in part:

> (1) (a) The owner of a mobile home or house-trailer which is not taxed as an improvement, as improvements are defined in 15-1-101, shall pay the personal property tax in two payments ...
>
> (b) The first payment is due within 30 days from the date of the notice of taxes due.
>
> (c) The second payment is due no later than September 30 of the year in which the property is assessed.
>
> (d) If not paid on or before the date due, the tax is considered delinquent and subject to the penalty and interest provisions in 15-16-102 applicable to other delinquent property taxes. The penalty must be assessed and interest begins to accrue on the first day of delinquency.

This section was amended in 1987 in order to clarify that penalty and interest should be assessed if a mobile home owner fails to pay the first-half taxes within 30 days from the date of the notice of taxes due. Minutes and Exhibits of the Senate Taxation Comm. Hrg. on S.B. 145, Jan. 28, 1987. Clearly, when the payment of the first half of personal property taxes becomes delinquent as set forth above, the interest and penalty provisions of section 15-16-102, MCA, apply. The penalty is assessed and interest begins to accrue on the first day of delinquency. § 15-24-202(1)(d), MCA.

The seizure and sale provisions of sections 15-16-113 and 15-17-911, MCA, may also apply when the first-half payment of taxes is delinquent. Section 15-16-113, MCA, is applicable if the delinquent personal property taxes are not a lien upon real property sufficient to secure the payment of the taxes. §§ 15-16-111, 15-16-113, MCA. Section 15-17-911, MCA, provides that seizure and sale of personal property are authorized at any time after the date the personal property taxes become delinquent. That section also authorizes institution of a civil action for collection of the taxes. If first-half taxes are not paid in a timely fashion, they are, pursuant to section 15-24-202(1), MCA, delinquent, and the procedure set forth in section 15-17-911, MCA, may be followed by the county treasurer.

THEREFORE, IT IS MY OPINION:

1. A lienholder must pay the delinquent real property taxes on a mobile home classified as an improvement before repossessing and moving the mobile home.

2. A lienholder must pay the delinquent personal property taxes on a mobile home which is not classified as an improvement before repossessing and moving the mobile home.

3. If the owner of a mobile home which is not classified as an improvement fails to make the first-half payment of personal property taxes and the first-half taxes become delinquent, the penalty and interest provisions of section 15-16-102, MCA, apply and the mobile home may be seized and sold for delinquent taxes pursuant to sections 15-17-911 and/or 15-16-113, MCA.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 42 OPINION NO. 96

HIGHWAYS - "No Trespassing" notice along unfenced private property lying adjacent to county road;
TRESPASS - Use of "No Trespassing" notice on unfenced property lying adjacent to public road;
MONTANA CODE ANNOTATED - Section 45-6-201.

HELD: Private property that is unfenced along public roadways may not be closed to public access through the use of orange markings placed on posts located where the road enters the private property.

13 July 1988

Wm. Nels Swandal
Park County Attorney
Park County Courthouse
Livingston MT 59047

Dear Mr. Swandal:

You have asked my opinion on the following question:

> May "No Trespassing" notices be placed within a county road right-of-way on the posts of a fenceline that lies perpendicular to the road and delineates private property that a landowner desires to close to public access?

Your opinion request evolved through the interaction of three groups: landowners who desire to post their property in compliance with the revised criminal no-trespassing statute, § 45-6-201, MCA; sportsmen who desire enhanced public access and claim the "No Trespassing" signs mislead the public, and Park County officials who seek to settle the dispute while protecting the integrity of the county road right-of-way.

The county roads in question are public rights-of-way that run through private property that is unfenced along the roadway. Occasionally the roadways cross a property line that divides two parcels held in separate ownership. On these property lines the landowners erect

fences, often in conjunction with stock grates across the road surface. The fences separate one grazing field from another, but the county road that bisects the open pasture is otherwise unfenced along its route.

The owners of these pastures have adopted an easy method of posting their fields closed to trespassing. Upon the assumption that the point at which the public road crosses the fenceline and cattle grate is an access point, the owners have painted orange the posts on either side of the grate. This assumption is based upon the revised criminal trespass statute, § 45-6-201, MCA. That statute provides that orange paint on fence posts may be used to give notice of no trespassing. The statute contains several requirements that must be met before property is considered closed. One such requirement is that each "normal point of access" must be posted with the proper amount of orange paint. Apparently, the landowners have attempted to convey to motorists that the property on either side of the road, following the orange marking, is closed to the public.

The immediate problem with this practice of posting is that orange paint on either side of an entry through a fenceline typically indicates that all property beyond the marking is closed to access. On similar facts the Montana Supreme Court recently upheld the criminal trespass conviction of a motorist who inadvertently drove down a road through a gate marked with orange paint. State v. Blalock, 45 St. Rptr. 1008, ___ P.2d ___ (1988). The landowners in your request are unable to convey through their orange marking that a motorist may cross the fenceline, enter the next field, stay on the roadway and not actually trespass. As the sportsmen's group has brought to your attention, this form of posting will likely mislead the public.

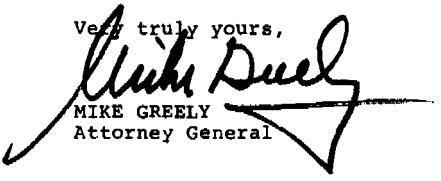
The landowners' intent here is clear. Unfortunately, the liberal posting requirements of the revised criminal trespass statute were not designed for application to the present situation. I doubt that the Legislature anticipated or contemplated the factual situation of an unfenced public right-of-way crossing fields that landowners wanted closed. The points of access for these fields actually run the entire length of the unfenced public road. The situation simply does not lend itself to easy and unambiguous posting.

Landowners who desire the result of effective posting without additional fence construction must therefore pursue alternatives to orange markings. One alternative would be to place a conspicuous sign on the roadway's edge upon entering the private property stating "Private Property, No Trespassing Next ____ Miles." Another alternative would be to place conventional "No Trespassing" signs at regular intervals along the private property bordering the road. In any case, the present practice of painting the posts adjoining the roadway at a fenceline is a misapplication of the notice provisions of section 45-6-201, MCA. The misapplication not only fails to legally close the adjacent property to trespassing but also inhibits the public's use and enjoyment of the road.

THEREFORE, IT IS MY OPINION:

Private property that is unfenced along public roadways may not be closed to public access through the use of orange markings placed on posts located where the road enters the private property.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 42 OPINION NO. 97

COUNTY OFFICERS AND EMPLOYEES - Members of recognized search and rescue units as auxiliary officers of county sheriff;
SHERIFFS - Members of recognized search and rescue units as auxiliary officers of county sheriff;
WORKERS' COMPENSATION - Coverage of members of recognized search and rescue units;
MONTANA CODE ANNOTATED - Sections 7-32-201 to 7-32-235, 7-32-2121(11);
OPINIONS OF THE ATTORNEY GENERAL - 36 Op. Att'y Gen. No. 6 (1975).

HELD: Members of a recognized search and rescue unit are auxiliary officers and must be provided full workers' compensation coverage when engaged in a search, training, or testing operation called and supervised by the sheriff.

14 July 1988

John W. Robinson
Ravalli County Attorney
Ravalli County Courthouse
Hamilton MT 59840

Dear Mr. Robinson:

You have requested my opinion on the following questions:

1. Are members of recognized search and rescue units "auxiliary officers" and thereby covered under workers' compensation laws?

2. If members of recognized search and rescue units are not auxiliary officers, can they be covered by workers' compensation for liability purposes when such units are called out by the sheriff for a search or for mandated training or testing?

In 1985 the Legislature amended section 7-32-235, MCA, by adding subsections (1) and (3), MCA, which authorize a county to "establish or recognize one or more search and rescue units within the county" and to support the units financially by means of a property tax. Your questions concern the county's responsibility for providing workers' compensation coverage for members of a search and rescue unit which the county has recognized under section 7-32-235(1), MCA. If the members of such a unit are "auxiliary officers," then section 7-32-203(2), MCA, requires the law enforcement agency that utilizes them to provide full workers' compensation coverage while the auxiliary officers are providing actual service for the law enforcement agency.

Prior to 1977 there was little statutory guidance on questions concerning voluntary law enforcement groups such as search and rescue associations. See, e.g., 36 Op. Att'y Gen. No. 6 at 300 (1975). Following a statewide survey by the Montana Board of Crime Control which revealed wide variations in the performance, training, authority, and supervision of such groups, the 1977 Legislature enacted Senate Bill 152 (1977 Mont. Laws, ch. 85), now codified at sections 7-32-201 to 234, MCA, which addressed the regulation of all volunteer members of law enforcement agencies. Senate Bill 152 distinguished between "auxiliary officers" and "reserve officers," established qualification and training standards for reserve officers, and defined the role and authority of auxiliary officers.

In 1981 the Legislature added section 7-32-235, MCA, to the statutory provisions on reserve and auxiliary officers. The new statute provided that search and rescue units are under the operational control and supervision of the county sheriff having jurisdiction. When the 1985 amendments discussed above were enacted, this provision became subsection (2) of section 7-32-235, MCA.

The 1981 legislation which expressly gave the county sheriff supervisory control over search and rescue operations (1981 Mont. Laws, ch. 42) contained an instruction stating that the new statute was intended to be codified as an integral part of Title 7, chapter 32, part 2, MCA, and that the provisions of Title 7, chapter 32, part 2, MCA, apply to the new statute. To conform the statutory list of duties of the sheriff, the

legislation also amended section 7-32-2121, MCA, by adding subsection (11), which requires the sheriff to "take charge of and supervise search and rescue units and their officers whenever search and rescue units are called into service."

Section 7-32-201(1), MCA, defines "auxiliary officer" as "an unsworn, part-time, volunteer member of a law enforcement agency who may perform but is not limited to the performance of such functions as civil defense, search and rescue, office duties, crowd and traffic control, and crime prevention activities." (Emphasis added.) Subsection (3) defines "law enforcement agency" as "a law enforcement service provided directly by a local government."

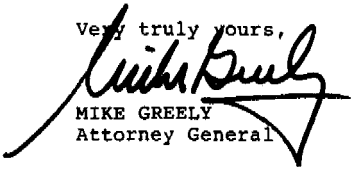
In view of the legislative history and express language of the involved statutes, I conclude that members of a county-recognized search and rescue unit are "auxiliary officers" and thereby subject to the applicable provisions of Title 7, chapter 32, part 2, MCA. Cf. State v. Lemmon, 41 St. Rptr. 2359, 692 P.2d 455 (1984) (member of sheriff's posse is an auxiliary officer). Search and rescue unit members are unsworn part-time volunteers who provide a law enforcement service when called out on a search by the sheriff. While such auxiliary officers are exempt from the qualification and training requirements which apply to reserve officers (see § 7-32-234, MCA), I further conclude that the full workers' compensation coverage required by section 7-32-203(2), MCA, should also extend to any training or testing exercises which are conducted on the orders and at the direction of the sheriff. See § 7-32-231, MCA. While engaged in training or testing operations under the sheriff's supervision, the auxiliary officers are providing "actual service for a law enforcement agency" and should be insured by the agency under its workers' compensation coverage. See § 7-32-203(2), MCA.

These conclusions make it unnecessary to address your second question.

THEREFORE, IT IS MY OPINION:

Members of a recognized search and rescue unit are auxiliary officers and must be provided full workers' compensation coverage when engaged in a search, training, or testing operation called and supervised by the sheriff.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 42 OPINION NO. 98

CITIES AND TOWNS - Authority to overrule decision of city library board of trustees;
LIBRARIES - Authority of library board of trustees;
URBAN RENEWAL - Authority of city commission to overrule library board decision in order to promote redevelopment in urban renewal area;
MONTANA CODE ANNOTATED - Section 22-1-309(4);
OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 91 (1986).

HELD: A city commission does not have the authority to overrule a decision by the city library board of trustees not to sell or lease a parking lot held in the name of the city and purchased to serve the library's parking needs.

18 July 1988

David Gliko
Great Falls City Attorney
P.O. Box 5021
Great Falls MT 59403-5021

Dear Mr. Gliko:

You have requested my opinion on the following question:

> May the city commission overrule a decision by the city library board of trustees not to sell or lease a parking lot held in the name of the city and purchased to service the library's parking needs?

In 1965 the Board of Trustees of the Great Falls City Library asked the city to issue general obligation bonds in order to finance the construction of a new library. The bond issue was placed on the ballot and approved by the Great Falls voters. The general obligation bonds were issued in the name of the city, and the new library was constructed. Some of the bond money was used to purchase a parking lot for the library. Title to the parking lot was conveyed by the sellers to the city. Since 1965 the library board has leased out parking

spaces in the lot to the public and has received the income from the leases.

Recently a developer who is interested in refurbishing an apartment building adjacent to the library parking lot offered to purchase or lease the lot in order to meet the parking requirements of the city's urban renewal plan. After two public hearings the library board declined to sell or lease the parking lot to the developer. The city commission has asked whether it has the legal authority to override the library board's decision and transfer the property to the developer in an effort to promote redevelopment in the urban renewal area.

The powers and duties of the library board of trustees are set forth in section 22-1-309, MCA, which provides in part:

> The library board of trustees shall have exclusive control of the expenditure of the public library fund, of construction or lease of library buildings, and of the operation and care of the library. The library board of trustees of every public library shall:
>
> ....
>
> (4) have the power to acquire, by purchase, devise, lease or otherwise, and to own and hold real and personal property in the name of the city or county or both, as the case may be, for the use and purposes of the library and to sell, exchange or otherwise dispose of property real or personal, when no longer required by the library and to insure the real and personal property of the library[.]

The board acquired the parking lot by purchase and has owned and held it in the name of the city for the use and purposes of the library. Section 22-1-309(4), MCA, gives the board the express power to sell, exchange, or otherwise dispose of the parking lot whenever it is no longer required by the library.

I have found no similar statutory authority granting the city commission the right to override the library board's decision concerning disposition of real property

which is owned and held by the board and used for library purposes. The fact the title to the parking lot is held in the name of the city merely shows compliance with section 22-1-309(4), MCA, and does not provide a basis for the city to transfer an interest in the property without the approval and request of the library board.

In 41 Op. Att'y Gen. No. 91 (1986) I considered whether a board of county commissioners could override a decision by the county library board of trustees concerning pay increases for library personnel. I noted in the opinion that library trustees are granted direct responsibility for administering the library in a manner largely independent of city or county control. The reasoning of that opinion applies as well to your question. Insofar as the library trustees have been given explicit authority under the Library Systems Act, their determinations may not be subjected to plenary review and possible modification by the city commission. I conclude that the city commission may not overrule the decision by the library board of trustees not to sell or lease the library's parking lot.

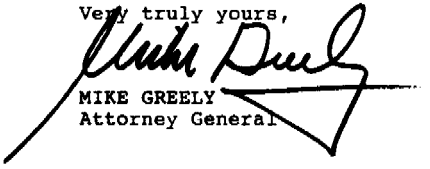
As in my previous opinion, I do not find the Montana Supreme Court's decision in Municipal Employees Local 2390 v. City of Billings, 171 Mont. 20, 555 P.2d 507 (1976), to be authority for the proposition that the library trustees are subject to the control of the city commission in matters expressly given to the trustees by statute. While the Court referred to the library board as an "adjunct of the local government" for the purpose of determining which entity is to be viewed as the "public employer" of library personnel, the Court also acknowledged that the library board is given independent powers to manage and operate the library.

I do not address, nor do I intend in this opinion to limit in any way, the authority of the city under the Urban Renewal Law as set forth in Title 7, chapter 15, part 42, MCA. See, e.g., § 7-15-4259, MCA.

THEREFORE, IT IS MY OPINION:

A city commission does not have the authority to overrule a decision by the city library board of trustees not to sell or lease a parking lot held in the name of the city and purchased to serve the library's parking needs.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 42 OPINION NO. 99

CHILD CUSTODY AND SUPPORT - Changing statute of limitations for paternity action by state agency did not revive actions barred under previous statute of limitations;
LIMITATIONS ON ACTION - Changing statute of limitations for paternity action by state agency did not revive actions barred under previous statute of limitations;
REVENUE, DEPARTMENT OF - Changing statute of limitations for paternity action by state agency did not revive actions barred under previous statute of limitations;
STATUTES - Retroactivity;
MONTANA CODE ANNOTATED - Sections 1-2-109, 40-6-108;
MONTANA LAWS OF 1987 - Chapter 129.

HELD: The change by the 1987 Montana Legislature in the statute of limitations for paternity actions initiated by a state agency did not revive actions barred under the previous statute of limitations.

19 July 1988

John D. LaFaver, Director
Department of Revenue
Room 455, Mitchell Building
Helena MT 59620

Dear Mr. LaFaver:

You have requested my opinion concerning a recent legislative change to the statute of limitations governing paternity actions. As amended in 1985, section 40-6-108, MCA, provided that a state agency must bring an action to establish paternity within two years of the child's application for services under Title IV-D of the Social Security Act. The effect of this statute was to bar any paternity claims made more than two years after the child's application for services. Prior to 1985 the statute of limitations for paternity actions was three years from the birth of the child.

The change enacted in 1987 by the Montana Legislature allows the state agency to bring an action "at any time" after the child has applied for such services. The

prospective effect of the legislative change is clear, but your question relates to the effect of the legislation retroactively. You have posed the following question:

> In enacting a new statute of limitations for paternity actions initiated by a state agency, did the Montana Legislature revive causes of action which were barred under the previous statute?

My answer is that there is no revival. The general proposition that an action, once barred, is not revived by subsequent legislation is settled:

> Although there is some authority to the contrary ... the great preponderance of authority favors the view that one who has become released from a demand by the operation of the statute of limitations is protected against its revival by a change in the limitation law.

51 Am. Jur. 2d Limitation of Actions § 44 (1970) (footnotes omitted). In a case which was factually similar to your question, the Colorado Supreme Court has held that a paternity action barred by a previous statute of limitations could not be revived by a change in the statute:

> When the bar of the statute of limitations has once attached, the legislature cannot revive the action. [Citation omitted.]

Jefferson County Department of Social Services v. D. A. G., 607 P.2d 1004, 1006 (Colo. 1980).

This conclusion is buttressed by the general disfavor toward retroactive application of legislation. Section 1-2-109, MCA, provides:

> No law contained in any of the statutes of Montana is retroactive unless expressly so declared.

I have examined the complete text of chapter 129 of the 1987 Montana Laws, which contains the legislative change in the statute of limitations for paternity

actions, and find no legislative expression of retroactive application. The use of the expression "at any time" refers to the period in which the state can bring a legal action and cannot be construed as expressing a legislative intent for retroactive application of the statute. The statutory rule in section 1-2-109, MCA, finally, comports with established common law principles:

> In most jurisdictions, in the absence of a clear manifestation of legislative intent to the contrary, statutes of limitation are construed as prospective and not retrospective in their operation, and the presumption is against any intent on the part of the legislature to make such a statute retroactive.

51 Am. Jur. 2d Limitation of Actions § 57 (footnote omitted).

THEREFORE, IT IS MY OPINION:

> The change by the 1987 Montana Legislature in the statute of limitations for paternity actions initiated by a state agency did not revive actions barred under the previous statute of limitations.

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.

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