RESERVE

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 7

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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 PUBLIC HEARING ON PROPOSED AMENDMENT OF RULES 6.6.1502 and 6.6.1503.

TO: All Interested Persons

1. On May 16, 1988, at 10:00 a.m., a public hearing will be held in the conference room of the state auditor's office in the Mitchell Building at Helena, Montana, to consider the amendment of ARM 6.6.1502 and ARM 6.6.1503.

2. The proposed amendments replace present rules ARM 6.6.1502 and ARM 6.6.1503. The proposed amendments would set March 15 of each year as the filing deadline for both promulgated and deviated rates.

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

6.6.1502 CROP HAIL INSURANCE RATE FILINGS (1) Any crop hail insurer proposing to use rates other than those filed by the Crop hail Insurance Actuarial Association shall first file the proposed rates with the commissioner of insurance for his approval.

(2) Proposed rates subject to subsection (1) of this rule shall be filed on or before ~~April 15~~ March 15 of each year.

AUTH: 33-16-202, MCA IMP: 33-16-201, MCA

6.6.1503 CROP HAIL INSURANCE RATE DEVIATION FILINGS (1) A crop hail insurer proposing to use rates, based upon the rates filed by the Crop Hail Insurance Actuarial Association but which deviate from those rates in any aspect, shall first file the proposed rates with the commissioner of insurance for his approval.

(2) An insurer shall include with rates filed pursuant to subsection (1) of this rule, cumulative crop hail statistics indicating the insurer's expense loading substantiating the proposed rate deviation.

(3) Proposed rates subject to subsection (1) of this rule shall be filed on or before ~~April 1~~ March 15 of each year.

AUTH: 33-16-202, MCA IMP: 33-16-201, MCA

4. The above amendments are being proposed to eliminate confusion among crop hail agents and insurers about when they must file their rates. To end this confusion and make it simpler for agents and insurers to file properly, the Insurance Department proposes that a March 15th date for both promulgated and deviated rates be adopted. This will also allow more time for the agents to begin selling their product prior to the hail season.

5. Interested parties may submit oral or written comments at the hearing. Written comments may also be submitted no later than May 12, 1988 to: Jim Borchardt
Chief Examiner
State Auditor's Office
P.O. Box 4009
Helena, MT 59620

6. Jim Borchardt, State Auditor's Office, Room 202, Mitchell Building, Helena, MT 59620, has been designated to preside over and conduct the hearing.

7. The authority of the state auditor to amend the above rules is based on 33-1-313, MCA, and the rules implement sections 33-16-201 and 33-16-203, MCA.

Andrea "Andy" Bennett
State Auditor and
Commissioner of Securities

Certified to the Secretary of State this 4th day of April, 1988.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF OCCUPATIONAL THERAPISTS

In the matter of the proposed amendment of a rule pertaining to fees) NOTICE OF PROPOSED AMENDMENT OF 8.35.407 FEES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 14, 1988, the Board of Occupational Therapists proposes to amend the above-stated rule.

2. The proposed amendment of 8.35.407 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1057, Administrative Rules of Montana)

"8.35.407 FEES (1) through (b) will remain the same.
(c) License renewal ~~$120.00~~ $60.00
(d) through (2) will remain the same."
Auth: 37-1-131, 37-24-201, 37-24-202, MCA Imp: 37-24-310, MCA

REASON: This amendment is being proposed to make fees commensurate with program area costs.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Occupational Therapists, 1424 9th Avenue, Helena, Montana 59620-0407, no later than May 12, 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 Occupational Therapists, 1424 9th Avenue, Helena, Montana 59620-0407, no later than May 12, 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 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 11 based on the 110 licensees in Montana.

BOARD OF OCCUPATIONAL
THERAPISTS
DEBRA J. AMMONDSON, OTR/L
CHAIRMAN

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

Certified to the Secretary of State, April 4, 1988.

STATE OF MONTANA
BEFORE THE DEPARTMENT OF COMMERCE

In the matter of the proposed adoption of new rules for the administration of the 1988 Federal Community Development Block Grant Program	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED RULES PERTAINING TO THE ADMINISTRATION OF THE 1988 FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM

TO: All Interested Persons:

1. On May 5, 1988, at 1:30, p.m., a public hearing will be held in Room C-209, of the Cogswell Building, Helena, Montana, to consider the adoption by reference of rules governing the administration of the 1988 Federal Community Development Block Grant (CDBG) program.

2. The proposed adoption will read as follows:

"I. INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING THE 1988 CDBG PROGRAM (1) The department of commerce herein adopts and incorporates by this reference the Montana Community Development Block Grant Program 1988 Application Guidelines and the Montana Community Development Block Grant Program, February, 1988 Grant Administration Manual published by it as rules for the administration of the 1988 CDBG program.

(2) The rules incorporated by reference in (1) above, relate to the following:

(a) the policies governing the program,
(b) requirements for applicants,
(c) procedures for evaluating applications,
(d) procedures for local project administration,
(e) environmental review of project activities,
(f) procurement of goods and services,
(g) financial management,
(h) protection of civil rights,
(i) fair labor standards,
(j) acquisition or property and relocation of persons displaced thereby, and
(k) administrative considerations specific to public facilities, housing and neighborhood revitalization and economic development projects.

(3) Copies of the regulations adopted by reference in subsection (1) of this rule may be obtained from the Department of Commerce, Local Government Assistance Division, Capitol Station, Helena, Montana 59620."

Auth: 90-1-103, MCA Imp: 90-1-103, MCA

3. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may be submitted to the Local Government Assistance Division, Department of Commerce, Capitol Station, Helena, Montana 59620, no later than May 12, 1988.

4. Richard M. Weddle will preside over and conduct the hearing.

DEPARTMENT OF COMMERCE

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

Certified to the Secretary of State, April 4, 1988.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the repeal) NOTICE OF THE PROPOSED REPEAL
OF ARM 10.58.101, Advisory) OF ARM 10.58.101, ADVISORY GROUP
Group)

NO PUBLIC HEARING IS CONTEMPLATED

TO: All Interested Persons

1. On June 16, 1988, the Board of Public Education proposes to repeal rule 10.58.101, Advisory Group.

2. The rule proposed to be repealed can be found on page 10-859 ARM.

3. The board is proposing the repeal of this rule because the Advisory Group has been replaced by a legislative mandated advisory council.

4. Interested persons may present their data, views or arguments either orally or in writing to Alan Nicholson, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than May 13, 1988.

5. If persons who are directly affected by the proposed repeal wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Alan Nicholson, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than May 13, 1988.

6. If the Board receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 2270 as there are 59 Certification Review Panel members, 7 Board of Public Education members and 22637 persons currently certified in the state of Montana.

7. Authority: 20-2-114, MCA IMP, 20-2-121, MCA

In the matter of the) NOTICE OF PROPOSED
amendment of Fees) AMENDMENT OF ARM 10.66.104, FEES

NO PUBLIC HEARING IS CONTEMPLATED

TO: All Interested Persons

1. On June 16, 1988, the Board of Public Education proposes to amend rule 10.66.104, Fees.

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

10.66.104 FEES (1) An ~~$4~~ 8 charge is made by all Montana testing centers for administration of the GED ~~tests~~ Test Battery. Retest charges will be $4 for test section 1 (includes essay component) and $1 per section for test sections 2, 3, 4, or 5. ~~$4 is charged for a retest of all five parts of the battery, and $1 per test is charged for retest on one or more separate tests. However, the total retest charge for any period is limited to $4.~~

AUTH: Sec. 20-2-114, 20-7-131, MCA

IMP: Sec. 20-2-121, MCA

3. The board is proposing this amendment to meet scoring costs incurred by an essay component which has been added to the GED test battery.

4. Interested persons may present their data, views or arguments either orally or in writing to Alan Nicholson, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than May 13, 1988.

5. If persons who are directly affected by the proposed amendment wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Alan Nicholson, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than May 13, 1988.

6. If the Board 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 266 as there are 2663 persons who have taken the GED test in the past year.

Alan Nicholson
ALAN NICHOLSON, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: Charlotte Morton

Certified to the Secretary of State April 4, 1988.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Policy on Statement on Kindergarten Accreditation and Schedule Variances; and Local Participation	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 10.65.201, POLICY STATEMENT ON KINDERGARTEN ACCREDITATION AND SCHEDULE VARIANCES; AND ARM 10.65.202, LOCAL DISTRICT PARTICIPATION

TO: All Interested Persons

1. On May 4, 1988, at 8:00 a.m., or as soon thereafter as it may be heard, a public hearing will be held in the Board of Regents' Conference Room, 33 South Last Chance Gulch, Helena, Montana, in the matter of the amendment of ARM 10.65.201, Policy Statement On Kindergarten Accreditation and Schedule Variances.

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

10.65.201 POLICY STATEMENT ON KINDERGARTEN ACCREDITATION AND SCHEDULE VARIANCES (1) In accordance with section 20-1-301 and 20-1-302, MCA, school districts are expected to operate kindergarten programs for 180 days with a minimum of two hour daily classes, however, a variance to this schedule may be granted by the superintendent of public instruction in accordance with the board of public education policy. School districts applying for a first time program, reinstating a program, or requesting a schedule variance, must submit an application to the office of public instruction, which shall include a curriculum guide and a philosophy statement that shows that the kindergarten program will promote emotional, social, physical and developmental preparation for the first grade in that district and is a sequential part of the K-12 program. ~~Recognizing that the locations of homes of some kindergarten children, coupled with the normal half-day attendance patterns for kindergarten classes, may cause problems in transporting kindergarten children to and from classes, it is the policy of the board that a variance to the prescribed statutory schedule for kindergarten programs may be granted if the conditions set forth below are met.~~

~~(a) Kindergarten classes are scheduled for at least 360 hours during the school year, classes shall not exceed four hours per day, though the daily period for which children are supervised by the district may exceed four hours.~~

~~(b) Kindergarten classes are in operation every week of the school year, unless a one semester schedule has been approved, and for at least eight hours a week. A one semester kindergarten schedule will be considered for approval only after all other scheduling possibilities have been explored thoroughly.~~

~~(c) Kindergarten scheduling variances shall be granted for a period of one school year and must be renewed annually.~~

(2) Recognizing that the daily half-day attendance pattern for kindergarten classes may be inappropriate for school districts where there are special needs involving transportation, use of specialized teachers and scheduling of necessary programs, it is the policy of the board that a variance to the prescribed statutory schedule for kindergarten programs may be granted by the superintendent of public instruction if the kindergarten classes are scheduled for at least 360 hours of instruction during the school year and classes do not exceed four hours per day, though the daily period for which children are supervised by the district may exceed four hours.

(3) Kindergarten scheduling variances shall be granted for a period of five years. A school district must reapply for a variance every five years or whenever the kindergarten schedule changes. Schools granted a variance between 1986 and 1987 shall reapply in 1992. Schools granted a variance prior to 1986 shall reapply in 1991.

AUTH: Sec. 20-2-121, MCA
IMP: Sec. 20-1-302, MCA

10.65.202 LOCAL DISTRICT PARTICIPATION (1) Remains the same.
~~(2) Kindergarten scheduling variances shall be granted for a period of one school year and must be renewed annually.~~

AUTH: Sec. 20-2-121, MCA
IMP: Sec. 20-1-302, MCA

3. The board is proposing these amendments to assure that kindergarten programs are an integral part of the school program, to better meet present conditions and to allow for more efficiency in granting a kindergarten variance.

In the matter of the amendment of State Aid Distribution Schedule) NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 10.67.101, STATE AID DISTRIBUTION SCHEDULE

TO: All Interested Persons

On May 4, 1988, at 8:30 a. m., or as soon thereafter as it may be heard, a public hearing will be held in the Board of Regents' Conference Room, 33 South Last Chance Gulch, Helena, Montana, in the matter of the proposed amendment of ARM 10.67.101, State Aid Distribution Schedule.

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

10.67.101 STATE AID DISTRIBUTION SCHEDULE (1) It is the policy of the board of public education that state equalization aid will be distributed on a schedule of five equal payments of 20 percent each on the approximate dates of September 30, July 15, and such dates and in such manner that the county treasurers will make funds available to school districts on January 30, February 28, March 30 and ~~June 20~~ May 30 unless the distribution dates fall on a weekend or holiday. If such payment dates fall on a weekend or holiday, the funds shall be available on the previous business day. These payments will be made if sufficient funds are available. The distribution of these funds shall be ordered annually at the September meeting of the board of public education.

AUTH: Sec. 20-2-121 MCA
IMP: Sec. 20-9-344 MCA

3. The board is proposing this amendment to comply with the mandate of the legislature as set forth in Sec. 20-9-344 MCA, which states that the board will adopt policies for regulating the distribution of state equalization aid in accordance with the provisions of law and in a manner that would most effectively meet the financial needs of districts.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearings. Written data, views or argument may also be submitted to Alan Nicholson, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than May 13, 1988.

5. Alan Nicholson, Chairman, and Claudette Morton, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, have been designated to preside over and conduct the hearing.

Alan Nicholson
ALAN NICHOLSON, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: Claudette Morton

Certified to the Secretary of State April 4, 1988.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rule 11.5.407 defining supplemental payment eligibility based on living arrangement and Rule 11.5.410 setting standards for supplemental payments	))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 11.5.407 DEFINING SUPPLEMENTAL PAYMENT ELIGIBILITY BASED ON LIVING ARRANGEMENT AND RULE 11.5.410 SETTING STANDARDS FOR SUPPLEMENTAL PAYMENTS

TO: All Interested Persons

1. On May 6, 1988, at 10:00 a.m., a public hearing will be held at the conference room of the Department of Family Services, 48 North Last Chance Gulch to consider the proposed amendment of Rules 11.5.407 and 11.5.410 pertaining to defining supplemental payment eligibility based on living arrangement and setting standards for supplemental payments.

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

11.5.407 ELIGIBILITY BASED ON LIVING ARRANGEMENT

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

(d) Community homes for the severely disabled defined and licensed in accordance with part 1, Title 53, chapter 19, MCA.

Subsections (d) is renumbered to (e) and otherwise remains the same.

~~(e) Semi-independent program facilities approved by the department of family services and designed to enhance or maintain the independence of adults by providing individualized 24 hour on call supervision, home and community life training, service coordination and support services to the residents. A semi-independent program facility is usually a cluster of apartments with one to three persons residing in each unit with each unit consisting of a kitchen, one or more bedrooms, a living room and a bathroom.~~

(f) Transitional living services to developmentally disabled approved by the department of social and rehabilitation services as an intermediate step between the group home and independent living which promotes movement out of the group home. The program consists of clients living in congregate apartments with a staff person usually living at the complex for supervision or at least 24 hour on call availability of assistance. Staff is provided to train and supervise the clients to help them develop their skills to a higher level in such areas of daily living as cooking, shopping, and cleaning.

AUTH: Sections 52-1-103 and 52-1-104, MCA
IMP: Section 52-1-104, MCA

11.5.410 PAYMENT STANDARDS Subsections (1)(a) through (c) remain the same.

(d) community homes for the severely disabled - $94.00

Subsection (d) is renumbered to (e)

(ef) ~~semi-independent program facilities~~ transitional living services to developmentally disabled - $26.00

Subsections (2) through (4) remain the same.

AUTH: Sections 52-1-103 and 52-1-104, MCA
IMP: Section 52-1-104, MCA

3. Rationale: The proposed amendments change the definition of semi-independent program facilities to one of transitional living services to developmentally disabled in keeping with the definitions used by the Developmentally Disabled Division of the Department of Social and Rehabilitative Services (SRS). SRS currently certifies which programs meet the criteria so the same definitions must be used. The payment standard remains the same.

The amendment also adds a new payment category of community homes for the severely physically disabled. Currently two homes are licensed for the severely physically disabled and have received payment under another code by agreement with the Social Security Administration. Now that other homes for the severely physically disabled are being planned, a separate definition and pay category are needed to insure equal treatment of all the licensed homes.

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 Family Services, P.O. Box 8005, Helena, Montana 59604, no later than May 12, 1988.

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

Director, Department of Family Services

Certified to the Secretary of State April 4, 1988.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rule 11.6.104 pertaining to eligibility requirements for adoptive applicants	)))))	NOTICE OF PROPOSED AMENDMENT OF RULE 11.6.104 PERTAINING TO ELIGIBILITY REQUIREMENTS FOR ADOPTIVE APPLICANTS. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On May 27, 1988, the Department of Family Services proposes to amend Rule 11.6.104 pertaining to eligibility requirements for adoptive applicants.

2. Rule 11.6.104 as proposed to be amended provides as follows:

11.6.104 HOME APPROVAL, ELIGIBILITY REQUIREMENTS

Subsections (1) and (2) remain the same.

~~(3) Married adoptive applicants must have been married at least 3 years.~~

Subsections (4) and (5) are renumbered and otherwise remain the same.

~~(6) Adoptive parents must meet age requirements established by the department.~~

Subsections (7) through (10) are renumbered and otherwise remain the same.

AUTH: Sections 52-1-103 and 53-4-111, MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87
IMP: Sections 53-4-112 and 53-4-115, MCA

3. Rationale: The department is deleting the age and marital duration requirements for adoptive applicants at the request of the Montana Human Rights Commission.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to the Office of Legal Affairs, Department of Family Services, P.O. Box 8005, Helena, Montana 59604, no later than May 12, 1988.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request along with any written comments he has to the Office of Legal Affairs, Department of Family Services, P.O. Box 8005, Helena, Montana 59604, no later than May 12, 1988.

5. If the Department receives requests for a public hearing under 2-4-315, MCA, 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 10 persons based on 100 yearly adoptive applicants.

Eugene Huntington
Director, Department of Family Services

Certified to the Secretary of State April 4, 1988.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rule 11.12.104 pertaining to youth care facility licensing criteria	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 11.12.104 PERTAINING TO YOUTH CARE FACILITY LICENSING CRITERIA

TO: All Interested Persons

1. On May 4, 1988, at 10:00 a.m., a public hearing will be held in the conference room of the Department of Family Services, 48 North Last Chance Gulch, Helena, Montana to consider the proposed amendment of Rule 11.12.104 pertaining to youth care facility licensing criteria.

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

11.12.104 YOUTH CARE FACILITY, LICENSES

Subsections (1) through (6) remain the same.

(7) Any applicant who has received services for documented abuse or neglect of a child or whose own children have been in foster care should be denied a foster care license, unless an exception is granted by the department because the circumstances leading to the provision of services or the placement no longer exist.

AUTH: Sections 41-3-1103, 41-3-1142 and 53-4-111 MCA; AUTH Extension, Sec. 2, Ch. 177, L. 1985, Eff. 7/1/85; Sec. 8, Ch. 531, L. 1985, Eff. 10/1/85; Sec. 88, Ch. 609, L. 1987, Eff. 10/1/87

IMP: Sections 4-3-1103, 41-3-1142 and 53-4-113 MCA

3. Rationale: The rule is necessary to allow the department to grant youth care facility licenses to applicants who, in the past, may have received services for neglect or abuse of a child or whose children have been in foster care. These applicants are currently excluded from receiving a license even if the circumstances necessitating the services or placement have been adequately resolved. Often the resolution of the circumstances has produced a more mature, solid family or couple that would be an excellent placement resource for children this department places for temporary care. The rule allows the department to grant licenses under an exception. Thus more people will be allowed to be considered for a license.

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 Family Services, P.O. Box 8005, Helena, Montana 59604, no later than May 12, 1988.

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

Director, Department of Family Services

Certified to the Secretary of State April 4, 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 PUBLIC HEARING FOR AMENDMENT OF RULES (Dead Human Bodies)

To: All Interested Persons

1. On May 10, 1988, at 10:00 A.M. in Room C209, Cogswell Building, 1400 Broadway, Helena, Montana, a hearing will be held to consider the amendment of rules 16.29.101, 16.29.102, 16.29.103, and 16.29.106, concerning embalming and transportation of dead human bodies. The proposed amendments would require embalming for all bodies, with certain exceptions, and would make other minor changes.

2. The rules, as proposed to be amended, appear as follows (new material is underlined; material to be deleted is interlined):

16.29.101 DEFINITIONS For the purpose of this chapter, the following definitions apply:

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

(4) "Embalming" means the preservation and disinfection of the dead human body by application of chemicals, externally, internally, or both.

~~(4)~~-~~(5)~~(5)-(6) Same as existing rule.

~~(6)~~(7) "Specified communicable disease" means ~~one of the following diseases:~~

~~(a) smallpox~~

~~(b) cholera~~

~~(c) pneumonic plague~~

~~(d) lassa fever, ebola fever, Marburg virus disease, and any other undiagnosable febrile disease occurring shortly after returning from international travel;~~

~~(e) communicable pulmonary tuberculosis, as determined by a local health officer;~~

~~(f) acquired immune deficiency syndrome (AIDS);~~

~~(g) hepatitis B, non-A non-B, or unspecified;~~

diseases as determined by the department and set forth in ARM Title 16, Chapter 28. The department hereby adopts and incorporates herein by reference ARM Title 16, Chapter 28, which is the chapter of the department's rules that deals with communicable diseases. Copies of these rules may be obtained from the Preventive Health Services Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

~~(7)~~(8) Same as existing rule.

AUTHORITY: 50-1-202, MCA
IMPLEMENTING: 50-1-202, MCA

16.29.102 ~~DEATH--FROM--A--SPECIFIED-COMMUNICABLE-DISEASE~~ EMBALMING REQUIRED; EXCEPTIONS (1) When a person dies ~~or is suspected--of-dying-of-a-specified-communicable-disease,-the attending-physician-must-notify-a-local-health-officer--and-the department-of-the-death~~ embalming is required. ~~The-local-health officer-or-the-department-must-determine-whether-or--not~~ Within the period immediately following death and prior to embalming, the local health officer, the department, or other person(s) authorized by law may require further examination of the body ~~is-necessary~~ to establish the cause of death within reasonable medical certainty.

(2) If a person dies or is suspected of dying with a specified communicable disease that may be communicated to anyone handling the body, the local health officer must immediately inform the mortician or any other person handling the body (before or after death) of that fact and of the appropriate measures which should be taken to prevent transmission.

(3) ~~As-soon-as--reasonably--possible--following--death-or further-examination--required-by--a-local-health-officer-or-the department,-a-human-body-dead-of-specified-communicable-disease must--be--embalmed.----If--embalming-cannot-be-performed-at-the place-of-death,-a-local-health--officer-or--the-department-must be-contacted--for-instructions-on-precautions-to-be-observed-in transporting-the-body-to-the-place-of-embalming.~~ Embalming of a dead human body is not required where cremation is to occur.

(4) The director of the department or his/her designee may grant exemptions from the embalming requirement on a case-by-case basis.

AUTHORITY: 50-1-202, MCA IMPLEMENTING: 50-1-202, MCA

16.29.103 TRANSPORTATION OF DEAD HUMAN BODIES

(1) Same as existing rule.

(2) ~~A~~ All dead human ~~body~~ bodies ~~dead-of-a-cause-other than-a-specified--communicable--disease,~~ being transported by common carrier, must be embalmed and placed in a casket or equivalent suitable container, subject to ARM 16.29.102. ~~If such-body--is-en-route-more-than-8-hours,-or-if-the-termination of-common-carrier-transport-occurs-more-than-36-hours-after-the time-of--death,-the--body-must--be-embalmed,-refrigerated-at-35 degrees-F,-or-colder,-or-otherwise--treated-prior--to-transport so-as--to-prevent-or-substantially-retard-decomposition-and-the resultant-effluents-and-oders.~~

~~(3) When-a-human--body--dead--of--a--cause--other--than-a specified-communicable--disease-is--being-transported-by-a-private-conveyer-and-the-body-will-not-reach-its-destination-within--48--hours,--the--body--must-be-embalmed,-refrigerated-at-35 degrees-F,-or-colder,-or-otherwise-treated-so-as-to--prevent-or substantially-retard--decomposition-and-the-resultant-effluents and-oders.~~

~~(a)~~(3) Minimum requirements for transport ~~under-section (3)-of-this-rule~~ shall be a transporting cot or stretcher and a proper covering.

AUTHORITY: 50-1-202, MCA IMPLEMENTING: 50-1-202, MCA

16.29.106 EXCEPTIONS (1) An exception to the provisions of ARM 16.29.103(2), 16.29.103(3), or 16.29.104(1) may be granted by the department ~~or a local health officer~~ if such exception is requested prior to transportation of the dead human body and if such exception does not constitute a hazard to public health, create a public nuisance, or violate the provisions of Title 50, Chapter 15, Part 4 of the Montana Code Annotated.
AUTHORITY: 50-1-202, MCA IMPLEMENTING: 50-1-202, MCA

3. The department is proposing these amendments to the rules in response to a request by the Montana Board of Morticians to require immediate embalming in order to decrease the morticians' risk of exposure to communicable diseases. In addition, the deletion of the reference to "local health officer" in 16.29.106 is proposed because the funeral profession feels more secure in directly contacting the State Department of Health which has specific communicable disease responsibilities and expertise and which maintains statewide records making direct assistance to a mortician or person disposing of the body if the deceased dies in one town and is handled in another location.

4. Interested persons may submit their written data, views, or arguments concerning the proposed amendments either at the hearing or in writing to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than May 13, 1988. Mr. Solomon has been designated to preside over the hearing.

John J. Drynan, M.D.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State March 28, 1988.

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

In the matter of the amendment of 16.20.603, 16.20.604, 16.20.605, 16.20.607, 16.20.608, 16.20.616 - 16.20.624, 16.20.633, 16.20.641, and 16.20.642, and the adoption of NEW RULE I, all concerning surface water quality standards and the classification of surface waters in the state	))))))))	NOTICE OF PUBLIC HEARING FOR AMENDMENT OF RULES AND THE ADOPTION OF NEW RULES (Surface Water Quality Standards)

To: All Interested Persons

1. On May 20, 1988, at 9:00 a.m., the board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rules and the adoption of a new rule.

2. The proposed new rule acknowledges that state surface water quality standards do not apply on Indian reservations. The proposed amendments include new definitions of acute and chronic toxicity; discharge; reasonable land, soil, and water conservation practices; and toxic or deleterious substances. Additional proposed changes involve upgrading of the Muddy Creek mainstem and a portion of the Marias River below Tiber Dam; clarifications in other classifications; adoption of Gold Book levels as numeric standards for toxic or deleterious substances; adoption of a specific dissolved oxygen standard for Ashley Creek; replacement of the old "E" classification with a new "I" classification which sets goals to improve the quality of these waters; clarification of ARM 16.20.633(4); and minor editorial corrections.

3. The rules, as proposed to be amended, appear as follows (new material is underlined; material to be deleted is interlined; the new rule is inserted in its proposed location):

16.20.603 DEFINITIONS In this subchapter the following terms ~~shall~~ have the meanings indicated below and ~~shall be~~ are supplemental to the definitions given in section 75-5-103, MCA:

(1) "Acute toxicity" means that death of exposed organisms occurs or can be expected to occur in 96 hours or less.

~~(1)~~-~~(2)~~(2)-(3) Same as existing rule.

(4) "Chronic toxicity" means that death or functional impairment occurs or can be expected to occur to organisms exposed for periods of time exceeding 96 hours.

~~(3)~~(5) Same as existing rule.

(6) "Discharge" means the injection, deposit, dumping, spilling, leaking, placing, or failing to remove any pollutant so that it or any constituent thereof may enter into state waters, including ground water.

~~(4)~~-~~(6)~~(7)-(9) Same as existing rule, but renumbered.

(10) "Gold Book levels" means the freshwater acute or chronic levels or the levels for water and fish ingestion that are listed in Update Number Two (5/1/87) of Quality Criteria for Water 1986 (EPA 440/5-86-001). Gold Book levels are used throughout this subchapter to determine the maximum allowable concentrations of toxic or deleterious substances.

~~(7)~~(11) Same as existing rule, but renumbered.

~~(8)~~(12) "Mixing zone" means the area of a water body contiguous to an effluent with characteristics qualitatively or quantitatively different from those of the receiving water. The mixing zone is a place where effluent and receiving water mix and not a place where effluents are treated. Water quality standards do not apply in the mixing zone for those parameters regulated by a MPDES or NPDES permit. An effluent, in its mixing zone, may not cause acute toxicity, except that ammonia, chlorine, and dissolved oxygen may be present at acutely toxic concentrations provided that such acute toxicity does not block passage of aquatic organisms.

~~(9)~~-~~(14)~~(13)-(18) Same as existing rule.

(19) "Reasonable land, soil, and water conservation practices" means methods, measures, or practices that will protect present and reasonably anticipated beneficial uses. These practices include but are not limited to structural and nonstructural controls and operation and maintenance procedures. These practices may be applied before, during, or after pollution-producing activities to prevent impacts to beneficial uses.

~~(15)~~-~~(18)~~(20)-(23) Same as existing rule.

(24) "Toxic or deleterious substances" means those substances listed in Quality Criteria for Water 1986 (EPA 440/5-86-001, the "Gold Book") and Update Number Two (5/1/87) of the Gold Book, for which limits are not listed in ARM 16.20.616 through 16.20.641.

(25) The board hereby adopts and incorporates by reference herein Quality Criteria for Water 1986 (EPA 440/5-86-001, the "Gold Book") and Update Number Two (5/1/87) of the Gold Book, which set forth water quality levels for toxic or deleterious substances. Copies of this material may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTHORITY: 75-5-301, MCA
IMPLEMENTING: 75-5-301, MCA

16.20.604 WATER-USE CLASSIFICATIONS -- CLARK FORK-COLUMBIA RIVER DRAINAGE EXCEPT THE FLATHEAD AND KOOTENAI RIVER DRAINAGES The water-use classifications adopted for the Clark Fork of the Columbia River drainage are as follows:

(1) Clark Fork River drainage except waters listed in subsections (1)(a) through (1)(n) B-1

(a) Same as existing rule.

(b) Silver Bow Creek (mainstem) from the confluence of Blacktail Deer Creek to Warm Springs Creek . . . . . -B- I

(The Anaconda Company tailings pond and Silver Bow Creek drainage from this pond downstream to Blacktail Deer Creek and the tailings ponds at Warm Springs have no classification.)

(c)-(n) Same as existing rule.

AUTHORITY: 75-5-301, MCA
IMPLEMENTING: 75-5-301, MCA

16.20.605 WATER-USE CLASSIFICATIONS -- FLATHEAD RIVER DRAINAGE The water-use classifications adopted for the Flathead River are as follows:

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

(3) Flathead River drainage below the highway bridge at Polson to confluence with Clark Fork River except tributaries listed in subsections (3)(a) through (3)(h) B-1

(a)-(d) Same as existing rule.

(e) Hot Springs Creek (mainstem) from the Hot Springs water supply intake to the Little Bitterroot River . . . . . -B-C-3

(f)-(h) Same as existing rule.

AUTHORITY: 75-5-301, MCA
IMPLEMENTING: 75-5-301, MCA

16.20.607 WATER-USE CLASSIFICATIONS -- MISSOURI RIVER DRAINAGE EXCEPT YELLOWSTONE, BELLE FOURCHE, AND LITTLE MISSOURI RIVER DRAINAGES The water-use classifications adopted for the Missouri River are as follows:

(1) Missouri River drainage to and including the Sun River drainage except tributaries listed in subsections (1)(a) through (1)(m). B-1

(a)-(h) Same as existing rule.

(i) Prickly Pear Creek (mainstem) from the Montana Highway No. 433 crossing about one mile northwest of East Helena to Lake Helena . . . . . -B-I

(j)-(k) Same as existing rule.

(l) Muddy Creek ~~drainage~~ mainstem (tributary ~~to~~ of Sun River) . . . . . -B- I

(m) Same as existing rule.

(2) Same as existing rule.

(3) Missouri River drainage from Rainbow Dam in Great Falls to the Marias River except waters listed in subsections (3)(a) through (3)(d). . B-3

(a) Belt Creek drainage to and including Otter Creek drainage except portion of O'Brien Creek listed in subsection (3)(a)(i). B-1

(i) O'Brien Creek drainage to the Neihart water supply intake A-1

(b)-(d) Same as existing rule.

(4) Marias River drainage except the tributaries and segments listed in subsections (4)(a) through (4)~~(f)~~(g) B-2

(a)-(d) Same as existing rule.

(e) Marias River mainstem from Tiber Dam to the county road crossing in section 17, township 29 north, range 5 east B-1

~~(e)~~-~~(f)~~(f)-(g) Same as existing rule.

(5) Missouri River drainage from Marias River to Fort Peck Dam except waters listed in subsections (5)(a) through ~~(5)(e)~~(5)(f). C-3

(a)-(d) Same as existing rule.

(e) Musselshell River drainage to Deadman's Basin diversion canal above Shawmut except for the waters listed in subsections (5)(e)(i) ~~through (5)(e)(vi)~~. B-1

(i) Musselshell River (mainstem) from Hopley Creek to Deadman's Basin Diversion Canal near Shawmut B-2

~~(ii)~~(f) Musselshell River drainage below Deadman's Basin diversion canal above Shawmut except ~~portions of Careless, Swimming Woman, Flatwillow, South Willow Creek and Deadman's Basin Reservoir listed below~~ for the waters listed in subsections (5)(f)(i)-(5)(f)(iv). C-3

(i) Deadman's Basin Reservoir. B-1

~~(iii)~~(ii) Careless and Swimming Woman Creek drainage above their confluence north of Ryegate . . B-1

~~(iv)~~(iii) Flatwillow Creek drainage above U.S. Highway 87 crossing south of Grassrange. B-2

~~(v)~~(iv) South Willow Creek drainage above county road bridge in T10N, R24E, Section 7 . . . . . B-1

~~(iv) Deadman's Basin Reservoir. . . . . B-1~~

(6)-(7) Same as existing rule.

(8) Milk River drainage from the International Boundary to the Missouri River except the tributaries listed in subsections (8)(a) through (8)(c). B-3

(a)-(b) Same as existing rule.

(c) ~~People's~~ Peoples Creek drainage to and including the South Fork of ~~People's~~ Peoples Creek drainage. B-1

(9) Same as existing rule.

AUTHORITY: 75-5-301, MCA
IMPLEMENTING: 75-5-301, MCA

16.20.608 WATER-USE CLASSIFICATION -- YELLOWSTONE RIVER DRAINAGE The water-use classifications adopted for the Yellowstone River are as follows:

(1) Same as existing rule.

(2) Yellowstone River drainage from the Laurel water supply intake to the Billings water supply intake except the tributaries listed in subsections (2)(a) and (2)(b) B-2

(a) Clarks Fork Yellowstone River drainage from source to the Wyoming state line and from the Wyoming state line to and including Jack Creek near Bridger B-1

(b) Mainstem of the Clarks Fork River from Jack Creek to the Yellowstone River B-2

~~(b)~~(c) Tributaries to the Clarks Fork Yellowstone River from Jack Creek ~~(mainstem is B-2)~~ to the Yellowstone River except the portion of West Fork of Rock Creek listed in subsection (2)~~(b)~~(c)(i) B-1

(i) Same as existing rule.

(3) Same as existing rule.

(4) Yellowstone River drainage from Big Horn River to North Dakota boundary except waters listed in subsections (4)(a) through (4)(d). . C-3

(a) Yellowstone River mainstem from Big Horn River to North Dakota boundary B-3

(b) Tongue River (mainstem) from Wyoming boundary to Prairie Dog Coulee B-2

(c) Tongue River mainstem from Prairie Dog Coulee to Yellowstone River B-2 B-3

(d) Fox Creek drainage near Sidney B-2

AUTHORITY: 75-5-301, MCA
IMPLEMENTING: 75-5-301, MCA

NEW RULE I WATER USE CLASSIFICATIONS -- INDIAN RESERVATIONS (1) All waters are unclassified, even if listed in ARM 16.20.604 through 16.20.611.

AUTHORITY: 75-5-301, MCA
IMPLEMENTING: 75-5-301, MCA

16.20.616 A-CLOSED CLASSIFICATION

(1) Waters classified A-Closed are suitable for drinking, culinary, and food processing purposes after simple disinfection. Water quality is suitable for swimming, recreation, growth, and propagation of fishes and associated aquatic life, although access restrictions to protect public health may limit actual use of A-closed waters for these uses.

(2) Same as existing rule.

(3) ~~For waters classified A-Closed the following specific water quality standards shall not be violated by any person~~ No person may violate the following specific water quality standards for waters classified A-Closed:

(a) Same as existing rule.

(b) ~~Dissolved oxygen criteria are not applicable for the classification.~~ No change from naturally occurring dissolved oxygen levels is allowed.

(c)-(i) Same as existing rule.

AUTHORITY: 75-5-301, MCA
IMPLEMENTING: 75-5-301, MCA

16.20.617 A-1 CLASSIFICATION

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

(3) ~~For waters classified A-1 the following specific water quality standards shall not be violated by any person~~ No person may violate the following specific water quality standards for waters classified A-1:

(a)-(g) Same as existing rule.

~~(h) Concentrations of toxic or other deleterious substances which would remain in the water after conventional water treatment must not exceed the maximum contaminant levels set forth in the 1975 National Interim Primary Drinking Water Standards (40 CFR Part 141) or subsequent revisions or the 1979 National Secondary Drinking Water Standards (40 CFR Part 143) or subsequent revisions. The maximum allowable concentrations of toxic or deleterious substances also must not exceed acute or chronic problem levels as revealed by bio-assay or other methods. The values listed in EPA Water Quality Criteria documents (Federal Register Vol. 45, No. 231, Friday, November 28, 1980, pages 79318 - 79379) shall be used as a guide to determine problem levels unless local conditions make these values inappropriate. In accordance with section 75-5-306(1), MCA, it is not necessary that wastes be treated to a purer condition than the natural condition of the receiving water.~~

(h)(i) Concentrations of toxic or deleterious substances which would remain in the water after conventional water treatment may not exceed the maximum contaminant levels set forth in the U.S. EPA National Primary Drinking Water Regulations (40 CFR Part 141, 7/1/86 ed.) or the U.S. EPA National Secondary Drinking Water Regulations (40 CFR Part 143, 7/1/86 ed.). Concentrations of toxic or deleterious substances also may not exceed Gold Book levels.

(ii) Dischargers issued permits under ARM Title 16, chapter 20, subchapter 9, shall conform with ARM Title 16, chapter 20, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed Gold Book levels when stream flows equal or exceed the design flows specified in ARM 16.20.631(4).

(iii) When Gold Book levels are used as the basis for discharge permit limits for waters with a hardness of less than 20 mg/l (as $CaCO_2$), the limits for metals are based on a hardness of 20 mg/l. If site-specific criteria are developed as the basis for discharge permit limits, using the procedures given in the Water Quality Standards Handbook (U.S. EPA, Dec. 1983), the limits so developed are used instead of Gold Book levels.

(iv) In accordance with section 75-5-306(1), MCA, it is not necessary that wastes be treated to a purer condition than the natural condition of the receiving water as long as the minimum treatment requirements, adopted pursuant to section 75-5-305, MCA, are met.

(4) The board hereby adopts and incorporates herein by reference ~~"EPA Water Quality Criteria documents (Federal Register Vol. 45, No. 231, Friday, November 28, 1980, pages 79318-79379)" which set forth water quality criteria for toxic or other deleterious substances~~ the following:

(a) U.S. EPA National Primary Drinking Water Regulations, 40 CFR Part 141, 7/1/86 ed., which sets forth federal drinking water standards;

(b) U.S. EPA National Secondary Drinking Water Regulations, 40 CFR Part 143, 7/1/86 ed., which sets forth federal

secondary drinking water criteria;

(c) Quality Criteria for Water 1986 (EPA 440/5-86-001, the "Gold Book") and Update Number Two (5/1/87) of the Gold Book, which set forth water quality levels for toxic or deleterious substances; and

(d) the Water Quality Standards Handbook (U.S. EPA, Dec. 1983) which sets forth procedures for development of site-specific criteria.

(e) Copies of ~~this document~~ these materials may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTHORITY: 75-5-301, MCA
IMPLEMENTING: 75-5-301, MCA

16.20.618 B-1 CLASSIFICATION (1) Same as existing rule.

(2) ~~For--waters--classified--B-1--the--following-specific water-quality-standards-shall-not-be-violated-by--any-person~~ No person may violate the following specific water quality standards for waters classified B-1:

(a)-(g) Same as existing rule.

~~(h) Concentrations-of-toxic-or-other-deleterious-substances-which--would-remain--in-the--water-after-conventional-water treatment-must--not-exceed--the-maximum--contaminant-levels-set forth-in-the-1975-National-Interim-Primary-Drinking-Water-Standards-(40--CFR-Part--141)-or--subsequent-revisions--or-the-1979 National-Secondary--Drinking-Water--Standards-(40-CFR-Part-143) or-subsequent-revisions.--The-maximum--allowable-concentrations of-toxic--or-deleterious--substances-also-must-not-exceed-acute or-chronic-problem-levels-as--revealed--by--bio-assay--or-other methods.--The-values-listed-in-EPA-Water-Quality-Criteria-documents-(Federal-Register-Vol.-45,-No.-231,-Friday,--November-28, 1980,-pages--79318----79379)-shall-be-used-as-a-guide-to-determine-problem-levels-unless--local-conditions--make-these-values inappropriate.--In-accordance-with-section-75-5-306(1),-MCA,-it is-not-necessary-that--wastes-be--treated-to--a-purer-condition than-the-natural-condition-of-the-receiving-water.~~

(h)(i) Concentrations of toxic or deleterious substances which would remain in the water after conventional water treatment may not exceed the maximum contaminant levels set forth in the U.S. EPA National Primary Drinking Water Regulations (40 CFR Part 141, 7/1/86 ed.) or the U.S. EPA National Secondary Drinking Water Regulations (40 CFR Part 143, 7/1/86 ed.). Concentrations of toxic or deleterious substances also may not exceed Gold Book levels.

(ii) Dischargers issued permits under ARM Title 16, chapter 20, subchapter 9, shall conform with ARM Title 16, chapter 20, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed Gold Book levels when stream flows equal or exceed the design flows specified in ARM 16.20.631(4).

(iii) When Gold Book levels are used as the basis for discharge permit limits for waters with a hardness of less than 20 mg/l (as $CaCO_2$), the limits for metals are based on a hard-

ness of 20 mg/l. If site-specific criteria are developed as the basis for discharge permit limits, using the procedures given in the Water Quality Standards Handbook (U.S. EPA, Dec. 1983), the limits so developed are used instead of Gold Book levels.

(iv) In accordance with section 75-5-306(1), MCA, it is not necessary that wastes be treated to a purer condition than the natural condition of the receiving water as long as the minimum treatment requirements, adopted pursuant to section 75-5-305, MCA, are met.

(3) The board hereby adopts and incorporates herein by reference ~~"EPA-Water-Quality-Criteria-documents-(Federal-Register-Vol.--45,-No.--231,-Friday,-November-28,-1980,-pages-79318-79379)"-which-set-forth-water--quality--criteria--for--toxic-or other-deleterious-substances~~ the following:

(a) U.S. EPA National Primary Drinking Water Regulations, 40 CFR Part 141, 7/1/86 ed., which sets forth federal drinking water standards;

(b) U.S. EPA National Secondary Drinking Water Regulations, 40 CFR Part 143, 7/1/86 ed., which sets forth federal secondary drinking water criteria;

(c) Quality Criteria for Water 1986 (EPA 440/5-86-001, the "Gold Book") and Update Number Two (5/1/87) of the Gold Book, which set forth water quality levels for toxic or deleterious substances; and

(d) the Water Quality Standards Handbook (U.S. EPA, Dec. 1983) which sets forth procedures for development of site-specific criteria.

(e) Copies of ~~this document~~ these materials may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTHORITY: 75-5-301, MCA
IMPLEMENTING: 75-5-301, MCA

16.20.619 B-2 CLASSIFICATION (1) Same as existing rule.

(2) ~~For--waters--classified--B-2--the--following-specific water-quality-standards-shall-not-be-violated-by--any-person~~ No person may violate the following specific water quality standards for waters classified B-2:

(a)-(g) Same as existing rule.

~~(h) Concentrations-of-toxic-or-other-deleterious-substances-which--would-remain--in-the--water-after-conventional-water treatment-must--not-exceed--the-maximum--contaminant-levels-set forth-in-the-1975-National-Interim-Primary-Drinking-Water-Standards-(40--CFR-Part--141)-or--subsequent-revisions--or-the-1979 National-Secondary--Drinking-Water--Standards-(40-CFR-Part-143) or-subsequent-revisions.--The-maximum--allowable-concentrations of-toxic--or-deleterious--substances-also-must-not-exceed-acute or-chronic-problem-levels-as--revealed--by--bio-assay--or-other methods.--The-values-listed-in-EPA-Water-Quality-Criteria-documents-(Federal-Register-Vol.-45,-No.-231,-Friday,--November-28, 1980,-pages--79318----79379)-shall-be-used-as-a-guide-to-determine-problem-levels-unless--local-conditions--make-these-values~~

~~inappropriate.--In-accordance-with-section-75-5-306(1),-MCA,-it is-not-necessary-that--wastes-be--treated-to--a-purer-condition than-the-natural-condition-of-the-receiving-water.~~

(h)(i) Concentrations of toxic or deleterious substances which would remain in the water after conventional water treatment may not exceed the maximum contaminant levels set forth in the U.S. EPA National Primary Drinking Water Regulations (40 CFR Part 141, 7/1/86 ed.) or the U.S. EPA National Secondary Drinking Water Regulations (40 CFR Part 143, 7/1/86 ed.). Concentrations of toxic or deleterious substances also may not exceed Gold Book levels.

(ii) Dischargers issued permits under ARM Title 16, chapter 20, subchapter 9, shall conform with ARM Title 16, chapter 20, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed Gold Book levels when stream flows equal or exceed the design flows specified in ARM 16.20.631(4).

(iii) When Gold Book levels are used as the basis for discharge permit limits for waters with a hardness of less than 20 mg/l (as $CaCO_2$), the limits for metals are based on a hardness of 20 mg/l. If site-specific criteria are developed as the basis for discharge permit limits, using the procedures given in the Water Quality Standards Handbook (U.S. EPA, Dec. 1983), the limits so developed are used instead of Gold Book levels.

(iv) In accordance with section 75-5-306(1), MCA, it is not necessary that wastes be treated to a purer condition than the natural condition of the receiving water as long as the minimum treatment requirements, adopted pursuant to section 75-5-305, MCA, are met.

(3) The board hereby adopts and incorporates herein by reference ~~"EPA-Water-Quality-Criteria-documents-(Federal-Register-Vol.-45,-No.-231,-Friday,--November-28,--1980,-pages-79318-79379)"--which--set--forth--water-quality-criteria-for-toxic-or other-deleterious-substances~~ the following:

(a) U.S. EPA National Primary Drinking Water Regulations, 40 CFR Part 141, 7/1/86 ed., which sets forth federal drinking water standards;

(b) U.S. EPA National Secondary Drinking Water Regulations, 40 CFR Part 143, 7/1/86 ed., which sets forth federal secondary drinking water criteria;

(c) Quality Criteria for Water 1986 (EPA 440/5-86-001, the "Gold Book") and Update Number Two (5/1/87) of the Gold Book, which set forth water quality levels for toxic or deleterious substances; and

(d) the Water Quality Standards Handbook (U.S. EPA, Dec. 1983) which sets forth procedures for development of site-specific criteria.

(e) Copies of ~~this-document~~ these materials may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTHORITY: 75-5-301, MCA
IMPLEMENTING: 75-5-301, MCA

16.20.620 B-3 CLASSIFICATION (1) Same as existing rule.

(2) ~~For--waters--classified--B-3--the--following-specific water-quality-standards-shall-not-be-violated-by--any-person~~ No person may violate the following specific water quality standards for waters classified B-3:

(a)-(g) Same as existing rule.

~~(h) Concentrations-of-toxic-or-other-deleterious-substances-which--would-remain--in-the--water-after-conventional-water treatment-must--not-exceed--the-maximum--contaminant-levels-set forth-in-the-1975-National-Interim-Primary-Drinking-Water-Standards-(40--CFR-Part--141)-or--subsequent-revisions--or-the-1979 National-Secondary--Drinking-Water-Standards-(40-CFR-Part-143). The-maximum-allowable-concentrations--of--toxic--or-deleterious substances-also-must-not-exceed-acute-or-chronic-problem-levels as-revealed-by-bio-assay-or-other--methods.---The-values-listed in-EPA--Water-Quality-Criteria-documents-(Federal-Register-Vol. 45,-No.-231,-Friday,--November-28,--1980,-pages--79318---79379) shall-be--used-as--a-guide--to-determine--problem-levels-unless local-conditions--make-these--values-inappropriate.---In-accordance-with--section-75-5-306(1),--MCA,-it-is-not-necessary-that wastes-be-treated-to-a-purer-condition-than--the-natural-condition-of-the-receiving-water.~~

(h)(i) Concentrations of toxic or deleterious substances which would remain in the water after conventional water treatment may not exceed the maximum contaminant levels set forth in the U.S. EPA National Primary Drinking Water Regulations (40 CFR Part 141, 7/1/86 ed.) or the U.S. EPA National Secondary Drinking Water Regulations (40 CFR Part 143, 7/1/86 ed.). Concentrations of toxic or deleterious substances also may not exceed Gold Book levels.

(ii) Dischargers issued permits under ARM Title 16, chapter 20, subchapter 9, shall conform with ARM Title 16, chapter 20, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed Gold Book levels when stream flows equal or exceed the design flows specified in ARM 16.20.631(4).

(iii) When Gold Book levels are used as the basis for discharge permit limits for waters with a hardness of less than 20 mg/l (as $CaCO_2$), the limits for metals are based on a hardness of 20 mg/l. If site-specific criteria are developed as the basis for discharge permit limits, using the procedures given in the Water Quality Standards Handbook (U.S. EPA, Dec. 1983), the limits so developed are used instead of Gold Book levels.

(iv) In accordance with section 75-5-306(1), MCA, it is not necessary that wastes be treated to a purer condition than the natural condition of the receiving water as long as the minimum treatment requirements, adopted pursuant to section 75-5-305, MCA, are met.

~~(3) The-board-hereby-adopts-and-incorporates-by-reference 40-CFR--Part-141,--which-sets--forth-the--1975-National-Interim Primary-Drinking-Water-Standards,--and-40--CFR-Part--143,-which sets--forth--the--1979--National-Secondary-Drinking-Water-Stan-~~

~~dards.--Copies-of-40-CFR-Part-141--and-40--CFR-Part--143-may-be obtained-from--the-Water--Quality-Bureau,--Department-of-Health and-Environmental-Sciences,-Cogswell-Building,-Capitol-Station, Helena,-Montana-59620.~~

~~(4) The-board-hereby-adopts-and-incorporates-by-reference "EPA-Water-Quality-Criteria--documents--(Federal--Register-Vol. 45,-No.--231,-Friday,--November-28,-1980,-pages-79318--79379)", which-set-forth-water-quality-criteria-for-toxic-or-other-deleterious-substances.---Copies--of-this--document-may-be-obtained from-the-Water-Quality-Bureau,-Department--of-Health--and-Environmental-Sciences,-Cogswell-Building,-Capitol-Station,-Helena, Montana-59620.~~

(3) The board hereby adopts and incorporates herein by reference the following:

(a) U.S. EPA National Primary Drinking Water Regulations, 40 CFR Part 141, 7/1/86 ed., which sets forth federal drinking water standards;

(b) U.S. EPA National Secondary Drinking Water Regulations, 40 CFR Part 143, 7/1/86 ed., which sets forth federal secondary drinking water criteria;

(c) Quality Criteria for Water 1986 (EPA 440/5-86-001, the "Gold Book") and Update Number Two (5/1/87) of the Gold Book, which set forth water quality levels for toxic or deleterious substances; and

(d) the Water Quality Standards Handbook (U.S. EPA, Dec. 1983) which sets forth procedures for development of site-specific criteria.

(e) Copies of these materials may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTHORITY: 75-5-301, MCA
IMPLEMENTING: 75-5-301, MCA

16.20.621 C-1 CLASSIFICATION (1) Same as existing rule.

(2) ~~For--waters--classified--C-1--the--following-specific water-quality-standards-shall-not-be-violated-by--any-person~~ No person may violate the following specific water quality standards for waters classified C-1:

(a)-(g) Same as existing rule.

(h)(i) Concentrations of toxic or deleterious substances ~~must~~ may not exceed levels which render the waters harmful, detrimental or injurious to public health. ~~The--maximum-allowable-c~~ Concentrations of toxic or deleterious substances also ~~must~~ may not exceed ~~acute-or-chronic-problem-levels-as-revealed by-bioassay--or-other--methods.--The-values-listed-in-EPA-Water Quality-Criteria-documents-(Federal-Register-Vol.--45,-No.-231, Friday,-November--28,-1980,--pages-79318---79379)-shall-be-used as-a-guide-to-determine-problem-levels-unless--local-conditions make-these--values-inappropriate.---In--accordance-with-section 75-5-306(1),-MCA,-it-is-not-necessary-that-wastes-be-treated-to a-purer--condition-than--the-natural-condition-of-the-receiving water.~~ Gold Book levels.

(ii) Dischargers issued permits under ARM Title 16, chapter 20, subchapter 9, shall conform with ARM Title 16, chapter 20, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed Gold Book levels when stream flows equal or exceed the design flows specified in ARM 16.20.631(4).

(iii) When Gold Book levels are used as the basis for discharge permit limits for waters with a hardness of less than 20 mg/l (as $CaCO_2$), the limits for metals are based on a hardness of 20 mg/l. If site-specific criteria are developed as the basis for discharge permit limits, using the procedures given in the Water Quality Standards Handbook (U.S. EPA, Dec. 1983), the limits so developed are used instead of Gold Book levels.

(iv) In accordance with section 75-5-306(1), MCA, it is not necessary that wastes be treated to a purer condition than the natural condition of the receiving water as long as the minimum treatment requirements, adopted pursuant to section 75-5-305, MCA, are met.

~~(i) In the segment of the Clark Fork River classified B-I, the parameter limits set forth below apply rather than the limits listed for these parameters in EPA Water Quality Criteria documents (Federal Register Vol. 45, No. 231, Friday, November 28, 1980, pages 79318 - 79379):~~

Parameter	Maximum Instantaneous Concentration ug/l
~~Total copper~~	~~90~~
~~Total zinc~~	~~300~~
~~Total iron~~	~~1000~~
~~Total lead~~	~~100~~
~~Total cadmium~~	~~10~~
~~Total arsenic~~	~~50~~
~~Total mercury~~	~~1~~

(3) The board hereby adopts and incorporates herein by reference ~~"EPA Water Quality Criteria documents (Federal Register Vol. 45, No. 231, Friday, November 28, 1980, pages 79318-79379)" which set forth water quality criteria for toxic or other deleterious substances~~ the following:

(a) Quality Criteria for Water 1986 (EPA 440/5-86-001, the "Gold Book") and Update Number Two (5/1/87) of the Gold Book, which set forth water quality levels for toxic or deleterious substances; and

(b) the Water Quality Standards Handbook (U.S. EPA, Dec. 1983) which sets forth procedures for development of site-specific criteria.

(c) Copies of ~~this document~~ these materials may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTHORITY: 75-5-301, MCA
IMPLEMENTING: 75-5-301, MCA

16.20.622 C-2 CLASSIFICATION (1) Same as existing rule. (2) ~~For--waters--classified--C-2--the--following-specific water-quality-standards-shall-not-be-violated-by--any-person~~ No person may violate the following specific water quality standards for waters classified C-2:

(a) Same as existing rule.

(b) Dissolved oxygen concentration ~~must~~ may not be reduced below 7.0 milligrams per liter from October 1 through June 1 nor below 6.0 milligrams per liter from June 2 through September 30. These levels apply to all waters in the state classified C-2 except for Ashley Creek below the bridge crossing on airport road where the dissolved oxygen concentrations may not be reduced below 5 mg/l from October 1 through June 1, nor below 3 mg/l from June 2 through September 30.

(c)-(g) Same as existing rule.

(h)(i) Concentrations of toxic or deleterious substances ~~must~~ may not exceed levels which render the waters harmful, detrimental or injurious to public health. ~~The-maximum-allowable-c~~ Concentrations of toxic or deleterious substances also ~~must~~ may not exceed ~~acute-or-chronic-problem-levels-as-revealed by-bio-assay-or-other-methods.--The-values-listed-in--EPA-Water Quality-Criteria--documents-(Federal-Register-Vol.-45,-No.-231, Friday,-November-28,-1980,-pages-79318----79379)--shall-be-used as-a--guide-to-determine-problem-levels-unless-local-conditions make-these--values-inappropriate.---In--accordance-with-section 75-5-306(1),-MCA,--it-is--not-necessary--that-wastes-be-treated to-a-purer-condition-than-the-natural-condition--of-the-receiving-water:~~ Gold Book levels.

(ii) Dischargers issued permits under ARM Title 16, chapter 20, subchapter 9, shall conform with ARM Title 16, chapter 20, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed Gold Book levels when stream flows equal or exceed the design flows specified in ARM 16.20.631(4).

(iii) When Gold Book levels are used as the basis for discharge permit limits for waters with a hardness of less than 20 mg/l (as $CaCO_2$), the limits for metals are based on a hardness of 20 mg/l. If site-specific criteria are developed as the basis for discharge permit limits, using the procedures given in the Water Quality Standards Handbook (U.S. EPA, Dec. 1983), the limits so developed are used instead of Gold Book levels.

(iv) In accordance with section 75-5-306(1), MCA, it is not necessary that wastes be treated to a purer condition than the natural condition of the receiving water as long as the minimum treatment requirements, adopted pursuant to section 75-5-305, MCA, are met.

~~(i) In--the--segment--of--the-Clark-Fork-River-classified C-2,-the-parameter-limits-set-forth-below-apply-rather-than-the limits-listed--for-these--parameters-in--EPA-Water-Quality-Criteria-documents-(Federal-Register--Vol.--45,--No.--231,-Friday, November-28,-1980,-pages-79318---79379):~~

Parameter	Maximum Instantaneous Concentration ug/l
Total copper	90
Total zinc	300
Total iron	2200
Total lead	100
Total cadmium	10
Total arsenic	50
Total mercury	1

(3) The board hereby adopts and incorporates herein by reference "EPA-Water-Quality-Criteria-documents-(Federal-Register-Vol.-45,-No.-231,-Friday,--November-28,--1980,-pages-79318-79379)"--which--set--forth--water-quality-criteria-for-toxic-or other-deleterious-substances the following:

(a) Quality Criteria for Water 1986 (EPA 440/5-86-001, the "Gold Book") and Update Number Two (5/1/87) of the Gold Book, which set forth water quality levels for toxic or deleterious substances; and

(b) the Water Quality Standards Handbook (U.S. EPA, Dec. 1983) which sets forth procedures for development of site-specific criteria.

(c) Copies of this-document these materials may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTHORITY: 75-5-301, MCA
IMPLEMENTING: 75-5-301, MCA

16.20.623 -E- I CLASSIFICATION (1) Waters-classified-E are-suitable--for-agricultural--and-industrial-water-uses-other than-food-processing. The goal of the state of Montana is to have these waters fully support the following uses: drinking, culinary, and food processing purposes after conventional treatment; bathing, swimming, and recreation; growth and propagation of fishes and associated aquatic life, waterfowl, and furbearers; and agricultural and industrial water supply. An analysis will be performed for each of these waters during each triennial standards review period to determine the factors preventing or limiting attainment of the designated uses listed herein. Based on these analyses, the specific standards listed below will be adjusted to reflect any improvements which have occurred in water quality as a result of water quality control of nonpoint-source pollution.

(2) For-waters-classified-E-the-following--specific-water quality-standards-shall-not-be-violated-by-any-person No person may violate the following specific water quality standards for waters classified I:

(a)-(f) Same as existing rule.

(g) No increase above in naturally occurring true color is allowed which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.

(h)(i) ~~Concentrations of toxic or deleterious substances, pathogens, pesticides and organic and inorganic materials including heavy metals must be less than those demonstrated to be deleterious to livestock or plants or to humans who may consume such livestock or plants or to adversely affect other indicated uses.~~ No discharges of toxic or deleterious substances may commence or continue which lower or are likely to lower the overall water quality of these waters.

(ii) As the quality of these waters improves due to control of nonpoint sources, point-source dischargers will be required to improve the quality of their discharges following the MPDES rules (ARM Title 16, chapter 20, subchapter 9).

(iii) Beneficial uses are considered supported when the concentrations of toxic or deleterious substances in these waters do not exceed Gold Book levels when stream flows equal or exceed the flows specified in ARM 16.20.631(4) or, alternatively, for aquatic life when the concentrations do not exceed site-specific criteria developed using the procedures given in the Water Quality Standards Handbook (U.S. EPA, Dec. 1983).

(iv) Limits for toxic or deleterious substances in new discharge permits issued pursuant to the MPDES rules (ARM Title 16, chapter 20, subchapter 9) are the larger of either Gold Book levels or one-half of the mean in-stream concentrations immediately upstream of the discharge point.

(3) The board hereby adopts and incorporates herein by reference the following:

(a) Quality Criteria for Water 1986 (EPA 440/5-86-001, the "Gold Book") and Update Number Two (5/1/87) of the Gold Book, which set forth water quality levels for toxic or deleterious substances; and

(b) the Water Quality Standards Handbook (U.S. EPA, Dec. 1983).

(c) Copies of this material may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTHORITY: 75-5-301, MCA
IMPLEMENTING: 75-5-301, MCA

16.20.624 C-3 CLASSIFICATION (1) Same as existing rule.

(2) ~~For waters classified C-3 the following specific water quality standards shall not be violated by any person~~ No person may violate the following specific water quality standards for waters classified C-3:

(a)-(g) Same as existing rule.

(h)(i) Concentrations of toxic or ~~other~~ deleterious substances which would remain in the water after conventional water treatment ~~must~~ may not exceed the maximum contaminant levels set forth in the ~~1975~~ National ~~Interim~~ Primary Drinking Water ~~Standards~~ Regulations (40 CFR Part 141), 7/1/86 ed. ~~The maximum allowable~~ Concentrations of toxic or deleterious substances also ~~must~~ may not exceed ~~acute or chronic problem levels as revealed by bioassay or other methods. The values listed in EPA Water Quality Criteria documents (Federal Register~~

~~Vol.--45,--No.--231,--Friday,--November--28,-1980,-pages-79318-79379)-shall-be--used-as--a-guide--to-determine--problem-levels unless-local--conditions-make-these-values-inappropriate.~~ Gold Book levels.

(ii) Dischargers issued permits under ARM Title 16, chapter 20, subchapter 9, shall conform with ARM Title 16, chapter 20, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed Gold Book levels when stream flows equal or exceed the design flows specified in ARM 16.20.631(4).

(iii) When Gold Book levels are used as the basis for discharge-permit limits for waters with a hardness of less than 20 mg/l (as $CaCO_3$), the limits for metals are based on a hardness of 20 mg/l. If site-specific criteria are developed as the basis for discharge-permit limits, using the procedures given in the Water Quality Standards Handbook (U.S. EPA, Dec. 1983), the limits so developed are used instead of Gold Book levels.

(iv) In accordance with section 75-5-306(1), MCA, it is not necessary that wastes be treated to a purer condition than the natural condition of the receiving water as long as the minimum treatment requirements, adopted pursuant to section 75-5-305, MCA, are met.

~~(3) The-board-hereby-adopts--and--incorporates--herein-by reference-"EPA-Water-Quality-Criteria-documents-(Federal-Register-Vol.-45,-No.-231,-Friday,--November-28,--1980,-pages-79318-79379)"--which--set--forth--water-quality-criteria-for-toxic-or other-deleterious-substances.--Copies-of--this-document--may-be obtained-from--the-Water--Quality-Bureau,--Department-of-Health and-Environmental-Sciences,-Cogswell-Building,-Capitol-Station, Helena,-Montana-59620.~~

~~(4) The-board-hereby-adopts-and-incorporates-by-reference 40-CFR--Part-141,--which-sets--forth-the--1975-National-Interim Primary-Drinking--Water-Standards,--and-40--CFR-Part-143,-which sets-forth-the-1979--National--Secondary--Drinking--Water-Standards.---Copies-of--40-CFR--Part-141-and-40-CFR-Part-143-may-be obtained-from--the-Water--Quality-Bureau,--Department-of-Health and-Environmental-Sciences,-Cogswell-Building,-Capitol-Station, Helena,-Montana-59620.~~

(3) The board hereby adopts and incorporates herein by reference the following:

(a) U.S. EPA National Primary Drinking Water Regulations, 40 CFR Part 141, 7/1/86 ed., which sets forth federal drinking water standards;

(b) Quality Criteria for Water 1986 (EPA 440/5-86-001, the "Gold Book") and Update Number Two (5/1/87) of the Gold Book, which set forth water quality levels for toxic or deleterious substances; and

(c) the Water Quality Standards Handbook (U.S. EPA, Dec. 1983) which sets forth procedures for development of site-specific criteria.

(d) Copies of these materials may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana

59620.
AUTHORITY: 75-5-301, MCA
IMPLEMENTING: 75-5-301, MCA

16.20.633 PROHIBITIONS
(1)-(2) Same as existing rule.
(3) No wastes are to be discharged and no activities conducted which, either alone or in combination with other wastes or activities, will cause violations of surface water quality standards; provided, a short term exemption from a surface water quality standard may be authorized by the department under the following conditions:
(a) If the Department of Fish, Wildlife and Parks reviews a short-term construction or hydraulic project under section ~~76-5-501~~ 87-5-501, et seq., MCA, or section 75-7-101, et seq., MCA, an increase in turbidity caused by the project will be exempt from the applicable turbidity standard unless the department is advised by the Department of Fish, Wildlife and Parks that the project may result in a significant increase in turbidity. If the department is advised that the project may cause a significant increase in turbidity, the project will be exempt from the applicable turbidity standard only if it is carried out in accordance with conditions prescribed by the department in a 16.20.633(3) authorization.
(i) Same as existing rule.
(b)-(c) Same as existing rule.
(4) Leaching pads, tailing ponds, or water, waste, or product holding facilities ~~utilized in the processing of ore~~ must be located, constructed, operated and maintained in such a manner and of such materials so as to prevent the discharge, seepage, drainage, infiltration, or flow which may result in the pollution of surface waters. The department may require that a monitoring system be installed and operated if the department determines that pollutants are likely to reach surface waters or present a substantial risk to public health.
(a) Complete plans and specifications for proposed leaching pads, tailing ponds, or water, waste, or product holding facilities utilized in the processing of ore must be submitted to the department no less than 180 days prior to the day on which it is desired to commence their operation.
(b) Leaching pads, tailing ponds, or water, waste, or product holding facilities operating as of the effective date of this rule ~~utilized in the processing of ore~~ must be operated and maintained in such a manner so as to prevent the discharge, seepage, drainage, infiltration or flow which may result in the pollution of surface waters.
(5)-(11) Same as existing rule.
AUTHORITY: 75-5-301, MCA
IMPLEMENTING: 75-5-301, MCA

16.20.641 RADIOLOGICAL CRITERIA (1) No person ~~shall~~ may cause radioactive materials in surface waters to:
(a)-(d) Same as existing rule.
(e) Exceed the radiological limits established in the

U.S. EPA National ~~Interim~~ Primary Drinking Water ~~Standards~~ Regulations (40 CFR Part 141, 7/1/86 ed.)~~-and-subsequent-amendments~~.

(2) The Board hereby adopts and incorporates herein by reference U.S. EPA National Primary Drinking Water Regulations, 40 CFR Part 141, 7/1/86 ed., which sets forth federal drinking water standards. Copies of ~~the-National-Interim-Drinking-Water-Standards-and--subsequent-amendments~~ this material may be obtained from the ~~department~~ Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTHORITY: 75-5-301, MCA
IMPLEMENTING: 75-5-301, MCA

16.20.642 ~~BIOASSAYS-MEDIAN-TOLERANCE-CONCENTRATIONS~~

(1) Same as existing rule.

AUTHORITY: 75-5-301, MCA
IMPLEMENTING: 75-5-301, MCA

4. The board is proposing these amendments to the rules and the new rule in order to comply with the state and federal Clean Water Acts which require that the standards be revised at intervals not to exceed three years; the new federal Clean Water Act also requires that states adopt numeric limits for toxics. The required review indicated that the classifications of several streams did not correspond with the actual stream quality and that numerous corrections and clarifications were necessary.

5. Interested persons may submit their data, views, or arguments concerning the proposed amendments and new rule, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than May 20, 1988.

6. Robert L. Solomon, at the above address, has been designated to preside over and conduct the hearing.

HOWARD TOOLE, Chairman
BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES

by _____
JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State April 4, 1988.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the Matter of the repeal of rules 24.9.214, 24.9.227, 24.9.229, and 24.9.232-24.9.248, the amendment of rules 24.9.206 and 24.9.210, and the adoption of Rules I-XXXI (procedures for contested case hearings)	)	NOTICE OF PROPOSED REPEAL OF RULES 24.9.214, 24.9.227, 24.9.229, and 24.9.232-24.9.248, THE PROPOSED AMENDMENT OF RULES 24.9.206 AND 24.9.210, AND THE PROPOSED ADOPTION OF RULES I-XXXI (PROCEDURES FOR CONTESTED CASE HEARINGS) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On May 17, 1988, the human rights commission proposes to repeal rule 24.9.214, found on page 24-366, Administrative Rules of Montana, rule 24.9.227, found on page 24-373, Administrative Rules of Montana, rule 24.9.229, found on page 24-374, Administrative Rules of Montana, and rules 24.9.232 through 24.9.248, found on pages 24-383 through 24-393, Administrative Rules of Montana.

2. The commission proposes the repeal as part of a complete revision of its rules governing contested case hearings. New rules I through XXXI are proposed to replace the repealed rules.

3. The authority of the commission to repeal the rules is based on sections 49-2-204 and 49-3-106, MCA. The rules implement sections 2-4-104, 2-4-602, 2-4-603, 2-4-611, 2-4-612, 2-15-1706, 49-2-201, 49-2-203, 49-2-205, 49-2-401, 49-2-402, 49-2-404, 49-2-502, 49-2-504, 49-2-505, 49-2-506, 49-2-507, 49-2-508, and 49-3-308, MCA.

4. On May 17, 1988, the human rights commission proposes to amend rules 24.9.206 and 24.9.210. These rules relate to class actions and amendment of complaints.

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

24.9.206 DIVISION COMPLAINTS; CLASS ACTIONS BY INDIVIDUALS OR GROUPS (1) When the division has reason to believe that any person or organization is or has been engaged in a discriminatory practice in violation of the act, it may file a complaint with the commission alleging that the respondent is or has been engaged in a practice which violates the act. Such a complaint must be filed within 180 days of the most recent occurrence of the actions or practices complained of unless the complainant has initiated efforts to resolve the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy. If such a procedure is initiated, the complaint may be

filed within 180 days after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days the complaint must be filed within 300 days after the alleged unlawful discriminatory practice occurred or was discovered. A complaint filed by the division may seek relief authorized by law for any and all persons adversely affected by the practice or actions complained of. Division complaints shall be filed by the division administrator.

(2) In addition to complaints filed by the division, a complaint may be filed by or on behalf of an aggrieved person alleging that the respondent is engaging or has engaged in a practice or action which discriminates against a class of persons in violation of the act or code.

~~(3)--Upon-certification-for-hearing,-Rule-23-of-Montana Rules-of-Civil-Procedure,-Title-25,-Chapter-20,-MCA,-shall govern-designation-of-a-proceeding-as-a-class-action,-notice-to members-of-the-class,-withdrawal-of-a-member-from-the-class, use-of-one's-own-attorney-by-a-member-of-the-class,-the-effect of-the-commission's-findings-on-the-class,-maintenance-of-a class-action-in-regard-to-particular-issues-or-sub-classes, supplementary-orders-controlling-conduct-of-the-action,-and dismissal-or-compromise-of-the-complaint.~~

AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-501 and 49-3-304, MCA.

24.9.210 AMENDMENT OF COMPLAINTS (1) A complaint may be amended to cure defects or omissions, including failure to swear or affirm that the charge is true, or to clarify and amplify allegations, to bring the charge up to date in regard to a continuing pattern of occurrences, to allege new but related matters or to allege additional facts directly relating to or growing out of the subject matter of the original complaint. A complaint may be amended at any time up to the time that the complaint is certified to the commission for hearing. ~~Thereafter,-a-complaint-may-be-amended-only-in accordance-with-Rule-15-of-the-Montana-Rules-of-Civil Procedure,-Chapter-20-MCA,-except-that-the-commission-or hearing-examiner-shall-be-substituted-for-court.~~ The division shall promptly notify all parties in writing of any amendments.

AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-501 and 49-3-304, MCA.

6. The commission proposes the amendments in order to delete all references to the contested case hearing process in the rules governing investigation and conciliation. The commission is proposing new rules XIX and XXIII to govern class

actions and amendment of complaints at the contested case hearing stage of processing.

7. The authority of the commission to make the proposed amendments is based on sections 49-2-204 and 49-3-106, MCA. The rules as amended implement sections 49-2-501 and 49-3-304, MCA.

8. On May 17, 1988, the human rights commission proposes to adopt rules I through XXXI. All rules relate to the procedures used by the commission in handling complaints at the contested case hearing stage.

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

RULE I PURPOSE AND SCOPE OF RULES (1) [Rules I through XXXI] contain rules of procedure for contested case proceedings before the human rights commission.

(2) The commission will give liberal construction to the rules to effectuate the purposes of the human rights statutes of Montana within the commission's jurisdiction. "Liberal construction" means, without limitation, giving broad coverage and inclusive interpretation to human rights statutes and rules to assure enforcement and protection of the rights secured by them.

(3) The commission or a hearing examiner may suspend, waive or modify these rules for good cause to expedite decision, prevent manifest prejudice to a party, assure a fair hearing, or afford substantial justice.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-505, 49-3-308, MCA

RULE II DEFINITIONS (1) The following definitions apply to terms contained in these rules:

(a) "Administrator" or division administrator" means the administrator of the human rights division of the Montana department of labor and industry.

(b) "Charging party" means any person who files a complaint with the human rights commission under statutes providing for the filing of such complaints.

(c) "Commission" means the human rights commission, a quasi-judicial board established by section 2-15-1706, MCA.

(d) "Commissioner" means a member of the human rights commission.

(e) "Contested case" means a proceeding before the commission to determine the legal rights, duties, or privileges of a party following an opportunity for hearing. Contested case proceedings commence only following the completion of investigation by the commission staff and, in cases in which the staff finds that the allegations of the complaint are supported by substantial evidence ("reasonable cause"), following the conclusion of the staff's efforts to resolve the

complaint and eliminate the discriminatory practice through conference, conciliation, and persuasion.

(f) "Division" means the human rights division of the department of labor and industry, which is the staff of the human rights commission.

(g) "Ex parte consultation" means the act of a party to a contested case, any member of the division, any person having an interest in the outcome of a contested case or any other person not authorized by law, communicating with a hearing examiner, commissioner or the commission regarding the merits of any contested case. Communications which do not constitute discussions or information regarding an issue of fact or law in a contested case, such as discussions of enlargements of time, scheduling, administrative matters or questions of procedure do not constitute ex parte communications.

(h) "Hearing examiner" means an individual appointed to preside over contested case hearings and to make proposed orders for consideration by the commission. That individual may be either a person assigned with due regard for his or her expertise or a commissioner acting in that capacity. When the term is used in these rules it also refers to the chair of the commission or a presiding officer for purposes of contested case hearings conducted before the commission, sitting as a body.

(i) "Person" includes natural persons, individuals, labor union, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated entities, employers, employees, employment agencies, labor organizations, and such other natural persons or entities, including artificial persons, possessing such status as a matter of law. The definition includes any group, organization, entity or natural person who is "aggrieved" within the meaning of ARM 24.9.204.

(j) "Staff" or "commission staff" means the human rights division, which is the staff of the human rights commission.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-611, 2-15-1706, 49-2-101, 49-2-201, 49-2-505, 49-3-101, 49-3-308, MCA

RULE III JURISDICTION TO CONSIDER JURISDICTION (1) The commission and its hearing examiners shall, at all times, have jurisdiction to determine the jurisdiction of the commission over any particular contested case. In such situations the rules of procedure of the commission shall apply, and questions of jurisdiction may be resolved by rulings and orders based upon the pleadings or after a hearing, as required to suit the circumstances of the case.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-505, 49-3-308, MCA

RULE IV INCORPORATION OF OTHER PROCEDURAL RULES BY REFERENCE (1) To the extent these rules do not provide for or specify procedures, or where necessary to supplement these rules, the commission may apply the provisions of the Montana administrative procedure act, Montana rules of civil procedure, Montana uniform district court rules or Montana rules of evidence. Those procedural provisions are applicable to the extent they may clarify fair procedures, expedite determinations, and assist in the adjudication of rights, duties or privileges of parties before the commission.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-612, 49-2-505, 49-3-308, MCA

RULE V PRESENTATION OF A CASE IN SUPPORT OF A COMPLAINT (1) All parties before the commission have the right to be represented by an attorney of their choice. Except as provided in subsections (2), (3), and (4), the commission will not provide counsel for parties or provide funds for the payment of counsel or legal representation.

(2) The division may assign an attorney for the presentation of a case in support of a complaint or to appear in any contested case to represent the interests of the commission or the public. In such situations the case is prosecuted in the name of the division upon the relation of a charging party, and the administrator controls the conduct of the case and instructs any attorney assigned to present the case or represent the interests of the commission or the public. The relationship between such an attorney and a party is limited to the attorney and client privilege.

(3) The administrator will assign counsel to present a case or appear in a proceeding only in limited situations, including those in which the assignment is in the interest of the commission, the state and the public, such as when the issues posed by the case are significant, when a charging party has withdrawn and the administrator has chosen to proceed upon the complaint in accordance with ARM 24.9.213 or when the appearance is deemed necessary in the discretion of the administrator. The division will not present a case in support of a complaint as to any issue upon which it has made a finding of lack of reasonable cause.

(4) The division may appear in any contested case for limited or special purposes to represent the interests of the commission or the public.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-505, 49-3-308, MCA

RULE VI APPOINTMENT AND AUTHORITY OF HEARING EXAMINER (1) Contested cases will be presided over and heard by a hearing examiner, who may be any individual appointed by the commission or may be an individual commissioner.

(2) The hearing examiner has general authority to regulate the course of contested cases, and may exercise those powers and authority provided by section 2-4-611, MCA, including all powers and authority provided or implied by law.

(3) The hearing examiner may establish prehearing and hearing dates and procedures, rule upon procedural petitions and motions, make procedural rulings and orders which appear necessary from the record, make proposed orders for commission review, and otherwise regulate the conduct and adjudication of contested cases as provided by law.

(4) No ruling, order, decision or exercise of the power and authority of a hearing examiner is reviewable by the commission prior to the entry of a proposed order, except as otherwise provided in these rules or unless a manifest and irreparable injustice would result.

(5) The jurisdiction and authority of a hearing examiner terminates upon the entry of a proposed order unless the commission further delegates authority for other proceedings or exercise of authority.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-611, 49-2-505, 49-3-308, MCA

RULE VII DISQUALIFICATION OF A HEARING EXAMINER OR COMMISSIONER (1) A party may disqualify a hearing examiner from presiding over any matter governed by these rules only upon an affirmative showing, made in good faith, of personal bias, a lack of independence, disqualification by law or other ground for disqualification allowed by law.

(2) A party seeking to disqualify a hearing examiner may do so only upon the filing of a motion which is supported by a sufficient affidavit showing the particular facts and matters which constitute good cause for disqualification under subsection (1). The party must file the motion and affidavit no later than ten days before an original date set for hearing. Should a continuance of any hearing be required by the act of a party in seeking disqualification, such act shall not justify the issuance of a right to sue letter where a hearing was scheduled to be held within 90 days of the date of service of a notice of hearing.

(3) Following the filing of a motion and affidavit of disqualification and a reasonable period of time for an opposing party to comment upon it, the hearing examiner shall either enter an order of recusal or decline disqualification. That order must specify the particular facts and grounds upon which it is based.

(4) When a hearing examiner declines disqualification, a party objecting to the hearing examiner's ruling and order must petition the commission for an order of disqualification within ten days following the date of the order declining

disqualification. If no such petition is filed, the order is not appealable to the commission.

(5) A party may disqualify a commissioner from participating in a matter before the commission upon the same grounds and with the same procedure as that for the disqualification of a hearing examiner. A party seeking to disqualify a commissioner must file a motion and affidavit of disqualification with the commission not less than ten days prior to the date fixed for a hearing or proceeding before the commission. The question of disqualification shall be determined by a quorum of the commission, which may include the commissioner to be disqualified if his or her participation is required to constitute a quorum or decide the matter.

(6) A hearing examiner or commissioner may make an order or give notice of recusal or self-disqualification at any time.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-611, 49-2-505, 49-3-308, MCA

RULE VIII EX PARTE CONSULTATIONS (1) No hearing examiner or commissioner may participate in or initiate any ex parte consultation on the merits of a matter with any party or the commission staff. A hearing examiner or commissioner may engage in a communication concerning administrative or procedural matters where they are necessary under the circumstances and do not adversely affect the substantial rights of a party.

(2) The commission or a hearing examiner may consult with any person or the commission staff regarding the interpretation of a point of law.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-613, 49-2-505, 49-3-308, MCA

RULE IX CONTESTED CASE RECORD (1) The record of a contested case shall include the following:

(a) The complaint and all pleadings, motions and procedural rulings or orders.

(b) All evidence received or considered, including any electronic or other recording of the proceedings of hearing, but not including any notes of hearing made by a hearing examiner. If a party desires a stenographic record of any hearing or proceeding, it must be requested not less than 15 days prior to the hearing or proceeding. The party requesting a stenographic record must arrange and pay for it. In the event an electronic recording or proceedings is defective or not capable of transcription, the record may be reconstructed by the hearing examiner, by stipulation of the parties, or by a bystanders bill.

(c) A statement of matters officially noticed.

(d) Exhibits admitted into evidence.

(e) Objections, offers of proof or questions, including rulings thereon.

(f) Proposed findings and orders and exceptions to them.

(g) Where permitted, staff memoranda or data submitted to the hearing examiner or the commission.

(h) The finding of the division upon the conclusion of investigation.

(2) Parties who request the transcription of any electronic or stenographic recording of proceedings must do so at the time of the filing of exceptions to any proposed order or ruling. The party making the request for a transcript must make arrangements for the preparation of the transcript through the staff of the division and pay for the cost of the transcript and copies for each commissioner, the case record and opposing parties. The original transcript shall be made a part of the commission record.

(3) The administrator may make any necessary arrangements for the preparation of the record, including the preparation of any transcript or reproduction of the record, and require the party requesting the preparation of the record to bear the cost of such preparation and copying.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-614, 49-2-505, 49-3-308, MCA

RULE X PLACE OF HEARING (1) The commission or hearing examiner shall hold contested case hearings in the county where the unlawful conduct is alleged to have occurred, unless the respondent or the commission requests a change of venue for good cause shown. The hearing examiner may exercise the power of the commission to change venue for the hearing of a contested case upon the entry of a default against a respondent, to expedite hearing, or otherwise provide for a fair hearing upon good cause which appears of record.

(2) The hearing examiner may require a party to make arrangements for a suitable place of hearing and bear the cost of facilities to conduct the hearing.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-505, 49-3-308, MCA

RULE XI FORMAL PROCEEDINGS (1) All proceedings shall be formal unless informal proceedings or disposition under section 2-4-604, MCA are permitted by stipulation of the parties, agreed settlement, consent order or default.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-603, 2-4-604, 2-4-612, 49-2-505, 49-3-308, MCA

RULE XII INFORMAL PROCEEDINGS (1) A proposed order may be made following informal proceedings, which may be conducted where the parties to a contested case jointly waive a formal

proceeding, where the default of a party is entered, or where informal proceedings are appropriate following the imposition of sanctions upon a party.

(2) When informal proceedings are used the hearing examiner shall give parties an opportunity to present evidence at a convenient time and place, using fair procedures, to present to the hearing examiner:

(a) Written or oral evidence in opposition to the division determination of the sufficiency of evidence in support of a complaint, or other division action;

(b) A written statement challenging the grounds upon which the division or the commission has chosen to justify its action or inaction; or

(c) Other written or oral evidence relating to the contested case.

(3) During informal proceedings the hearing examiner may receive and consider evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs, but may not receive or consider evidence which is irrelevant, immaterial, or unduly repetitious. Hearsay evidence may be received and considered to supplement or explain other evidence, but such hearsay evidence may not be considered to support a finding unless it would otherwise be admissible over objection in civil actions or under the Montana rules of evidence.

(4) The hearing examiner may receive the division record or investigative file in evidence in informal proceedings, subject to objections or requests to strike hearsay evidence or other evidence not permitted under subsection (3).

(5) Telephonic hearings may be conducted during the course of informal proceedings.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-604, 49-2-505, 49-3-308, MCA

RULE XIII INFORMAL DISPOSITION (1) In accordance with the provisions of [rule XI], a hearing examiner may make an informal disposition of any matter.

(2) Where a charging party seeks to withdraw a complaint and the only issue remaining to resolve a contested case is the nature, scope and extent of affirmative relief to protect public interests, the division administrator may request informal disposition of a contested case to grant such relief in a proposed order.

(3) The hearing examiner may enter a proposed order upon agreed settlements, consent orders and defaults by means of informal disposition, including telephonic hearings.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-604, 49-2-505, 49-3-308, MCA

RULE XIV DOCUMENT FORMAT, FILING AND SERVICE (1) All documents, pleadings, and papers to be filed shall be eight and one-half inches (8½" x 11") in size. Papers must be double-spaced, clearly legible and submitted on calendared bond paper in accordance with the format for papers used in district court. Exhibits or other documents shall be reproduced in like size unless the original exhibit is required. A hearing examiner may require the reproduction of an oversized demonstrative or other exhibit in a size appropriate for the record.

(2) The place of filing is the offices of the commission at 1236 Sixth Avenue, P.O. Box 1728, Helena, Montana 59624-1728.

(3) Filing with the commission is effective upon actual receipt at the offices of the commission and not upon mailing.

(4) Parties shall submit the original or original copy and six copies of all submissions for the record. In lieu of the requirement that six copies of submissions be filed by the parties, the commission or its hearing examiner may require a party filing exceptions to any proposed order to file sufficient copies of the record as may be required for proceedings before the commission.

(5) Copies of all submissions filed must be served upon all parties of record, including intervenors or other parties allowed to appear for special purposes, and all submissions must contain or be accompanied by a certificate of service showing proof of the method of service and the date upon which such service was made. Service of copies of submissions upon parties may be made by means of first class mail, postage prepaid, unless the hearing examiner designates another manner of service.

(6) The hearing examiner may accept telephonic or oral filings of motions or requests for procedural relief, subject to recording by means of minute entry, note or the subsequent filing of a true and accurate recording of such matters, upon fair and timely notice to all parties of record.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-106, 49-2-505, 49-3-308, MCA

RULE XV TIME (1) In computing any period of time for acts required by these rules, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, legal holiday, or the commission offices are closed on such day. In that event, the period runs until the end of the next day when the commission offices are open or mail delivery is available. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays are excluded in

computation. A half holiday will be considered as other days and not as a holiday.

(2) Whenever a party has a right or is required to do some act under these rules within a prescribed period after service of a notice or paper upon the party and service is by mail, three days shall be added to the prescribed period. The date of service is computed from the date on which service is made by mail, as shown by the certificate of service or date of mailing.

(3) Except as to dates fixed by statute and not subject to modification, the hearing examiner or the commission may enlarge the time to perform an act. The time may be enlarged without a motion or notice, and with or without good cause, when a request for enlargement of time is made prior to the expiration of the time in which the act was to be performed. If the request is made after the expiration of the specified period in which to act, enlargement may be allowed only upon a showing of excusable neglect in the failure to act.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-505, 49-3-308, MCA

RULE XVI APPLICATION OF RULES AND UNREPRESENTED PARTIES (1) Where errors of law or procedure do not cause prejudice to a party or deny a party a fair hearing or fundamental justice, they may be disregarded. Parties who assign error for the violation of any rule must demonstrate that a failure to comply with these rules is in fact prejudicial or constitutes prejudice as a matter of law.

(2) Where strict adherence to these rules would cause undue hardship or create a substantial injustice to a party, the commission or hearing examiner may modify, waive, or excuse their application. The commission or hearing examiner may not modify, waive, or excuse mandatory acts which are required by statute or due process of law.

(3) Parties who choose not to be represented by counsel and who represent themselves must substantially comply with the provisions of these rules, subject to the provisions of subsection (2). A hearing examiner or the commission may modify the strict application of these rules to an unrepresented party to the extent they are not mandatory in order to assure a fair hearing.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-505, 49-3-308, MCA

RULE XVII APPEARANCE, DISMISSAL AND DEFAULT (1) Answers to complaints following the certification of a contested case for hearing are not required. The contentions of the parties and fair notice of them to prepare for hearing shall be developed through discovery and prehearing orders.

(2) A party may obtain a definite and detailed statement of matters of complaint or defense through discovery,

preparation of the prehearing memorandum, during a prehearing conference or by appropriate motion.

(3) Each party shall make its appearance in a contested case within 20 days of the date on which service of contested case certification is made upon the party or his or her legal representative. Appearance shall be in the form of a written notice acknowledging service of certification, and a designation of the name, address and telephone number of the attorney for a party. If a party chooses not to be represented by counsel, such fact shall be indicated in the written appearance. This rule is subject to the provisions of section 2-4-106, MCA and rule 4D of the Montana rules of civil procedure governing service by mail.

(4) In the event a party fails to appear, fails to comply with an order, fails to prosecute or defend the case, fails to engage in discovery or otherwise fails to do an act required by law or these rules, the hearing examiner or commission may enter an appropriate order terminating the contested case or limiting prosecution or defense of the contested case. Such orders may include dismissal of a complaint, entry of default, disposition by informal procedure under [rules XI, XII and XIII] or entry of other appropriate orders.

(5) A party may be relieved of any of the sanctions provided in subsection (4) upon a showing of excusable neglect, good cause, and a good faith willingness to comply with the further orders of the hearing examiner or the commission. A party may request such relief by the filing of a motion and supporting affidavit within ten days of the entry of an order imposing such sanctions.

(6) Upon the entry of a default against a respondent, the hearing examiner may fix a date or procedures for informal disposition of the complaint. Upon the default the charging party must present evidence in support of the complaint and proof of damages.

(7) Upon entry of an order of dismissal of a complaint, where the division has made a reasonable cause determination, the commission or hearing examiner shall notify the administrator of the proposed dismissal of the case to permit the administrator to present the case in support of the complaint and obtain the entry of orders of appropriate affirmative relief.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-106, 2-4-603, 49-2-505, 49-3-308, MCA

RULE XVIII INTERVENTION (1) Where it appears that a pending contested case will affect or determine the legal rights, duties, or privileges of a person or where the joinder of a party is needed for just adjudication under the provisions of rule 19 of the Montana rules of civil procedure, such person

will be allowed to intervene as a party upon timely application or where such fact appears as of record.

(2) Where permissive intervention or joinder of a party would be permitted under the provisions of rule 20 of the Montana rules of civil procedure, such intervention or joinder may be allowed upon timely application and a lack of prejudice to the parties of record. Where intervention would delay the hearing or disposition of a contested case, duplicate contentions of a party, cause prejudice to a party, or where the interests of a party seeking intervention are adequately represented by a party of record, the commission or hearing examiner may deny intervention or joinder.

(3) The hearing examiner or the commission may permit a party who does not seek to intervene as of right to participate in a matter in a limited capacity, but not as a party. A person who may not seek intervention as of right may be permitted to participate in a contested case in a limited manner, such as a friend of the commission, where such participation would not cause prejudice to a party, delay proceedings or deny a fair hearing. In such instances, a limited participant shall not have the right to control proceedings.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-505, 49-3-308, MCA

RULE XIX CLASS ACTIONS (1) A complaint may be prosecuted as a class action where the outcome of a contested case will affect a class of persons and where a class action would otherwise be allowed under rule 23 of the Montana rules of civil procedure.

(2) Class action applications, motions and procedures following certification of a contested case for hearing shall be governed by rule 23 of the Montana rules of civil procedure and any Montana law governing class actions.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-505, 49-3-308, MCA

RULE XX MOTIONS (1) Any party may seek procedural relief in a contested case by means of an appropriate motion. Appropriate motions include motions to dismiss, motions for summary judgment or judgment upon the pleadings, motions to strike and any other motion provided for or permitted by the Montana rules of civil procedure.

(2) Motions shall clearly state the procedural relief sought by a party, the grounds and authority supporting the entry of an order granting the motion, any prejudice which would result should the motion be denied, and the precise relief desired. All motions which assert factual matters not of record as the grounds for relief must be accompanied by affidavits or verified exhibits which show the facts upon which the proposed relief is grounded. Each motion must be supported

by a brief or memorandum of law showing the moving party's entitlement to relief as a matter of law. The commission or hearing examiner may deny any motion which is not supported by an affidavit, where required, and which is not supported by a brief or memorandum of law.

(3) Upon filing a motion or within five days thereafter, the moving party shall file the brief provided for in subsection (2). Within ten days after service of that brief the opposing party shall file an answer brief. Within ten days after the service of the answer brief the moving party may file a reply brief or other appropriate response.

(4) The failure to file a brief or a memorandum of law may subject the motion to summary ruling, and failure of a moving party to file a brief in support of the motion may be treated as an admission the motion is without merit. The failure to file an answer brief may be treated as an admission the motion is well taken and should be granted. The filing of a reply brief by the movant is optional and failure to file one will not subject the motion to summary ruling.

(5) The hearing examiner or the commission may order live or telephonic oral argument upon a motion on its own motion or that of a party, or may limit argument upon motions to the moving and responding papers. Unless oral argument is required, a motion is deemed submitted for a ruling upon the expiration of the time allowed by subsection (3) or by any enlargement of time allowed by order. Where oral argument is allowed, the motion is deemed submitted at the close of oral argument or upon further order.

(6) Oral motions may be heard during the course of hearing or in extraordinary situations which do not result in prejudice to a party.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-505, 49-3-308, MCA

RULE XXI EVIDENCE (1) The evidence received and considered in contested case hearings shall conform to the Montana rules of evidence and the provisions of section 2-4-612, MCA, except as modified for informal proceedings under sections 2-4-603 and 2-4-604, MCA.

(2) In evaluating evidence in the record the hearing examiner or the commission may use experience, technical competence and specialized knowledge as permitted by law.

(3) The hearing examiner or the commission may take notice of judicially or officially cognizable facts and of generally recognized technical or scientific facts within the commission's specialized knowledge. Such facts or knowledge may be obtained from treatises of learned scholars and public documents to the extent allowed by the rules of evidence. The commission shall notify parties of materials noticed and give them an opportunity to contest or comment upon them.

(4) Parties have the right to conduct cross-examination for a full and true disclosure of facts, and other examination by way of examination beyond the scope of direct, cross or redirect examination shall be within the sound discretion of the hearing examiner or the commission.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-603, 2-4-604, 2-4-612, 49-2-505, 49-3-308, MCA

RULE XXII DISCOVERY (1) The methods, scope and procedures of discovery are those governed and permitted by rules 26 through 37 of the Montana rules of civil procedure, recognizing that the commission or a hearing examiner are not permitted by law to make an award of attorney fees as a sanction for failure to make discovery.

(2) The hearing examiner or the commission may fix the time, places and methods of discovery by conference, prehearing order or otherwise, and may enter appropriate orders for violations of orders fixing discovery procedures.

(3) Depositions, interrogatories and answers to them, requests for production of documents and responses to them, and other discovery documents shall not be filed with the commission. A party who makes a motion referring to or supported by the product of discovery must support the motion by copies or verified abstracts of the discovery relied upon. A party who seeks to introduce the product of discovery as a part of the record must identify such documents in a prehearing memorandum or during the course of a prehearing conference. The use of depositions at hearing or in lieu of testimony by a witness shall be governed by the Montana rules of civil procedure. Where portions of a deposition are necessary for consideration, the hearing examiner or the commission may order the preparation of excerpts of a deposition to avoid a bulky record or consideration of irrelevant or prejudicial matter.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-602, 49-2-505, 49-3-308, MCA

RULE XXIII AMENDMENT OF COMPLAINT (1) A charging party may amend a complaint to cure defects or omissions, including procedural defects or defects in verification, and to allege new facts and matters arising out of continuing violation of law. A charging party may also amend a complaint where an amendment is necessary to provide a respondent with fair notice of the allegations of a party.

(2) The allowance or denial of an amendment to a complaint shall be governed by the provisions of sections 49-2-501(2) and 49-3-304(2), MCA with respect to the time for filing complaints except when the new material relates back to the filing of the original complaint.

(3) Complaints filed by the commission or its staff shall not, unless so specified, constitute the filing of a new complaint but shall relate to the underlying complaint in a contested case as an amendment to it. The commission staff may file a complaint or seek to amend a complaint to allege a discriminatory practice at any time.

(4) The charging party may amend the complaint at any time prior to a prehearing conference. Thereafter the charging party may amend the complaint only by leave of the hearing examiner, the commission or consent of an adverse party.

(5) A complaint may be amended by way of a prehearing order which contains the contentions of the parties and which is substituted for pleadings in the contested case.

(6) To the extent the amendment of pleadings is not otherwise addressed in this rule, such amendments shall be governed by the provisions of rule 15 of the Montana rules of civil procedure.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-501, 49-2-505, 49-3-304, 49-3-308, MCA

RULE XXIV PREHEARING CONFERENCES AND ORDERS (1) The commission or hearing examiner will hear all contested cases based upon a prehearing order which contains the full contentions of the parties as to fact and law, along with their claims for relief. The prehearing order shall supersede all prior pleadings in the contested case. Where a hearing is conducted following the default of a respondent, by stipulation of the parties as to limited matters, agreed settlement or a consent order, the hearing examiner or the commission may waive the requirement of a prehearing order.

(2) The commission may direct a hearing officer, hearing examiner or commissioner to conduct a prehearing conference and prepare or approve a prehearing order in any contested case or other matter which may be heard before the commission. The commission may also require a prehearing conference in situations involving numerous parties, complex issues of fact or law or a lengthy record for the purpose of simplifying issues or assisting the commission in making its determinations and orders.

(3) A hearing examiner or the commission may order preliminary prehearing conferences, prehearing conferences or other procedures to simplify evidence and issues for hearing or consideration and otherwise enter orders to regulate the conduct of contested case proceedings. Prehearing orders shall contain the contentions of fact and law of the parties, the issues to be considered and the relief sought by the parties. The order may contain matters such as witness and exhibit lists, procedural time limitations, motions, requests for admission and such other matters as may facilitate the hearing and disposition of contested cases.

(4) If a party fails to comply with an order to prepare a prehearing memorandum or portions of one, or fails to participate in any prehearing conference or proceeding, a hearing examiner or the commission may impose sanctions upon that party by way of dismissal of the complaint, default, limitation of evidence in support of or in defense to a complaint or otherwise. A party may be bound by a recital of contentions in a prehearing memorandum or provided for in a prehearing order and may be deemed to have waived any matter of prosecution or defense not contained in a prehearing order.

(5) The prehearing order is substituted for the pleadings in a contested case and the order shall constitute the standard of relevance at hearing. The allowance of testimony, exhibits, or other evidence at hearing which is beyond the scope of the prehearing order is within the sound discretion of the hearing examiner or the commission.

(6) The hearing examiner or the commission may require the parties to exchange exhibits or summaries of evidence prior to hearing and submit all exhibits for entry in the record prior to hearing. The contentions of the parties as to fact and law contained in a prehearing order may be treated as the proposed findings of fact, conclusions of law and proposed orders, subject to such further submissions in argument as may be permitted.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-505, 49-3-308, MCA

RULE XXV SUBPOENAS (1) The hearing examiner or a member of the commission may issue subpoenas on their own motion or that of a party for the attendance of witnesses or production of evidence, and may fix the procedure for service of subpoenas and payment of fees in the manner provided in civil actions.

(2) The hearing examiner or the commission may enter appropriate orders, as allowed by law, for the failure of a person subject to the provisions of a subpoena to comply with its terms.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-104, 2-4-602, 49-2-203, 49-2-505, 49-3-308, MCA

RULE XXVI HEARING (1) A contested case hearing shall be conducted before a hearing examiner or, at its discretion, a quorum of the commission.

(2) The hearing shall be conducted in the manner of civil actions before the district court, sitting without a jury, and the hearing examiner or the commission may enter appropriate orders during the course of the hearing to assure the conduct of a fair hearing. The method and scope of presentation of evidence at hearing, as well as the conduct of the hearing, recesses and continuances, is within the sound discretion of

the hearing examiner or the commission. This subsection may be modified to the extent permitted by [rules XI through XIII].

(3) The hearing examiner or the commission may enter appropriate orders to control the conduct of the parties or their attorneys, including conduct which is disruptive or constitutes contempt, and may recess, continue or limit the course of hearing.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-612, 49-2-505, 49-3-308, MCA

RULE XXVII PROPOSED ORDERS (1) Following the close of hearing or other proceeding which allows the parties an opportunity for hearing the hearing examiner shall prepare a proposed order consisting of findings of fact, conclusions of law and recommended relief. Copies of the proposed order shall be served upon all parties of record.

(2) A hearing examiner may render an opinion of law in lieu of detailed references to authority in the making of conclusions of law.

(3) The proposed order shall substantially comply with the provisions of sections 2-4-623, 49-2-506, 49-2-507, 49-3-309, and 49-3-310, MCA with respect to final orders.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-621, 49-2-505, 49-2-506, 49-2-507, 49-3-308, 49-3-309, 49-3-310, MCA

RULE XXIII NOTIFICATION OF ENTRY OF PROPOSED ORDER (1) Upon the entry of a proposed order the hearing examiner shall give the parties written notice of the entry of that order, including the date of entry of the order and a notification of the rights of the parties to file exceptions to it for review by the commission.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-621, 49-2-505, 49-3-308, MCA

RULE XXIX EXCEPTIONS TO PROPOSED ORDERS (1) Following the entry of a proposed order in a contested case and prior to consideration of that order by the commission, parties who are adversely affected by the proposed order shall have the opportunity to file exceptions, present briefs and oral argument upon it as provided in this rule. Parties claiming to be aggrieved by the entry of a proposed order or any part of it must file exceptions under this rule prior to final commission action in the contested case.

(2) Where a party seeks to make exception to any conclusion of law, and commission review will not require a review of a transcript of hearing, exceptions by an aggrieved party must be filed within 20 days of the date of the entry of the proposed order, and a brief in support of the exceptions

must be filed with the exceptions. Thereafter any party opposing any such exception shall have 10 days in which to file an answering brief. A party making exceptions to a proposed order shall then have ten days from the service of an answering brief to file his or her final brief. All parties filing exceptions under this subsection must do so within 20 days of the date of the entry of the proposed order, and no enlargement of time will be allowed for such purpose.

(3) When a transcript of proceedings at hearing has been prepared prior to the issuance of the proposed order and any party seeks to file exceptions to any finding of fact or conclusion of law requiring a factual record, the party must file his exceptions within 20 days of the date of the entry of the proposed order. A brief in support of the exceptions must be filed with the exceptions. Thereafter, any party opposing any such exception has 10 days in which to file an answering brief. The party making exceptions to the proposed order then has 10 days to file a final brief. The commission will not allow an enlargement of time for the filing of exceptions.

(4) Where a transcript of proceedings at hearing has not been prepared prior to the issuance of a proposed order and an aggrieved party seeks to file exceptions to any finding of fact or conclusion of law requiring a factual record, a notice that the party will file exceptions must be filed with the commission within 20 days of the date of entry of the proposed order. When such a notice is filed the party seeking to make exceptions must request and make provision for the preparation of a transcript of proceedings. All parties who seek to make exception to any finding of fact or conclusion of law must file the notice required by this rule within the stated period of time, and no enlargement of time to file the notice required by this subsection will be allowed. The party giving notice of intent to file exceptions must make arrangements for the preparation of a transcript and make payment for it, and an original and six copies of the transcript must be filed with the commission within 40 days of the date of filing of the notice of intent to make exceptions. If both parties give notice of intent to file exceptions, they must share equally in the cost of the transcript and copies. The exceptions and supporting brief of the party making exceptions must be filed within 20 days of the date of the filing of the transcript, whichever date shall occur first. Thereafter any opposing party shall have 10 days from the date of service of the exceptions and brief in support of them to file an answering brief. The party making exceptions may have ten days following the service of the answering brief to file its concluding brief.

(5) Where no party files exceptions to a proposed order within the time permitted by this rule, commission review shall be upon the proposed order under the provisions of section 2-4-621(3), MCA.

(6) When a party has filed exceptions to a proposed order, the commission will fix a date to provide the parties an opportunity to present oral argument to the commission. Each party is allowed one-half hour of argument before the commission. Oral argument may be waived by the parties.

(7) The chair of the commission, his or her designee, or a hearing examiner appointed by the commission may consider procedural motions and enter procedural orders as necessary for commission review.

(8) The commission may appoint a commissioner or hearing examiner for the purpose of conducting a prehearing conference prior to commission consideration of exceptions.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-621, 2-4-623, 49-2-505, 49-3-308, MCA

RULE XXX COMMISSION HEARINGS TO CONSIDER EXCEPTIONS (1) On the date fixed by the commission for oral argument upon the exceptions of the parties, a quorum of the commission shall hear oral argument.

(2) Any commissioner who is absent at the presentation of oral argument may participate in deliberations and the entry of a final decision or order of the commission in a contested case if he or she, where required, reviews the complete record of the contested case, including a recording or transcript of the oral argument of the parties.

(3) At the time of oral argument, and subject to the rule of the commission chair, any commissioner may pose questions to a party, his or her representatives.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-621, 2-4-623, 49-2-505, 49-3-308, MCA

RULE XXXI FINAL ORDERS (1) Where no exceptions to a proposed order have been made by the parties and commission consideration is upon the order itself, the commission may reject or modify conclusions of law contained in the order. The commission may not reject or modify the findings of fact contained in the proposed order unless a party makes exceptions in accordance with [rule XXIX] or the commission orders a review upon the complete record of the contested case.

(2) The commission may adopt the proposed order as its final order, and must rule upon exceptions made by the parties. It may also enter its separate final order, with findings of fact, conclusions of law and orders in accordance with section 2-4-623, MCA.

(3) All orders of monetary relief must state the basis and method of computation for amounts awarded. If a party fails to propose findings of fact in support of his or her claim for specific monetary relief, the commission may require

the parties to submit the necessary computation required for relief or may decline the relief.

(4) Regardless of the claims of the parties, the commission may grant all relief permitted by sections 49-2-506 and 49-3-309, MCA, including full affirmative relief in the public interest, subject to the provisions of section 2-4-621, MCA with respect to an increase of award over that recommended in the proposed order.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 2-4-623, 49-2-505, 49-2-506, 49-2-507, 49-3-308, 49-3-309, 49-3-310, MCA

10. The commission proposes the rules as part of an overall review of its procedural rules in order to streamline its procedures, eliminate redundant and unnecessary material, provide clear distinctions between the investigation/conciliation stages and the contested case hearing stage of processing, and clarity that the commission's procedural rules are intended to implement Chapter 3 of Title 49, MCA.

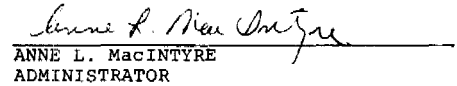
11. The authority of the commission to adopt the proposed rules is based on sections 49-2-204 and 49-3-106, MCA. The rules implement sections 2-4-104, 2-4-106, 2-4-602, through 2-4-604, 2-4-611 through 2-4-614, 2-4-621, 2-4-623, 2-15-1706, 49-2-101, 49-2-201, 49-2-203, 49-2-501, 49-2-505 through 49-2-507, 49-3-101, 49-3-304, and 49-3-308 through 49-3-310, MCA.

12. Interested parties may submit their data, views, or arguments on the proposed repeal, amendment or adoption in writing to Margery H. Brown, Chair, Human Rights Commission, P.O. Box 1728, Helena, Montana, 59624-1728 no later than May 16, 1988.

13. If a person who is directly affected by the proposed repeal, amendment, or adoption wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Margery H. Brown, Chair, Human Rights Commission, P.O. Box 1728, Helena, Montana, 59624-1728, no later than May 16, 1988.

14. If the agency receives requests for a public hearing on the proposed repeal, amendment, or adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal, from the administrative code committee of the legislature, from a governmental subdivision or agency, or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons based upon the number of potential parties to cases in Montana.

MONTANA HUMAN RIGHTS COMMISSION
MARGERY H. BROWN, CHAIR

By: 
ANNE L. MacINTYRE
ADMINISTRATOR
HUMAN RIGHTS DIVISION

Certified to the Secretary of State April 4, 1988.

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

In the matter of the amendment of rule 36.15.216 pertaining to the minimum standards for granting a permit for the establishment or alteration of an artificial obstruction or nonconforming use in a designated floodway	NOTICE OF PROPOSED AMENDMENT OF RULE 36.15.216

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 20, 1988 the Board proposes to amend ARM 36.15.216 relating to the criteria for issuing permits for the establishment or alteration of an artificial obstruction or nonconforming use in a floodway.

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

"36.15.216 PERMITS - CRITERIA - TIME LIMITS

(1) Permits shall be granted or denied by the permit issuing authority on the basis of whether the proposed establishment or alteration of an artificial obstruction or nonconforming use meets the requirements of the Act and the minimum standards established by the Board in these rules.

(2) Additional factors that shall be considered for every permit application are:

(a) the danger to life and property from backwater or diverted flow caused by the obstruction;

(b) the danger that the obstruction will be swept downstream to the injury of others;

(c) the availability of alternative locations;

(d) the construction or alteration of the obstruction in such manner as to lessen the danger;

(e) the permanence of the obstruction;

(f) the anticipated development in the foreseeable future of the area which may be affected by the obstruction; and,

(g) such other factors as are in harmony with the purposes of the Act and these rules.

(3) The permit issuing authority may grant a permit for the establishment or alteration of an artificial obstruction or nonconforming use that is not in compliance with the minimum standards contained in these rules only if:

(a) The proposed use would not increase ~~flood heights or~~ flood hazard either upstream or downstream; in the area of insurable buildings.

(b) Refusal of a permit would because of exceptional circumstances cause a unique or undue hardship on the applicant or community involved;

(c) The proposed use is adequately floodproofed; and

(d) Reasonable alternative locations outside the designated floodplain are not available.

(4) A permit application is considered to have been automatically granted 60 days after receipt of the application, unless the permit issuing authority notifies the applicant before the 60th day that the permit is denied or unless ARM 36.15.801(3) or 36.15.210 apply.

AUTH: Sec. 76-5-208 MCA
IMP: Sec. 76-5-405, 406, MCA

3. Rationale: The Montana Department of Highways has petitioned the Board to amend its rule because highway crossings of floodplains using culverts or bridges that would cause an increase in the 100-year flood elevation of more than 0.5 feet have resulted in the Highway Department seeking variances from permit issuing authorities pursuant to ARM 36.15.216. However, under the present rule variance permits may not be granted when there will be any increase in flood elevation. The variance standards in the present form are more restrictive than the minimum standards they were meant to vary. In effect there is no variance procedure for highway crossings for floodways. The proposed amendment would give discretion to the permit issuing authority to grant variances subject to restrictions regarding insurable property.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Donald D. MacIntyre, Chief Legal Counsel, Department of Natural Resources and Conservation, 1520 East Sixth Avenue, Helena, Montana 59620-2301, no later than May 20, 1988.

5. If a person who is directly affected by the proposed amendments wishes to express data, views, and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request along with any written comments he has to Donald D. MacIntyre, Chief Legal Counsel, Department of Natural Resources and Conservation, 1520 East Sixth Avenue, Helena, Montana 59620-2301, no later than May 20, 1988.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; 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.

William A. Shields

William A. Shields, Chairman
Board of Natural Resources
and Conservation

Certified to the Secretary of State April 4, 1988.

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

In the matter of the amendment of Rule 46.2.302 pertaining to civil rights complaints	)))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.2.302 PERTAINING TO CIVIL RIGHTS COMPLAINTS

TO: All Interested Persons

1. On May 4, 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 Rule 46.2.302 pertaining to civil rights complaints.

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

46.2.302 CIVIL RIGHTS (1) The Department administers its divisions in accordance with Section 49-2-308 MCA which states, in part: "...It is an unlawful discriminatory practice for the state or any of its political subdivisions: (1) to refuse, withhold from, or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of race, creed, religion, sex, marital status, color, age, physical or mental handicap, or national origin, unless based on reasonable grounds; ...", and in accordance with Article II, Section 4 of the 1972 Montana State Constitution~~, as amended,~~ in that no person is excluded from participation, denied benefits, or subjected to discrimination under any program conducted by the Department and its divisions.

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

(4) Individuals who feel they have been discriminated against pursuant to Section 49-2-308 MCA ~~are entitled to a hearing in accordance with the rules promulgated by the Department for fair hearings and contested cases as stated in ARM 46.2.201 through ARM 46.2.214~~. may file a complaint with the Montana Commission for Human Rights, the appropriate federal agency or the appropriate department division administrator or their designee.

AUTH: Sec. 53-2-201 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87
IMP: Sec. 53-2-201 MCA

3. ARM 46.2.302, unaltered since its adoption in 1972, is proposed to be amended because it inaccurately describes the procedures available for redress of grievances by persons who think they have been discriminated against in provision of services or benefits. Individuals are entitled to a fair hearing before a department fair hearings officer only on

issues related to eligibility, etc. Discrimination issues are to be referred to either the department's internal complaint procedure, the state Human Rights Commission or the federal government. All complaints related to discrimination in services funded by the federal government (e.g. Medicaid, Food Stamps, etc.) are referred, pursuant to federal regulations, to the appropriate federal agency for processing by the federal discrimination complaint system.

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 May 12, 1988.

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

Gail Gray
Director, Social and Rehabilitation Services

Certified to the Secretary of State April 4, 1988.

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

In the matter of the amendment of Rules 46.8.102, 46.8.104 and 46.8.105 pertaining to individual habilitation plans for developmentally disabled persons	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.8.102, 46.8.104 AND 46.8.105 PERTAINING TO INDIVIDUAL HABILITATION PLANS FOR DEVELOPMENTALLY DISABLED PERSONS

TO: All Interested Persons

1. On May 5, 1988, at 10:00 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 46.8.102, 46.8.104 and 46.8.105 pertaining to individual habilitation plans for developmentally disabled persons.

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

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

Subsections (1) through (16) remain the same.

~~(17) "Interdisciplinary team" means a group of persons that is drawn from or represents those professions, disciplines, or service areas that are relevant to identifying an individual's needs and designing a program to meet them, and that is responsible for evaluating the individual's needs, developing an individual habilitation plan to meet them, periodically reviewing the individual's response to the plan, and revising the plan accordingly.~~

(17) "Individual habilitation plan" means a written plan for training and action developed for a developmentally disabled person by the individual habilitation planning (IHP) team on the basis of a skill assessment and determination of the strengths and needs of the person.

(18) "Individual habilitation planning team" means an interdisciplinary team composed of those persons specified in ARM 46.8.105(3) that identifies and evaluates an individual's needs, develops an individual habilitation plan to meet those needs, periodically reviews the individual's response to the plan and revises the plan accordingly.

Original subsections (18) through (25) remain the same in text but will be renumbered as (19) through (26).

AUTH: Sec. 53-20-204 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87
IMP: Sec. 53-20-203, 53-20-204 and 53-20-205 MCA

46.8.104 EVALUATION SERVICES Subsection (1) remains the same.

(2) Within thirty (30) calendar days of the enrollment of a developmentally disabled person in a provider service program, with the exception of respite and transportation services, the provider shall perform a comprehensive skill assessment for ~~each~~ that person ~~enrolled in the program~~. Each assessment shall be reviewed ~~semi~~-annually by the provider. Results of the assessment shall be provided to the client's individual habilitation planning team~~,~~, including the individual receiving services.

AUTH: Sec. 53-20-203 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87
IMP: Sec. 53-20-203 MCA

46.8.105 INDIVIDUAL HABILITATION PLANS (1) ~~An individual habilitation plan is a written plan of intervention and action developed by an interdisciplinary team of persons on the basis of a skill assessment and determination of the status and needs of a client.~~ An IHP must be developed and maintained by an IHP team for each individual who is a recipient of state funded developmental disabilities services. The individual habilitation plan (IHP) ensures that the provision of services will be systematic and that ~~interventions~~ are training is designed to enhance the development of ~~the client~~ persons receiving developmental disabilities services.

~~(2)~~ Each ~~client~~ person receiving state funded developmental disabilities services is entitled to an a single, comprehensive individual habilitation plan (IHP).

(2) ~~Unless otherwise specified by provider agreement,~~ The ~~individual habilitation plan~~ IHP shall be developed by the IHP team within thirty (30) calendar days of ~~the client's~~ an individual's entry into a service program, implemented within two calendar weeks of the date of its adoption unless otherwise specified by the IHP team, and be formally reviewed and revised at intervals determined by the IHP team. ~~not to exceed six~~ A plan must be formally reviewed and revised as necessary within twelve (12) months from the initial or previously reviewed ~~individual habilitation plan~~ IHP.

(3) ~~Each individual habilitation plan shall be developed by an individual habilitation planning team.~~ The ~~individual habilitation planning~~ IHP team ~~members are~~ must be constituted as follows:

(a) the ~~client and the client's advocate, if the client has an advocate,~~ developmentally disabled person receiving services, unless the participation of the person ~~of either~~ is ~~unobtainable and is so documented in writing,~~ not possible;

(b) the advocate for the individual receiving services, unless that person is unable to participate. An advocate is a person who represents the interests and rights of ~~a client~~ an

individual receiving services as if they were the person's own, who is not an employee of any agency directly providing services to the ~~client~~ individual and who is acknowledged by the ~~client~~ individual as his or her advocate at the time of the ~~individual habilitation plan~~ IHP meeting. If both a ~~client~~ the individual and an advocate participate on an ~~individual habilitation planning~~ IHP team, the advocate's position must be consistent with the ~~client's~~ individual's expressed interests;

(~~b~~c) ~~the client's parents, if legally responsible for the client, or the client's legal guardian, unless this participation is unobtainable and is so documented in writing;~~ one or both parents, if obtainable, of an individual receiving services who is a minor or of an adult who does not object to their participation;

(d) the legal guardian of the individual receiving services, unless the individual doesn't have one, or unless the guardian's participation is unobtainable;

(~~c~~e) the ~~client's~~ case manager of the individual receiving services;

(~~d~~f) at least one person who works directly with the ~~client~~ individual receiving services from each service program ~~provided~~ providing services to the ~~client~~ individual;

(~~e~~g) the professional person from the institution of origin if the ~~client~~ individual receiving services has not yet been formally discharged from that institution; ~~and~~

(h) in cases where the individual is currently enrolled in a public school, the persons designated to develop an individualized education plan (IEP) in PL 94-142 and the special education reference manual, Montana laws and rules;

(~~f~~i) a staff member of the division ~~whenever possible~~;

(j) any family member or relative desiring to participate if the individual receiving services does not object; and

(k) psychologists, medical personnel and other professionals providing assessment, service recommendations based on assessments, and/or direct service as a result of assessed needs.

(4) If the individual receiving services or any other member of the team is unable to participate in the meeting, the reasons for that absence must be documented in writing.

(~~4~~5) ~~Advisory members of the individual habilitation planning team may include:~~ In order to hold an IHP meeting, each person listed in subsections (3)(a) through (3)(g) above who is a member of the team must be present at the meeting unless unable to attend.

~~(a) any family member or relative; and~~

~~(b) psychologists, medical personnel and other consultants.~~

(6) Each ~~individual habilitation plan~~ IHP shall be developed at the IHP meeting and shall include at least the following:

(a) A summary statement of the results of the comprehensive assessments, both formal and informal, of the individual receiving services, which identifies current strengths and deficits. The summary statement must include, but is not to be limited to, the following materials if completed:

(i) a physical examination and health assessment;

(ii) a dental examination;

(iii) an adaptive behavior or independent living skills assessment completed within 60 calendar days prior to the IHP;

(iv) a developmental, educational or vocational evaluation completed within sixty (60) calendar days prior to the IHP unless the evaluation may be conducted at other than annual intervals as determined by the individual's IHP team and documented in the IHP;

(v) other reassessments as needed and identified by the individual's IHP team;

(~~a~~b) the goals toward which the interventions outlined in the ~~individual habilitation plan~~ IHP will be directed;

~~(b) the pertinent results of assessments, both formal and informal, which outline the client's strengths and behavior/skill deficits;~~

(c) the specific objectives, directed toward the achievement of goals as specified for the individual receiving services. The objectives must be prioritized, stated separately and in behavioral terms, which specify single behavioral outcomes~~, and reflect the client's needs as identified by assessment data and the goals established for the client~~. Components of objectives are:

(i) a statement of the conditions or setting in which the behavior is to occur;

(ii) an objective, measurable description of the behavior; and

(iii) a statement of the acceptable level of performance~~;~~

(~~d~~iv) names of persons, and the agencies, programs or services they represent, who have been assigned responsibility for implementation of ~~the~~ each objective;

(~~e~~v) the dates by which ~~each person is to begin implementing~~ the programs for each objective assigned by the ~~individual habilitation planning~~ IHP team are to be implemented;

(~~f~~vi) the projected date by which the ~~client~~ individual receiving services is expected to have met each objective;

~~(g) documentation of the barriers or conditions responsible for each client need which will not be addressed or attempted to be met before the next individual habilitation planning meeting;~~

(~~h~~d) a summary of ~~the client's~~ medical and dental ~~status~~, appointments and records for the period since the last IHP meeting. ~~including~~ The summary must include the physicians' names, the dates of service, ~~and~~ the results of the ~~client's~~ individual's most recent health examinations, a list

of ~~and--rationale--for~~ any prescribed medications, the current methods of administration, and any ~~medical-goals-and~~ service objectives relating to the ~~client's~~ individual's medical status;

(e) the service objectives, which include but are not limited to significant desired outcomes that cannot be achieved as a result of learning or training or that are evaluated qualitatively, including quantifiable but non-behavioral outcomes (e.g., seizure reduction or maintenance of blood pressure within a certain range, and quality of life outcomes such as developing and maintaining social networks), and outcomes dependent on the behavior of staff (e.g., provision of adaptive or mobility equipment, obtaining specialized assessments, or referral for alternative placement). Estimated completion dates and/or review dates should be stated.

~~(i)--administrative--goals-and-objectives,-including-initiation-and-completion-dates;~~

(~~j~~f) names~~,--program~~ and affiliations ~~and--signatures~~ of each person ~~accepting~~ assigned responsibility for a role, task or objective assigned ~~to-him-or-her~~ by the ~~individual--habilitation-planning~~ IHP team; ~~and~~

(~~k~~7) ~~names-and-signatures-of~~ The IHP, upon adoption and revision, must be signed by all persons who have participated in developing the ~~individual-habilitation-plan-(including-the client,--unless--the-client's-unwillingness-to--participate-is documented)--which-will~~ plan, including the individual receiving services. Their signatures verify their participation~~,~~ in and agreement with the ~~individual--habilitation-plan~~ IHP, and their acknowledgement of the confidential nature of the information presented and discussed.

(6~~8~~) The ~~individual-habilitation-planning~~ IHP team shall designate ~~a-member-or-members~~ an individual program coordinator (IPC) to review the ~~individual-habilitation-plan~~ IHP and resulting individual program plans (written strategy for meeting an objective) on ~~at-least~~ a monthly basis. ~~for-implementation-and-continued--appropriateness.--This-review--shall-document:~~ The IPC, upon review, must document that coordination is occurring, direct services are being obtained, services are being linked, gaps in services are being identified, progress is being made towards graduation criteria and advocacy is occurring.

(9) The responsibilities of the IPC are:

(a) to ensure that services for the individual receiving services, as identified by the IHP team, are located and obtained outside and inside the agency;

(b) to observe the implementation of programs and the delivery of services and to intervene to ensure implementation of the IHP;

(c) to elicit the preferences of the individual receiving services and to implement those preferences when they are not inconsistent with the achieving of objectives;

(d) to delegate responsibility to the individual receiving services for managing those activities for which the individual has demonstrated management capacity;

(e) to explain the purpose of the IHP team meeting to the individual receiving services and other team members, obtain input from the individual, and otherwise prepare the individual for the IHP team meeting;

(f) to enter data into the record at least monthly on progress toward the attainment of criteria within the priority behavioral objectives, and to analyze that data to determine whether the plan continues to meet the needs of the individual;

(g) to document a review of all components of the IHP in the record at least monthly;

(h) to notify the IHP team members in writing of the six month data review, including the name of the individual receiving services for whom the meeting is being held, and the time, date and place of the meeting.

(10) At any time that an IHP team member requests that the IPC be changed, the IHP team will meet and review the request.

(11) At the six month data review, the IPC shall invite the IHP team members to review the data. The data review will occur regardless of whether any of the IHP team members attend. If, after reviewing the data, any team member feels that an IHP meeting is necessary, that team member may request a meeting. This provision is not to be construed as limiting the right of an IHP team member to call a meeting at any time.

~~(a) progress data recorded in behavioral terms at least as often as the intervals designated by the individual habilitation planning team; and~~

~~(b) problems and changes in a client's status warranting review of the individual habilitation plan by the individual habilitation planning team. The review information will be sent to the case manager and other interested individual habilitation planning team members every month or as designated by the individual habilitation planning team.~~

(~~7~~12) The ~~individual habilitation planning~~ IHP team shall meet at least ~~every six months~~ annually to formally review the goals and objectives established at the previous ~~individual habilitation planning~~ IHP meeting. In reviewing the previous ~~individual habilitation plan~~ IHP, the ~~individual habilitation planning~~ IHP team shall:

(a) ~~review~~ analyze progress data which has been collected on the ~~client's~~ response of the individual receiving services to each objective and individual program plan assigned at the last ~~individual habilitation plan~~ IHP team meeting;

(b) modify the goals and objectives as necessary and suggest changes in ongoing individual program plans;

(c) determine further services and programs that are needed as a result of current assessments or assessment up-

dates completed prior to the meeting; and

(d) ~~consider~~ determine the advisability of continued current service provision and alternative placements or services.

(~~8~~13) The case manager, or other person, assigned by the ~~individual habilitation planning~~ IHP team shall provide a copy of the ~~individual habilitation plan~~ IHP to the ~~client~~ individual receiving services; to the ~~client's~~ individual's family, when appropriate; and to each member of the ~~individual habilitation planning~~ IHP team. The case manager or other designated person shall interpret the ~~individual habilitation plan~~ IHP to the ~~client~~ individual.

(~~9~~14) The duties of the case manager in the ~~individual habilitation planning~~ IHP process are:

(a) to schedule ~~individual habilitation planning~~ the annual IHP team meetings or any meeting whenever ~~individual habilitation plan revision is~~ deemed necessary by any ~~individual habilitation planning~~ IHP team member ~~but at least every six months~~;

(b) to notify in writing (except for meetings called in emergency situations) all ~~individual habilitation planning~~ IHP team members, ~~parents, and any other appropriate persons~~ of the name of the individual for whom the meeting is being held, and the date, time and place of the ~~individual habilitation planning~~ IHP team meetings at least two weeks prior to the scheduled ~~individual habilitation planning~~ IHP meeting;

(c) to ~~explain the purpose of, obtain input from, and otherwise prepare the client for upcoming individual habilitation planning meetings;~~ conduct the IHP meeting;

(d) to record the results of the ~~individual habilitation planning~~ IHP team meetings, interpret them to the ~~client~~ individual receiving services (unless another team member is designated to interpret the results to the individual) and disseminate copies to all ~~individual habilitation~~ IHP team members within two weeks of the ~~individual habilitation planning~~ IHP team meeting; and

(e) to ensure that the ~~individual habilitation planning team members~~ IPC assigned the tasks of monthly reviews documents the reviews in the ~~client's individual habilitation plan~~ IHP file;

(f) to ensure that those persons responsible for obtaining updated medical information bring it to the IHP meeting;

(~~f~~g) to inform team members of the requirements of confidentiality~~.~~;

(h) to facilitate the movement of the individual receiving services to another service or agency when such movement is chosen by the IHP team.

(~~1~~0~~1~~5) The decision-making process for development of an ~~individual habilitation plan~~ IHP shall be as follows:

(a) decisions shall be made by consensus of ~~individual habilitation planning~~ IHP team members;

(b) if a consensus cannot be reached, the ~~individual habilitation planning~~ IHP team shall adjourn for no more than five (5) working days, to allow time for a resolution of the conflict~~,~~:

(i) an IHP team member who has not attended the IHP meeting may review the plan and comment in writing on the plan within five (5) working days of receipt of the plan;

(ii) should an IHP team member who has not attended the IHP meeting not agree with the plan, that team member must notify the case manager in writing within five (5) working days of receipt of the plan that there is no consensus;

(iii) the case manager will schedule an IHP meeting within five (5) working days of receiving written notice that there is no consensus;

(c) at the next ~~individual habilitation planning~~ IHP meeting, if a consensus ~~still~~ has still not been reached, the unresolved issues shall be referred to the ~~regional supervisor~~ area manager and the ~~social worker supervisor III~~ appropriate department of family services regional administrator who shall meet within ten (10) working days to jointly make a decision. ~~individual habilitation planning~~ IHP team members may attend to document the differing points of view;

(d) if the ~~regional supervisor and the social worker supervisor III~~ area manager and the department of family services regional administrator cannot reach a decision, or if any ~~individual habilitation planning~~ IHP team member is dissatisfied with the decision of the area manager and the department of family services' regional administrator, an appeal ~~to the division administrator and social services bureau chief~~ may be made to the administrator of the developmental disabilities division, department of social and rehabilitation services and the administrator of the program and planning division, department of family services, who shall meet within ten (10) working days to jointly make a decision;

(e) further appeal may be made to the director of the department~~,~~ of social and rehabilitation services, whose decision shall be final.

(f) in cases where an appeal occurs involving a person who is currently enrolled in public school, the following procedures will apply:

(i) if the appeal arises in a situation where a team member is appealing an issue which impacts the IEP, the procedural safeguards and IEP rules of PL 94-142 and the special education reference manual, Montana laws and rules shall apply;

(ii) if the appeal arises in a situation where a team member is appealing an issue which impacts a part of the IHP other than an IEP, the appeal process described in subsections 13(b) through 13(e) of this rule shall apply.

(~~11~~16) At each ~~individual habilitation planning~~ IHP team meeting, the case manager shall review the requirements of

confidentiality. ~~Each non-member must sign a statement to the effect that he or she is aware of the confidential nature of the client information and will treat such information in accordance with the department's policy on confidentiality.~~

AUTH: Sec. 53-20-204 MCA; AUTH Extension, Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87
IMP: Sec. 53-20-203 MCA

3. These proposed rule changes provide generally for conforming Montana's individual habilitation planning process with the requirement of the Accreditation Council for Persons Who are Developmentally Disabled (ACDD). Montana has adopted the standards of the ACDD. Those standards call for the existence of a single, comprehensive plan coordinated by one person for each individual being served. Specifically, the rule must be changed to provide for one planning process for each person, to allow for an expanded IHP team to assure coordination of the IHP across environments, to provide that IHPs are scheduled on an annual basis and to make the planning process more comprehensive and disciplinary in nature.

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 May 12, 1988.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State _____, 1988.

BEFORE THE BOARD OF COSMETOLOGY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendments of rules pertaining to schools, instructors, applications, examinations, electrology, sanitary standards, and salons and the repeal of a rule pertaining to licenses	))))))	NOTICE OF THE AMENDMENT OF RULES PERTAINING TO COSMETOLOGY, ELECTROLOGY, AND MANICURING AND THE REPEAL OF A RULE PERTAINING TO LICENSES

TO: All Interested Persons

1. On December 24, 1987, the board of cosmetologists published notice of a proposed amendment of rules 8.14.601, 8.14.603, 8.14.604, 8.14.606, 8.14.802 through 8.14.806, 8.14.808, 8.14.810, 8.14.813 through 8.14.815, 8.14.901 through 8.14.903, 8.14.905 through 8.14.907, 8.14.909, 8.14.1003, 8.14.1004, 8.14.1010, 8.14.1104 through 8.14.1106, 8.14.1108, 8.14.1201, 8.14.1202, 8.14.1206, 8.14.1208 through 8.14.1210, 8.14.1212, 8.14.1214 through 8.14.1216, and the proposed repeal of 8.14.1001, concerning schools, instructors, applications, examinations, electrology, sanitary standards, salons, and licensing, at pages 2278 through 2293 of the 1987 Montana Administrative Register, issue number 24.

2. The board has amended and repealed the rules as proposed with the following changes. (new matter underlined, deleted matter interlined)

3. Where the words "bath room" were proposed, the words "rest room" shall be inserted when replacement pages are done.

"8.14.603 SCHOOL REQUIREMENTS (1) through (5) will remain the same.

(6) Daily attendance records ~~and records of all subjects taught and practiced~~ shall be submitted to the office of the department on or before the 15th of each month. These records shall be accurate and reflect attendance ~~to the minute~~.

(7) through (17) will remain the same.

(a) The cosmetology student's required training time continues on the date of the re-enrollment unless more than ~~45~~ 60 calendar days have elapsed from the last date of attendance. The manicuring student's required time continues on the date of the re-enrollment unless more than 7 calendar days have elapsed from the last date of attendance. The board will take into consideration any prolonged medical withdrawal on a case by case basis.

(18) through (25) will remain the same."

"8.14.802 EXAMINERS--EXAMINATIONS (1) through (11) same as proposed.

(12) Applicants will be notified of the grade received and whether they "Pass" or "Fail." Upon receipt of a notarized letter, unsuccessful applicants will be notified of those practical areas in which they were deficient.

(13) will remain the same."

"8.14.805 APPLICATION--OUT-OF-STATE COSMETOLOGISTS/MANICURISTS (1) and (2) will remain the same.

(3) Applicants shall take the practical and written examinations for cosmetology~~, manicuring and/or electrology~~; and/or manicuring, also the law and rules examination, administered by the department.

(4) through (6) will remain the same."

"8.14.903 INSPECTION AND EQUIPMENT (1) through (7) will remain the same.

(8) Schools shall provide only disposable single service drinking cups or a drinking fountain.

(9) through (11) will remain the same."

"8.14.1106 CONSTRUCTION, CLEANING AND SANITIZING TOOLS AND EQUIPMENT (1) through (6)(b) will remain the same.

~~(c) cold sterilants with bead sterilizer 450 F, 10 minutes~~

~~(d)~~ (c) through (14) will remain the same."

"8.14.1210 CLEANING AND SANITIZING TOOLS AND EQUIPMENT (1) same as proposed.

(a) ~~Salons and schools are not to possess or store brush or velcro rollers. If the patron brings in their own items, they can be used on this one patron.~~

(2) through (3) will remain the same."

3. Comments to the rules were made by Mr. Farrel Griffin, Acme Beauty College, Ms. Dixie Hromcik, International School of Cosmetology, Ms. Nancy Marshall, Ms. Pamela Cooper, and Ms. Donna Alires, electrologists, Mr. McRay Evans, Mr. Mack's Beauty, and Mr. Jacques Romeijn, La Reina School. These comments have resulted in the amendments to the rules as proposed as set forth above. The comments and the board's responses are as follows:

COMMENT: Mr. Griffin commented that 8.14.601(f) is already in the statutes.

RESPONSE: The board rejects this comment. The rule specifies part of the "form and manner" required by statute.

COMMENT: Mr. Griffin, Ms. Hromcik, Mr. Evans, and Mr. Romeijn, commented that 8.14.603(6)'s provision "to the minute" is not necessary and creates an expensive and undue burden which also takes away from time teaching.

RESPONSE: The board concurred in part and rejected in part. The board needs records to fulfill its responsibility to the schools and students to monitor and verify hours of attendance for transfer and license purposes. However, if the records are accurate, they need not be detailed in specifics or "to the minute."

COMMENT: Mr. Griffin commented that 8.14.603(14) should be striken because schools cannot dock hours.

RESPONSE: The board rejected this comment because other methods of discipline are available.

COMMENT: Mr. Evans commented that 8.14.603(17) should provide 90 days, but is not enforceable anyway because schools cannot get at the student.

RESPONSE: The board concurred. The proposed 45 day period is changed to 60 days (but not the requested 90 days) as a compromise.

COMMENT: Mr. Griffin commented that 8.14.604(1) is too restrictive in that it allows only instructors with inactive licenses to substitute. Licensed cosmetologists should be allowed to substitute, especially in an emergency situation.

RESPONSE: The comment was rejected because allowing a licensed cosmetologist without instructor training or certification to be an instructor, even temporarily, would not safeguard quality of education.

COMMENT: Mr. Griffin and Ms. Hromcik commented that 8.14.802(12) should include a grade, that temporary licenses should be taken at the time of examination, and that the examinations should be graded the same day.

RESPONSE: The comments were concurred in in part. A grade will be provided with notice. The temporary license will continue to be in effect until the results of the examination are obtained, as required by statute. This is fair to those examinees obtaining a passing grade. The exam will not be graded the same day, as such is impractical if not impossible, given the time allowed and the resources available to the board.

COMMENT: Mr. Griffin commented that 8.14.803 should provide that the hour records of the school should be the determining factor. Mr. Evans commented on the same rule that schools should retain records and that reporting to the board is another hardship on schools.

RESPONSE: The comments were rejected because the board needs the information for licensing purposes. If a dispute arises, neither record should be a determining factor until inquiry discloses which is correct.

COMMENT: Ms. Marshall commented that 8.14.805 improperly includes electrology in a cosmetology rule.

RESPONSE: The board concurred and the reference to electrolgy is deleted.

COMMENT: Ms. Hromcik commented that 8.14.808(1) should have a maximum time limit on brush-up courses, because, without it, a situation could be created where a cosmetologist may work on the public in a school for an unlimited time. Mr. Evans commented on the same rule that it is not realistic, that no credits are given, and that an unlicensed person may take the course.

RESPONSE: The comments were rejected because the board believes that, with a student paying for attendance and a school maintaining records and providing instruction, there should be no situation though which any problems may develop. Furthermore such restriction by rule may exceed the board's authority.

COMMENT: Mr. Griffin commented that 8.14.814 changes so often that the rule book cannot keep up with it and it is impossible to teach and should be eliminated in written form. Ms. Hromcik commented that the fees should be constant as possible.

RESPONSE: The board rejected these comments. The rule will remain in written form. The board is required to set fees commensurate with costs. As costs change fees change.

COMMENT: Ms. Alires commented that the 8.14.909(1) examination should be conducted by two electrologists having proctor training.

RESPONSE: The comment was rejected as being too restrictive. The board may consider these comments when appointment of examiners is made.

COMMENT: Ms. Marshall, Ms. Cooper, and Ms. Alires commented and submitted evidence that 8.14.1106(6)(c) should be deleted because the bead sterilizer has been determined to be a device not free from risk, in that it may fail to sterilize adequately.

RESPONSE: The comment concurred in because the evidence clearly shows that credible and authoritative sources have found the bead sterilizer to be an inadequate means of sterilizing instruments.

COMMENT: Ms. Hromcik, Mr. Evans, and Mr. Romeijn commented that the word "bath room" is inappropriate and that, in the rules, the word "rest room" or "toilet" should be used.

RESPONSE: The comment were concurred in and the word "rest room" will replace "bath room."

COMMENT: Mr. Griffin and Mr. Evans commented that 8.14.1210(1)(a) should be striken because prohibiting possession is wrong, in that it does not allow stocking for sale. Furthermore, these types of rollers may be cleaned, and

to allow patrons to bring unsanitized rollers into a salon may be unsound.

RESPONSE: The board concurred in these comments.

COMMENT: Mr. Griffin, Ms. Hromcik, Mr. Evans, and Mr. Romeijn commented that 8.14.1215(1) should continue to require a uniform, but that socks or nylons should also be required.

RESPONSE: The comments were rejected. Schools may require a uniform through a school dress code. Cleanliness is the element that is important, and the board believes that a uniform requirement does not play a large role in this.

4. The authority and implementation for each amendment and the repeal is set forth following the notice of proposed amendment and repeal identified in paragraph 1 above.

5. No other comments or testimony were received.

BOARD OF COSMETOLOGISTS
DUDLEY WILLIAMS, CHAIRMAN

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

Certified to the Secretary of State April 4, 1988.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF HORSE RACING

In the matter of the amendment of rules pertaining to licensees, general provisions, general requirements, general rules, and definition of detrimental conduct	)))))))))	NOTICE OF AMENDMENT OF 8.22.502 LICENSES ISSUED FOR CONDUCTING PARIMUTUEL WAGERING ON HORSE RACING, 8.22.601 GENERAL PROVISIONS, 8.22.801 GENERAL REQUIREMENTS, 8.22.1401 GENERAL RULES, 8.22.1502 DEFINITION OF CONDUCT DETRIMENTAL TO THE BEST INTERESTS OF RACING

TO: All Interested Persons:

1. A notice of proposed agency action was published in issue number 3, at page 217, 1988 Montana Administrative Register regarding the above-stated rules. These amendments were adopted in issue number 6, at page 569 with one change as shown. Wording in the first paragraph of ARM 8.22.1502 was inadvertently omitted in the original notice. The paragraph should have read as it appears in the current ARM's as follows: "For the purpose of implementing section 23-4-202 (2), MCA, as amended, and also of defining conduct which the board considers detrimental to the best interest of racing as contemplated by ARM 8.22.701(8), the board rules that the following conduct is detrimental to the best interest of racing but these rules are not intended to limit the application of the phrase or otherwise to be exclusive:".

Subsections (14) through (16) were also inadvertently omitted in the original notice. These subsections will remain as they appear in the current ARM's but will be renumbered as subsections (16) through (18).

2. The replacement pages filed with the Secretary of State for the March 31, 1988 deadline reflect the rules as they should have been originally adopted.

BOARD OF HORSE RACING
HAROLD GERKE, CHAIRMAN

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

Certified to the Secretary of State, April 4, 1988.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF NURSING HOME ADMINISTRATORS

In the matter of the amendment of 8.34.414 concerning Examinations) NOTICE OF AMENDMENT OF 8.34.414 EXAMINATIONS

TO: All Interested Persons:

1. On November 27, 1987, the Board of Nursing Home Administrators published a notice of public hearing on the proposed amendment of the above-stated rule at page 2129, 1987 Montana Administrative Register, issue number 22.

2. The hearing was held on Monday, January 11, 1988, at 9:00 a.m., in the downstairs conference room 1424 - 9th Avenue, Helena, Montana.

3. The Board has amended the rule as proposed with the following changes: (new matter underlined, deleted matter interlined)

"8.34.414 EXAMINATIONS (1) through (3)(a) will remain the same.

(b) Or the equivalent education, training and experience provided by section 37-9-303(1)(b), MCA must include at least 1 year out of the last 3 years as an assistant administrator or director of nursing, or a one-year internship with a licensed nursing home administrator. There must be verification of the time completed, and a recommendation that the applicant be licensed. This must be from a person who has been a practicing administrator for at least the past 3 years. (c) will remain the same.

Auth: 37-9-2-3 Imp: 37-9-203

4. This amendment is necessary to clarify what the board will consider to be satisfactory and sufficient education, training or experience equivalent to statutory education and training requirements necessary to qualify to take the licensing examination.

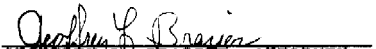
5. Comments received and the Board's responses are as follows:

COMMENT: Comments were received from the staff of the Administrative Code Committee (ACC), the Montana Health Care Association, and department staff that the original proposed rule was not consistent with section 37-9-303(1)(b), MCA, and therefore urged the board to change the proposed rule.

RESPONSE: The board concurred and has changed section 8.34.414(3)(b) to reflect section 37-9-303(1)(b), MCA.

6. No other comments or testimony were received.

BOARD OF NURSING HOME
ADMINISTRATORS
CAROL ANN ANDREWS, CHAIRMAN

BY: 
GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 4, 1988.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF MILK CONTROL

In the matter of the amendment of Rule 8.79.301 regarding assessments	)	NOTICE OF THE AMENDMENT OF RULE 8.79.301 LICENSEE ASSESSMENTS
	)	DOCKET #82-88

TO: All Interested Persons:

1. On February 25, 1988, the Milk Control Bureau of the Department of Commerce published a notice of amendment of Rule 8.79.301 regarding licensee assessments and reporting of those results at page 338 in the 1988 Montana Administrative Register, issue no. 4.

2. The Bureau has amended the rules as proposed. However, it should be noted that in the original notice a statement of the reason for the amendment was not given. It should have been noted that the purpose for the amendment was to lower the assessment rate because less revenue was needed to meet budgeted expenses for the coming biennium.

3. No other comments or testimony were received.

William E Ross

William E. Ross, Bureau Chief
Montana Milk Control Bureau

Certified to the Secretary of State April 4, 1988.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF MILK CONTROL

In the matter of the adoption of rules establishing a statewide pooling arrangement with quota plan as a method of payment of milk producer prices) NOTICE OF REFERENDUM FAILURE) POOLING RULES) DOCKET # 80-87

TO: ALL LICENSEES UNDER THE MONTANA MILK CONTROL ACT (SECTION 81-23-302, MCA, AND FOLLOWING), AND ALL INTERESTED PERSONS:

1. On October 5, 1987, the Montana Board of Milk Control published notice of the proposed adoption of rules 8.86.501, 8.86.511, and 8.86.521, to establish a statewide pooling arrangement with a quota as a method of payment of milk producer prices. An amendment to the original petition that was the subject of the notice was offered and incorporated into the notice as a separate petition. Notice was published at page 1737 of the 1987 Montana Administrative Register, issue no. 19, as MAR NOTICE 8-86-21.

2. The notice of adoption was published at page 481 of the 1988 Montana Administrative Register, issue no. 5.

3. The rule numbers 8.86.501, 8.86.511, and 8.86.521 will not be used because the referendum on the statewide pool did not pass. As a result of a majority of the producers voting no on the referendum, the pooling rules which were intended to be effective on May 1, 1988 will not be adopted as originally proposed on February 29, 1988.

4. Referendum ballots were mailed to all affected producers, producer-distributors and distributors on March 7, 1988. The results of the ballots were officially tabulated on March 24, 1988 and were as follows: 104 in favor and 115 against. Those voting in favor of the plan provided 142,129,393 pounds of milk or less than 50% of a total of 301,755,410 pounds of milk produced in the State of Montana. A proposal for pooling of farm-to-plant freight failed by a margin 144 against to 74 in favor.

5. This amended notice is intended to institute final action on the matters contemplated by MAR NOTICE 8-86-21 and to satisfy all requirements in rulemaking proceedings under sections 81-23-302, 2-4-302, and 2-4-305, MCA.

MONTANA BOARD OF MILK CONTROL
CURTIS C. COOK, CHAIRMAN

BY: William E. Ross
William E. Ross, Bureau Chief
Montana Board of Milk Control

Certified to the Secretary of State April 4, 1988.

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE OF MONTANA

In the matter of the adoption of rules concerning definitions and tuition rates for special education.	))))	NOTICE OF ADOPTION OF NEW RULES CONCERNING DEFINITIONS AND RATES FOR SPECIAL EDUCATION ARM 10.16.1312-1315

To: All Interested Persons:

1. On February 11, 1988, the Office of Public Instruction published notice of the proposed adoption of new rules relating to definitions and tuition rates for special education at page 221 of the 1988 Montana Administrative Register, issue number 3.

2. The Office has adopted these rules as proposed.

3. A public hearing was held on March 14, 1988, to consider the proposed adoption of these rules. The Office was represented by Bob Runkel, Director of Special Education.

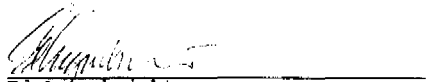
Also present at the hearing were Ray Shackleford, Deputy Superintendent; Lynda Brannon, State Aid Coordinator; and Marilyn Pearson, Special Education Monitor, all from the Office of Public Instruction; Dr. Jake Block, Superintendent, Missoula Elementary School District No. 1, and Dr. Dennis Kraft, Superintendent, Missoula High School District.

It was noted that one typographical error had occurred in the noticed rule. Under Rule III Formula for Special Education Tuition Rates, (1)(c)(ii) High School Tuition--Regular, 2. should be "x'd" out in the "In County" column similar to (1)2. under Elementary tuition--Regular.

COMMENT: Dr. Block suggested that cases involving severe and profound handicaps may require more support than is provided under the proposed rule. He asked that language be developed that would reflect flexibility for unusual cost cases.

RESPONSE: No change is made. Title 10, Chapter 6, Rules of Procedure for all School Controversy Contested Cases Before the County Superintendents of the State of Montana has been established to address controversies and addresses special education matters under 10.6.101 Scope of Rules (1)(e). The interpretation is that a district may appeal costs over and above the formula calculation established in the proposed rule under 10.6.102 School Controversy Means Contested Case, 10.6.103 Initiating School Controversy Procedure Process, 10.6.104 Jurisdiction, 10.6.105

Commencement of Action/Requirements of the Notice of Appeal and 10.6.106 Notice of Hearing.



Ed Argenbright
State Superintendent of
Public Instruction

Certified to the Secretary of State April 4, 1988.

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

In the matter of the repeal, amendment, transfer and adoption of rules pertaining to licenses and license agents	))))	NOTICE OF ADOPTION OF ARM 12.3.107 (RULE I) ANTELOPE LICENSE FOR DISABLED PERSONS, ARM 12.3.401 (RULE II) FEE FOR DUPLICATE LICENSES; REPEAL OF ARM 12.3.103 AND ARM 12.3.301; AND TRANSFER OF ARM 12.3.101 AND ARM 12.3.102

TO: All Interested Persons

1. On February 11, 1988, the Montana Department of Fish, Wildlife and Parks gave notice of the proposed repeal of ARM 12.3.103 and ARM 12.3.301, the transfer of ARM 12.3.101 and ARM 12.3.102 and the adoption of ARM 12.3.107 (RULE I) and ARM 12.3.401 (RULE II) pertaining to licenses and license agents on page 227 of the Administrative Register, issue number 3.

2. No public hearing was held nor was one requested.

3. The department adopted, repealed and transferred the rules as proposed with the following changes:

12.3.107 (RULE I) ANTELOPE LICENSES FOR DISABLED PERSONS

(1) A permanently physically handicapped and nonambulatory person, as defined by ARM 12.3.106, may apply for a special antelope license. Twenty five licenses each year will be issued in districts that have quotas ~~in excess~~ of 50 OR MORE as published in the hunting regulations. The successful applicant shall receive their choice of districts. IF THE NUMBER OF VALID DISABLED APPLICANTS EXCEEDS THE NUMBER OF ALL LICENSES AVAILABLE, THE DEPARTMENT WILL HOLD A DRAWING THAT GIVES ALL APPLICANTS AN EQUAL CHANCE OF BEING SELECTED.

4. The department has considered the comments received:

COMMENT: The Administrative Code Committee staff suggested that the rule should provide a mechanism for issuing licenses should the number of applicants exceed the number of licenses available.

RESPONSE: The department concurs with the comments and has adopted the statute's permissive provision for a drawing.

5. The authority for ARM 12.3.107 (RULE I) has been changed to read: AUTH: ~~87-1-201~~ 87-2-706, MCA.

ARM 12.3.401 (RULE II) FEE FOR DUPLICATE LICENSES

(1) For the purposes of 87-2-104(1), MCA, a payment of THE ORIGINAL COST OF THE LICENSE, NOT TO EXCEED $5 is required for each application for a duplicate license. Each application form for a duplicate license includes all classes of licenses, special licenses and any other type of license determined to be appropriate by the department.

6. **COMMENT:** Comments were received from the Administrative Code Committee staff which pointed out that the statutory language establishes the cost as the original cost, not to exceed $5. The staff also pointed out that, while the statute mentions only classes of licenses, the rule includes licenses that are not in classes.

RESPONSE: The rule has been changed to reflect the comment on the cost of the licenses. As to the second comment, the department agrees that the statute might be interpreted to apply only to licenses in classes. However, since 87-2-104(1) is the only statute which addresses the issue of duplicate licenses, the Department believes that a logical interpretation requires that provision for duplicate licenses should be applied to all licenses. The Department is not aware of any reason why duplicates should be available to licenses in classes but not be available to licenses not in classes. The department is considering a proposed legislative change which would clarify the statute's intent.

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

Certified to the Secretary of State April 4, 1988.

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

In the matter of the rules regulating the sale of progeny of raptors	)))))	NOTICE OF AMENDMENT OF RULE 12.6.1406 TO ALLOW FOR THE SALE OF THE PROGENY OF RAPTORS UNDER CERTAIN CONDITIONS

TO: All Interested Persons

1. On February 25, 1988 the Department of Fish, Wildlife, and Parks published notice of a proposed amendment of Rule 12.6.1406 allowing for the sale of the progeny of raptors at page 344 of the 1988 Montana Administrative Register, issue number 4.

2. The department has adopted the rules as proposed with the following changes:

12.6.1406 TRANSFER, PURCHASE, SALE OR BARTER OF RAPTORS OR, RAPTOR EGGS, RAPTOR SEMEN OR RAPTOR PROGENY

(1) Remains the same

(2) A permittee may purchase, sell or barter ~~any captive-bred raptor's progeny which is banded with a numbered seamless marker provided or authorized by the U.S. Fish and Wildlife Service (service)~~ THE PROGENY OF LEGALLY HELD RAPTORS BEING HOUSED UNDER THE TERMS AND CONDITIONS OF FEDERAL AND/OR STATE RAPTOR PROPAGATION PERMITS IF PROGENY ARE BANDED, subject to the following conditions:

(a) Remains the same.

(b) Remains the same.

(3) Remains the same.

(4) ~~A permittee may not purchase, sell or barter the progeny of any raptor taken from the wild.~~ A PERMITTEE MAY ONLY PURCHASE, SELL OR BARTER THE PROGENY OF RAPTORS LEGALLY REMOVED FROM THE WILD AND HELD UNDER PROPER FEDERAL AND/OR STATE RAPTOR PROPAGATION PERMITS OR THE PROGENY OF CAPTIVE-BRED PARENT RAPTORS LEGALLY HELD UNDER PROPER FEDERAL AND/OR STATE RAPTOR PROPAGATION PERMITS.

3. The department has considered the comments received:

COMMENTS: Numerous comments were received from individual falconers and the Montana Falconer's Association protesting provisions of the proposed rule which would limit sales to progeny of captive-bred raptors and prohibiting the sale of progeny of wild raptors. The comments pointed out that these provisions conflict with federal regulations and are unnecessarily restrictive. The Association noted that the restriction would generally affect only Montana raptors which can be legally taken from the wild and, therefore, have no

commercial value. According to the Association, the raptors do not need the protection contemplated by the proposed rule. One comment endorsed the rules as proposed and one comment requested a hearing.

RESPONSE: The department concurs with those comments advocating that the rules allow the sale of progeny of both captive-bred raptors and raptors legally taken from the wild. The new language, which was suggested by commentor, John McPartlin, reflects those comments. The department did not hold a hearing because several commentors opposed a hearing. This opposition was based on an expressed need to expedite adoption of rules so they would be effective prior to the birth of this year's progeny.

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

Certified to the Secretary of State April 4, 1988.

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

In the matter of the adoption of rules for the administration of the pheasant enhancement program.	))))	NOTICE OF ADOPTION OF ARM 12.9.601 THROUGH 12.9.605 (RULES I THROUGH V) ESTABLISHING THE PHEASANT ENHANCEMENT PROGRAM

TO: All Interested Persons:

1. On January 14, 1988 the Department of Fish, Wildlife and Parks published notice of the proposed adoption of ARM 12.9.601 through ARM 12.9.605 (RULES I through V) relating to the administration of the pheasant enhancement program at page 16 of the 1988 Montana Administrative Register, issue number 1.

2. Written and oral comments were received at seven hearings held between February 10 and February 17, 1988.

3. As a result of the comments received, the rules have been adopted as proposed, except for the following changes (new material capitalized and underlined, deleted material interlined):

12.9.601 (RULE I) DEPARTMENT AUTHORIZATION OF PROJECTS Remains the same.

AUTH: 87-1-249, MCA
IMP: ~~87-1-246 through 87-1-249~~ 87-1-248, MCA

12.9.602 (RULE II) REQUIREMENTS OF PROJECTS (1) Remains the same.

(a) Remains the same.

(b) all releases must be made ~~before~~ BETWEEN MARCH 1 AND September 15;

(c) Remains the same.

(d) all releases must be on land open to public hunting without the imposition of any monetary charge for such hunting privilege DURING THE YEAR OF RELEASE. Release sites may be subject to reasonable use limitations but no fee may be charged in connection with the privilege to hunt on any release site;

(2) FOR GOOD CAUSE SHOWN THE DEPARTMENT MAY WAIVE ANY REQUIREMENT LISTED IN SUBSECTION (1).

The rest of the rule remains the same.

AUTH: 87-1-249, MCA
IMP: ~~87-1-246 through 87-1-249~~ 87-1-248, MCA

12.9.603 (RULE III) REPORTING REQUIREMENTS Remains the same.

AUTH: 87-1-249, MCA
IMP: ~~87-1-246 through 87-1-249~~ 87-1-248, MCA

12.9.604 (RULE IV) PAYMENT BY DEPARTMENT (1) The department will pay authorized projects ~~$3.00~~ $1.50 per cock and ~~$1.50~~ $3.00 per hen for each bird released in compliance with all the provisions of ARM 12.9.601 (Rule I) through ARM 12.9.603 (Rule III).

AUTH: 87-1-249, MCA
IMP: ~~87-1-246 through 87-1-249~~ 87-1-247, MCA

12.9.605 (RULE V) EFFECT OF RULE VIOLATIONS Remains the same.

AUTH: 87-1-249, MCA
IMP: ~~87-1-246 through 87-1-249~~ 87-1-248, MCA

4. The department has considered the comments received:

COMMENT: ARM 12.9.604 (RULE IV) allows only $3.00 per bird released, while the cost to raise a bird to the eight week minimum release is $3.40. What studies were used to justify such low costs?

RESPONSE: The department did not do any studies to determine costs for raising birds. The $3 limit was established by the legislature and intended as a partial reimbursement of costs. The payments for cocks and hens were inadvertently transposed in the proposed rule. This error has been corrected in the final rule.

COMMENT: ARM 12.9.602 (RULE II)(d) does not define whether the land must be open to all hunting or only pheasant hunting and the period during which land must remain open to hunting.

RESPONSE: The department believes that the public hunting provision of the statute refers only to pheasant hunting and not to other species. Each project is an annual agreement between the participant and the department. From that standpoint, the provision for the project to be open to public hunting applies only to the hunting season during the year of release. The department has changed the rule to reflect these comments.

COMMENT: Eight week old birds are too young for release into the wild.

RESPONSE: The department recognizes that eight weeks is a minimum age for release. Although survival varies by age, the department believes it is necessary to compromise between the age of release and the cost sharing limitations. To require a longer rearing period would further increase the costs of rearing the birds.

COMMENT: Numerous comments were directed to the need for habitat enhancement provisions to insure permanent pheasant populations.

RESPONSE: The department recognizes the need for habitat. The legislation does not allow for the expenditure of funds for such habitat enhancement activities. The legislation contemplated the presence of the federal Conservation Reserve Program to provide for some of the habitat needs.

COMMENT: Studies have shown that pheasant planting has become an obsolete practice and a waste of the sportsmen's money.

RESPONSE: The department realizes that studies cast serious doubt on the effectiveness of planting programs. However, the legislation is specific that its purpose is to conduct a planting program. The department will implement the program, evaluate its results and report those results to the next legislative session.

COMMENT: The dates for release should be changed to March 1 through October 1.

RESPONSE: The department believes that releases of game farm pheasants should be made early enough to allow them to adapt to the wild prior to the opening of hunting season. There are opportunities to release pheasants in the spring and the rule has been changed to allow for spring release. September 15 was substituted for October 1 in order to allow more time between release and the beginning of the hunting season.

COMMENT: The acreage limitation should be dropped and all reviews should be on a case by case basis.

RESPONSE: The department recognizes that smaller habitat units exist. However, the 80-acre minimum seems to be a realistic size for public hunting and for sustaining viable pheasant populations. A project may include more than one landowner and would allow adjacent landowners to be treated as one project. In addition, under waiver provisions added to ARM 12.9.602 (RULE II) the department has the authority to make exceptions to the 80-acre limitation where warranted.

COMMENT: The requirement of having a department employee verify the releases is an undue burden and the department should only be notified of the release.

RESPONSE: The legislation states that payments are based upon the number of birds released. The differential payment for hens and cocks also requires accurate accounting for payment.

COMMENT: Pheasants should be released only in those areas where the best habitat exists and where wild birds are insufficient to fill the habitat.

RESPONSE: The department has established minimum criteria for habitat suitability. This is an effort to provide some opportunity for survivability, although it may not be optimum.

COMMENT: The department should appoint an advisory committee to work with the department on the program.

RESPONSE: The program is strictly for released pheasants. The department does not see the need for an advisory group under this program structure.

COMMENT: The department should coordinate its effort with the Soil Conservation Service and landowners to improve habitat.

RESPONSE: The legislation does not allow the expenditure of funds on habitat development. Information on the program will outline the importance of habitat and its components which landowners may use for planning habitat improvement.

COMMENT: The program is directed at private land and should also include public land.

RESPONSE: The rules as written and proposed allow for releases on public land so long as proper authorizations are received at the time of application and the habitat criteria are met.

COMMENT: Evaluation of the program should focus on the percentage of pheasants that live to produce young and the number taken in the bag.

RESPONSE: The rules contain elements which will allow for partial evaluation of the program as mandated by the law. The degree of evaluation requested will be dependent upon the funding limitation set by the law for administration and evaluation of the program.

COMMENT: Releases should be made only in those areas which do not contain wild pheasants.

RESPONSE: Requiring the department to do extensive studies to determine existing wild pheasant populations prior to approval of allocations would be time consuming and expensive. The cost sharing provision, since it does not completely cover pheasant-rearing costs, should help to discourage releases in areas which currently have viable wild pheasant populations.

COMMENT: The rules should contain a provision for certification of disease free stock.

RESPONSE: Current statutes already require such certification for birds shipped into the state. There is no mechanism, however, for the livestock board to make such inspections prior to release.

COMMENT: Is there a scientific and rational basis for excluding the three counties from participation in the program?

RESPONSE: The department selected the three counties as control areas to monitor wild pheasant populations without the influence of game farm pheasants. The purpose of SB 331 was

the establishment of permanent viable populations and not just the release of birds. These three counties represent established pheasant populations. The comparison of the areas will help provide the assessment of the success of establishing populations outside those three counties.

COMMENT: The Administrative Code Committee staff requested that statutes cited as being implemented by each rule be reviewed to determine whether a specific statute should be cited, rather than all statutes dealing with the pheasant enhancement program.

RESPONSE: Specific statutes have been cited in the final rule.

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

Certified to the Secretary of State April 4, 1988.

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

In the matter of the amendment of rules 16.32.101, 16.32.102, 16.32.103, 16.32.106, 16.32.107, 16.32.109, 16.32.110, 16.32.111, 16.32.112, 16.32.114, 16.32.118, 16.32.136, 16.32.137, 16.32.140, concerning criteria and procedures for review of certificates of need for health care facilities	)	CLARIFICATION OF COMMENT AND RESPONSE TO RULE AMENDMENT (Certificate of Need)

To: All Interested Persons

1. On July 16, 1987, on page 1074 of issue number 13 of the Montana Administrative Register, the department published a Notice of Amendment of Rules (effective July 17, 1987) concerning criteria and procedures for review of certificates of need for health care facilities.

2. On page 1078 of that notice, in the Comment and Response section, under Rule 16.32.102 (Long-term and Personal Care -- Where Allowed), the department responded to comment (b) concerning deletion of "personal care" from the definition of "long-term care". To the extent that the department's response recites that the counting of personal care beds as long-term care beds would continue as provided in the 1985 State Health Plan, the response is inaccurate.

Such a statement was inadvertent and was in fact inconsistent with the amendment of the department's rule 16.32.103. The intent of the amendment to ARM 16.32.103 was to implement the revision to the C.O.N. law concerning the so-called 10/10 rule by providing for summary review of changes in small numbers of beds. Since conversion of personal care beds to long-term care beds is covered by the statutory revision and the department's rule amendments, adherence to the provision in the 1985 State Health Plan whereby personal care beds (built in substantial conformance to institutional standards) are counted as long-term care beds is no longer necessary or appropriate. This new procedure, by which personal-care beds are not counted as long-term care beds went into effect the day after publication of the department's Notice of Amendment (i.e., on July 17, 1987).

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State April 4, 1988.

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

In the matter of the amendment of rule 16.32.501 concerning reportable tumors	)))	NOTICE OF AMENDMENT OF RULE (Tumor Registry)

To: All Interested Persons

1. On February 25, 1988, at page 358 of issue number 4 of the 1988 Montana Administrative Register, the department published notice of proposed amendment of the above-captioned rule concerning the reporting by hospitals and clinical laboratories of the incidence of tumors.

2. The department has amended the rule as proposed.

3. The department received no requests for a public hearing concerning this rule amendment. No comments were received concerning the proposed six-month time frame.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State April 4, 1988.

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

In the matter of the proposed adoption of rules under ARM Title 36, Chapter 19, setting procedures and policy for the reclamation and development grants program	)))))	NOTICE OF THE ADOPTION OF RULES UNDER ARM TITLE 36, CHAPTER 19 SETTING PROCEDURES AND POLICY FOR THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM

To All Interested Persons:

1. On December 24, 1987, the Board of Natural Resources and Conservation published notice of the proposed adoption of Rules under ARM Title 36, chapter 17, setting procedures and policy for the reclamation and development grants program. The Notice was published at pages 2347 through 2355 of the 1987 Montana Administrative Register, issue number 24. The Board has revised this Notice of Adoption to show that these rules will be codified under ARM Title 36, Chapter 19.

2. On January 13, 1988, the Department held a public hearing concerning the adoption of the above mentioned rules. The Department also allowed written comments to be made through January 21, 1988.

3. The Board has adopted the rules with the following changes:

36.19.101 DEFINITIONS Adopted as proposed.

36.19.102 ELIGIBLE PROJECTS Adopted as proposed.

36.19.103 ELIGIBLE APPLICANTS Adopted as proposed.

36.19.104 APPLICATION CATEGORIES Adopted as proposed.

36.19.105 LONG-TERM PROJECTS OR PROGRAMS (1) The reclamation and development grants program is not intended to be a continuous source of funding for the administrative or personnel costs of long-term projects or programs that are more appropriately funded through the state budget process. The department may recommend that such projects not be funded.

(2) The department may recommend funding for short-term projects that are part of a long-term project or program. Short-term project implies that the project is ~~less than~~ two years duration or less and that discrete, identifiable products are realized upon project completion.

Auth: 90-2-1105, MCA; Auth. Extension, Sec. 17, Ch. 418, L. 1987, Eff. 7/1/87; Imp: 90-2-1105, MCA

36.19.106 SIZE OF AWARD Adopted as proposed.

36.19.107 NUMBER OF AWARDS PER JURISDICTION Adopted as proposed.

36.19.108 FUNDING LIMITS PER PROJECT TYPE Adopted as proposed.

36.19.109 APPLICATION (1) An applicant shall submit an application on forms prescribed in the department's Guidelines and Forms for Preparing Grant Applications.

(2) An applicant proposing more than one project shall submit a separate application for each.

(3) An applicant shall submit four copies of the application to the department at the time of filing and shall provide additional copies as requested by the department.

Auth: 90-2-1105, MCA; Auth. Extension, Sec. 17, Ch. 418, L. 1987, Eff. 7/1/87; Imp: Sec. 90-2-1105, MCA

36.19.110 SUPPLEMENTAL MATERIAL Adopted as proposed.

36.19.111 CHANGES OR ADDITIONS Adopted as proposed.

36.19.112 APPLICATION SUBMITTAL DEADLINES (1) Applications for reclamation and development program grants must be postmarked or hand-delivered to the department prior to May 15 of even-numbered years.

(2) The department will publicly notice the date on which a grant cycle commences~~.~~, which will be not later than February 15 of even-numbered years.

Auth: 90-2-1105, MCA; Auth. Extension, Sec. 17, Ch. 418, L. 1987, Eff. 7/1/87; Imp: 90-2-1105, MCA

36.19.201 APPLICATION EVALUATION PROCEDURE Adopted as proposed.

36.19.202 PREFERENCES AND RANKING OF QUALIFIED PROJECTS Adopted as proposed.

36.19.203 SOLICITATION OF VIEWS FROM OTHER INTERESTED PARTIES Adopted as proposed.

36.19.204 ENVIRONMENTAL FEASIBILITY AND COMPLIANCE WITH STATUTES AND RULES (1) The applicant shall identify the probable environmental and ecological consequences of the proposed project by considering all areas of concern identified on an environmental checklist supplied by the department. For eligible and qualified applications t~~T~~he department will assess these results and prepare its own environmental assessment to determine if a proposed project will have significant environmental impacts. If further information is required by the department the applicant must provide this information before a department determination will be made. Inability or failure of an applicant to furnish such information in a timely manner will result in that application being declared ineligible for funding.

(2) If the applicant identifies potential adverse environmental and ecological consequences of the proposed project, it shall identify mitigating measures to be implemented ~~that it believes will allow the proposed project to comply with applicable~~

~~statutory and regulatory standards, such as those protecting the quality of resources such as air, water, land, fish, wildlife and recreational opportunities,~~ to avoid or effectively reduce such consequences.

(3) If the project constitutes a major state action significantly affecting the quality of the human environment, an environmental impact statement ~~may~~ shall be required as prescribed by the ~~administrative rules governing the~~ Montana Environmental Policy Act and associated administrative rules.

Auth: 90-2-1105, MCA; Auth. Extension, Sec. 17, Ch. 418, L. 1987, Eff. 7/1/87; Imp: 90-2-1112, MCA

36.19.301 CONDITIONS OF GRANTS Adopted as proposed.

36.19.302 GRANT CONTRACT Adopted as proposed.

36.19.303 PAYMENT OF GRANTS Adopted as proposed.

36.19.304 REPORTS AND ACCOUNTING (1) Each grant recipient shall submit periodic progress reports as specified in the grant contract and shall submit a final report to the department within three months following the completion of the contract period or at such other time specified in the grant contract.

(2) Grant recipients shall make oral or written presentations of progress as agreed to in the grant contract.

(3) The grant recipient shall adequately account for expenditures in a manner acceptable to the department. All records, reports, and other documents that relate to the project and that are required by the department to be maintained by the grant recipient are subject to audit by the office of the legislative auditor, the department and, where required by law, the legislative fiscal analyst.

(4) The Department shall make a biennial accounting to the Legislature concerning the status of previously funded projects.

Auth: 90-2-1105, MCA; Auth. Extension, Sec. 17, Ch. 418, L. 1987, Eff. 7/1/87; Imp: 90-2-1105, 1111, 1114, MCA

36.19.305 PROJECT MONITORING AND ACCESS FOR INSPECTION AND MONITORING Adopted as proposed.

36.19.306 APPLICATIONS AND RESULTS PUBLIC Adopted as proposed.

4. The Board has carefully considered all comments received:

COMMENT: Grant applicants who identify potential adverse environmental consequences of their project should identify mitigating measures that will effectively reduce those consequences, rather than merely stating how to make the project comply with applicable regulatory standards, as provided by proposed Rule XVI(2).

RESPONSE: The Board agrees that mitigation measures should

effectively reduce adverse environmental effects, and that merely meeting regulatory standards might not achieve this result. Rule XVI has been modified accordingly. By altering this rule, the Board does not intend to imply that grant applicants are exempt from all applicable regulatory standards.

COMMENT: Environmental impact statements are mandatory if a project constitutes a major state action that significantly affects the quality of the human environment.

RESPONSE: The Board agrees that environmental impact statements are mandatory under those circumstances. Rule XVI(3) has been amended to replace "may" with "shall".

COMMENT: A citizen's advisory council should be created in order to allow opportunity for public review of and comment upon grant applications.

RESPONSE: The Montana Legislature considered and rejected using citizen advisory councils in connection with this grant program. Absent legislative authorization, the Board cannot create a formal advisory council. However, the Department will make available to interested parties a list of grant applications received, and parties will have an opportunity to review and comment upon the applications.

COMMENT: Applicants should not be allowed to make any part of their application confidential.

RESPONSE: The proposed rule allows some materials to be made confidential upon a showing of good cause by the applicant. Confidentiality will be allowed where the demand of individual privacy clearly exceeds the merits of public disclosure. The rule as proposed balances public and private rights as required by Art. II, sec. 9, Mont. Const., and thus will not be amended.

Several other minor rule changes were made for clarification and in response to comments requesting that time periods and deadlines be more clearly stated.

BOARD OF NATURAL RESOURCES
AND CONSERVATION

By: William A. Shields
WILLIAM A. SHIELDS, Chairman

Certified to the Secretary of State, April 4, 1988.

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

In the Matter of Adoption of Rules on the Ratemaking Treatment of Contributions in Aid of Construction.	))))	NOTICE OF ADOPTION OF RULES ON RATEMAKING TREATMENT OF CONTRIBUTION IN AID OF OF CONSTRUCTION

TO: All Interested Persons

1. On December 24, 1987, the Department of Public Service Regulation published notice of the proposed adoption of rules regarding ratemaking treatment of contribution in aid of construction at pages 2356 & 2357 of the 1987 Montana Administrative Register Issue Number 24.

2. Commission has adopted the following new rules as proposed:

Rule I. 38.5.2901 PURPOSE

Rule IV. 38.5.2904 EFFECT ON RATES

3. The Commission has adopted the new rules with the following changes:

Rule II 38.5.2902 DEFINITION (1) The term contribution in aid of construction refers to all money or other property received by a public utility that it must include in its taxable income as a result of the repeal of IRC § 118(b). It includes money or other property received by a regulated public utility to pay for the cost of additional plant or to pay the cost of modifying existing plant ~~to serve a person or entity~~.

Rule III. 38.5.2903 CALCULATION OF CONTRIBUTION (1) The amount ~~to be collected by~~ a regulated utility collects from a customer making a contribution in aid of construction ~~to pay for additional plant~~ must include:

(a) The contribution in aid of construction, and

(b) An amount equal to ~~T~~the utility's increased income tax expense that is caused by ~~associated with~~ including the contribution in ~~as~~ income, less the present value of estimated future tax savings from depreciation of the additional plant.

(i) ~~(2)~~ To calculate the present value of future tax savings ~~benefits~~ a utility must determine a reasonable discount rate using the following criteria:

(a), (b), (c) No changes.

(2) ~~(3)~~ A utility may be exempt from the requirement of ARM 38.5.2903(1)(b) that it collect from the customer the tax expense and discounted present value of future tax savings associated with the contribution in aid of construction ~~from the customer~~ if:

(a) The additional tax expense is borne by the shareholders ~~treated~~ as a "below the line" expense; ~~borne by the shareholder;~~ , and

(b) All consumer's contributions in aid of construction are calculated in the same manner as regards responsibility for the tax expense; and

(c) No change.

4. Comments: The Commission received written comments from Montana Power Company (MPC), Montana-Dakota Utilities (MDU) and GTE Northwestern (GTE). Mountain Bell gave oral comments. As required by ARM 1.3.208(1)(iii) these comments and the Commission's reasoning on the comments follows:

Rule I. GTE generally opposes the Commission's requirement that a utility collect from the contributor the income tax expense associated with contributions in aid of construction (CIAC). GTE states that the rules are unnecessarily complex and will increase the tax burden associated with CIAC, discourage CIAC and discourage economic development. GTE supports ratebasing taxes payable on CIAC.

GTE's proposals are rejected because the Commission is attempting to match the additional tax expense caused by the repeal of IRC § 118(b) to the cost causer. GTE's proposal would assign that expense to the ratepayers generally. The rules attempt to equitably balance the interests of the contributor, the utility and the ratepayers.

Rule II. MPC and MDU both commented that the definition of CIAC be broadened to clarify that it includes all property, the value of which must be included in taxable income because of the repeal of § 118(b). The Commission accepted this proposal.

Rule III. Mountain Bell had no comment on the substance of this rule but commented that the Commission's instructions in Rule III(1), (2) and (3) were confusing and should be more clearly stated. The Commission accepted the comment and attempted to clarify the instructions.

Rule III(3)(b). MPC commented that this rule should be changed to allow a utility to apply to the Commission for a waiver of the requirement that all consumer's contributions are calculated in the same manner. MPC stated that although a utility's general policy is to charge a contributor the tax associated with the contribution, special circumstances may merit nonuniform application of this rule.

The Commission rejects this proposal. The rules provide a uniform approach to the additional tax expense problem. The Commission does not have the staff to individually consider the circumstances of each CIAC made to a public utility in Montana to determine whether the utility shareholder or contributor should bear the expense. In special circumstances a utility can seek a waiver of Commission rules as provided in ARM 38.2.305.

CLYDE JARVIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE APRIL 4, 1988.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL of ARM 42.6.121 through 42.6.123 relating to Child Support Collection Fees.	)))	NOTICE OF THE REPEAL of ARM 42.6.121 through 42.6.123 relating to Child Support Collection Fees.

TO: All Interested Persons:

1. On February 25, 1988, the Department published notice of the repeal of ARM 42.6.121 through 42.6.123 relating to Child Support Collection Fees at page 360 of the 1988 Montana Administrative Register, issue no. 4.

2. The Department has repealed ARM 42.6.121 through 42.6.123 as proposed.

3. No comments or testimony were received.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 4/4/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rules I (42.19.401) and II (42.19.402) relating to Low Income Residential Property Tax Benefit.	NOTICE OF THE ADOPTION of Rule I (42.19.401)and II (42.19.402) relating to Low Income Residential Property Tax Benefit.

TO: All Interested Persons:

1. On February 11, 1988, the Department published notice of the proposed adoption of Rules I (42.19.401) and II (42.19.402) relating to low income residential property tax benefit at pages 238-242 of the 1988 Montana Administrative Register, issue no. 3.

2. The Department has adopted these rules with some minor amendments.

RULE I (42.19.401) LOW INCOME PROPERTY TAX REDUCTION (1) (i) remains the same as proposed,

(ii) the applicant was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness. These impediments must be demonstrated to have existed at significant levels from January 1 of the current year to the time of application. Telephone extensions and written extensions will be granted through July 1 of the current year for the above listed reasons. WILLFUL misrepresentation of ~~any~~ facts pertaining to income or the impediments that prevent timely application filing will ~~be handled in accordance with 15-8-306, MCA,~~ RESULT IN THE AUTOMATIC REJECTION OF THE APPLICATION.

(2) The department or its agent will review the application and any supporting documents. The department may review income tax records to determine accuracy of information. The department or its agent will approve or deny the application. The applicant will be advised in writing of the decision. An annual ~~application~~ STATEMENT OF ELIGIBILITY is required unless a review of income tax records or other records related to the applicant's income demonstrates that an individual who met the provisions of (1)(i) had no significant change in income level. In that situation the annual ~~application~~ STATEMENT OF ELIGIBILITY required may be waived by the department or its agent.

(3) remains the same as proposed.

(4) The applicant is required to list total income from all sources, including otherwise tax exempt income of all types. That income includes, but is not limited to, employment income, business income, social security, railroad pension, teachers pension, employment pension, veterans pension, any other pension, alimony, disability income, unemployment benefits, welfare payments, aid to dependent children, ~~food stamps,~~ rentals, interest from investments, stock/bond interest or dividends, interest from banks and any other income.

(5) remains the same as proposed.

Rule II (42.19.402) is adopted as proposed.

3. No public hearing was held. However, three written comments were received by the department.

COMMENT: Jim Lear, Administrative Code Committee pointed out that the notice should cite 15-6-151, MCA, as an implemented section under rule I. The annual application requirement of rule I conflicts with 15-6-151, MCA. Also, Mr. Lear expressed concern regarding notification procedures for taxpayers who might qualify for the reduction.

RESPONSE: The department has so noted the reference to 15-6-151, MCA, as an implementing section under rule I. The annual application requirement language has been changed to "annual statement of eligibility" which seems to be consistent with the statutory language. The notification procedures currently being used are: informational ads placed in local newspapers at the beginning of each year; previously qualified taxpayers are mailed a new eligibility form; attendance of local assessors and agents to various senior citizen meetings, etc. for the purpose of discussing the low income tax benefits; low income application deadlines are indicated on our assessment lists (value notification forms); and in some cases a radio ad is used.

COMMENT: Carole Graham, County Director IV, Missoula County Office of Human Services, Department of Social & Rehabilitation Services was concerned about the inclusion of income from all sources, including otherwise tax exempt income of all types, such as food stamps. Also of a concern was the added paperwork which this inclusion would require of the applicants and the county offices who administer these projects.

RESPONSE: The department shares Ms. Graham's concerns. It is not the department's practice to check each and every low income form for verification of income. Normally, the department will accept the amounts the taxpayer reports.

The department has sent a memo to field staff indicating that food stamps are not to be counted as income in this program. The department staff attorneys are reviewing the General Relief Assistance and Aid to Families with Dependent Children laws and rules to see whether the department should be including them as income in this program. Food stamps, which was a specific item in the proposed rule, has been taken out. Low income energy assistance is not considered income for the low income property tax relief.

The department's offices have also experienced greater workloads and staff reductions since 1982. We still find it necessary to check some of the low income applications that taxpayers submit. As mentioned earlier, it is not the department's policy to check all of them so any increased workload on other offices should be minimal.

COMMENT: Robert Rowe, Montana Legal Services Association, voiced similar concerns with regard to the low income programs which the applicants may already be receiving and the duplication of requirements through these rules.

RESPONSE: Mr. Rowe's concerns are identical to Ms. Graham's and have therefore been addressed above.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 4/4/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rule I (42.19.501) relating to Residences of Disabled Veterans and the AMENDMENT of ARM 42.20.102.	NOTICE OF THE ADOPTION of Rule I (42.19.501) relating to Residences of Disabled Veterans and the AMENDMENT of ARM 42.20.102.

TO: All Interested Persons:

1. On February 11, 1988, the Department published notice of the proposed adoption of Rule I (42.19.501) relating to residences of disabled veterans and the proposed amendment to ARM 42.20.102 at pages 243-246 of the 1988 Montana Administrative Register, issue no. 3.

2. A public hearing was held on March 3, 1988, to consider the proposed adoption of these rules. The department proposed additional modifications to the rules at the hearing. Several persons appeared at the hearing and presented oral testimony. Written comments were also received.

3. The Department has adopted these rules with the following changes:

RULE I (42.19.501) PROPERTY TAX EXEMPTION FOR 100% DISABLED VETERANS (1) (i) remains the same as proposed.

(ii) the applicant was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness. These impediments must be demonstrated to have existed at significant levels from January 1 of the current year to the time of application. Telephone extensions and written extensions will be granted through July 1 of the current year for the above listed reasons. ~~Misrepresentation of any facts pertaining to income or the impediments that prevent timely application filing will be handled in accordance with 15-8-306, MCA.~~ WILLFUL MISREPRESENTATION OF FACTS PERTAINING TO INCOME OR THE IMPEDIMENTS THAT PREVENT TIMELY APPLICATION FILING WILL RESULT IN THE AUTOMATIC REJECTION OF THE APPLICATION.

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

(5) A lot for purposes of the property tax exemption will be defined as the land beneath and immediately adjacent to the residence not to exceed one ~~quarter of an~~ acre. Land in excess of one ~~quarter of an~~ acre will not be exempt.

(6) and (7) remain the same as proposed.

The amendments proposed to ARM 42.20.102 are adopted as they were originally proposed in the notice.

4. The oral testimony, written comments and department response regarding the adoption and amendment to these rules is as follows:

COMMENT: Mr. George Poston, United Veterans Committee stated that he would like the application form, PPB-8A specified in the rule.

RESPONSE: The form may change yearly or the content may change which would mean a rule change if the form was specified in the rule. Mike Noble of the Property Assessment Division, Appraisal/Assessment Bureau, explained this concern at the hearing and Mr. Poston seemed to agree that perhaps the form should not be included in the rule.

COMMENT: Mr. Poston was concerned with the field evaluation called for in subsection (3). His questions centered on our conducting a follow up physical exam of a veteran to determine 100% disability.

RESPONSE: The department has absolutely no intention of conducting a physical exam of the applicant. This subsection means the department will review the income qualifications if requested by field staff.

COMMENT: Mr. Poston questioned our limiting the exemption to the residence (see subsection (4)). He wanted it expanded to include all buildings unless those buildings helped produce income over the amount of income allowed by statute for the 100% disabled veterans tax exemption.

RESPONSE: Section 15-6-211(1), MCA, specifies residence. Section 15-6-211(2)(a), MCA, specifies house. The statute seems clear on this point. The department does not believe legislative intent was to exempt every building in the ownership of the applicant. The department has included a garage because they are usually part of a residence. There does not appear to be any intent by the Legislature to include farm buildings, shop buildings, rental property, etc. Division legal staff have reviewed and agree with the position we have taken in the proposed rule. This section of the rule shall remain as written.

COMMENT: Mr. Poston suggested that subsection (5) be changed to include a figure greater than one quarter acre. He suggested anywhere from 4 to 5 acres.

RESPONSE: The department would agree to increase the acreage limitation to a maximum of one acre. That change would allow consistent treatment for those individuals who have a one acre homesite on agricultural property.

COMMENT: Mr. William Comp, Service Officer for the Veterans Administration, believed the ambiguities of the proposed rule should be cleared up in writing.

RESPONSE: The department wrote the rule to clear up the problems and/or ambiguities of the law. As such, there do not appear to be any ambiguities in the proposed rule. If the rule contains provisions that could be misinterpreted or interpreted in different ways, the department will clear those up through memos to field staff.

COMMENT: Mr. Brad Olson, Veterans of Foreign Wars stated subsection (1) should be amended to indicate an April 15th deadline for the required application.

RESPONSE: The March 1st deadline is consistent with statutory requirements for the application deadline for low income property tax reduction applicants. It is also consistent with existing time-frames for other applications per current administrative rules. The assessor is statutorily mandated to complete certain functions by certain dates. In order to meet those dates, other work must be completed in certain time-frames. Therefore, it is necessary to establish, through rules, taxpayer time-frames for reporting and filing applications. These time-frames should and do give the taxpayer ample time while still allowing enough time for the assessor to complete the necessary processing and meet the statutory deadlines. It should also be pointed out that specific deadline safeguards are a part of the proposed rule.

COMMENT: Mr. Olson suggested the one quarter acre limitation should be dropped, as it would create a financial hardship.

RESPONSE: The statute limits the exemption to a residence and the lot upon which it is built. Although there is no statutory definition of lot, it does not seem that the intent of the Legislature was to open the exemption to all land under the ownership of the veteran. It seems reasonable that the Department quantify "lot" by rule. The Department will, however, redefine lot to include up to one acre rather than one quarter acre.

COMMENT: Mr. Frank Kankelborg raised issue with the rule limiting the exemption to the residence. He wanted it to include other outbuildings, especially utility sheds. He also charged that the department was simply trying to increase state treasury money at the expense of the 100% disabled veteran.

RESPONSE: See answer to Mr. Poston's previous question. The second part of Mr. Kankelborg's concerns is clearly not true. The state has nothing to benefit from limiting the exemption to the residence. Property tax money stays in the county with the exception of the university levy (6 mills) and the equalization levy (45 mills).

COMMENT: Mr. Kankelborg wanted the acreage limit increased to one acre.

RESPONSE: The department agreed to increase the acreage limitation to one acre (see previous responses).

COMMENT: Mr. Kankelborg suggested there is "no need for this rule".

RESPONSE: Quite the contrary, there are definite needs for this rule. All of the issues addressed in the rule have been raised numerous times over the years by field staff. The law is unclear in several areas and in fairness to the 100% disabled veterans and to all taxpayers, those areas need to be clarified.

COMMENT: Mr. John Den Herder, Member of Disabled American Veterans, Lewis & Clark Chapter 8, saw a need for a definition of "agent".

RESPONSE: Statutory language suggests an agent is someone who works for or is hired by a department to represent the department's interests. The department sees no need to further clarify that in this rule.

COMMENT: Mr. Den Herder wanted the provisions of subsection (6)(a) changed to allow for proration of property purchased by an applicant after January 1 of the year of application.

RESPONSE: An Attorney General Opinion issued 14 February 1986 indicates the department is correct in its opinion on proration as outlined in subsection (6)(a) of the proposed rule.

COMMENT: Mr. Roger Novotne of the Veteran's Administration, wanted the annual requirement for a letter of eligibility removed if the veteran was 100% permanently disabled.

RESPONSE: The department will notify field staff that a yearly letter of eligibility specifying the percent of disability is not required in the above case and for spouses of deceased eligible veterans. However, the yearly application will still be required in order to secure income information.

COMMENT: Mr. Walter Wheeling of an Ex-POW organization, expressed concern about the one quarter acre limitation, the proration of tax if property is purchased after January 1 and wanted the Veterans Administration to provide a list of eligible veterans to the department.

RESPONSE: The first two concerns have been addressed in subsequent responses. The department will consider working with the Veterans Administration on a list of eligible veterans and providing that information to field staff.

COMMENT: Mr. John Sloan of the V.F.W., expressed concern about the income limitation.

RESPONSE: Since the income limitation is a matter of law, his concern should be addressed to the Legislature. It was also pointed out to Mr. Sloan the income was only the adjusted gross income and did not include disability income.

COMMENT: Mr. Herb Baloo had concerns similar to Mr. Sloan's.

RESPONSE: Same as those to Mr. Sloan.

Written comments and responses.

COMMENT: William E. Comp, Jr., National Service Officer, Disabled American Veterans, had questions concerning the field evaluation.

RESPONSE: See response to verbal comments by Mr. Poston, #2.

COMMENT: Mr. Comp expressed concerns on the limitations that do not allow all buildings to be exempted.

RESPONSE: This issue was addressed in the verbal comment section.

COMMENT: Mr. Comp was also upset with limitations placed on the acreage to be exempted and the defining of a lot.

RESPONSE: These issues were addressed in the verbal comments section.

COMMENT: Mr. Comp expressed concern with the yearly requirement for a letter of eligibility for 100% permanently disabled veterans.

RESPONSE: This issue has also been addressed in the verbal comment section.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 4/4/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rule I (42.19.1220) and Rule II (42.22.1401) relating to new & expanding industry and class twenty property.	NOTICE OF THE ADOPTION of Rule I (42.19.1220) and Rule II (42.22.1401) relating to new & expanding industry and class twenty property.

TO: All Interested Persons:

1. On February 11, 1988, the Department published notice of the proposed adoption of Rule I (42.19.1220) and Rule II (42.22.1401) relating to new and expanding industry and class twenty property at pages 264 and 266 of the 1988 Montana Administrative Register, issue no. 3.

2. The Department has adopted these rules as proposed with amendments.

3. A public hearing was held on March 4, 1988, to consider the proposed adoption of these rules. No persons appeared to oppose the proposed adoptions. Bob Holliday of the Property Assessment Division appeared on behalf of the Department. The only comment received was from a staff member of the Administrative Code Committee.

4. The Department adopts the rules with the following amendments:

RULE I TAX INCENTIVE FOR NEW AND EXPANDING INDUSTRY (1) The industrial plant owner must make application to the governing body of the affected taxing jurisdiction on a form provided by the department of revenue, property assessment division. The form shall include, among other information, A SPECIFIC DESCRIPTION OF THE IMPROVEMENT OR MODERNIZED PROCESS FOR WHICH SPECIALIZED TAX TREATMENT IS REQUESTED, THE DATE WHEN CONSTRUCTION OR INSTALLATION IS TO COMMENCE OR HAS COMMENCED AND THE DATE WHEN IT IS TO BE COMPLETED. IN ADDITION, THE PLANT OWNER MUST PROVIDE a disclosure of other property tax benefits the property receives or for which application has been made. The governing body of the affected taxing jurisdiction must approve the application and pass an approving resolution ~~prior to any construction and~~ before tax benefits under 15-24-1402, MCA, can be received.

(2) In order to be considered for the current tax year, an application must be filed on the form available from the department before ~~March 1~~ THE FIRST MONDAY IN MARCH of the tax year.

(3) ~~The administrator, Property Assessment Division, Mitchell Building, Helena, MT 59620 must be notified of the planned expansion or modernization 30 days prior to the commencement of any construction.~~ THE PLANT OWNER MUST NOTIFY THE PROPERTY ASSESSMENT DIVISION BY SENDING A COPY OF THE APPROVED APPLICATION DESCRIBED IN SUBSECTION 1 WITHIN 30 DAYS AFTER RECEIVING APPROVAL FROM THE AFFECTED TAXING JURISDICTION.

(4) THE PRECEDING YEAR AND CURRENT YEAR'S ADDITIONS AND INVESTMENTS WILL ALL BE CONSIDERED AND INCLUDED FOR PURPOSES OF DETERMINING WHETHER THE THRESHOLD INVESTMENT LEVELS SPECIFIED IN 15-24-1401(1) AND (3) HAVE BEEN MET.

~~(4)~~ (5) The department shall appraise the industrial plant **before and** after expansion or modernization.

~~(5)~~(6) Only the increased value attributed to the expansion or modernization will receive tax incentives under 15-24-1402, MCA.

~~(6)~~ (7) An industrial plant which qualifies for classification as new industrial property under 15-6-135, MCA, cannot qualify for a tax incentive 15-24-1402, MCA, as new industry property defined in 15-24-1401(3), MCA.

~~(7)~~ (8) Additional expansion or modernization of an industrial plant constructed in tax years subsequent to an expansion approved for tax incentives under 15-24-1402, MCA, does not qualify for an additional tax incentive unless an additional application is filed and an approving resolution passed.

AUTH, Sec. 15-1-201 MCA; AUTH Ext, Ch. 574, Sec. 3, L. 1987, Eff. 4/20/87; IMP, 15-24-1401, 15-24-1402 MCA.

RULE II TAX BENEFITS FOR CLASS TWENTY PROPERTY (1) For the purposes of determining property eligible for class 20 classification, "single working unit" means an integrated facility having been organized, synchronized and combined to perform an industrial function.

(2) The property owner of record or his agent must make application to the department of revenue, property assessment division for the classification of property as class 20. An application must be filed on a form available from the department of revenue, property assessment division before March 1 of each tax year for which the property owner seeks the classification of property as class 20. **~~For the purposes of determining property eligible for class 20 classification, "single working unit" means an integrated facility having been organized, synchronized and combined to perform an industrial function.~~** The application must be accompanied by the approving resolution of the governing body for the taxing jurisdiction.

(3) Real property, improvements to real property, improvements upon real property, fixtures, machinery and mobile equipment left on the site will qualify as class 20 property when authorized in the approving resolution of the governing body for the taxing jurisdiction.

(4) The governing body of a county or incorporated city or town shall determine by resolution the specific buildings, structures, machinery, equipment and fixtures that will be placed in taxable class 20 from an appraisal made by the department.

(5) Property qualifying as class 20 property on January 1 will remain in class 20 for the entire assessment year even though production may commence after January 1.

(6) The department shall maintain two taxable values for a plant approved for class 20 classification. One taxable value will include the 25% reduction in market value granted each year

by the approving governing body for class 20 property. The other taxable value will be maintained for purposes of the mill levies to which class 20 does not apply.

(7) When a plant or an operating unit is classified as class 20 property, the property assessment division shall not further reduce value based upon economic or functional obsolescence. AUTH, Sec. 15-1-201 MCA; AUTH Ext, Ch. 618, Sec. 4, L. 1987, Eff. 4/27/87; IMP, 15-6-101, 15-6-150, 15-6-155, 15-8-111 MCA.

COMMENT: Rule I imposes a condition of receiving the tax incentive for new and expanding industry that conflicts with the statute authorizing the tax benefit Rule I requires that the governing body approve the tax break "prior to any construction," that the "administrator, Property Assessment Division,...must be notified of the planned expansion or modernization 30 days prior to the commencement of any construction", and that the "department shall appraise the industrial plant before and after expansion or modernization." However, 15-24-1401 defines "[industry] expansion" and "new [industry] as including qualifying improvements or modernized processes added "either in the first tax year in which the tax benefits provided for in 15-24-1402 are to be received or in the preceding tax year." By that language the Legislature authorizes the construction work to be commenced before the taxpayer makes application for the tax incentive. To that extent, rule I subverts the express will of the legislature.

RESPONSE: The department has reviewed rule I along with 15-24-1401 and 15-24-1402 and has agreed to remove the requirement that the applicant must have received approval from the affected taxing jurisdiction and notified the department prior to commencement of any construction. It would only make good business sense for an applicant to receive approval for the tax benefit before investing at least $250,000 on an expansion project or $500,000 on a new project. However, even though it would make good business sense it does not appear to be a statutory requirement.

The language allowing benefits for construction in the preceding tax year is merely an accommodation to the taxpayer that allows construction to begin in the middle of one year and to continue into the next year so that the applicant has a maximum opportunity to meet the $250,000 or $500,000 threshhold. The statute recognizes the reality that construction projects typically begin in one year and end in another. If that phrase were not in the statute, a business might construct $300,000 of improvements one year and $300,000 the next and miss out on the tax benefit. Rule I(4) has been amended to clarify the use of the phrase "or in the preceding tax year" to address this situation.

COMMENT: The third sentence of subsection (2) in rule II is repetitious of subsection (1) and should be deleted.

RESPONSE: The department agrees. It will be deleted.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 4/4/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL of ARM 42.21.101 and 42.21.102) relating to aircraft and watercraft taxation.	NOTICE OF THE REPEAL of ARM 42.21.101 and 42.21.102 relating to aircraft and watercraft taxation.

TO: All Interested Persons:

1. On February 11, 1988, the Department published notice of the proposed repeal of ARM 42.21.101 and 42.21.102 relating to aircraft and watercraft taxation at pages 236 and 237 of the 1988 Montana Administrative Register, issue no. 3.

3. The Department has repealed these rules as proposed.

3. The Department has thoroughly considered all comments received.

COMMENT: A staff person from the Administrative Code Committee commented that the notice erroneously cites Ch. 644, L. 1987, as the bill that substituted a fee system for the ad valorem taxation of watercraft. The correct cite is Ch. 649, L. 1987. The rule notice should cite extension of authority sections contained in Ch. 453, L. 1987, and Ch. 649, L. 1987.

RESPONSE: The Department concurs with the Administrative Code Committee and corrects the stated cites with this notice. The histories will reflect these corrections in the replacement pages submitted on June 30, 1988.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 4/4/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.21.106; 42.21.107; 42.21.113; 42.21.123; 42.21.131; 42.21.137; 42.21.138; 42.21.139; 42.21.140; 42.21.151; and 42.21.155.	NOTICE OF THE AMENDMENT of Rules Relating to Trending and Depreciation of Personal Property.

TO: All Interested Persons:

1. On February 11, 1988, the Department of Revenue published notice of a public hearing to be conducted on March 9, 1988 to consider the proposed amendments to the above-referenced rules relating to trending and depreciation of personal property at pages 249 through 263 of the 1988 Montana Administrative Register, issue no. 3.

2. No one appeared at the hearing to testify and no comments were received.

3. The Department has amended these rules as proposed.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 4/4/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) ARM 42.21.114 relating to) Abstract Record Valuation.)	NOTICE OF THE AMENDMENT of ARM 42.21.114 relating to Abstract Record Valuation.

TO: All Interested Persons:

1. On February 11, 1988, the Department published notice of the proposed amendment ARM 42.21.114 relating to abstract record valuation at pages 247-248 of the 1988 Montana Administrative Register, issue no. 3.

2. The Department has adopted these amendments as proposed.

3. A public hearing was held on March 4, 1988 and oral testimony was received at that time. Written comments were also received.

COMMENT: Mr.Charles Vernon - owner of Abstract Company in Kalispell, felt the proposed changes to the rule would reinstate the rule that was used prior to 1985.

RESPONSE: Prior to the 1985-1986 rule, the department had no specific rule for valuing abstract and title records. The records were valued based on the taxpayers supplied value.

For 1985-1986, the department used an administrative rule that required abstract records to be valued on a parcel count basis. The district court "threw out" our 1985-1986 rule valuing the abstract records in a county based on parcel count. As a result, the department proposes rule 42.21.114 as the only alternative. The proposed rule contains provisions for checking "turned-in" values against corporation tax or income tax records.

COMMENT: Loren Sohlberg, Kalispell, stated he believed the proposed rule was a result of meetings between the department and the Abstract Association. He said he still believes the documents required by the department contain intangible information and should not be taxed. He wanted subsections (2)(d), (e) and (f) removed. He also felt these records could not be depreciated under current I.R.S. rules.

RESPONSE: The question of whether the records are intangible has been answered in the negative, by the District Court decision. Subsections (2)(d), (e) and (f) are necessary for use in valuing records when companies refuse to voluntarily turn in values.

A review of some of the abstract companies corporation tax and income tax records reveals that companies are depreciating these records.

Response to written comments:

COMMENT: Mr. Levine wanted to know why title companies were being singled out for a separate rule. He also wanted to know if other similar records for other businesses were being reviewed.

Mr. Levine wanted to know why 15-8-306, MCA, was specifically being inserted in this rule and not other rules.

Mr. Levine had questions concerning the refund of taxes on his business in 1985 and 1986.

RESPONSE: Title companies are not being singled out. All tangible personal property belonging to businesses is subject to taxation. It was necessary to have a specific rule for title companies because of past problems and because the District Court overturned our method of valuing abstract records. Some of the businesses Mr. Levine mentioned will be reviewed in the near future.

The use of 15-8-306, MCA, is a matter of law and relates to any business or reporting form that the property tax division uses. It is incorporated in most of our forms. While not specifically cited in other rules, it is implicitly implied in statute to relate to any item(s) of personal property.

This question does not relate to the proposed rule.

COMMENT: Mr. Hazelbaker raised concerns about the intangible nature of abstract records and wondered whether the records were depreciable.

Mr. Hazelbaker wanted to use a parcel count to ascertain the value.

Mr. Hazelbaker raised questions as to the necessity of having a rule and making it so long and specific.

RESPONSE: This comment was previously responded to in verbal comments made to Mr. Sohlberg.

A parcel count cannot be used because of the 1987 District Court decision which declared the department's rule 42.21.114 invalid. By invaliding the rule, the Court invalidated the use of parcel counts for valuation purposes.

In response to Mr. Hazelbaker's general observations; we must proceed with a rule because of the District Court's decision on our former rule. That rule, which was very short in length, was invalidated by the District Court decision. Additionally, it was the abstract companies who brought suit in District Court against the Department of Revenue. Unfortunately, the new rule, by necessity, is much longer in

order to completely specify the procedure and reporting requirements that are necessary to value abstract records.

COMMENT: Robert Marcott, representing Snavely and Phillips raised arguments which center on the department's continued taxation of abstract records as intangible assets.

RESPONSE: The department does not suggest in its rule that it taxes intangible assets. The title plant exists as physical items. The taxpayer has attached value to those items as suggested by a review of their income tax records. Those records reveal that in some cases the records are being depreciated and in other cases, the records are listed as assets. It is therefore the department's contention that the rule would tax the tangible value of the title plant.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 4/4/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.21.120 and 42.21.122 and the ADOPTION of ARM 42.21.124 and the REPEAL of 42.21.121 relating to the taxation of livestock.	NOTICE OF THE AMENDMENT of ARM 42.21.120 and 42.21.122 and the ADOPTION of ARM 42.21.124 and the REPEAL of 42.21.121 relating to the taxation of livestock.

TO: All Interested Persons:

1. On February 11, 1988, the Department of Revenue published notice of amendment, adoption and repeal of the above-referenced rules relating to livestock exemptions and levy at pages 232 through 235 of the 1988 Montana Administrative Register, issue no. 3.

2. No comments were received.

3. The Department has amended, adopted and repealed these rules as proposed.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 4/4/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.22.101 and 42.22.112 relating to taxation of airlines.	NOTICE OF THE AMENDMENT of ARM 42.22.101 and 42.22.112 relating to taxation of airlines.

TO: All Interested Persons:

1. On February 11, 1988, the Department published notice of the proposed amendment of ARM 42.22.101 and 42.22.112 relating to taxation of airlines at pages 229 through 231 of the 1988 Montana Administrative Register, issue no. 3.

2. The Department has amended ARM 42.22.101 and 42.22.112 as proposed.

3. No comments or testimony were received.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 4/4/88.

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

In the matter of the amendment of Rules 46.12.102, 46.12.702 and 46.12.703 pertaining to Medicaid reimbursement for multi-source drugs	)))))	NOTICE OF THE AMENDMENT OF RULES 46.12.102, 46.12.702 AND 46.12.703 PERTAINING TO MEDICAID REIMBURSEMENT FOR MULTI-SOURCE DRUGS

TO: All Interested Persons

1. On October 29, 1987, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.102, 46.12.702 and 46.12.703 pertaining to Medicaid reimbursement for multi-source drugs at page 1958 of the 1987 Montana Administrative Register, issue number 20.

2. The Department has amended Rules 46.12.702 and 46.12.703 as proposed.

3. The Department has amended the following rule as proposed with the following changes:

46.12.102 MEDICAL ASSISTANCE, DEFINITIONS Subsections (1) through (20) remain as proposed.

(21) Maximum allowable cost (MAC) is the upper limit the department will pay for multi-source drugs. ~~in accordance with 42 CFR 447.331 which is a federal regulation dealing with limits of payment.~~ In order to establish base prices for calculating the maximum allowable cost, ~~T~~the department hereby adopts and incorporates by reference the methodology for limits of payment set forth in 42 CFR 447.331 ~~by reference.~~ and 447.332. The maximum allowable cost for multiple source drugs will not exceed the total of the dispensing fee established by the department and an amount that is equal to ~~120~~ 150 percent of the price established under the methodology set forth in 42 CFR 447.331 and 447.332 for the least costly therapeutic equivalent that can be purchased by pharmacists in quantities of 100 tablets or capsules or, in the case of liquids, the commonly listed size. If the drug is not commonly available in quantities of 100, the package size commonly listed will be the accepted quantity. A copy of the above-cited regulations may be obtained from the Department of Social and Rehabilitation Services, Economic Assistance Division, ~~111 Sanders,~~ P.O. Box 4210, Helena, Montana, ~~59601~~ 59604.

Subsections (22) through (38) remain as proposed.

AUTH: Sec. 53-6-113 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87
IMP: Sec. 53-6-101, 53-6-131 and 53-6-141 MCA

3. The Department has thoroughly considered all commentary received:

COMMENT: The federal statutes allow a dispensing fee as established by the Department plus an amount equal to 150% of the least costly therapeutic equivalent. The proposed reduction to 120% of the least costly therapeutic equivalent is unfair and unjust.

RESPONSE: The Department has changed the proposed amendment to ARM 46.12.102(21) to read, "The maximum allowable cost for multiple source drugs will not exceed the total of the dispensing fee established by the Department and an amount that is equal to 150 percent of the price...."

COMMENT: SRS's definition of Estimated Acquisition Cost (EAC) as Average Wholesale Price (AWP) less 10% erroneously assumes that all pharmacies have the same buying power.

RESPONSE: Estimated acquisition costs (EAC) means the agency's best estimate of the price generally and currently paid by providers for a drug marketed or sold by a particular manufacturer or labeler in the package size most frequently purchased by providers.

The change to a straight 10% less than AWP more accurately reflects the actual cost of AWP drugs according to the dispensing fee survey conducted in 1985 for the Department by the University of Montana School of Pharmacy with the cooperation of the Montana State Pharmaceutical Association (MSPA). The School of Pharmacy found that of the drugs surveyed, the average acquisition cost of a drug was 12.87% less than AWP.

COMMENT:

A. Use other variables to set price. The market is so competitive that if the government reimbursed on rate of actual cost, we may be surprised at how savings achieved will compare favorably to savings under these intricate government schemes.

B. The fairest system of all is a straight percentage on average wholesale cost like a 33 and 1/3% markup on anything costing less than 20 dollars and a 20% markup on items costing more than 20 dollars, limiting the quantities to one month supply. A system like this is easy to administer.

RESPONSE: In 1986, the MSPA Board of Directors reviewed all of the proposals for reimbursement systems. They concluded that of all the proposals, a system based on usual and

customary charges would not be feasible. The system would be difficult to administer because there are no clear definitions of usual and customary charges.

COMMENT: Montana is an isolated State. Most pharmacies in Montana are small and cannot get quantity discounts like the larger chains do. These rules will force the majority of Montana pharmacists to go out of state to wholesalers.

RESPONSE: The majority of Montana pharmacies presently purchase their drugs and products from out of state wholesalers and it is unlikely that this will change. The intent of the new federal rule is to provide for competition among manufacturers.

In 1986, the MSPA Board of Directors reviewed the federal proposals which included the Pharmacists' Incentive Program (PHIP) which would establish the payment levels above. The MSPA Board supported the PHIP program and believed that substantial savings would be realized by Montana through the system being adopted since it would establish a generic floor. This would encourage the stocking of the lower priced generics and create an incentive for manufacturers of the higher priced generics to lower their prices to be competitive.

The proposed rules are based on the PHIP concept.

COMMENT: Although the cost of business has increased greatly, there has not been an increase in the upper level of the dispensing fee since October 1, 1980, or any increase in our fee schedule in approximately five years.

RESPONSE: Figures in the twenty-second edition (September 1987) of the "Pharmaceutical Benefits under State Medical Assistance Programs" published each September by the National Pharmaceutical Council show that 36 of 47 programs (77%) had dispensing fees equal to or lower than the Montana maximum allowable dispensing fee of $3.75. In other words, Montana's dispensing fee compares favorably to the fees allowed in other states. Increases in dispensing fees are a matter for legislative resolution. Effective December 1, 1986, as mandated by the 1987 Special Session of the Legislature, all new providers were given a dispensing fee of $3.50 and all existing providers' dispensing fees were frozen at the level their fee had been set at. The issue of increased dispensing fees needs to be presented to the next legislature by participating pharmacists. Under current appropriations, increases in fees were only authorized for nursing homes and physicians.

COMMENT: If a doctor wants to have a brand name drug dispensed for a drug that is on the multi-source (generic) list, can it be done?

RESPONSE: Yes, under the following conditions. Providers of service who are licensed to prescribe drugs may specify that a brand name drug is necessary; however, in order for the brand name drug to be reimbursable by the Medicaid program at the brand name price, the practitioner must specify in his/her own handwriting that the drug is brand required or brand necessary. This requirement also includes phone prescriptions and outpatient drug prescriptions in medical facilities such as hospitals and nursing homes.

Prescriptions with check-off boxes and rubber stamps and preprinted statements do not meet these requirements.

COMMENT: How often is the drug pricing list updated?

RESPONSE: The drug pricing file is updated weekly.

COMMENT: How often will the federal multi-source (generic) drug list be updated?

RESPONSE: The federal government has stated that they will periodically update and publish the upper limits and the source of the drug price in the Medicaid manual. The list is dynamic and no schedule has been set. The Department will share this information with providers as soon as it receives the updates.

COMMENT: How many drugs are on the federal multi-source (generic) drug list?

RESPONSE: There are approximately 235 drugs and approximately 21,700 products available through the numerous manufacturers and/or wholesalers.

COMMENT: This proposal makes a complicated system of reimbursement more cluttered with rule changes. No pharmacy can stay abreast of a system like this. It just makes us have more and more rejected claims, which means we must resubmit them causing more work at the payee level and makes us wait longer for our reimbursement which now takes 60 to 90 days and must eventually be passed down to our vendors.

RESPONSE: Medicaid claims processing reports for the Outpatient Drug Program during the last six months, May 1987 through October 1987, show that the average number of days from the date of service to the date of receipt of the claim was 36.9 days and from the date of receipt to the date of payment was 13 days.

For the same period of time, the percentage of drug claims approved from the date of receipt was 79.5% within 10 days of receipt and 96.5% within 20 days of receipt.

72% of all drug claims were received within 1-30 days, 18% were received within 31-60 days and the remainder were received in over 60 days.

Only a small percentage of outpatient drug claims are denied or rejected. The reasons for these denials are the claim is not signed, the claim is not dated, the National Drug Code (NDC) number is inaccurate or not included, the provider number is inaccurate or not included, the recipient number is incorrect, quantities are listed incorrectly, days of services are incorrect or not included, or the claim is over 180 days from date of service.

The Department and our contracted fiscal agent will work with any provider to enhance claim processing and turn around time from the date of service to the date of payment.

4. These rules will be effective May 1, 1988.

Director, Social and Rehabilitation Services

Certified to the Secretary of State _____, 1988.

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

In the matter of the amendment of Rules 46.12.204, 46.12.501, 46.12.502, 46.12.541, 46.12.602, 46.12.605, 46.12.902, 46.12.905 and 46.12.912 pertaining to Medicaid Optional Services	))))))))	NOTICE OF AMENDMENT OF RULES 46.12.204, 46.12.501, 46.12.502, 46.12.541, 46.12.602, 46.12.605, 46.12.902, 46.12.905 AND 46.12.912 PERTAINING TO MEDICAID OPTIONAL SERVICES

TO: All Interested Persons

1. On February 25, 1988, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.204, 46.12.501, 46.12.502, 46.12.541, 46.12.602, 46.12.605, 46.12.902, 46.12.905 and 46.12.912 pertaining to Medicaid Optional Services at page 377 of the 1988 Montana Administrative Register, issue number 4.

2. The Department has amended Rules 46.12.204, 46.12.501, 46.12.502, 46.12.541, 46.12.602, 46.12.605, 46.12.902, 46.12.905 and 46.12.912 as proposed.

3. No written comments or testimony were received.

4. These rule changes will be applied retroactively to July 1, 1987. July 1, 1987 was the date upon which the rule changes cutting the specified optional services were to become effective. Those rule changes were temporarily enjoined from that time until entry of the permanent injunction on February 5, 1988.

Director, Social and Rehabilitation Services

Certified to the Secretary of State April 4, 1988.

VOLUME 42 OPINION NO. 75

COUNTY COMMISSIONERS - Creation and taxation of fire service areas;
FIRE DEPARTMENTS - Creation and taxation of fire service areas;
FIRE DISTRICTS - Creation and taxation of fire service areas;
TAXATION AND REVENUE - Taxation of temporary and permanent structures in fire service areas;
MONTANA CODE ANNOTATED - Sections 1-2-101, 7-33-2401, 7-33-2401(1), 7-33-2404, 7-33-2404(2).

HELD: 1. The "property owners" in section 7-33-2401, MCA, are owners of real property in the fire service area.

2. The structures taxed under section 7-33-2404, MCA, include temporary structures that would be benefited by the fire service area.

18 March 1988

J. Allen Bradshaw
Granite County Attorney
P.O. Box 490
Philipsburg MT 59858

Dear Mr. Bradshaw:

You have requested my opinion on the following questions:

1. What is the proper interpretation of "property owners" in section 7-33-2401, MCA?

2. What kinds of structures are subject to taxation under section 7-33-2404, MCA?

Your questions arise from legislation enacted in 1987 which provides for the creation of fire service areas in unincorporated locations. The purpose of this legislation is to enable smaller property owners in rural areas to form a district primarily aimed at

protecting structures on their property rather than the property itself, and to tax themselves on those structures to pay for the district's operation. See Hearing on House Bill 579, before House Committee on Local Government, Feb. 9, 1987. Accordingly, the statutes provide for the fire service area to be created at the behest of the landowners and funded by assessments on their structures.

Your first question is whether the "property owners" in section 7-33-2401, MCA, are owners of real property or whether the term includes owners of personal property such as certain temporary structures. Section 7-33-2401(1), MCA, provides for the creation of a fire service area by the board of county commissioners upon receipt of a petition signed by at least 30 "owners of real property" or a majority of the owners of real property if there are no more than 30 such owners in the proposed service area. Subsection (2) of that section contains the procedure for establishing the fire service area and provides for protests from "property owners" in the area. Subsection (4) empowers the board of county commissioners to dissolve a fire service area and, in case of dissolution, places the responsibility of remaining debts and entitlements to remaining assets after dissolution of the service area on the "owners of property" in the area.

I conclude that the terms "property owners" and "owners of property" mean owners of real property. As previously indicated, the petition to create the service area must be signed by a number of real property owners; clearly the Legislature intended the creation and dissolution of the fire service area to involve the landowners in the proposed area. To interpret the remainder of that statute to permit participation of persons who own only personal property would be inconsistent with subsection (1), and with the legislative intent as well. A statute must be read and considered in its entirety. State ex rel. Cashmore v. Anderson, 160 Mont. 175, 500 P.2d 921, 926-27 (1972), cert. denied, Burger v. Anderson, 410 U.S. 931 (1973). An interpretation which defines "property owners" as owners of personal property is untenable when viewed in the context of the purpose of the statutory scheme--to provide fire service to structures. You suggest in your letter that certain temporary structures may be considered personal property; but there are many more

kinds of personal property that are not the object of the fire service areas. Thus, to construe "property owners" to include owners of personal property would include in the procedure for its creation and dissolution, persons who have no purposeful connection to the object of the service area. In construing statutes, words employed should be given such meaning as is required by the context, and as is necessary to give effect to the purpose of the statute. In re Shun T. Takahaski's Estate, 113 Mont. 490, 129 P.2d 217, 220 (1942).

Your next question is whether temporary structures that are personal property rather than real property are subject to taxation under section 7-33-2404, MCA. That section, which provides for financing the fire service area, requires the board of county commissioners to establish a schedule of rates to be charged owners of "all classes of structures benefited by the fire service area." § 7-33-2404(1), (2), MCA. Section 7-33-2404(1), MCA, does not distinguish between temporary and permanent structures. I cannot construe such a distinction when the Legislature has failed to do so. See § 1-2-101, MCA. The only qualification of section 7-33-2404, MCA, is that the structure is benefited by the fire service area. The "classes of structures" referred to in section 7-33-2404(2), MCA, are enumerated in Title 15, chapter 6, part 1, MCA, which governs taxation of all taxable property and includes personal as well as real property. If the Legislature had intended to exclude temporary structures from taxation under section 7-33-2404, MCA, it would have done so. See § 1-2-101, MCA. Thus, any temporary structures, regardless of designation as real or personal property, must be taxed to finance the operation of the service area, as long as those structures would be benefited by the service area.

THEREFORE, IT IS MY OPINION:

1. The "property owners" in section 7-33-2401, MCA, are owners of real property in the fire service area.

2. The structures taxed under section 7-33-2404, MCA, include temporary structures that would be benefited by the fire service area.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 42 OPINION NO. 76

COUNTIES - Effect of pay freeze on longevity pay for deputy sheriffs;
COUNTY COMMISSIONERS - Effect of pay freeze on longevity pay for deputy sheriffs;
COUNTY OFFICERS AND EMPLOYEES - Effect of pay freeze on longevity pay for deputy sheriffs;
PEACE OFFICERS - Effect of pay freeze on longevity pay for deputy sheriffs;
SALARIES - Effect of pay freeze on longevity pay for deputy sheriffs;
SHERIFFS - Effect of pay freeze on longevity pay for deputy sheriffs;
MONTANA CODE ANNOTATED - Sections 1-2-101, 3-10-207, 7-4-2107, 7-4-2502 to 7-4-2505, 7-4-2510.

HELD: 1. If the salary of a deputy sheriff is set at the same level as for the prior fiscal year, that year may not be used when calculating longevity pay and the deputy's longevity pay is, in effect, frozen.

2. If the pay freeze is lifted and the salary increased, the deputy's longevity pay does not include additional longevity pay for the time period during which the salary was set at the same level as the prior fiscal year.

28 March 1988

Richard A. Simonton
Dawson County Attorney
Dawson County Courthouse
Glendive MT 59330

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

Gentlemen:

You have asked for my opinion on the following questions:

1. Under section 7-4-2510, MCA, if the county commissioners set the salary for a deputy sheriff at the same level of salary as the prior fiscal year, is the deputy's longevity pay frozen?

2. In the event the county commissioners lift the pay freeze and authorize a cost-of-living increase, does the deputy's longevity pay include additional longevity pay for the time period during which his or her salary was frozen?

The county commissioners may set their salaries and all other county officials' salaries at the same level as the prior fiscal year. §§ 3-10-207, 7-4-2107, 7-4-2502 to 2505, MCA. According to section 7-4-2508, MCA, the sheriff is to set the salary of a deputy sheriff as a percentage of the sheriff's income.

With regard to longevity payments, section 7-4-2510, MCA, expressly provides that those years of service during which the salary is set at the same level as the prior fiscal year "may not be included in any calculation of longevity increases."

> Beginning on the date of his first anniversary of employment with the department and adjusted annually, a deputy sheriff or undersheriff is entitled to receive a longevity payment amounting to 1% of the minimum base annual salary for each year of service with the department, but years of service during any year in which the salary was set at the same level as the salary of the prior fiscal year may not be included in any calculation of longevity increases. This payment shall be made in equal monthly installments. [Emphasis added.]

There is no provision for making up lost longevity pay.

Where the language of a statute is plain, unambiguous, direct, and certain, the statute speaks for itself and there is nothing to be construed. State v. Hubbard, 39 St. Rptr. 1608, 1611, 649 P.2d 1331, 1333 (1982). In such a case, my function is simply to ascertain and declare what is contained in the statute, not to insert what has been omitted or omit what has been inserted. § 1-2-101, MCA. Reese v. Reese, 196 Mont. 101, 104, 637 P.2d 1183, 1185 (1981).

If the salary of a deputy is set at the same level as the salary of the prior fiscal year, the deputy's longevity pay is also, in effect, frozen, because that year of service may not be included in any calculation of longevity increases. Even when the pay freeze ends, the year or years that the deputy's salary was set at the same level as in the prior fiscal year may not be used to calculate the deputy's longevity pay. Pursuant to section 7-4-2510, MCA, loss of an increase in longevity pay due to a pay freeze is permanent.

THEREFORE, IT IS MY OPINION:

1. If the salary of a deputy sheriff is set at the same level as for the prior fiscal year, that year may not be used when calculating longevity pay and the deputy's longevity pay is, in effect, frozen.

2. If the pay freeze is lifted and the salary increased, the deputy's longevity pay does not include additional longevity pay for the time period during which the salary was set at the same level as the prior fiscal year.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 42 OPINION NO. 77

COURTS, DISTRICT - Filing fee requirement for substitution of judge in criminal proceedings;
CRIMINAL LAW AND PROCEDURE - Filing fee requirement for substitution of judge in district court proceedings;
FEES - Filing fee requirement for substitution of judge in district court criminal proceedings;
JUDGES - Filing fee requirement for substitution in district court criminal proceedings;
MONTANA CODE ANNOTATED - Sections 3-1-804, 25-1-201;
MONTANA LAWS OF 1987 - Chapter 318.

HELD: The fee for substitution of a district court judge in section 25-1-201(1)(p), MCA, applies only in civil actions, and no such fee is currently imposed in criminal actions.

29 March 1988

Daniel L. Schwarz
Powder River County Attorney
Powder River County Courthouse
Broadus MT 59317

Dear Mr. Schwarz:

You have requested my opinion concerning the following question:

> Is a party in a criminal district court proceeding required to pay the fee specified in section 25-1-201(1)(p), MCA, as a condition to substituting a judge?

I conclude that the fee requirement in section 25-1-201(1)(p), MCA, applies only to civil actions, that it has no effect on criminal proceedings, and that no fee requirement for substitutions now exists in criminal actions.

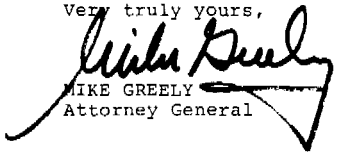
Section 25-1-201, MCA, lists district court fees in civil actions. It was amended in 1987 by the addition of a new provision, now codified as section 25-1-201(1)(p), MCA, requiring a $100 fee "for filing a motion for substitution of a judge." 1987 Mont. Laws, ch. 318, § 1. Substantial confusion has apparently arisen over the applicability of the amendment to criminal actions because of substitution rules recently adopted by the Montana Supreme Court, codified in section 3-1-804, MCA, which state that a substitution motion "shall not be effective for any purpose unless a filing fee is paid to the clerk of the district court in the amount set by law" and which specifically waive such fee "in criminal cases where the defendant has received a court-appointed counsel."

It is quite clear that the substitution fee requirement in section 25-1-201(1)(p), MCA, pertains only to civil actions. This conclusion is dictated not only by its inclusion in Title 25, which deals with civil and not criminal procedure, but also by the title of the underlying bill and session law which provided that the amendment was "AN ACT CREATING A FEE FOR FILING A MOTION FOR SUBSTITUTION OF A DISTRICT JUDGE IN A CIVIL CASE[.]" House Bill No. 141 (Mont. 50th Leg. Sess.); 1987 Mont. Laws, ch. 318; see Department of Revenue v. Puget Sound Power & Light Co., 179 Mont. 255, 263, 587 P.2d 1282, 1286 (1978) ("[t]he title of an act is presumed to indicate the legislature's intent"); In re Senate Bill No. 23, 168 Mont. 102, 105, 540 P.2d 975, 976 (1975) ("[a] consideration of the title of the Act is a necessary first step in our search for the purpose and meaning of this statute"); In re Coleman Estate, 132 Mont. 339, 343, 317 P.2d 880, 882 (1975) ("[t]he title of the act may be looked to [in construing it]"). Montana statutes do not otherwise impose a fee for substituting a district court judge in criminal proceedings. Although the Supreme Court rule dealing with substitutions could be construed as suggesting such a requirement does exist in criminal actions, the more appropriate interpretation is that, to the extent a fee has been established for those actions, it must be paid except when the defendant is indigent.

THEREFORE, IT IS MY OPINION:

The fee for substitution of a district court judge in section 25-1-201(1)(p), MCA, applies only in civil actions, and no such fee is currently imposed in criminal actions.

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 December 31, 1987. This table includes those rules adopted during the period December 31, 1987 through March 31, 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 December 31, 1987, 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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