RESERVE

MONTANA ADMINISTRATIVE REGISTER

1981 ISSUE NO. 12
PAGES 583-661

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 Joint Resolution directing an agency to adopt, amend or repeal 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 existing or proposed rules. The address is Room 138, 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 loose-leaf 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 statute 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 General Index, Montana Code Annotated to determine department or board associated with subject matter or statute number.
Department	2.	Refer to Chapter Table of Contents, Title 1 through 46, page i, Volume 1, ARM, to determine title number of department's or board's rules.
	3.	Locate volume and title.
Subject Matter and Title	4.	Refer to topical index, end of title, to locate rule number and catchphrase.
Title Number and Department	5.	Refer to table of contents, page 1 of title. Locate page number of chapter.
Title Number and Chapter	6.	Go to table of contents of chapter, locate rule number by reading catchphrase (short phrase describing rule.)
Statute Number and Department	7.	Go to cross reference table at end of each title which lists each MCA section number and corresponding rules.
Rule in ARM	8.	Go to rule. Update by checking the accumulative table and the table of contents for the last register issued.

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 Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1981. With the exception of this issue of the Montana Administrative Register (MAR), this accumulative table includes all rulemaking action published in each register since March 31, 1981.

To be current on rulemaking, it is necessary to check the ARM updated through March 31, 1981, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule number in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published.

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(Superintendent of Public Instruction)

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MONTANA ADMINISTRATIVE REGISTER

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NOTICE: The July 1977 through June 1980 Montana Administrative Registers have been placed on microfiche. For information, please contact Jim Waltermire, Secretary of State, Room 202, Capitol Building, Helena, Montana 59620

BEFORE THE DEPARTMENT OF BUSINESS REGULATION
OF THE STATE OF MONTANA
MILK CONTROL DIVISION

In the matter of the amendment of rule 8.6.302 regarding producer assessments	NOTICE OF PROPOSED AMENDMENT OF RULE 8.6.302 NO PUBLIC HEARING CONTEMPLATED DOCKET No. 49

TO: All Interested Persons

1. On July 30, 1981, the Department of Business Regulation proposes to amend Rule 8.6.302 relating to an assessment to be levied upon licensees pursuant to Sections 81-23-105 and Section 81-23-202, MCA. The amendment will have retroactive effect to July 1, 1981 upon promulgation.

2. The purpose of the amendment is to suspend the assessments called for in the above rule until reinstated at some future undetermined date. The rule as proposed to be amended would read as follows:

"8.6.302 ADDITIONAL PRODUCER ASSESSMENT

For the purpose of securing the necessary funds to administer a program of testing raw milk, as required by Section 81-23-105, MCA, an assessment is hereby levied on licensed producers in the amount of ~~two cents ($0.02)~~ no cents ($0.00) per hundredweight on the total volume of all milk subject to the milk control act sold by a producer."

3. Interested persons may present their data, views or arguments by submitting the same in writing to the Department of Business Regulation, 805 North Main Street, Helena, Montana 59620 no later than July 25, 1981.

4. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit that request along with any comments he may have to the above address, no later than July 25, 1981.

5. If the agency receives requests for a public hearing on the proposed amendment from either 10 percent or 25 persons 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 agency or subdivision; or from an association having not less than 25 members whose members will be directly affected by the proposed amendment, 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 29 persons based on an estimate of 287 subject to this assessment.

6. The authority of the agency to make the proposed

amendment is based on Section 81-23-104, MCA, implementing Section 81-23-105, MCA.

GARY BUCHANAN, DIRECTOR
DEPARTMENT OF BUSINESS REGULATION

By: William E. Ross
William E. Ross, Administrator
Milk Control Division

Certified to the Secretary of State June 15, 1981

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

In the matter of the amendment of rule 8.7.301 (6) (a) and (6) (h) relating to the class I price announcement) NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 8.7.301 - (Pricing Rules) Docket No. 52

TO: All Interested Persons

1. On August 4th and, if necessary, on August 5th, 1981, at 9:00 a.m. or as soon thereafter as parties can be heard, a hearing will be held in the auditorium of the Department of Social and Rehabilitation Services, 111 Sanders, Helena, Montana.

2. The purpose of the hearing is to consider the amendment of Rule 8.7.301 (6) (a) to provide for comparable milk pricing with other states in surrounding areas by reflecting a more realistic value for butterfat. The net effect of the proposed change would be as follows:

(a) The proposed change would not affect the overall cost of the raw product, but would result in changes in the price of milk as follows:

(b) Homogenized milk - price increase of $.0208 per ½ gallon; "2%" milk - price decrease of $.03679 per ½ gallon; Skim milk - price decrease of $.10344 per ½ gallon.

The other purpose of the hearing is to consider an amendment to Rule 8.7.301 (6) (h) to the effect that jobber prices calculated under that rule will be considered minimum prices.

3. The rule as proposed to be amended would read as follows:

TABLE I

Producer price determination using above formula with November, 1969 = 100 and an Interval = 4.5.

FORMULA INDEX		PRICE PER CWT
~~143.0---146.6~~	201.5 - 205.1	~~$9.18~~ $12.86
~~147.5---151.1~~	206.0 - 209.6	~~9.41~~ 13.09
~~152.0---155.6~~	210.5 - 214.1	~~9.64~~ 13.32
~~156.5---160.1~~	215.0 - 218.6	~~9.87~~ 13.55
~~161.0---164.6~~	219.5 - 223.1	~~10.10~~ 13.78
~~165.5---169.1~~	224.0 - 227.6	~~10.33~~ 14.01
~~170.0---173.6~~	228.5 - 232.1	~~10.56~~ 14.24
~~174.5---178.1~~	233.0 - 236.6	~~10.79~~ 14.47
~~179.0---182.6~~	237.5 - 241.1	~~11.02~~ 14.70
~~183.5---187.1~~	242.0 - 245.6	~~11.25~~ 14.93
~~188.0---191.6~~	246.5 - 250.1	~~11.48~~ 15.16
~~192.5---196.1~~	251.0 - 254.6	~~11.71~~ 15.39
~~197.0---200.6~~	255.0 - 259.1	~~11.94~~ 15.62
~~201.5---205.1~~	260.0 - 263.6	~~12.17~~ 15.85
~~206.0---209.6~~	264.5 - 268.1	~~12.40~~ 16.08
~~210.5---214.1~~	269.0 - 272.6	~~12.63~~ 16.31
	273.5 - 277.1	16.54
	278.0 - 281.6	16.77
	282.5 - 286.1	17.00
	287.0 - 290.6	17.23

(i) the Class I butterfat differential will be calculated by multiplying the average Chicago area butterfat price (Grade A 92 score) by or most recently reported by the United States Department of Agriculture, by .118 and the resulting answer from this calculation shall be rounded to nearest half cent. When milk does not test 3.5 percent butterfat, the price per CWT will be adjusted by the above resulting calculation for each .1 percent the butterfat test moves up or down.

The Board proposes to amend paragraph (6) (h) by adding a sentence as follows:

(h) Jobber prices will be computed as a percentage of the producer-to-wholesale margin at an average of approximately seventy-eight percent (78%) of the wholesale price. The jobber prices calculated will be a minimum jobber price.

4. The amendments are proposed to Rule 8.7.301 (6) (a) for the purpose of permitting, by a change in the butterfat differential, the price of class I milk products to be priced comparably to milk produced and sold in other states. The amendment to Rule 8.7.301 (6) (h) would change current jobber pricing from a minimum price at plant dock to a simple minimum jobber price. The change would allow the Milk Control Board to set uniform jobber prices.

5. Interested persons may present their data, views or arguments pursuant to Section 2-4-302, MCA, either orally or in writing at the hearing or by mailing the same to the Board of Milk Control, 805 North Main Street, Helena, Montana, 59620, no later than August 4, 1981.

6. Robert J. Wood, 805 North Main Street, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority of the Board to make the proposed amendment is based on section 81-23-302, MCA, implementing the same section.

BY ORDER OF THE BOARD OF MILK CONTROL

Curtis Cook
CURTIS COOK, Chairman

By William Ross
WILLIAM ROSS, Administrator
Milk Control Division

Certified to the Secretary of State June 12, 1981

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
rule 8.7.301(9), as it relates to) THE AMENDMENT OF RULE 8.7.301
amendment of inter-plant transfers) (Pricing Rules)

Docket No. 50

1. On August 4th and 5th, if necessary, 1981 at 9:00 a.m., mdt, or as soon thereafter as interested parties can be heard, a public hearing will be held in the Social and Rehabilitation Services Auditorium at 111 Sanders, Helena, Montana, 59620.

2. The hearing will be held at the request of Beatrice Foods of Great Falls, Maynard Sticht of Missoula and Vita Rich Dairy of Havre, Montana. The petition filed by Beatrice Foods Company of Great Falls proposes amending rule 8.7.301 (9)(a) as follows:

(a) The following maximum freight allowances may be charged producers of a licensed distributor or dealer, whose plant is located within Montana, for transfer of bulk milk, a major portion of which is used Class I, between distributor situated more than twenty-five (25) road miles apart, regardless of the market area or state of the receiving plant:

DISTANCE	MAXIMUM FREIGHT ALLOWANCE (per CWT)	
25-50 Miles	~~$0.25~~	$.365
51-75 Miles	~~0.40~~	.55
76-100 Miles	~~0.50~~	.73
101-150 Miles	~~0.60~~	1.10
151-200 Miles	~~0.70~~	1.46
201-250 Miles	~~0.80~~	1.83
251-300 Miles	~~0.88~~	2.19
301-350 Miles or Over	~~0.95~~	2.56

The petition filed by Maynard Sticht of Missoula, Montana proposes amending rule 8.7.301(9)(a) as follows:

(a) The following maximum freight allowances may be charged producers of a licensed distributor or dealer, whose plant is located within Montana, on transfers of bulk milk, a major portion of which is used Class I, between distributors situated more than twenty-five (25) road miles apart, regardless of the market area or state of the receiving plant:

DISTANCE	MAXIMUM FREIGHT ALLOWANCE
25-50 Miles	25¢
51-75 Miles	40¢
76-100 Miles	50¢
101-150 Miles	60¢
151-200 Miles	70¢
201-250 Miles	80¢
251-300 Miles	88¢
301-350 Miles	95¢

The maximum freight allowance shall be subject every ninety (90) days to comparison with the U.S. Department of Labor, Bureau of Labor Statistics' Consumer Price Index. If the Consumer Price Index shall have increased one (1) percentage point within the ninety (90) day period, the freight

allowance shall increase accordingly. It shall be the duty of the Milk Control Division to so notify all haulers.

The petition filed by Vita Rich Dairy proposes amending rule 8.7.301 by adding a new paragraph. The new paragraph 8.7.301(9)(g) would be added as follows:

(g) A freight allowance to cover cost of transporting Class III milk from the plant to cheese factory, or other sales outlets, for the producers, will be allowed the plant based on actual cost, proportionate to each producer.

4. The purpose of the proposed amendments is to provide for increased hauling rates and/or freight allowances for interplant transfers.

5. Interested persons may present their data, views or arguments pursuant to section 2-4-302, MCA, either orally or in writing at the hearing or by mailing the same to the Board of Milk Control, 805 North Main Street, Helena, Montana, 59620, no later than August 4, 1981.

6. Robert J. Wood, 805 North Main Street, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority of the Board of Milk Control to conduct this hearing is based on section 81-23-302, MCA, implementing the same section.

BY ORDER OF THE BOARD OF MILK CONTROL

Curtis Cook
CURTIS COOK, Chairman

By William E. Ross
WILLIAM E. ROSS, Administrator
Milk Control Division

Certified to the Secretary of State June 12, 1981

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

In the matter of the amendment of rule 8.7.301 (10)(a)(v), (a)(xv)(b)(Fi)(Gi) as it relates to) amendment of farm to plant haul-) ing. (Statewide Hearing August 4th and 5th, 1981.)	NOTICE OF PUBLIC HEARING ON THE AMENDMENT OF RULE 8.7.301 (Pricing Rules) Docket No. 51

TO: All Interested Persons

1. On August 4th and 5th, if necessary, 1981, at 9:00 a.m., m.d.t., or as soon thereafter as interested parties can be heard, a public hearing will be held in the Social and Rehabilitation Services Auditorium at 111 Sanders, Helena, Montana, 59620.

2. The hearing will be held at the request of Donald Dykstra at Manhattan, Montana, Maynard Sticht at Missoula, Montana, and Howard Roberts at Fairfield, Montana.

The petition as filed by Don Dykstra amends rule 8.7.301 (10)(a)(v) and (a)(xv) as follows:

(a) Definitions as used in this paragraph are as follows:

(v) Gas, diesel fuel, oil and lubricants costs are defined as those amounts actually recorded and used in bulk tank trucks on specific farm-to-plant routes. For every seven (7) cents in raise of cost of gas and diesel fuel the rate of hauling would automatically increase one (1) cent per CWT.

(xv) Hauling rates. The term hauling rates as used in this rule means the rate charged producers for hauling milk from farm-to-plant. The hauling rate is to be based on the cost of hauling for the six lowest months of the year for each route to compensate for an inflationary factor.

The petition as filed by Maynard Sticht amends rule 8.7.301 (10)(6) by adding the following:

(ii) Uniform System of Accounting. Each hauler shall keep its books of accounts, and all other books, records, and memoranda which support the entries in such books of accounts so as to be able to furnish readily full information as to any item included in any account. Each entry shall be supported by such detailed information as will permit a ready identification, analysis and verification of all facts relevant thereto.

Each hauler shall keep his books on a monthly or quarterly basis. Each hauler shall close its books at the end of each calendar year. Each hauler's books of account shall be kept under the uniform system of accounting, as prescribed by the Milk Control Division.

Each hauler shall make available his books of accounts and supporting records for audit by the Milk Control Division. In lieu of such audit, each hauler may submit an annual audited or reviewed financial statement, which has been prepared in accordance with generally accepted accounting principles, as prescribed by the American Institute of Certified Public Accountants.

The petition as filed by Howard R. Roberts amends rule 8.7.301(10) by adding a new section (f) as follows:

(f) A profit, over and above all costs and allowances but not to exceed the U.S. Department of Labor's inflation rate during the cost study or audit period will be allowed. This is not to be construed as a guaranteed profit, but only as an allowable profit.

3. It is proposed that rule 8.7.301(10)(a)(v) and (xv) be amended and paragraph (f) be added for the purpose of allowing for a greater operating margin.

4. The purpose of the amendment of rule 8.7.301(10)(b) is to provide greater flexibility in audit requirements for milk haulers.

5. Interested persons may present their data, views or arguments pursuant to section 2-4-302, MCA, either orally or in writing at the hearing or by mailing the same to the Board of Milk Control, 805 North Main Street, Helena, Montana, 59620, no later than August 4, 1981.

6. Robert J. Wood, 805 North Main Street, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority of the Board of Milk Control to conduct this hearing is based on section 81-23-302, MCA, implementing the same section.

BY ORDER OF THE BOARD OF MILK CONTROL

Curtis Cook
CURTIS COOK, Chairman

By William Ross
WILLIAM ROSS, Administrator
Milk Control Division

Certified to the Secretary of State June 12, 1981.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 10.57.207, Correspondence, Extension and Inservice Credits	))))	NOTICE OF PROPOSED AMENDMENT OF ARM 10.57.207 NO HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 26, 1981 the Board of Public Education proposes to amend rule 10.57.207, Correspondence, Extension and Inservice Credits.

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

10.57.207 CORRESPONDENCE, EXTENSION AND INSERVICE CREDITS (1) Credits earned by correspondence (from accredited colleges and universities only) are acceptable toward renewal or reinstatement.

(2) Credits earned by extension courses offered during a school year by an accredited teacher training institution are equivalent, for renewal or reinstatement purposes, to credits obtained in residence at an accredited institution.

(3) Credits earned as a result of school district inservice education programs that have been approved by the Montana superintendent of public instruction (certification services division) are acceptable for certificate renewal or reinstatement. ~~All credits for renewal or reinstatement must supplement, strengthen and update the teacher's basic preparation. Credits should be graduate credits. Other credits may be considered on an individual basis. Information concerning the approval of credit may be obtained by contacting teacher education and certification, office of public instruction.~~

3. This rule is proposed to be amended to allow additional approved undergraduate and inservice credits for renewal or reinstatement.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Chairman Allen D. Gunderson, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, at any time prior to July 23, 1981.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments to Chairman Allen D. Gunderson, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than July 23, 1981.

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 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 one thousand, eighty certified teachers based on approximately ten thousand, eight hundred (10,800) presently holding teaching certificates in the State of Montana.

7. The authority of the agency to make the proposed amendment is based on Section 20-4-102 MCA and the rule implements section 20-4-103, MCA.

Allen D Gunderson

ALLEN D. GUNDERSON, CHAIRMAN
BOARD OF PUBLIC EDUCATION

by Linda Van Dyn

Assistant to the Board

Certified to the Secretary of State on June 15, 1981.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 10.57.208, Reinstatement	)))	NOTICE OF PROPOSED AMENDMENT OF ARM 10.57.208

NO HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 26, 1981 the Board of Public Education proposes to amend rule 10.57.207, Reinstatement.

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

10.57.208 REINSTATEMENT (1) Lapsed certificates cannot be renewed but the holder may apply for reinstatement of the certificate provided requirements are met which are in force at the time reinstatement is requested. A minimum of 12 quarter (8 semester) credits of college work or the equivalent is required within the five-year period immediately preceding the date of application for reinstatement of the class 2 certificate. A minimum of 6 quarter (4 semester) credits or the equivalent within this period is required for reinstatement of class 1 or class 3 certificates. ~~A teacher must elect credits which will strengthen and supplement the previous preparation, generally, this will involve upper division or graduate work.~~

(2) If the period of lapse is 15 years or more, the reinstatement requirements may be obtained from the superintendent of public instruction. If the period of lapse is less than 15 years, the teacher may apply for a class 5 certificate to meet recency or reinstatement requirements.

(3) The recent training requirements for any person desiring reinstatement of class 1 or class 3 certification shall be 6 quarter (4 semester) credits of college work earned within the five-year period prior to making application for the certificate. In cases where this requirement has not been met, a class 5 certificate may be issued to meet the recent training requirement.

(4) For any person holding a master's degree, a year of successful teaching or administrative experience during the five-year period prior to making application will be accepted in lieu of the recent training requirement for reinstatement of class 1 or class 3 certificate.

3. This rule is proposed to be amended to allow additional approved undergraduate and inservice credits for renewal or reinstatement.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Chairman Allen D. Gunderson, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, at any time prior to July 23, 1981.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Chairman Allen D. Bunderson, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than July 23, 1981.

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 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 one thousand, eighty certified teachers based on approximately ten thousand, eight hundred (10,800) presently holding teaching certificates in the State of Montana.

7. The authority of the agency to make the proposed amendment is based on Section 20-4-102 MCA and the rule implements sections 20-4-103 and 20-4-106.

Allen D Gunderson

ALLEN D. GUNDERSON, CHAIRMAN
BOARD OF PUBLIC EDUCATION

by Linda Van Dyn
Assistant to the Board

Certified to the Secretary of State on June 15, 1981.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 10.57.402, Class 2 Standard Teaching Certificate	)	NOTICE OF PROPOSED AMENDMENT OF ARM 10.57.402
	)	NO HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 26, 1981 the Board of Public Education proposes to amend rule 10.57.402, Class 2 Standard Teaching Certificate.

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

10.57.402 CLASS 2 STANDARD TEACHING CERTIFICATE (1) Term: 5 years - renewable.

(2) Basic education: Bachelor's degree and appropriate approved teacher education program.

(3) Renewal: Verification of one year of successful teaching experience or the equivalent plus presentation of acceptable evidence of 6 additional quarter (4 semester) credits.

(4) Reinstatement: 12 quarter (8 semester) credits or the equivalent earned within the 5-year period preceding application. (See guidelines for reinstatment of certificates allowed to lapse 15 years or more.)

~~(5) Renewal and reinstatement credits must supplement, strengthen and update the teacher's basic preparation and should be graduate credits. Other credits may be considered on an individual basis. Information concerning the approval of other credit may be obtained by contacting teacher education and certification in the office of public instruction.~~

~~(6)~~(5) Elementary endorsement: Completion of an approved elementary teacher education program of an accredited teacher training institution. While there is no specific requirement as to the number of credits of professional preparation for elementary endorsement, approximately 45 quarter (30 semester) credits are generally found. Within the 45 credits, the following courses are required: human growth and development, teaching of reading and/or language arts, social studies and arithmetic, and student teaching or appropriate intern experiences.

~~(7)~~(6) Secondary endorsement:

(a) Approved major: 45 quarter (30 semester) credits, and

(b) Approved minor: 30 quarter (20 semester) credits; or

(c) Approved major: 60 quarter (40 semester) credits in a single field of specialization.

(d) K-12 requires training in both elementary and secondary curriculum.

(e) Professional preparation: at least 24 quarter (16 semester) credits teaching, to include student teaching.

~~(8)~~ (7) Subject field endorsements must be in areas approved for certification by the board of public education as subjects commonly offered for credit in the high school curriculum. The pattern of preparation must constitute the approved secondary teacher education program of an accredited college or university.

~~(9)~~ (8) Both elementary and secondary endorsement require completion of the general academic courses specified by the recommending college or university for completion of its teacher education program.

3. This rule is proposed to be amended to allow teachers greater flexibility in earning credit for certificate renewal and reinstatement.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Chairman Allen D. Gunderson, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, at any time prior to July 23, 1981.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Chairman Allen D. Gunderson, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than July 23, 1981.

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 theproposed 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 one person based on approximately ten thousand, eight-hundred (10,800) people presently holding teaching certificates in the State of Montana.

7. The authority of the agency to make the proposed amendment is based on Section 20-4-102 MCA and the rule implements Sections 20-4-106 and 20-4-108 MCA.

Allen D Gunderson

ALLEN D. GUNDERSON, CHAIRMAN
BOARD OF PUBLIC EDUCATION

by Linda Van Dyn
Assistant to the Board

Certified to the Secretary of State June 15, 1981.

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

In the matter of the amendment of rule 16.2.704, relating to the assessment of EIS fees for subdivision review	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 16.2.704 (EIS Fees)

TO: All Interested Persons

1. On July 27, 1981 at 1:30 p.m. a public hearing will be held in room no. C209 of the Cogswell Building, Capitol Complex, Helena, Montana to consider the amendment of rule 16.2.704.

2. The proposed amendment replaces present rule 16.2.704 found in the Administrative Rules of Montana. The proposed amendment would revise the manner in which the department will assess environmental impact statement fees for review of subdivisions under the Sanitation in Subdivisions Act.

3. The rule as proposed to be amended provides as follows (matter to be stricken is interlined, new material is underlined):

16.2.704 RESTRICTIONS (1) The fee assessed hereunder shall only be used to gather data and information necessary to compile an environmental impact statement. No fee may be assessed if the department intends only to compile a preliminary environmental review or a programmatic review. If the department collects a fee and later determines that additional data and information must be collected or that data and information supplied by the applicant and relied upon by the department is inaccurate or invalid, an additional fee may be assessed under the procedures outlined in subsectons (2), (3) and (4) of ARM 16.2.701 if the maximum fee has not been collected as provided by ARM 16.2.702.

~~(2)--No-fee-shall-be-collected-under-this-sub-chapter-when-a-fee-has-been-collected-for-the-review-of-the-proposed-sewage-disposal,-solid-waste-disposal-and-water-supply-systems-for-a-subdivision-as-authorized-by-section-76-4-104,-MCA,-and-ARM-Title-16,-Chapter-16,-Sub-chapter-8-unless-the-amount-to-be-collected-under-this-sub-chapter-exceeds-by-two-thousand--five-hundred-dollars-($2,500)-the-amount-collected-under---Section-76-4-105-and-ARM-Title-16,-Chapter-16,-Sub-chapter-8.-If-it-is-determined-that-a-fee-must-be-collected-under-this-sub-chapter,-the-amount-collected-under-section-76-4-105,-MCA,-and-ARM-Title-16,-Chpater-16,-Sub-chapter-8-shall-be-deducted-from-the-amount-of-the-fee-collected-under-this-sub-chapter.~~

(2) Whenever a fee has been collected for the review of the proposed sewage disposal, solid waste disposal and water supply systems for a subdivision as authorized by section 76-4-105, MCA, and ARM Title 16, Chapter 16, sub-chapter 8, the fee assessed under this sub-chapter shall be determined as follows:

(a) The department shall estimate the total costs which it expects to incur in gathering and compiling data and information needed for the environmental impact statement, and if that estimate exceeds $2,500, notify the applicant, as provided in ARM 16.2.701(2) and (3).

(b) Following receipt of the applicant's estimate of the cost of the project, as required under ARM 16.2.701(3), the department shall estimate the portion of the lot fee collected pursuant to section 76-4-105, MCA, and ARM Title 16, Chapter 16, sub-chapter 8, which is directly applicable to gathering and compiling information which will be useable in the environmental impact statement. This estimate will include only those normal subdivision review activities which would be performed regardless of the need for an environmental impact statement. An itemization of these expenses must be submitted to the applicant at the time the department notifies the applicant of the final amount of the fee as provided in ARM 16.2.701(4).

(c) The final amount of the fee shall equal the total cost of gathering and compiling data and information for the EIS as determined under ARM 16.2.701, minus the portion of the subdivision lot fee attributable to gathering data and information, as determined under subsection (b) of this rule.

4. The Department is proposing this amendment to the rule because the present rule prevents the department from assessing the full fee authorized by the Montana Environmental Policy Act and the model rules adopted thereunder. The Montana Environmental Policy Act (75-1-101 et seq., MCA,) authorizes the department to assess a fee for preparation of an EIS when the total cost of gathering and compiling data and information for the EIS will exceed $2,500. The Sanitation in Subdivisions Act (76-4-101 et seq., MCA) authorizes the department to assess fees for review of subdivisions. The department has determined that, to avoid double assessment of fees, after the $2,500 threshold determination is made, the portion of the subdivision review fee which is directly applicable to EIS costs should be deducted from the EIS fee. This rule amendment will implement that procedure.

5. Interested persons may present their data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, MT., no later than July 23, 1981.

6. Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, MT, has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed amendment is based on section 75-1-202, MCA, and the rule implements section 75-1-202, MCA.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State June 15, 1981

BEFORE THE DEPARTMENT OF AGRICULTURE

OF THE STATE OF MONTANA

In the matter of the adopting of emergency rules providing a procedure that may be used to authorize application of pesticides with less diluent than specified on the product label	)))))	NOTICE OF ADOPTION OF EMERGENCY RULES PROVIDING PROCEDURES AUTHORIZING APPLICATION OF PESTICIDES WITH LESS THAN LABEL SPECIFIED DILUENTS.

TO: All interested Persons

(1) Statement of reasons for emergency:

(a) Various manufacturers of pesticide compounds market identical products under different brand names. Each manufacture has independently obtained a registration number for its specific product, and EPA has approved a specific label for each specific product. An item required to be shown on each label is the amount of diluent to be mixed with each product, prior to application. There is no uniformity between manufacturers of identical products as to the quantity or proportion of diluent to be mixed with the pesticide active ingredient prior to application. Both state and federal law provides that it is illegal to apply a pesticide in a manner inconsistent with the label. Applicators have become aware through experience that different proportions of diluent to active ingredient have advantages and disadvantages for use in certain weather conditions and geographic areas, and have requested this department and EPA to devise a procedure that would allow for different diluent to active ingredient ratios without having to shop between different brands, which on many occasions was still unsuitable for the particular application need. The farm user and the applicators, and as a result, the general public all suffer.

This lack of uniformity between diluent and active ingredient ratios between brands makes the enforcement of label requirements a practical impossibility, contrary to the intent of both the state and federal law, and has the detrimental effect of inducing various applicators to utilize diluent to active ingredient ratios set forth on labels other than the label on the product they have at hand, thereby violating both state and federal law.

The foregoing problems resulted in EPA devising a procedure which allows certain qualified agencies and individuals to vary the diluent ratio to meet a particular application need without violating state and federal law, and without requiring each pesticide manufacturer to re-test, and re-label their respective products.

Because of the need to implement this procedure the soonest possible and eliminate the imminent peril to public welfare and safety the department finds the need to adopt and implement these rules immediately, without prior notice.

(2) The text of the emergency rules is as follows:

Rule 1 - General

(1) The department hereby establishes rules providing the mechanism to issue written "recommendations" which allow the use of pesticides with less diluent than specified on the product labeling, in combination with the authorized amount of active ingredient.

(2) The recommendation, which provides an official means to allow application of a pesticide with less than label diluent, shall only be applicable to agricultural and forest sites.

(3) The application of a pesticide in diluted form different from label specifications is defined as:

(a) ultra low volume (ULV) when the diluted formulation is applied at a rate of less than or equal to one-half gallon per acre; and as

(b) low volume(LV) when the diluted formulation is applied at a rate less than that specified on the label but greater than one-half gallon per acre.

AUTH & IMP. Secs. 80-8-105(3)(a), (4); 2-4-303 MCA.

Rule II - Conditions allowing ULV applications

(1) The use of less than label diluent, for ULV applications, shall be based upon an official written or published document herein called a "recommendation," which may be made in accordance with these rules, by an Agricultural Extension Service of a land grant college or university or by an appropriate federal, state, or local government agency;

(2) The use of less than label diluent for ULV applications shall only be permissible if the label does not specifically prohibit ULV applications.

(3) The pesticide shall only be applied in accordance with the provisions of rule 4 and other provisions of these rules. AUTH & IMP Secs. 80-8-105(3)(a),(4); 2-4-303 MCA.

Rule III- Conditions allowing LV applications

(1) The use of less than label diluent, for LV applications, shall be based upon an official written or published document herein called a "recommendation," which may be made in accordance with these rules by an Agricultural Extension Service of a land grant college or university, by an appropriate federal, state, or local government agency, or by persons certified and licensed as commercial applicators in the categories of either Agricultural Plant Pest Control, or Forest Pest Control.

(2) The use of less than label diluent, for LV applications, shall only be permissible if the label does not specifically prohibit LV applications.

(3) The pesticide shall only be applied in accordance with the provisions of rule 4 and other provisions of these rules.

(4) Recommendations of certified-licensed commercial applicators shall only apply to their own pesticide applications. AUTH & IMP 80-8-105(3)(a),(4); 2-4-303 MCA.

Rule IV- Persons making recommendations No person, whether affiliated with a university, government agency or a commercial applicator, shall issue any recommendation until the Department of Agriculture, and the U.S. Environmental Protection Agency, Registration Division, have been notified in writing, setting forth their name, affiliation and/or status as a certified applicator, and of their intention to issue recommendations. AUTH & IMP 80-8-105(3)(a),(4); 2-4-303 MCA.

Rule V - Contents of the Recommendations

(1) Each recommendation shall be made in writing, and signed and dated by the appropriate duly authorized person. Official publications of university or government agencies may also be a source of recommendation, if the certified applicator is noted in the publication.

(2) All recommendations must provide operational level guidance to the applicator, delineating acceptable methods for reducing all potential increases in exposure levels and risks. The recommendation should address each of the following:

(a) any unreasonable increase in risk to applicators, workers, or bystanders;

(b) any unreasonable increase in risk of phytotoxicity to the target crop or any nearby sensitive crop;

(c) any unreasonable increase in risk to nontarget organisms, including birds, fish, wildlife, bees, and beneficial insects;

(d) pesticide residues in excess of established tolerances for agricultural commodities as identified in the code of federal regulations, 40 CFR Part 180.

(3) The recommendations shall specify geographical location (e.g., county) or counties in which the specific use practice(s) will be conducted, the specific ratio amount(s) of diluent to be used, the commodity, crop or area on which the application is to be made, the dates and duration for which the recommendation is applicable, and the specific pesticide(s) to be used setting forth the percentage of active ingredient as shown on the label. The appropriate method of application, air or ground, must be specified and linked to the site/pest combinations listed in the product labeling. The particular pesticide product(s) to be used by product name and EPA registration number or the particular formulation of active ingredients to which the recommendation applies.

AUTH & IMP Secs. 80-8-105(3)(a),(4); 2-4-303 MCA.

Rule VI - Notification Any person issuing a recommendation shall provide the state and EPA a copy of each recommendation. Copies of the recommendations should be addressed to:

(a) Montana Department of Agriculture
Environmental Management Division
Capitol Station
Agriculture/Livestock Bldg.
Helena, MT 59620; and

(b) Environmental Protection Agency
Office of Pesticide Programs
Registration Division (TS-767)
Technical Support Section Head
401 M Street, S. W.
Washington, D. C. 20460
(In care of either the Fungicide-Herbicide Branch or Insecticide-Rodenticide Branch)

AUTH & IMP Secs. 80-8-105(3)(a),(4); 2-4-303 MCA.

Rule VII Limitations

(1) The use of a registered pesticide for the control of pests in accordance with these rules neither modifies other label provisions or directions for use, nor authorizes the use of the pesticide in a manner inconsistent with any other label

provisions, including, but not limited to, directions for use, precautionary labeling and warning statements. Under no circumstances do these rules permit any activity which is expressly prohibited on the label.

(2) Label provisions which must be complied with at all times, regardless of the use patterns include, without limitations, precautionary statements regarding product mixing, loading and preparation, other application methods, other label dosage rates, application frequency or preharvest intervals, tolerances field reentry intervals, protective clothing or equipment requirements, product packaging and transportation requirements, and storage and disposal practices. A person shall not use this procedure to make recommendations for pesticides used under a Section 18 emergency exemption.

(3) Commercial certified applicators shall not issue any recommendation for the use or application of a category 1 pesticide.

(4) The recommendation for the particular use pesticide(s) will be valid in the specific geographical region(s) of the state wherein it's use was intended, and for the pesticide(s) to be applied.

(5) Any use of a pesticide with less diluent than specified on the labeling, in combination with the authorized amount of active ingredient(s), constitutes use of a registered pesticide in a manner inconsistent with its labeling in violation of the Montana Pesticides act, section 80-8-211, except when such use is allowed by these rules.

(6) No recommendation for ULV or LV shall be implemented until the department has received the recommendation.

AUTH & IMP Secs. 80-8-105(3)(a),(4); 2-4-303 MCA

(h) Rule VIII Responsibility of Compliance The responsibility for complying with recommendations issued under these rules, and all applicable label instructions, will rest with the person using or supervising the use of the pesticide. Persons or organizations who issue recommendations under these rules should be aware that under state law they may be found liable for civil damages to persons who suffer harm as a result of that recommendation.

AUTH & IMP Sec. 80-8-105(3)(a),(4); 2-4-303 MCA

(i) Rule IX Revocation of Recommendation The department may immediate revoke any recommendation, or the authorization of any person to issue a recommendation under these rules, by any appropriate means including telephone, when the use of a pesticide has demonstrated, or is officially suspected of, or reasonable capable of producing substantial adverse effects to man or the environment. A & I 80-8-105(3)(a),(4); 2-4-303 MCA

(3) The rational for the proposed rules are as set forth in the statement of reasons for emergency.

(4) The authority of the department to adopt the proposed rules is 80-8-105(3)(a) and (4) MCA; and 2-4-303 MCA, IMP-same.

Dated this 10th day of June, 1981.

W. Gordon McOmber, Director
MONTANA DEPARTMENT OF AGRICULTURE

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 10.62.101 concerning certification of fire department instructor	)))	NOTICE OF AMENDMENT OF ARM 10.62.101 FIRE DEPARTMENT INSTRUCTOR CERTIFICATION

TO: All Interested Persons.

1. On April 30, 1981 the Board of Public Education proposed to amend rule 10.62.101, Fire Department Instructor Certification, at page 382 of the 1981 Montana Administrative Register, issue number 8.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

Allen D. Gunderson

ALLEN D. GUNDERSON, CHAIRMAN
BOARD OF PUBLIC EDUCATION

by Linda Vaughn

Assistant to the Board

Certified to the Secretary of State June 15, 1981.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment, adoption and repeal of rules relating to accreditation of schools	))))	NOTICE OF ADOPTION, AMENDMENT AND REPEAL OF RULES RELATING TO ACCREDITATION OF SCHOOLS

TO: All Interested Persons:

1. On March 26, 1981, the board of public education published notice of a proposed action to amend, adopt and repeal rules relating to school accreditation standards at page 211 of the 1981 Montana Administrative Register, issue number 6. Public hearings were held and interested persons were given until April 24, 1981 to present written arguments, views, or data.

2. The board has amended, adopted and repealed school accreditation standard rules to become effective June 26, 1981, as follows:

10.55.102 CATEGORIES OF ACCREDITATION (1) "Multi-year accreditation" will be given a school which meets the minimum standards as herein described and

(a) exhibits evidence of having met many of the recommended standards or

(b) exhibits other evidence of operating an outstanding educational program and

(c) provides a long-term plan for the continued improvement of the school's educational program. Multi-year accreditation may be granted for a period of up to five years.

(2) "Regular accreditation" is awarded for a school which meets minimum standards or shows deviations from standards of a minor nature. Regular accreditation is for one year.

(3) "Accredited with advice" will be noted when a school exhibits serious and/or numerous deviations from minimum standards; improvement is expected within the ensuing school year.

(4) "Accredited on probation" will be noted when a school exhibits or continues to have serious and/or numerous deviations from standards or has substantially increased the seriousness of deviations over the previous year. The local school board and other administrative officers must adopt and submit a school improvement plan to the superintendent of public instruction. This plan must provide a systematic procedure for the correction of infractions noted.

(5) A school which fails to have improved after having been accredited with advice or accredited on probation will be non-accredited.

10.55.105 TYPES OF SCHOOLS (1) An elementary school is an organizational unit composed of any combination of grades K through eight.

(2) A middle school is an organizational unit composed of any combination of grades four through eight.(Note: All portions of the middle school organization and program composed of grade six and lower shall comply with the standards for accreditation applicable to elementary school.)

(3) A junior high school is an organizational unit composed of grades seven, eight and nine operating in conjunction with a senior high school and an elementary school.

(4) A high school is an organizational unit composed of any of the combinations which follow:

(a) Senior high school: grades 10-12 operating in conjunction with a junior high school and an elementary school.

(b) Six-year high school: grades 7-12 operating in conjunction with an elementary school as per 20-6-501, MCA.

(c) Four-year high school: grades 9-12 operating in conjunction with an elementary school.

10.55.202 BOARD OF TRUSTEES (1) Boards shall conduct regular monthly meetings and keep records in accordance with state law.

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

(3) Each school district shall have written policies which delineate the responsibilities of the board, the superintendent and personnel employed by the school district. Policies will be reviewed annually by the school district and will be available to employees and patrons of the school.

(4) Each school district shall have valid, written contracts with all regularly employed certified administrative, supervisory and teaching personnel.

(5) Each school district shall schedule a school term consisting of at least 180 days, Monday through Friday, in accordance with state law. A Saturday may not count as an instructional day unless it is used as a make-up day when an emergency has closed school during the regular school week. In such emergencies, approval for holding school on a Saturday must be obtained from the superintendent of public instruction except where an emergency is of one day's duration and is to be made up on Saturday of the same week, in which instance the district or county superintendent may approve the Saturday make-up day.

(6) The board of trustees shall transact official business with professional personnel and other employees through the district superintendent of schools except as provided in section 39-31-101 through 39-31-304 of state law.

(7) The board of trustees shall adopt specific policies and procedures for evaluation of certified staff. A comprehensive individual personnel file based on specific evaluation of every teacher, principal, supervisor and other certified staff

employed in the district shall be maintained. The individual being evaluated shall be provided with a copy of the written evaluation and shall be granted access to his/her evaluation file.

10.55.204 PRINCIPAL (1) The principal shall be certified in accordance with state statutes and with the policies of the board of public education.

(2) Requirements for the services of principals are determined by enrollments of schools or school districts.

(a) Any school with an enrollment of fewer than 150 students and not under the supervision of a district superintendent shall provide for supervision at the minimum average of two days per teacher per year either through the office of the county superintendent or through the shared services of elementary principals, subject area consultants and/or curriculum consultants.

(b) In any school district with a combined elementary and secondary enrollment of 50 but less than 150 students and where the superintendent serves as both elementary and secondary principal, the superintendent shall devote half-time to administration and supervision in both schools.

(c) In any school district where the combined elementary and secondary enrollment exceeds 150 but is less than 300, the superintendent may serve as half-time elementary or high school principal. The district must employ a half-time elementary or high school principal for the other unit in the district. The superintendent shall devote half-time as principal of the assigned school. Or, in any school district where the combined elementary and secondary enrollment exceeds 150 but is less than 300, and where the superintendent serves as both elementary and secondary principal, the district must employ a half-time administrative assistant. The administrative assistant shall be defined as a person who holds a bachelor's degree and presents evidence of working toward the administrator's certificate on a planned program to be completed within 5 years of first assignment. The administrative assistant shall not supervise or evaluate staff or curriculum.

(d) Any elementary or secondary school with an enrollment of 150 to 300 shall employ a principal (in addition to the superintendent) who shall devote half-time to supervision and administration.

(e) Any school with an enrollment exceeding 300 shall employ a principal (in addition to the superintendent) who shall devote full-time to supervision and administration.

(f) Any junior or senior high school with an enrollment of over 500 students shall employ an assistant principal who shall devote at least one-half of each school day to supervision and administration.

(g) Any elementary school with an enrollment of over 65 students shall employ an assistant principal who shall devote at least one-half of each school day to supervision and administration.

10.55.205 SUPERVISORY AND ADMINISTRATIVE TIME AND CLERICAL ASSISTANCE (1) Supervision and administration shall include a continuous inservice program for the improvement of instruction. A minimum inservice program shall consist of monthly meetings of staff devoted to instructional improvement. Teachers, supervisors and administrators shall plan together the inservice programs for curriculum development and/or instructional planning.

10.55.207 STUDENT RECORDS (1) Each school shall keep a permanent file of student records which shall include the name and address of the student, parent or guardian, birth date, academic work completed, level of achievement (grades, standardized achievement tests), immunization record as per 20-5-406, MCA, and attendance data of the student. Student records shall be kept in a fireproof file or vault in the school building or for rural schools, in the county superintendent's office. Each school district shall establish policies and procedures for the use and transfer of student records which are in compliance with state and federal laws which assure that an individual's privacy is respected.

(2) All inactive permanent records from a school that closes shall be sent to the county superintendent or the appropriate county official.

10.55.302 CERTIFICATES (1) All teachers shall hold valid Montana teaching certificates. Administrative personnel who teach also shall hold teaching certificates. All supervisory personnel shall hold appropriate certificates. The term "all teachers" shall be interpreted to include teachers involved in the classroom instructional activities of any federally financed program or project. An emergency authorization of employment is not a valid certificate; it is granted to a district which, under emergency conditions, cannot secure the services of a certified teacher. Neither study hall supervisors nor teacher aides need to be certified; however, an instructional aide assigned to a classroom shall be under the direct supervision of that classroom's teacher.

(2) All personnel coaching intramural or interscholastic athletics shall have successfully completed a course in first aid.

(3) In accordance with state law, salary shall be withheld from teachers who have not registered their certificates in the office of the county superintendent within 60 calendar days after their term of service begins.

(4) All teachers shall file official transcripts of all college work in the office of their chief school administrator. If there is no district superintendent or principal, the county superintendent is the chief school administrator.

10.55.303 TEACHING ASSIGNMENTS (1) Teachers shall be assigned at the levels and in the subjects for which their certificates are endorsed. Exception: Teachers assigned in grade 7 or 8 who holds a secondary certificate may teach in subject areas for which they hold no endorsement if they have 15 quarter (10 semester) credits of preparation in the assigned subject area. The 15 credits shall include a methods course in the teaching of that subject area appropriate to the grade levels.

(2) Teachers holding certificates endorsed for general subject fields (e.g., general science or social sciences) shall have 15 quarter (10 semester) credits of preparation in any specific subject taught within the general area.

(3) Teachers in state-approved junior high schools shall hold valid Montana teacher certificates endorsed for appropriate levels and subjects. Certification at the elementary level based on a bachelor's degree entitles the holder to teach in grades kindergarten through nine. Teachers with such certification shall have a minimum of 30 quarter (20 semester) credits in all subjects which they teach at the ninth grade level.

(4) Teachers assigned to teach reading skills or remedial reading shall have one of the following certification endorsements: a) elementary education, b) an endorsement in reading, c) an endorsement in English with at least 15 credits in reading instruction.

10.55.304 HIGH SCHOOL, JUNIOR HIGH SCHOOL, MIDDLE SCHOOL AND GRADES 7 and 8 BUDGETED AT HIGH SCHOOL RATES (1) High schools and junior high schools shall employ at least four full-time equivalent certified teachers (including library and guidance personnel) in addition to the administrator of the school.

(2) Middle schools and grades 7 and 8 budgeted at high school rates with 60 or more students shall employ at least three full-time equivalent certified teachers (including library and guidance personnel) in addition to the administrator of the school.

(3) Grades 7 and 8 budgeted at high school rates with less than 60 students shall employ two and one-half full-time equivalent certified teachers (including library and guidance personnel) in addition to the administrator of the school.

(a) Individual class size shall not exceed 30 students, except where schools are experimenting and have the approval of the state superintendent. Physical education and typing classes may have 45 students. Class size limits do not apply to instrumental music or choral groups.

(b) No teacher shall have more than 28 clock hours of assigned student responsibility per week.

(c) The number of students assigned a teacher per day shall not exceed 160. Typing and physical education classes shall be counted at two thirds of the actual enrollment. Study hall, regardless of size, shall be counted as 15 students. Student limits do not apply to instrumental music or choral groups. Lib-

rary, guidance and study hall duties are assigned student responsibilities. However, in cases where a teacher is assigned full-time in these areas, the assignment may be for the entire day.

10.55.305 ELEMENTARY SCHOOLS (1) In multi-grade classrooms, the maximum class load shall be as set forth below:

(a) Grades kindergarten, 1, 2, and 3: 20 students.

(b) Grades 4, 5, and 6: 24 students.

(c) Grades 7 and 8: 26 students.

(2) Multi-grade classrooms that cross grade level boundaries (e.g., 3-4, 6-7) shall use the maximum of the lower grade.

(3) In single-grade rooms, the maximum class load shall be as set forth below:

(a) No more than 24 students in kindergarten.

(b) No more than 26 students in grades 1 and 2.

(c) No more than 28 students in grades 3 and 4.

(d) No more than 30 students in grades 5 through 8.

(4) In one-teacher schools, the maximum class load shall be 18 students.

(5) No teacher shall have more than 28 clock hours of assigned student responsibility per week except for one- and two-teacher rural schools.

10.55.402 BASIC INSTRUCTION PROGRAM: HIGH SCHOOL, JUNIOR HIGH MIDDLE SCHOOL AND GRADES 7 and 8 BUDGETED AT HIGH SCHOOL RATES (1) Each district shall have in writing and on file a process of program evaluation. Self-review of each program shall occur at least once every ten years, using the Northwest Association evaluation program or evaluative material of the district's choice.

(2) A high school shall require a minimum of 16 units for graduation including ninth-grade units; however, at its discretion, a board of trustees may require additional units of credit for graduation. A unit of credit shall be given for satisfactory completion of a full-unit course. At the discretion of the local administrator, fractional credit may be given for partial completion of a course.

(3) A unit of credit is defined the equivalent of at least 225 minutes per week for subjects without laboratory work and 250 minutes per week for subjects that require laboratory work.

(4) The following is a list of alternate procedures for earning credit. They are acceptable equivalents to the basic definition of a unit of credit.

(a) Satisfactory completion of the content of a course in a period of time either shorter or longer than that normally required. Criteria for successful completion shall be developed as a guide for teachers, students and parents in assuring quantity and quality of performance, regardless of time involved.

(b) In accordance with the policies of the local board of trustees, credit earned in summer classes may be applied toward graduation requirements if the summer classes are taught by properly certified teachers. This credit shall be prorated in accordance with the policies of the local board of trustees.

(c) Satisfactory completion of special courses in such programs as Job Corps, Upward Bound and Armed Forces schools. Credit given for satisfactory completion of such courses shall be in accordance with policies of the local board of trustees.

(d) Satisfactory completion of unconventional programs such as work study, cooperative work experience, college level courses taken in high school and others. Work study and work experience programs shall be coordinated under the supervision of a certified teacher.

(e) In accordance with the policies of the local board of trustees, a regularly enrolled student may apply toward graduation credits earned through the National University Extension Association or earned through one of the schools approved by the National Home Study Council. Such units of credit taken with the approval of the Montana high school in which the student was then enrolled and appearing on the student's official transcript, must be accepted in any Montana high school.

(f) In accordance with the policies of the local board of trustees, credit earned in adult education classes may be applied toward graduation requirements, provided the classes have been established in accordance with state law and provided classes are taught by properly certified teachers employed by the school district.

(5) Course requirements for graduation are: the board of trustees shall require the development and implementation of processes to assist staff members in assessing the educational needs of each student. Local boards of trustees may waive specific course requirements based on individual student needs and performance levels. Waiver requests also shall be considered with respect to age, maturity, interests and aspirations of the students and shall be in consultation with parents or guardians.

(a) Language arts: 4 units.

(b) American history: 1 unit.

(c) American government: ½ unit. A 2-unit course in American history and American democracy, which includes a study of government, may be used to meet the American history and government requirements.

(d) Mathematics: 2 units.

(e) Laboratory science: 1 unit.

(f) Health and physical education: 1 unit. A school must offer at least a two-year program of physical education and specific instruction in health, the content to be adjusted to provide for earning one unit of credit during the two-year period. Students must take health and physical education for two years. Participating in interscholastic athletics cannot be utilized to meet this requirement.

(6) Units of credit earned in any Montana high school accredited by the board of public education shall be accepted in all Montana high schools.

(7) In accordance with the policies of the local board of trustees, students may be graduated from high school with less than four years enrollment.

(8) The basic instructional program for each high school shall be at least 16 units of course work which shall in-

clude at least those given below:

(a) Language arts: 4 units. The basic minimum program in the four skills of communication (speaking, listening, reading and writing) is required each year.

(b) Social sciences: 2 units.

(c) Mathematics: 2 units.

(d) Science: 2 units.

(e) Health and physical education: 1 unit. A school must offer at least a two-year program of physical education and specific instruction in health, the content to be adjusted to provide for earning one unit of credit during the two-year period. Students must take health and physical education for two years. Participation in interscholastic athletics cannot be utilized to meet this requirement.

(f) Fine arts: 1 unit. Fine arts includes music, art, and drama.

(g) Practical arts: 2 units. Practical arts include home economics education, industrial arts, business education and agriculture.

(h) Two electives.

(9) Basic instructional program for junior high school, middle school, and grades 7 and 8 budgeted at high school rates must offer:

(a) Language arts: 3 units in junior high and 2 units for middle school and 7th and 8th grades.

(b) Social Sciences: 3 units in junior high and 2 units in middle school and 7th and 8th grades.

(c) Mathematics: mathematics offerings are to include both algebra and general math in grade 9. 3 units in junior high and 2 units in middle school and 7th and 8th grades.

(d) Science: 3 units in junior high and 2 units in middle school and 7th and 8th grades.

(e) Health and physical education: ½ unit each year in junior high and ½ unit each year in middle school and 7th and 8th grades.

(f) Art: ½ unit each year in junior high and ½ unit each year in middle school and 7th and 8th grades.

(g) Music: ½ unit each year in junior high and ½ unit each year in middle school and 7th and 8th grades.

(h) Practical arts (includes home economics, industrial arts, business education and agriculture): ½ unit each year in junior high and ½ unit each year in middle school and 7th and 8th grades.

(10) A unit is defined as the equivalent of at least 225 minutes per week in non-laboratory courses and 250 minutes per week in courses that require laboratory work. Units in grade 9 shall be equivalent to units of credit for graduation requirements.

10.55.403 BASIC INSTRUCTIONAL PROGRAM: ELEMENTARY (1) An elementary school shall have a minimum educational program that includes the subject areas listed below:

(a) Language arts including reading, literature, writing, speaking, listening, spelling, penmanship and English.

(b) Arithmetic, written computation and problem solving.

(c) Science, ecology and conservation.

(d) Social sciences, including geography, history of the United States, history of Montana, agriculture and economics. Contemporary and historical traditions and values of American Indian culture may also be included.

(e) Fine arts, including music and art.

(f) Physical education.

(g) Safety, including fire prevention as outlined in state statutes.

(h) Health education.

(i) Weekly time allotments for each subject area are flexible; however, in grades 1, 2 and 3, the standard school day must consist of at least four hours.

(j) In grades 4, 5, 6, 7 and 8, the standard school day must consist of at least six hours. Daily time allotments do not include time allotted for the lunch period, the time allotments should be scheduled to give balance to the educational program. One recess period per day may be counted toward the standard school day if a planned activity is provided during the recess. Passage time between classes may be counted toward the standard school day.

(2) Basic instructional course material or textbooks in the fundamental skill areas of language arts, mathematics, science and social studies must be reviewed by school district personnel at intervals not exceeding five years. All instructional materials must be sequential and, in addition, must be compatible with previous and future offerings.

10.55.404 LIBRARY MEDIA SERVICES, K-12 (1) All schools shall have a centralized catalog of all the instructional media in the school, exclusive of textbooks. This collection shall include all the print and nonprint materials as well as supporting audio-visual equipment and shall be accessible to students and teachers.

(2) Each school district shall have written policies regarding the selection, use and evaluation of materials and services and procedures for handling challenged materials. The selection and use of specific items of material, with the advice of the staff, are the responsibility of the local school board.

(3) In high schools, junior high schools, middle schools and 7th and 8th grades funded at high school rates the full-time or part-time librarian shall have a teaching certificate with a library endorsement.

(a) In schools of 100 or fewer students, the librarian shall devote a minimum of 1½ hours or two periods per day in the library.

(b) In schools of 101 to 300 students the librarian shall spend a minimum of 3 hours or three periods per day in the library.

(c) In junior and senior high schools of 301 to 500 students, the librarian shall spend full-time in the library. One library aide shall be employed for each librarian, or the services of a student librarian or volunteer aide shall be available.

(d) Junior and senior high schools of 501 students shall have a full-time librarian and additional librarians at the following ratio:

Enrollment	Librarian
501 to 1,000	1.5
1,000 to 1,500	2
1,500 to 2,000	2.5
2,000 to 2,500	3

(e) One library aide shall be employed for each librarian, or the services of a student librarian or a volunteer aide shall be available.

(4) Elementary schools with four or more teachers must assign a teacher with a minimum of nine credit hours in professional library training at a ratio of one full-time librarian to 800 students or a minimum of one hour per day, whichever is greater. In school districts employing a certified teacher with a library endorsement, a trained para-professional under the direct supervision of this librarian may be employed to meet this requirement.

(5) The library media collection shall include instructional items in numbers sufficient to meet staff and student needs. (Instructional items refer to all print and nonprint media owned by the school district including reference materials, periodicals, newspapers and materials held in the district instructional media centers.) The items shall be selected to represent as nearly as possible all areas of the curriculum at the appropriate reading level and interests of the students.

(6) After a school library has assembled the minimum collection, the annual expenditure for the library collection, exclusive of textbooks and audiovisual materials, must meet the minimum expenditures given below:

Funding: high school, junior high school, middle school and 7th and 8th grade funded at high school rates	
50 or fewer	$ 900
51-100	1,440
101-200	1,800
201-500	3,600 ($9.00)
501-1,000	5,400 ($7.20)
1,001-1,800	7,200 ($6.30)
1,800 +	10,800 ($5.40)

Minimum of $1.80 per student for media software.

Funding: Elementary

300 or fewer	$8.10 per student or $180, whichever is greater.
Over 300	$2,430 plus $4.50 per student over 300 enrollment.

Minimum of $1.80 per student for media software.

(7) The staff shall provide students with instruction in the use of the media.

(8) Provision shall be made for work areas and individual study areas for viewing, listening and recording.

(9) The library shall be open on all instructional days for student and teacher use during all periods of the school day as well as immediately preceding and following regular school hours.

10.55.406 GUIDANCE AND COUNSELING: HIGH SCHOOL, JUNIOR HIGH SCHOOL, MIDDLE SCHOOL, AND 7th AND 8th GRADE FUNDED AT HIGH SCHOOL RATES (1) Each full-time counselor and part-time counselor shall have a valid Montana teaching certificate and have at least 30 quarter hours (20 semester hours) preparation in guidance. (Effective for the 1986-87 school year, a high school counselor will need an endorsement based on a minimum of a minor and three years experience as a certified classroom teacher.)

(2) A minimum equivalent of one full-time counselor for each 400 students shall be provided. All schools must have a counselor assigned for at least one hour a day or five hours per week.

(3) A separate room specifically designed for guidance and counseling shall be provided.

(a) Adequate space and facilities for clerical assistance shall be provided.

(b) A guidance library shall be provided which is available to all students.

10.55.407 GUIDANCE AND COUNSELING: ELEMENTARY (1) Guidance and counseling services shall be provided.

10.55.503 SCHOOL PLANT AND FACILITIES (1) The school plant and facilities must be adequate for the number of students enrolled and for the curriculum offered. Facilities must be constructed and equipped to safeguard health and to protect students and staff against fire and other hazards. The local board of trustees or other designee shall review annually plant and facilities in cooperation with the local fire chief and the county sanitarian where such offices exist.

(2) All high schools, regardless of enrollment, must have at least four general classrooms in addition to a study hall and a library. All rooms shall be neat, clean, well lighted, attractive and adequately heated and ventilated.

(3) Schools must provide a special room with the necessary equipment for emergency nursing care and first aid.

(4) Lunch rooms shall meet state standards for food handling establishments and the standards established by the superintendent of public instruction. (See State of Montana Sanitary Code for Eating and Drinking Establishments issued by the Montana state department of health and environmental sciences, latest ediction.)

(5) New construction, enlargement or remodeling of any building to be used for public school purposes must be approved by the superintendent of public instruction, the Montana state department of health and environmental sciences and the state fire marshal.

(6) The furnishing and equipping of the school building shall be sufficient in quality and quantity to support a quality educational program. Hygienic requirements and adaptability to various school and classroom activities should be carefully considered in the selection of school equipment and materials. Adequate storage space, convenient to classrooms, should be provided for equipment and materials.

(7) All new or remodeled buildings shall be equipped with at least a class "C" fireproof vault adequate to handle school and student records.

(8) A flag of the United States of America shall be displayed in accordance with state law. The Montana state flag must be properly displayed in an appropriate location in the building.

10.55.505 SAFETY (1) Fire drills should be conducted in accordance with state statutes.

(2) Precautions for protection against disasters such as blizzards, fires, floods, earthquakes, bomb threats, or nuclear disasters must be taken throughout buildings and grounds.

(3) Safety precautions must be taken for the protection of students and staff against injuries in all buildings and on all grounds, particularly on playgrounds and in laboratories, shops and gymnasiums. Special provision must be made to protect students while operating power machinery.

(4) Gas supply lines serving science laboratories, home economics rooms, shops or other rooms utilizing multiple outlets shall have a master shut-off valve that is readily accessible to the instructor or instructors in charge.

(5) Home economics rooms, shops, offices and other rooms using electrically operated instructional equipment shall be supplied with a master electric switch readily accessible to the instructor or instructors in charge.

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

10.55.108 ALTERNATIVE STANDARDS (1) Any school or school district may apply to the board of public education for permission to use an alternate for any standard, section of standards or the

entire set of standards. To do so, the school administration should indicate the educational goals or values that the current standard should provide students, then how the alternate being applied for would provide the same or improved goals or values. Permission to use an approved alternate would be granted for one year and renewable if the one-year pilot is evaluated to be workable and educationally sound by both the school or school district and the board of public education.

4. The rules proposed to be repealed are as follows and can be found on the page of the Administrative Rules of Montana as so noted:

10.55.104	APPORTIONMENT OF STATE AND COUNTY FUNDS	p.10-768
10.55.206	REPORTS	p.10-774
10.55.208	EXTRACURRICULAR FUNDS	p.10-774
10.55.405	LIBRARY SERVICES: ELEMENTARY	p.10-788

5. On April 15 and April 22, 1981, hearings were held by the board regarding the foregoing rules. The hearings were attended by 261 persons, 122 of whom presented testimony. One hundred and five letters and written communications were also received. A summary of the major comments received and the board response is as follows:

10.55.204 (2)

Comment: Fifty-five persons spoke in opposition to the proposed change which would allow local districts to determine their needs for principals. Ten persons favored the proposed standard. Opponents to the proposed standard generally felt that principals would be eliminated by local districts to save money and stressed the importance of the principal's role in the school. Proponents favored the rule on the basis of the local control it granted to districts.

Response: The board was pursuaded by opponents to the proposed amendment and therefore voted to return to the current rule on elementary principals. The argument that local control would be enhanced through adoption of the proposed amendment was overruled by the board's feeling that educational quality might suffer if the amendment be adopted.

10.55.401 (5)(f)

Comment: The proposal to allow interscholastic athletics to be substituted for health and P.E. was opposed by 27 persons at the hearings and favored by none. In addition, 34 letters against the proposal were received. The main arguments against it were: 1) that P.E. prepares students for lifetime sports and interscholastic athletics does not; 2) students in interscholastic athletics would miss health education; 3) scheduling as students drop in and out of interscholastic athletic teams would be difficult.

Response: The board was pursuaded by the arguments of the opponents to the rule and voted to continue the current rule regarding no P.E. exemption for interscholastic athletics.

10.55.401(9)

Comments: Several persons said they opposed the proposed amendment because it would require that each student must take specific subjects with defined units of credit. This proposal removes flexibility for the student at grade levels where students should be exploring as many areas as possible.

Response: The board agreed with opponents and modified the rule to meet their objections by substituting the words "must offer" for the proposed words "must be taken by each student."

10.55.404(6)

Comments: A considerable amount of testimony regarding proposed library standards was received. The major part of that testimony related to library funding levels, and most favored higher levels. In response to this testimony the board adopted a rule recommended by Superintendent Argenbright which increased library funding substantially above the levels proposed.

The board also heard testimony to the effect that the rule as proposed was confusing because it included recommended standards and introductory material with the rule itself. Accordingly, the board voted to delete all introductory material and recommended standards from the rule. This material will be included in the booklet on accreditation standards which is distributed to schools, but will not be included in the Administrative Rules of Montana.

Allen D Gunderson
ALLEN D. GUNDERSON, CHAIRMAN
BOARD OF PUBLIC EDUCATION

by Executive Assistant to the Board

Certified to the Secretary of State June 15, 1981.

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

In the matter of the repeal of ARM 16.16.699	))	NOTICE OF THE REPEAL OF RULE 16.16.699

TO: All Interested Persons

1. On May 14, 1981, the department published notice of a proposed repeal of rule 16.16.699 concerning review of water and sewer systems in subdivisions at page 430 of the 1981 Montana Administrative Register, issue number 9.

2. The department has repealed rule 16.16.699 found on page 16-835 of the Administrative Rules of Montana.

3. No comments or testimony were received.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State June 15, 1981

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

In the matter of the adoption of a rule requiring schools to report when students fail to meet immunization requirements	NOTICE OF THE ADOPTION OF RULE 16.28.714 (Report of Non-Compliance)

TO: All Interested Persons

1. On May 14, 1981, the department published notice of a proposed adoption of rule 16.28.714 concerning pupil non-compliance reports, at page 432 of the 1981 Montana Administrative Register, issue number 9.

2. The department has adopted the rule with the following changes:

16.28.714 REPORT OF NON-COMPLIANCE (1) If a person is excluded from school due to the failure to complete immunization, claim an exemption, or qualify for conditional enrollment, the school must ~~immediately notify~~ place in the U.S. mail notice of that fact to the following~~, by telephone, that such an exclusion has occurred~~ by the end of the day the exclusion occurs:

(a) the local health ~~department~~ officer; and

(b) The Preventive Health Services Bureau of the department (phone: ~~449-2645~~ 449-4740).

Concurrent telephone notification of either or both of the above agencies is encouraged but not required.

(2) The notification must include the name of the excluded person; his or her address; the name of his or her parent(s), guardian or responsible adult; and the date of exclusion.

(3) ~~Within 24 hours after the above phone notification, written~~ Written documentation of that notification must be placed in the school file, if any, of the person excluded, or in a special file established for such documentation, if the person has no school file. Such documentation must include the information noted in (2) above, ~~time and~~ date of ~~the phone notification~~ mailing, and name of the individual giving the notification.

3. Several commenters objected to the cost of telephoning both the local health department and the Prevent Health Services Bureau in Helena, especially if there were several cases requiring notification. As alternatives, one commenter suggested notification of local health departments only; another notification in writing of the state alone; and a third, phone notification of the local health department, which would be required to notify the Preventive Health Services Bureau in turn, or, in the alternative, notification of the latter by mail by the school and phone notification of the local health department.

The department recognized the financial burden phone calls could potentially be on schools and compromised by requiring written notification within a specified time period, which would be far cheaper, and appears, due to the dual notification of both local and state health departments, to ensure at least one or the other finds out quickly about the need to take enforcement action. Notification of both local and state departments was retained because both are responsible for enforcement, and, if only the local level is informed, the state department has no legal authority to require the local level to pass on the notification to the state.

The proposed rule was also altered to eliminate confusion about who was to be notified on the local level by naming the contact as the health officer, rather than the local health department, and, in the alternative, the county attorney, who is legally responsible for representation of the local health department. Encouragement of a telephone notification was also included, though not required.

Alberta Paxton, Nursing Director of the Butte Public Schools, also wanted the rule to address the cost of reporting and who was going to bear the cost. Since cost allocation is not a subject which can be dealt with by administrative rule, no change was made.

4. The effective date of this rule is July 1, 1981.

In the matter of the amendment of rules 16.28.701, definitions; 16.28.702, requirements for unconditional enrollment in school; 16.28.705, documentation of immunization status of first-time enrollees after July 31, 1981; 16.28.706, conditional enrollment requirements; 16.28.711, exempted pupil report; and 16.28.712, immunization status summary report	NOTICE OF THE AMENDMENT OF RULES 16.28.701, 16.28.702, 16.28.705, 16.28.706, 16.28.711, and 16.28.712 (School Immunization Requirements)

TO: All Interested Persons

1. On May 14, 1981, the department published notice of a proposed amendment of rules 16.28.701, 16.28.702, 16.28.705, 16.28.706, 16.28.711, and 16.28.712, concerning school immunization requirements at page 434 of the 1981 Montana Administrative Register, issue number 9.

2. The department has amended rules 16.28.701, 16.28.702, 16.28.705, 16.28.711, and 16.28.712 as proposed.

3. The department has amended rule 16.28.706 with the following changes:

16.28.706 REQUIREMENTS FOR CONDITIONAL ENROLLMENT

(1) Same as proposed rule.

(2) Same as proposed rule.

(3) Same as proposed rule.

(4) Same as proposed rule.

(5) If the person who is conditionally enrolled fails to complete immunization within the time period indicated in subsection (2) above, he ~~is exempt from the immunization requirements that remain unfulfilled and a statement that he is administratively exempt from those requirements, naming the particular diseases for which immunization remains incomplete, must be filed in his school record on a form provided by the department~~ must either claim an exemption from the immunizations not received and documented, or be excluded from school BY THE BOARD OF TRUSTEES, IN THE CASE OF A PUBLIC SCHOOL, BY THE ADMINISTRATOR, IN THE CASE OF A PRIVATE SCHOOL, OR BY THE DESIGNEE OF EITHER.

4. Alberta Paxton, Nursing Director of the Butte Public Schools, requested that proposed subsection (3) of rule 16.28.702 be changed to give transfer students 30 school days, rather than calendar days, to produce the necessary documentation. Since the amendments passed by the 1981 legslature granting the grace period to transfer students refer to calendar days, the department has no authority to alter the proposed language as requested.

Ms. Paxton also requested clarification, in rule 16.28.706(5), of who was to do the excluding. The law places the responsibility on the "governing authority", so comparable clarifying language from the statutory definition of "governing authority" was added.

5. The effective date of these amendments is July 1, 1981.

In the matter of the repeal of rules 16.28.709, providing for an administrative exemption from immunization requirements, and 16.28.710, setting a time limit for complying with immunization requirements	)))( )))	NOTICE OF THE REPEAL OF RULE 16.28.709 (Administrative Exemption) AND RULE 16.28.710 (Time Limit)

TO: All Interested Persons

1. On May 14, 1981, the department published notice of a proposed repeal of rules 16.28.709, concerning administrative

exemptions, and 16.28.710, concerning a time limit for complying with immunization requirements at page 432 of the 1981 Montana Administrative Register, issue number 9.

2. The department has repealed rule 16.28.709 and 16.28.710, found on pages 16-1231 and 16-1232, respectively, of the Administrative Rules of Montana.

3. Dr. John Frankino, representing the Montana Catholic Conference, opposed the repeal of the above rules on grounds they would increase school administrative expense, and proposed placing the burden of enforcement of the school immunization laws upon the local health departments. Since both proposed repeals reflect statutory changes made by the 1981 legislature, and since the law presently makes the schools responsible for excluding pupils who do not comply with the immunization requirements or whose parents have not claimed an exemption, the comments could not be accepted and the rules were repealed.

4. The effective date of repeal of the above rules is July 1, 1981.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State June 15, 1981

BEFORE THE BOARD OF PERSONNEL APPEALS
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 24.26.503, ARM, encouraging the informal resolution of classification appeals; and Rule 24.26.508, ARM, providing for full disclosure of issues in classification appeals.	)))))))	NOTICE OF THE AMENDMENT OF RULES 24.26.503 and 24.26.508

TO: All Interested Persons

1. On April 16, 1981, the Board of Personnel Appeals published notice of proposed amendments to rule 24.26.503 concerning informal resolution of classification appeals, and rule 24.26.508 concerning the grievance procedure in classification appeals at page 342 of the 1981 Montana Administrative Register, issue number 7.

2. The agency has adopted the rules as proposed.

3. No comments or testimony were received.

John Kelly Addy, Chairman
Board of Personnel Appeals

BY: David Hunter
DAVID HUNTER
Commissioner of Labor & Industry

Certified to the Secretary of State June 12, 1981.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF PHARMACISTS

In the matter of the amendments of ARM 40.38.404, subsection (5) concerning examination fee; 40.38.1215, subsection (5)(a), (b), (c) and (d), dangerous drugs; and adoption of a new rule regarding suspension or revocation for gross immorality)	NOTICE OF AMENDMENT OF ARM 40.38.404 (5) FEE SCHEDULE; 40.38.1215 (5) ADDITIONS, DELETIONS, & RESCHEDULING OF DANGEROUS DRUGS; 40.38.415 SUSPENSION OR REVOCATION - GROSS IMMORALITY

TO: All Interested Persons:

1. On May 14, 1981, the Board of Pharmacists published a notice of proposed amendment of ARM 40.38.404, subsection (5) concerning examination fees; 40.38.1215, subsection (5)(a), (b), (c) and (d) concerning dangerous drugs; and adoption of a new rule regarding suspension or revocation for gross immorality at pages 441 through 444, Montana Administrative Register, issue number 9.

2. The board has amended the rules as proposed. The new rule is being adopted with the following changes: (new matter underlined, deleted matter interlined)

"40.38.415 SUSPENSION OR REVOCATION - GROSS IMMORALITY

(1) For the purpose of interpreting 'gross immorality' as it applies to Section 37-7-311 (5), MCA, the board has determined that it includes, but is not limited to:

(a) knowingly engaging in any activity which violates state and federal statutes and rules governing the practice of pharmacy;

(b) knowingly dispensing an outdated or questionable product;

(c) knowingly dispensing a cheaper product and charging ~~third-party-vendors~~ for a more expensive product;

(d) knowingly charging for more dosage units than is actually dispensed;

(e) knowingly altering prescriptions or other records which the law requires pharmacies and pharmacists to maintain;

(f) knowingly dispensing medication without proper authorization;

(g) knowingly defrauding any persons or government agency receiving pharmacy services;

(h) placing a signature on any affidavit pertaining to any phase of the practice of pharmacy which the pharmacist knows to contain false information; and

(i) any act ~~or practice~~ performed in the practice of pharmacy which is hostile to the public health and which ~~that~~ is knowingly committed ~~or engaged in~~ by the holder of a license."

3. The change to subsection (c) above is in response

to a letter from the Montana State Pharmaceutical Association in which they object to the wording based upon the premises that knowingly dispensing a cheaper product and charging for a more expensive product to anyone, not just third party vendors is a matter for consideration as unacceptable practice and third party vendors should not be singled out for special consideration by the Board of Pharmacists.

The change to subsection (i) is because it was pointed out by counsel to the Administrative Code Committee that proposed (i) was too broad in that it covered acts not related to the practice of pharmacy. The adopted language is intended to address only acts performed in the practice of pharmacy by licensees.

No other comments or testimony were received. The reasons for amendment and adoption are those stated above and in the notice.

BOARD OF PHARMACISTS
JAMES R. CARLSON, R.Ph., PRESIDENT

BY: _____
ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, June 15, 1981.

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT OF RULE 42.31.2141, relating to personal property tax credits for public contractors.	)))))	NOTICE OF AMENDMENT OF RULE 42.31.2141, relating to personal property tax credit for public contractors.

TO: All Interested Persons:

1. On May 14, 1981, the Department of Revenue published notice of the proposed amendment of Rule 42.31.2141, relating to personal property tax credits for public contractors, at pages 445 and 446 of the 1981 Montana Administrative Register, issue no. 9.

2. The Department has amended the rule as proposed.

3. No comments were received.

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 6-15-81.

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

In the matter of the amendment of Rule 46.8.102 and the adoption of Rule 46.8.110 pertaining to the developmental disabilities program, minimum standards	))))))	NOTICE OF THE AMENDMENT OF RULE 46.8.102 AND THE ADOPTION OF RULE 46.8.110 PERTAINING TO THE DEVELOPMENTAL DISABILITIES PROGRAM

To: All Interested Persons:

1. On May 14, 1981, the Department of Social and Rehabilitation Services published notice of a proposed amendment to Rule 46.8.102 and the proposed adoption of Rule 46.8.110 pertaining to the Developmental Disabilities Program, minimum standards at page 447 of the Montana Administrative Register, issue number 9.

2. The agency has amended Rule 46.8.102 as proposed.

3. The agency has adopted Rule 46.8.110 with the following changes:

46.8.110 ~~RULE I~~ MINIMUM STANDARDS (1) The department of social and rehabilitation services hereby adopts and incorporates herein by reference as minimum standards to assure quality community-based services to developmentally disabled persons the Standards for Services for Developmentally Disabled Individuals, Accreditation Council for Services for Mentally Retarded and Other Developmentally Disabled Persons (ACMRDD) which is a manual published by the Accreditation Council for Services for Mentally Retarded and Other Developmentally Disabled Persons, 1980. A copy of the service standards may be obtained at cost or on temporary loan from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59601.

(2) It is the intention of the department that providers shall comply with all aspects of standards applicable to each provider's operation by June 1, 1986. Providers shall adhere to the sets of standards as adopted by the department in stages during the process of development as provided for in this rule. These sets of standards as adopted by rule shall constitute the standards for compliance.

(3) The selection of the standards for the first stage of rule adoption for state fiscal year 1982 is called Set I. Set I standards are selected from the service standards incorporated by reference in this rule. (See ARM Rule I(1)). Set I service standards include the following items:

Section 1 - Individual Program Planning And Implementation
1.3 The Individual Program Plan
Standards 1.3.1 through 1.3.8.5.4

1.4 Individual Program Implementation
Standards 1.4.0.1 through 1.4.0.6
1.4.2 Mobility
Standards 1.4.2.1 through 1.4.2.2.1 and standards 1.4.2.4 through 1.4.2.7.6
1.4.3 Habilitation, Education and Training
Standards 1.4.3.1 through 1.4.3.4.9
1.4.4 Work and Employment
Standards 1.4.4.1 through 1.4.4.9.9

1.6 Programming Records
Standards 1.6.1 through 1.6.7

Section 2 - Alternative Living Arrangements
2.1 Attention to Normalization and Use of Least Restrictive Alternatives
Standards 2.1.4 through 2.1.20
2.3 Temporary Assistance Living Arrangements
Standards 2.3.1 through 2.3.3.1
2.5 Congregate Living
2.5.1 The Congregate Living Environment
Standards 2.5.1.1 through 2.5.1.3.13.1
2.5.2 Staffing and Staff Responsibilities
Standards 2.5.2.1 through 2.5.2.13

Section 3 - Achieving And Protecting Rights
3.1 Attention to Individual Rights and Responsibilities
Standards 3.1.1 through 3.1.4.7 and standards 3.1.13 through 3.1.18.1
3.2 Advocacy
3.2.1 Self Representation
Standards 3.2.1.1 through 3.2.1.4
3.2.2 Personal Advocacy
Standards 3.2.2.1 through 3.2.2.8

Section 4 - Individual Program Support
4.4 Follow Along
Standards 4.4.1 through 4.4.10

4.5 Family Related Services
4.5.1 Home Training Services
Standards 4.5.1.1 through 4.5.1.2
4.5.2 Family Education Services
Standards 4.5.2.1 through 4.5.2.8.1
4.6 Professional Services
Standards 4.6.7 through 4.6.7.5.1

Section 5 - Safety and Sanitation
Standards 5.5.2 through 5.5.2.10.1

Section 7 - The Agency In The Service Delivery System
7.4 Prevention
Standards 7.4.1. through 7.4.2.3

(4) A provider who has a contractual agreement with the division at the time of adoption of this rule shall be in full compliance with 85% of Set I standards by ~~June~~ May 1, 1982. The provider shall select standards from Set I which meet 85% compliance criteria.

(5) Upon the failure of a provider to comply with 85% of Set I service standards applicable to each provider's operation as stated in this chapter, the following shall occur:

(a) The provider shall provide by ~~June~~ May 1, a written justification for the failure of a provider to comply with the applicable standards as stated.

(b) The department shall assist the provider in the preparation of a compliance plan with reasonable timelines. The plan must be approved by the department by June 30.

(6) The department may, upon the failure of a provider to comply with 5(a) and (b), terminate the provider's contract for default of agreements .

(7) Any provider not contracting with the division at the time of adoption of this rule will prepare an implementation plan within 60 days after the effective date of the contract for the approval of the department.

(8) The department may grant a waiver to all providers on a specific service standard item if it is determined by the department that funds are not generally available to the providers to meet the requirement for that specific service standard item.

(9) Providers shall provide the following documents to the department:

(a) a written assessment by ~~June~~ May 1, 1982, of compliance with Set I standards established in this chapter;

(b) a complete written assessment by September 30, 1981, of provider's ability to meet the requirements of all standards applicable to each provider's operation. This assessment is to be based upon an assessment tool provided by the department;

(c) an estimate by September 30, 1981 of the cost of meeting the requirements of all service standards applicable to each provider's operation;

(d) other information as requested upon a 30-day notification.

(10) The department shall:

(a) provide to each provider by July 1, 1981, one manual titled, Standards For Services For Developmentally Disabled Individuals, developed by the Accreditation Council for Services for Mentally Retarded and Other Developmentally Disabled Persons (ACMRDD), published by the Accreditation Council For Services For Mentally Retarded and Other Developmentally Disabled Persons, 1980;

(b) provide an assessment tool, other materials and instruction for the complete written assessment of all service standards applicable to each provider's operation at least 90 days preceding the date the assessment is due;

(c) provide an assessment tool, other materials, and instruction for the written assessment of compliance to Set I standards at least 90 days preceding the date the assessment is due;

(d) provide technical assistance to providers on service standard compliance.

(11) The department shall: ~~monitor provider compliance of Set I service standards and review status with each provider board of directors and report standard status of each provider to regional councils and to the state planning and advisory council by July 30 of each year.~~

(a) monitor and provide in writing an approval or nonapproval by June 1, of the providers' written assessment of Set I standards;

(b) review status of each provider to regional councils and state planning and advisory council by September 30, 1982.

(12) ~~An adverse decision regarding service standard compliance~~ A decision of nonapproval regarding the written assessment of Set I service standards under this part may be appealed to the department director in writing no later than June 20, 1982. ~~of each fiscal year.~~

(a) The director will select a committee of three persons which shall include:

(i) division administrator,

(ii) regional council chairperson, and

(iii) provider of a like service.

(b) The selected committees upon review of verbal and written testimony concerning standard compliance will send their recommendations to the department director within 30 days following notice of the committee selection.

(c) Upon consideration of the committees testimony and recommendation the department director will make a final decision within a reasonable time period.

(13) Providers who are accredited by the commission on accreditation of rehabilitation facilities (CARF) on July 1, 1981; receiving funds through the rehabilitation services division and; providing habilitation services which is specific functional training based on an individual habilitation plan for adults including, but not limited to, basic life skills training, pre-vocational training, work activity training, and vocational sheltered employment training may be exempt as to those habilitation services from this rule with the exception of:

Section 1 - Individual Program Planning And Implementation
1.6 Programming Records
Standards 1.6.1 through 1.6.7

Section 3 - Achieving And Protecting Rights
3.1 Attention to Individual Rights and Responsibilities
Standards 3.1.1 through 3.1.4.7 and
Standards 3.1.13 through 3.1.15.3 and
Standards 3.1.17 and Standards 3.1.18 through 3.1.18.1

3.2 Advocacy
3.2.1 Self Representation
Standards 3.2.1.1 through 3.2.1.1.5

(14) The following subsections shall be applicable only to those providers as described in subsection (13) of this rule:

(a) A provider who has a contractual agreement with the division at the time of adoption of this rule shall be in compliance with 100% of standards by May 1, 1982.

(b) Upon the failure of a provider to comply with 100% of service standards applicable to each provider's operation as stated in this chapter, the following shall occur:

(i) The provider shall provide by May 1, a written justification for the failure of a provider to comply with the applicable standards as stated.

(ii) The department shall assist the provider in the preparation of a compliance plan with reasonable timelines. The plan must be approved by the department by June 30.

(c) The department may, upon the failure of a provider to comply with b(i) and (ii), terminate the provider's contract for default of agreements.

(d) The department may grant a waiver to all providers on a specific service standard item if it is determined by the department that funds are not generally available to the providers to meet the requirement for that specific service standard item.

(e) Providers shall provide to the department a written assessment by May 1, 1982, of compliance with standards applicable to those established in this chapter;

(f) The department shall:

(i) provide to each provider by July 1, 1981, one manual titled, Standards For Services For Developmentally Disabled Individuals, developed by the Accreditation Council for Services for Mentally Retarded and Other Developmentally Disabled Persons (ACMRDD), published by the Accreditation Council For Services For Mentally Retarded and Other Developmentally Disabled Persons, 1980;

(ii) provide an assessment tool, other materials, and instruction for the written assessment of compliance to Set I standards as indicated in subsection (13) at least 90 days preceding the date the assessment is due;

(iii) provide technical assistance to providers on service standard compliance.

(g) The department shall:

(i) monitor and provide in writing an approval or nonapproval by June 1, of the providers' written assessment of Set I standards as indicated in subsection (13);

(ii) review status of each provider to regional councils and state planning and advisory council by September 30, 1982.

(h) A decision of nonapproval regarding the written assessment of Set I service standards as indicated in subsection (13) under this part may be appealed to the department director in writing no later than June 20, 1982.

(i) The director will select a committee of three persons which shall include:

(I) division administrator,

(II) regional council chairperson, and

(III) provider of a like service.

(ii) The selected committees upon review of verbal and written testimony concerning standard compliance will send their recommendations to the department director within 30 days following notice of the committee selection.

(iii) Upon consideration of the committees testimony and recommendation the department director will make a final decision within a reasonable time period.

4. The department has thoroughly considered all verbal and written commentary received.

Comment: There are not adequate funds to provide services to clients. How will programs acquire money to comply with standards?

Response: Service programs will need no funds, or minimal funds to meet Set I standards promulgated in this rule. Information is being gathered this fiscal year to determine funding implications for adoption of future sets of standards.

Necessary resources will be available before additional standards are required.

Comment: The Developmental Disabilities Division has no control over the activities of the case manager. If the case manager does not perform the duties necessary for compliance of some standards, how can the provider agency be held responsible for compliance?

Response: The rule that is being promulgated is a Department rule, which includes the Community Services Division. Therefore, control of the case manager functions lies within the Department. The Developmental Disabilities Division will coordinate these activities with the Community Services Division.

Comment: Additional administrative staff time will be necessary to prepare policies and procedures in order to comply with Set I standards. How will service programs provide time for both direct client services and administrative staff time for standards?

Response: Corporations are presently required to develop programmatic and personnel policies and procedures. The implementation of standards complement the existing corporation policies and procedures. Therefore, in most instances, only minor hours of staff time should be necessary for modifications. For service programs who are not meeting current requirements, technical assistance from the Developmental Disabilities Division will be available. Both administrative and direct client activities are required to enable a program to provide quality services to clients.

Comment: Seven corporations are accredited under CARF standards as a requirement of the Rehabilitative Services Division. These corporations should not be expected to be accredited under two sets of standards. Why shouldn't these programs be exempt from the proposed rule?

Response: The rule does not require accreditation under any set of standards. In response to the testimony at the hearing, this rule has been modified to state that providers who are accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF) and receive funding from Rehabilitative Services Division are exempt from complying with portions of the rule for habilitation services only. Portions of Set I standards are selected for compliance by these corporations for the habilitation services. However, all services provided by these corporations, other than habilitation services, will adhere to the rule and all Set I standards.

Comment: Corporations providing service to small numbers of individuals in remote areas have a limited number of qualified staff and have a lack of available specialized support services. How can small corporations be expected to meet these standards? Will they be eliminated from the service system?

Response: Standards will not be used to eliminate corporations which are providing quality services. Resources and procedures will be developed to assist corporations to comply with the standards. Changes in service delivery may be necessary to meet the standards but the result will be a program of higher quality.

Comment: Specialized technical resources will be needed to implement the standards. Currently, the division does not seem able to provide this level of technical assistance.

Response: Within the state there are many professionals with varying expertise. Corporations currently have materials that can be shared with other corporations. It is the intention of the Department to identify and use these resources. The Department will provide assistance for those corporations in need. National staff, professionally trained to interpret these standards, will be available to the Division for consultation.

Comment: Not all the individuals receiving services from corporations are developmentally disabled. Are we expected to meet these standards for those persons?

Response: These standards are required only for those portions of programs provided by corporations funded by the Developmental Disabilities Division. The Developmental Disabilities Division does not fund services for individuals who are not developmentally disabled.

Comment: Not all the standards apply to all programs. Are there other standards that might be more applicable for the services each corporation provides?

Response: Corporations are required to meet only those standards applicable to the services they provide. The Developmental Disabilities Division's intention is to adopt standards which endorse a normalization philosophy in the service delivery system. In addition, the proposed standards meet the needs of individuals with developmental disabilities from birth to death. Present information indicates there are no other standards which meet these conditions.

Comment: The use of standards will decrease service quality and there will be no increase in client improvement. Why should we comply with standards?

Response: It is nationally accepted that service standards set the minimal acceptable service that is appropriate for a developmentally disabled individual. Standards are developed by recognized professional persons and consumers specifically for the purpose of providing a quality service which promotes client progress.

Comment: The current appeal committee consists of three members. It is suggested that the committee be increased to five members including a regional supervisor from the region involved in the appeal, and a board member. The existing regional council chairperson should be appointed from the region involved in the appeal.

Response: The present committee represents three parties in the system - the state agency, the provider agency and the consumer organization. It is assumed the equal balance is necessary in the process of making recommendations to the director.

Comment: A third-party survey will allow for a more objective evaluation of compliance. This rule should provide for a third-party evaluation.

Response: Sufficient information is not available at this time to determine if a third-party evaluation is feasible. Corporations are not prepared for third-party evaluations within this rule this year.

Comment: It is recommended that providers must be in full 100% compliance with service standards. Alternatively, it is recommended that if 85% compliance is to be acceptable, that it must be at least 85% compliance with the standards in each subsection of the standards.

Response: Upon reviewing the complete standard assessment which will reveal the standards each provider selects in order to comply with 85% of Set I standards, a decision will be made on the future compliance requirements of standards. Until additional information is gathered and analyzed, providers will select the standards of Set I for 85% compliance.

Comment: It is suggested that larger portions of the standards be adopted both in the current year and the successive years, thereby all standards would be adopted within a two-three year period.

Response: The Set I standards were selected because minimum or no funds were necessary for compliance. The complete assessment will provide information, such as amount of money needed for compliance and number of standards each corporation

can presently meet. Analyzing the provider assessments will provide information with which to make decisions concerning time and money necessary for future service standards compliance.

Director, Social and Rehabilitation Services

Certified to the Secretary of State June 15, 1981.

VOLUME NO. 39 OPINION NO. 16

ADMINISTRATIVE LAW - Uniform Fire Code; deference to agency interpretation;
FIRE MARSHAL - Interpretation of the Uniform Fire Code;
SERVICE STATIONS - Operation of key lock systems;
UNIFORM FIRE CODE - Interpretation;
UNIFORM FIRE CODE - Key lock systems allowed;
ADMINISTRATIVE RULES OF MONTANA - Sections 23.7.101, 23.7.111;
MONTANA CODE ANNOTATED - Sections 7-33-4208, 50-3-102, 50-3-103;
UNIFORM FIRE CODE - Sections 1.102(a), 79.703(b).

HELD: Service stations may operate unattended key lock systems for commercial, industrial, governmental and manufacturing establishments during the hours they are not open to the public.

2 June 1981

David W. Gliko, Esq.
City Attorney
P.O. Box 5021
Great Falls, Montana 59403

Dear Mr. Gliko:

You have requested an opinion as to whether service stations may operate a twenty-four hour key lock system without the continuous supervision of an attendant. Under such a system, the service station provides certain customers with keys that allow them to obtain fuel when no attendant is on duty at the station.

Pursuant to sections 50-3-102 and 103, MCA, the State Fire Marshal has adopted the Uniform Fire Code, 1979 Edition, for use throughout the State of Montana. ARM 23.7.111. The city of Great Falls has also adopted the code pursuant to section 7-33-4208, MCA. One of the purposes of the code is to prescribe uniform regulations consistent with nationally recognized practice for safeguarding, to a reasonable de-

gree, life and property from fire hazards arising from storage and use of hazardous substances. U.F.C. section 1.102(a). Section 79.703(b) of the code provides:

> (b) Supervision. The dispensing of Classes I and II liquids into the fuel tank of a vehicle or into a container shall at all times be under the supervision of a qualified attendant. Service stations not open to the public do not require an attendant or supervisor. Such stations may be used by commercial, industrial, governmental or manufacturing establishments for fueling vehicles used in connection with their business. The attendant's primary function shall be to supervise, observe and control the dispensing of Classes I and II liquids while said liquids are being dispensed. It shall be the responsibility of the attendant to prevent the dispensing of Classes I and II liquids into portable containers not in compliance with section 79.702(d), control sources of ignition, and to immediately handle accidental spills and fire extinguishers, if needed.
>
> If the dispensing of Classes I and II liquids at a service station available and open to the public is to be done by a person other than the service station attendant, the nozzle shall be a listed automatic-closing type.

The question has been raised whether the use of the term "such", underlined above, means that only service stations not open to the public at any time may dispense fuels without the presence of an attendant. Administrative rules, like state statutes, should be interpreted according to the plain meaning of the words used. See State v. Green, 586 P.2d 595, 603 n.24 (Alaska 1978), Rierson v. State, ____ Mont. ____, 614 P.2d 1020, 1023 (1980). My function in construing a statute is simply to ascertain and disclose what is contained in the language used and not insert or infer what has been omitted. See Chennault v. Sager, ____ Mont. ____, 610 P.2d 173, 176 (1980). Here, the section in question does not specify that the station may not be open to the public at any time.

The State Fire Marshal has interpreted the provision to allow public service stations to operate key lock systems during those hours they are not open to the public. In struggling with statutory construction problems, great

deference must be shown to interpretation given to a statute by the officers charged with its administration. Montana Power Company v. Cremar, ___Mont.___, 596 P.2d 483 (1979). As the State Fire Marshal is charged with the enforcement of the Uniform Fire Code "in every area of Montana," ARM 23.7.101, municipalities within the state that adopt the code, without variation from the state version, are subject to the interpretation adopted by that agency.

THEREFORE, IT IS MY OPINION:

Service stations may operate unattended key lock systems for commercial, industrial, governmental and manufacturing establishments during the hours they are not open to the public.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 39 OPINION NO. 17

CONSTITUTIONS - Right to know: property record cards used in tax appraisals;
OPEN RECORDS - Property record cards used in tax appeals;
PROPERTY, REAL - Tax appraisal property records: right to know;
PUBLIC INFORMATION - Property record cards used in tax appraisals;
TAXATION AND REVENUE - Appraisal property record cards;
MONTANA CODE ANNOTATED - Sections 2-6-101, 2-6-102, and 2-6-104.
MONTANA CONSTITUTION - Article II, section 9.
OPINIONS OF THE ATTORNEY GENERAL - 37 OP. ATT'Y GEN. NO. 107 at 460 (1978); 37 OP. ATT'Y GEN. NO. 112, at 482 (1978); 38 OP. ATT'Y GEN. NO. 1 (1979); 38 OP. ATT'Y GEN. NO. 109 (1980).

HELD: The Department of Revenue may not withhold property record cards from public inspection.

3 June 1981

Ellen Feaver, Director
Department of Revenue
Sam W. Mitchell Building
Helena, Montana 59601

Dear Ms. Feaver:

You have asked for my opinion on the following question:

> May the Department of Revenue withhold "property record cards" from public inspection?

"Property record cards" are cards on which tax appraisers for the State of Montana record their observations and opinions with respect to each piece of real property that is appraised. Included may be information concerning the nature and condition of improvements to the property, the type of construction and interior finishing, numbers of bedrooms and bathrooms, the type of heating and plumbing, and other

information relevant to a determination of the market value of the property. These include construction costs, selling price, and information concerning depreciation, obsolescence, and trends in the real estate market of the locale.

The "right to know" of every Montanan is guaranteed by Article II, section 9 of the Montana Constitution, which states:

> No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

The Constitution requires that a potential conflict between the public's right to know and an individual's right of privacy be resolved by applying a balancing test. In 37 OP. ATT'Y GEN. NO. 107, at 460, 462 (1978), I set forth the steps involved in a proper application of this balancing test:

> (1) Determining whether a matter of individual privacy is involved, (2) determining the demands of that privacy and the merits of publicly disclosing the information at issue, and (3) deciding whether the demand of individual privacy clearly outweighs the demand of public disclosure.

It is the duty of each agency, when asked to disclose information, to apply these steps and make an independent determination within the guidelines of the law, subject to judicial review. See 37 OP. ATT'Y GEN. NO. 107, at 460, 462 and 466, (1978); 37 OP. ATT'Y GEN. NO. 112, at 482 (1978); 38 OP. ATT'Y GEN. NO. 1 (1979). The determination requires knowledge that often only the custodian has concerning the information and the people involved. It is useful, however, to examine legal precedent in determining and weighing the merits of privacy or disclosure. Therefore, I have researched the questions presented, and offer the following opinion. See 38 OP. ATT'Y GEN. NO. 109, at 2-3 (1980).

Whether a matter of individual privacy is involved in the case of property record cards is debatable. The right of privacy is not easily defined with precision. 37 OP. ATT'Y GEN. NO. 107, at 460, 462, (1978). In Hearst Corp. v.

Hoppe, 90 Wash. 2d 123, 580 P.2d 246, 253 (1978), a case that also concerned access to raw data on which final assessment figures were based, the Washington Supreme Court adopted the privacy standard of the Restatement (Second) of Torts §652D., at 383 (1977), which limits the disclosure of any private matter that "would be highly offensive to a reasonable person and.... is not of legitimate concern to the public." Examples cited are "(s)exual relations,.... family quarrels, many unpleasant or disgraceful or humiliating illnesses, most intimate personal letters, most details of a man's life in his home, and some of his past history that he would rather forget." Cf. 37 OP. ATT'Y GEN. NO. 107, at 460, 463, (1978) (privacy protects facts about an individual's attitudes, beliefs, behavior, and any other personal aspect of that individual's life); Attorney General v. Collector of Lynn, _____Mass._____, 385 N.E.2d 505, 508, n.5 (1979) (privacy extends only to fundamental personal matters such as marriage and procreation). The Hearst Corp. court applied this privacy standard and concluded:

> In this case, we reach only the first step in the balancing process--determining whether the release of the materials sought would be highly offensive to a reasonable person. The appellant has not demonstrated that these records fall within this category. There is nothing in the materials which the trial judge ordered disclosed that reveals intimate details of anyone's private life in the Restatement sense. Thus, the portions of the folios ordered disclosed fail to violate any right of privacy.

580 P.2d at 254, Accord, Van Buren v. Miller, 22 Wash. App. 836, 592 P.2d 671, 675-76 (1979). A number of courts from other jurisdictions have also rejected the argument that a right of privacy is involved in the disclosure of information used to assess property. See Attorney General v. Board of Assessors, _____Mass._____, 378 N.E.2d 45, 46 (1978); Menge v. City of Manchester, 113 N.H. 533, 311 A.2d 116, 119 (1973); DeLia v. Kiernan, 119 N.J. Super. 581, 293 A.2d 197, 199, cert. denied, 62 N.J. 74, 299 A.2d 72 (1972); Sanchez v. Papontas, 32 App. Div.2d 948, 303 N.Y.S.2d 711, 712-13 (1969); Sears Roebuck & Co. v. Hoyt, 202 Misc. 43, 107 N.Y.S.2d 756, 759-60 (1951). In accord with the weight of authority, I find as a matter of law that no demand of individual privacy is present, no balancing is required, and

the public's right to know on what basis assessments are made is guaranteed.

Even if privacy were involved, it would not be sufficient to outweigh the merits of public disclosure. The availability of the property record cards would undoubtedly increase public confidence in the lawfulness of tax appraisals, and allow government to serve outside of the shadow of public mistrust that is often cast by unnecessary secrecy. See DeLia v. Kiernan, supra, 293 A.2d at 198-99; cf. 38 OP. ATT'Y GEN. NO. 109 (1980) (state employee's title, dates and duration of employment, and salary).

In reaching my conclusion, I have examined carefully the memorandum prepared by your legal staff setting forth arguments in favor of nondisclosure. First, it is argued that the property record cards do not constitute "public writings" within the meaning of section 2-6-101, MCA. That issue is irrelevant to the question of disclosure. The Montana constitutional right to know does not refer to "public writings", but rather "documents...of all public bodies or agencies of state government and its subdivisions." The Constitutional Convention committee that considered this provision deliberately refrained from using the term "public documents" in order to avoid tying the right to know to the statutory definition of "public writings." VII Montana Constitutional Convention Transcript of Proceedings 5148; cf. Menge v. City of Manchester, supra, 311 A.2d at 118 ("[D]efinitions [of public records] for other purposes predating the 'right to know' law are not helpful.") Furthermore, section 2-6-102, MCA, concerning "public writings," is not controlling with respect to questions of public access. The main purpose of that statute is to allow citizens to obtain certified copies of certain documents to use in court. Section 2-6-104, MCA, is the controlling statute. It addresses public access in general and is not limited to "public writings". Section 2-6-104, states:

> Except as provided in 40-8-126 [concerning adoption records], and 27-18-11 [concerning attachment records], the public records and other matters in the office of any officer are at all times during office hours open to the inspection of any person.

(Emphasis added). Long before the adoption of the 1972

Montana Constitutional right to know, the Montana Supreme Court held that this statute "extends beyond the matter of 'public records' and eliminates the necessity of a precise definition of what constitute public records." State ex rel. Holloran v. McGrath, 104 Mont. 490, 498, 67 P.2d 838, 841 (1937). One commentator has classified Montana's statute as among the most liberal public access laws in the country. See Comment, Public Inspection of State and Municipal Executive Documents: "Everybody, Practically Everything, Anytime, Except....", 45 Fordham L. Rev. 1105, 1119-20 (1977). Raw valuation and assessment data should be open to inspection under the broad terms of section 2-6-104. See Gold v. McDermott, 32 Conn. Super. 583, 347 A.2d 643, 646 (1975); Menge v. City of Manchester, supra, 311 A.2d at 118.

Second, your staff has cited two cases from other jurisdictions in which public access to property record cards has been denied. Dunn v. Board of Assessors, 361 Mass. 692, 282 N.E.2d 385 (1972); Kottschade v. Lundberg, 280 Minn. 501, 160 N.W.2d 135 (1968). Both cases rely on particular statutory definitions of public records, and are therefore irrelevant to Montana's determination of access. Furthermore, due to statutory changes in Massachusetts, Dunn is no longer the law there. In Attorney General v. Board of Assessors, supra, 378 N.E.2d 45 (1978), the Supreme Judicial Court of Massachusetts held that property records cards must be made available to the public in that state.

Third, your legal memorandum sets forth a number of policy reasons for keeping the property record cards confidential. These policy considerations have been rejected by courts in other states as insufficient to overcome the public's interest in disclosure. Courts have found unpersuasive arguments that the cards must be kept confidential in order to promote the public cooperation necessary for the Department to perform its functions, (see Gold v. McDermott, supra, 347 A.2d at 647; Van Buren v. Miller, supra, 592 P.2d at 674) or that access to assessment roll books is sufficient to satisfy the public's right to know (see Gold v. McDermott, supra, 347 A.2d at 647; Hearst Corp. v. Hoppe, supra, 580 P.2d at 251). Courts have explicity rejected the argument that assurances of confidentiality can prevent public disclosure. In Hearst Corp. v. Hoppe, supra, the Washington Supreme Court said:

> One established principle...is that an agency's promise of confidentiality or privacy is not

> adequate to establish the nondisclosability of information; promises cannot override the requirements of the disclosure law. [Citations.]

580 P.2d at 254; accord, Van Buren v. Miller, supra, 592 P.2d at 675; Sears Roebuck & Co. v. Hoyt, supra, 107 N.Y.S.2d at 759.

Fourth, your memorandum states, "This is not the same case as where the public wants to know how its tax dollars are spent, but rather segments of the public are attempting to inspect information the State has gathered about private citizens." This statement implies that the decision to provide access depends on the reasons that particular individuals have for requesting access. That approach has been rejected by some courts, and I do not consider it a viable approach in Montana. In 37 OP. ATT'Y GEN. NO. 107, at 460, 464 (1978), I discussed a better approach, exemplified by Robles v. Environmental Protection Agency, 484 F.2d 843 (4th Cir. 1973):

> The Robles court...set down a rule of all or nothing disclosure. The Robles court reasoned that disclosure....never was intended to depend upon the interest or lack of interest of the party seeking disclosure. Therefore, the Robles approach disregards the purpose or motive of the requesting party.
>
> This...approach, illustrated in Robles, is the better of the two for Montana. Neither our Constitution nor our Open Meeting Law suggest that an individual must display a certain reason in order to inspect government operations and records. Both of these provisions in our law are concerned with the necessity of an open government and the public's ability to observe how its government operates regardless of each person's subjective motivation.

Accord, 38 OP. ATT'Y GEN. NO. 109 (1980). This approach was also accepted in Montana before the constitutional right to know was established. See State ex rel Holloran v. McGrath, supra, 104 Mont. at 495-96, 67 P.2d at 840. In determining whether information should be available to the public, the subjective motives of those seeking access must be disregarded.

Finally, in response to arguments made by some members of the public concerning the public's interest in disclosure, your memorandum states that access to the information on the property record cards is not necessary to prepare tax appeals. However, courts have ruled that a taxpayer challenging his or her assessment as discriminatory is entitled to inspect the government's property record cards. See Tagliabue v. North Bergen Township, 9 N.J. 32, 86 A.2d 773 (1952); DeLia v. Kiernan, supra, 293 A.2d 198; Sears Roebuck & Co. v. Hoyt, supra, 107 N.Y.S.2d 756. Department of Revenue v. State Tax Appeal Board, _____Mont._____, 613 P.2d 691 (1980) does not contradict those rulings.

THEREFORE IT IS MY OPINION:

The Department of Revenue may not withhold property record cards from public inspection.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 39 OPINION NO. 18

HEALTH - Health club swimming pools, regulation of;

PUBLIC ACCOMMODATIONS - Hotel swimming pools, regulation of construction of;

RULES AND REGULATIONS - Interpretive rules, authority for adoption and effect of;

SWIMMING POOLS - Construction and safety standards, authority to adopt;

SWIMMING POOLS - Health club swimming pools, regulation of;

SWIMMING POOLS - Hotel swimming pools, regulation of construction of;

MONTANA CODE ANNOTATED - Sections 2-4-102(11), 50-51-103, 50-53-102(5), 50-53-103(1) and 50-53-107.

ADMINISTRATIVE RULES OF MONTANA - 16.10.618 and 16.10.1201(3).

HELD:1. The statutes in Title 50, Chapter 53, MCA, concerning public swimming pools, apply to health club swimming pools.

2. Title 50, Chapter 53, MCA, authorizes the Department of Health and Environmental Sciences to adopt interpretive rules concerning construction standards relating to safety for public swimming pools generally.

3. Section 50-51-103, MCA, authorizes the Department of Health and Environmental Sciences to adopt legislative rules, having the force of law, concerning construction standards relating to safety for swimming pools operated in connection with hotels, motels or tourist homes.

4 June 1981

Dr. John J. Drynan
Director
Department of Health and
Environmental Sciences
Cogswell Building
Helena, Montana 59601

Dear Dr. Drynan:

You have requested my opinion on the following questions:

1. Do the statutes in Title 50, Chapter 53 of the Montana Code Annotated (MCA) concerning public swimming pools, apply to privately owned hotel, apartment, and condominium swimming pools, but not to membership health clubs that charge monthly or yearly dues and are not open to the general public?

2. Is the Deparment of Health and Environmental Sciences authorized by Title 50, Chapter 53, MCA, to adopt regulations for swimming pools relating to safety and construction standards?

I. Public Swimming Pools.

Title 50, Chapter 53, MCA, implements "the public policy of this State to regulate public swimming pools to protect public health." § 50-53-101, MCA. It establishes standards for public swimming pools and duties of pool operators and provides criminal penalties for violations. §§ 50-53-106 to 109. Your Department is charged with the enforcement of chapter 53. §§ 50-53-103 to 105, MCA.

Your letter indicates that it has been the policy of the Department to apply this chapter not only to publicly owned swimming pools, but also to privately owned swimming pools that are operated in conjunction with hotels, apartments and condominiums and to private membership clubs, such as the YMCA, that allow non-members to use the pool for a daily or per-use fee. However, the Department has not applied

Chapter 53 to private membership clubs that allow non-members to use the pool only if hosted by a member of the club.

Your first question is whether this distinction is justified. It is my opinion that it is not. Chapter 53 applies to all "public swimming pools." §50-53-101, MCA. The definition of "public swimming pool" is:

> An artificial pool and bathhouses and related appurtenances for swimming, bathing, or wading, including natural hot water pools. The term does not include:
> (a) swimming pools located on private property used for swimming or bathing only by the owner, members of his family, or their invited guests; or
> (b) medicinal hot water baths for individual use.

§50-53-102(5), MCA. The Department's rules state:

> "Public swimming pool" means any swimming pool, other than a private residential pool available only to the family of the homeowner and his guests, intended to be used collectively by numbers of persons for swimming or bathing operated by any person as defined herein, whether he be owner, lessee, operator, licensee, or concessionaire, regardless of whether a fee is charged for such use. (Emphasis supplied.)

ARM 16.10.1201(3). Neither the statute nor your rule provides any basis for the distinction you have made. The statute refers broadly to all artificial pools except "swimming pools located on private property used for swimming or bathing only by the owner, members of his family, or their invited guests. ..." The reference to family supports a narrow exception for strictly private swimming pools annexed to a residence for the use of a family and its friends. 1/ Your rule comports with this interpretation,

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1/ See Lucas v. Hesperia Golf & Country Club, 255 Cal. App. 2d 241, 63 Cal. Rptr. 189, 194 (Cal Dist. Ct. App. 1967); Adams, Inc. v. Louisville and Jefferson County Board of Health, 439 S.W.2d 586, 589 (Ky. 1969).

providing only the limited exception of "a private residential pool available only to the family of the homeowner and his guest." A health club pool, which is regularly used collectively by many families and guests, does not fall within this exception. 2/ Therefore, membership health club pools are covered by chapter 53.

II. Construction Standards For Safety.

Your second question concerns the Department's authority to adopt rules concerning safety and construction standards for pools. Under chapter 53, the only expressly delegated authority to adopt legislative rules, having the force of law, is limited to rules for sanitation. However, it is my opinion that chapter 53 as a whole impliedly authorizes the adoption of interpretive rules, which are not binding on the courts, concerning construction and safety standards as well. A third question arises out of this interpretation. Does the effect of the construction rules differ as applied to hotel and motel swimming pools, since the Department has additional regulatory power over hotels and motels under chapter 51? I believe it does. As applied to hotel and motel swimming pools, the construction and safety rules have the force of law.

Section 50-53-103(1), MCA, expressly delegates to the Department of Health and Environmental Sciences the authority to adopt "rules for sanitation in public swimming pools." Therefore, rules relating to cleanliness and other precautions against disease are legislative rules, which have the force of law. See § 2-4-102(11)(a), MCA. By its plain meaning, however, section 50-53-103(1) does not authorize the adoption of legislative rules concerning life safety and accident prevention. 3/

Chapter 53 as a whole does impliedly authorize the adoption of interpretive rules concerning construction standards relating to life safety and accident prevention. Section

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2/ See Lucas v. Hesperia Golf and Country Club, supra.

3/ See Vinson v. Howe Builders Association of Atlanta, 233 Ga. 948, 213 S.E.2d 890, 891 (1975); but cf., Adams, Inc. v. Louisville and Jefferson County Board of Health, supra, 439

S.W.2d at 589. (holding that "health measures" encompass reasonably related safety measures).
50-53-107, MCA, states:

> Public swimming pools and public bathing places, including pool structures, methods of operation, source of water supply, methods of water purification, lifesaving apparatus, safety measures for bathers, and personal cleanliness measures for bathers, shall be sanitary, healthful, and safe. (Emphasis added.)

Sections 50-53-104 and 108, MCA, grant to the Department the discretionary power to enforce this requirement for safe pool structures. With this discretionary enforcement power necessarily goes the authority to adopt interpretive rules stating publicly how the enforcement power will be exercised. See Skidmore v. Swift & Co., 323 U. S. 134 (1944).

The effect of such interpretive rules is discussed by Professor Davis in his analysis of Skidmore. He says:

> An administrator who has a discretionary power but no delegated power to make rules may state how he will exercise his discretion, and the result may be interpretative rules to which a court may give effect of law if the court is persuaded by the rules. But because the legislative body has not delegated legislative power to the administrator, the rules are not binding on the court; the court is free, if it chooses, to substitute its judgment as to the content of the interpretative rules.

2 K. Davis, Administrative Law Treatise § 7.10, at 51 (2d ed. 1979) This analysis accords with section 2-4-102(11)(b), MCA, which states:

> [I]nterpretive rules...may be adopted...under express or implied authority to codify an interpretation of a statute. Such interpretation lacks the force of law. (Emphasis added.)

Under the implied authority of Chapter 53, then, the Department of Health and Environmental Sciences may only adopt interpretive rules, which do not have the force of law, concerning construction standards relating to life safety and accident prevention. However, your letter points out

that with respect to hotel or motel swimming pools, more explicit authority is provided in section 50-51-103, MCA. That statute, applicable to hotels, motels, rooming houses, retirement homes and tourist homes, states:

> The department [of health and environmental sciences] may adopt and enforce rules to preserve the public health and safety. These rules shall relate to construction, furnishings, housekeeping, personnel, sanitary facilities and controls, water supply, sewerage and sewage disposal system, refuse collection and disposal, registration and supervision, and fire and life safety code. (Emphasis added.)

This statute expressly delegates to the Department the authority to adopt rules concerning construction standards for hotels or motels relating to safety. If a hotel or motel provides a swimming pool for the use of its guests, that swimming pool must comply with any rules specifying construction standards adopted by the Department pursuant to section 50-51-103. The Department has adopted such a rule. ARM 16.10.618 states:

> The construction and operation of any swimming pool, hot bath, mineral bath, or public swimming place in connection with any hotel, motel, or tourist home shall be in accordance with Title 50, Chapter 53, MCA and department rules regarding the construction and operation of swimming pools.

Because this rule was adopted under the expressly delegated authority of section 50-51-103, MCA, it has the force of law. See § 2-4-102(11)(a), MCA. Thus, the same rules concerning construction standards for safety which are interpretive only in their application to public swimming pools generally, have the force of law as applied to hotel, motel, or tourist home swimming pools.

THEREFORE, IT IS MY OPINION:

1. The statutes in Title 50, Chapter 53, MCA, concerning public swimming pools, apply to health club swimming pools.

2. Title 50, Chapter 53, MCA, authorizes the Department of Health and Environmental Sciences to adopt

interpretive rules concerning construction standards relating to safety for public swimming pools generally.

3. Section 50-51-103, MCA, authorizes the Department of Health and Environmental Sciences to adopt legislative rules, having the force of law, concerning construction standards relating to safety for swimming pools operated in connection with hotels, motels or tourist homes.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 39 OPINION NO. 19

AIRPORTS - Liquor license fee;

ALCOHOLIC BEVERAGES-- License fee for airports;

LICENSES - Liquor, fee payment by airports;

MONTANA CODE ANNOTATED - Section 16-4-208, 16-4-501.

HELD: Airport authorities holding liquor licenses are not required to pay annual fees for such licenses.

5 June 1981

Ellen Feaver, Director
Department of Revenue
Sam Mitchell Building
Helena, Montana 59601

Dear Ms. Feaver:

You have requested my opinion on the following question:

> Are airport authorities holding liquor licenses required to pay annual fees for such licenses?

In 1979 the Montana Legislature enacted legislation empowering certain publicly-owned airports to acquire all-beverages licenses from the Department of Revenue, regardless of the number of such licenses already issued in the quota area in which the airports are located. § 16-4-208, MCA, (Chapt. 461, L. Mont. 1979). According to section 16-4-208(3), the airport licenses "shall be subject to all statutes and rules governing all-beverages licenses."

The question has now arisen whether airports that have acquired licenses are required to pay renewal fees annually. Section 16-4-501(7), MCA, generally provides for the payment

of annual license fees by holders of all-beverages licenses, the amount of the fee depending on the location of the license and the size of the population. Section 16-4-208(3) would therefore apparently impose the same requirement on airport licensees.

In this instance, however, the Legislature enacted a specific provision on licensing fees for public airports. Section 16-4-501(8) provides: "The fee for one all-beverage license to a public airport shall be $800." According to recognized principles of statutory construction, a special statute covering a particular subject matter--in this case, licensing fees for airports-must be read as an exception to a statute covering the same subject in general--in this case, standard fees for other all-beverages licenses. In re Kesl's Estate 117 Mont. 377, 385, 161 P.2d 641, 645 (1945); accord, State ex rel Marlenee v. District Court, ___ Mont. ___, 592 P.2d 153, 156 (1979). Besides excepting public airports from the general payment schedule for all-beverages licenses, subsection (8) of section 16-4-501 also reveals a legislative intent to require airports to pay only initial, rather than yearly, license fees. In each of the other subsections of section 16-4-501, except those dealing with short-term permits, the Legislature explicitly mandated an "annual license fee." The omission of modifying language similar to that in the statute's other subsections clearly indicates a legislative decision to exclude public airports from the normal requirement of yearly license renewal payments and to require only the single $800 payment for acquisition of the license. See In re Kesl's Estate 117 Mont. at 386, 161 P.2d at 645.

THEREFORE, IT IS MY OPINION:

Airport authorities holding liquor licenses are not required to pay annual fees for such licenses.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 39 OPINION NO. 20

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES - State grant-in-aid to local governments;

LOCAL GOVERNMENT - Eligibility for state grant-in-aid;

LOCAL GOVERNMENT - Self-government powers;

LOCAL GOVERNMENT - Mill levy limitations;

PUBLIC ASSISTANCE - State grant-in-aid program;

MONTANA CODE ANNOTATED - Sections 7-1-114, 53-2-321, 53-2-322 and 53-2-323;

LAWS OF MONTANA 1977 - Section 31, chapter 37.

HELD: For purposes of the state grant-in-aid program, counties with self-government powers are eligible for a grant if they have exhausted all of the 13.5 mill levy authorized by section 53-2-321, MCA, assuming the county has satisfied all other requirements specified in section 53-2-323, MCA.

9 June 1981

John LaFaver, Director
Department of Social and
Rehabilitation Services
111 Sanders
Helena, Montana 59601

Dear Mr. LaFaver:

You have asked my opinion regarding the eligibility of counties with self-government powers for the state public assistance grant-in-aid program.

In Montana county governments are required to provide for the care and maintenance of the indigent sick and dependent poor, and to levy taxes not exceeding 13.5 mills annually to maintain the county poor fund. Sections 53-2-321 and 53-2-322, MCA. In the event the county poor fund is exhausted and the county is unable to meet its obligations to provide assistance to the needy, the county may apply to the Department of Social and Rehabilitation Services for an emergency grant-in-aid, which is a grant of state-appropriated general fund dollars, to enable the county to meet its public assistance obligations. Section 53-2-323, MCA.

Section 53-2-323 provides in pertinent part:

> A county may apply to the Department for an emergency grant-in-aid, and the grant shall be made to the county upon the following conditions:
>
> 1. The board of county commissioners or a duly elected or appointed executive officer shall make written application to the department for emergency assistance and shall show by written report and sworn affidavit of the county clerk and recorder and chairman of the board of county commissioners or other duly elected or appointed executive officer of the county the following:
>
> (a) that the county will not be able to meet its proportionate share of any public assistance activity carried on jointly with the department;
>
> (b) that all lawful sources of revenue and other income to the county poor fund will be exhausted;
>
> (c) that all expenditures from the county poor fund have been lawfully made; and
>
> (d) any other information required by the department.

Section 53-2-321 MCA, specifically authorizes the counties "to levy and collect annually a tax on property <u>not exceeding</u> 13 1/2 mills....." This is the only mill levy authorized for public assistance. Thus, referring to county mill levies, as opposed to other unrelated sources of revenue, once a county has levied and collected 13 1/2 mills for purposes of the county poor fund it has exhausted "all lawful sources of revenue" and thus met the requirement of section 53-2-323 (1)(b) MCA.

However, those counties which have adopted self-government powers are specifically excluded from the mill levy limitations imposed by law. Section 7-1-114 MCA, provides in part:

> 1. A local government with self-government powers is subject to the following provisions:
>
> * * *
>
> (g) any law regulating the budget, finance, or borrowing procedures and powers of local governments, except that the mill levy limits established by state law shall not apply. (Emphasis supplied.)

Your question is whether a county with self-government powers is eligible for a grant-in-aid after it has levied and collected 13⅓ mills.

The cardinal principle of statutory construction is that the intent of the legislature is controlling. Baker National Insurance Agency v. Montana Department of Revenue, 175 Mont. 9, 571 P.2d 1156 (1977). Where there is no language in a statute specifically expressing legislative intent, that intent may be determined through resort to the legislative history. Department of Revenue v. Puget Sound Power And Light, ___ Mont. ___, 587 P.2d 1282 (1978). Prior to amendment in 1977, the pertinent provision of section 53-2-323, MCA (then codified at section 71-311, R.C.M. 1947), provided:

> "If the whole six mill levy together with the whole of the per capita tax authorized by said section 71-106, and the income to the county poor fund from all other sources shall prove inadequate to pay for the general relief in the county....the State Department of Public Welfare shall, insofar as it has funds available, come to the assistance of such county..."

The section was amended twice in 1977. The first amendment was made in section 31, chapter 37, laws of Montana, 1977. The second amendment to the section was adopted in section 1, chapter 168, laws of Montana, 1977. Chapter 168 rewrote the section in its present form.

The code commissioner did not codify the amendments contained in chapter 37. In the 1977 cumulative supplement to the Revised Codes of Montana, Volume 4, part 2, following

section 71-311, the compilers note provides: "This section was amended twice in 1977, once by Ch. 37 and once by Ch. 168. The code commissioner has directed that the section be set forth as amended by Ch. 168." Thus, section 53-2-323 MCA, as it is presently codified, contains no reference to the amendments made by chapter 37, laws of Montana, 1977. However, chapter 37, was a legally enacted statute and it is crucial in determining the legislative intent on the question you have asked. Chapter 37 substituted "if the whole of the 13.5 mill levy authorized by 71-106" at the beginning of the section for "if the whole six mill levy together with the whole of the per-capita tax authorized by said section 71-106." Section 71-106 was the 13.5 mill levy limit now codified in section 53-2-321, MCA.

By enacting chapter 37, the legislature specifically limited the scope of the application for a grant-in-aid to whether the county had levied and collected the "whole of the 13.5 mill levy" authorized by the referenced section. The statutes must be read and considered in their entirety. Legislative intent may not be gained from the wording of any particular sentence or section but only from a consideration of the whole. Teamsters Local #45 v. Cascade City School District, 162 Mont. 277, 511 P.2d 339 (1973).

The reference in chapter 37 to the specific mill levy limit authorized now in section 53-2-321 MCA, read together with language requiring exhaustion of all sources of revenue makes it clear that in reviewing an application to the department for a state grant-in-aid, the legislature intended that the review be limited to the mill levy authorized in section 53-2-321, MCA. That is the only interpretation that endows the chapter 37 amendment with substance. Each component of a statute must be construed in such a way that each has some meaning, vitality and effect, Burritt v. City of Butte, 161 Mont. 530, 534, 508 P.2d 563 (1973), and each must be given a reasonable construction which will provide harmony with its other provisions. State Board of Equalization v. Cole, 122 Mont. 9, 20, 195 P.2d 989 (1948).

While counties with self-government powers are not subject to statutory mill levy limits it does not necessarily follow that such counties must levy more than 13.5 mills to be eligible for a grant-in-aid. All that is required is that the county exhaust "the whole of the 13.5 mill levy" authorized in section 53-2-321, MCA. To hold otherwise

would mean that the taxpayers of those counties having adopted self-government powers would be subject to unlimited mill levies for the support of the county poor fund and never be eligible for the state grant-in-aid program. Residents of local governments with general government powers would be subject only to the 13.5 mill levy under section 53-2-321, MCA. Clearly this is not the intended result. Legislation enacted to promote the public health, safety and general welfare is entitled to broad construction with the view toward the accomplishment of the highly beneficial objectives, and exceptions should be given a narrow interpretation. State ex rel. Florence Carlton School District v. Ravalli County, 35 St. Rptr. 1836, ___ P.2d_____ (1978).

THEREFORE, IT IS MY OPINION:

For purposes of the state grant-in-aid program, counties with self-government powers are eligible for a grant if they have exhausted all of the 13.5 mill levy authorized by section 53-2-321, MCA, assuming the county has satisfied all other requirements specified in section 53-2-323, MCA.

Very truly yours,

MIKE GREELY
Attorney General