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MONTANA ADMINISTRATIVE REGISTER

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MINERAL SCIENCE AND TECHNOLOGY
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1978 ISSUE NO. 12
PAGES 1380 — 1400



NOTICE - The July 1977 through June 1978 Montana Administrative Registers have been placed on jacketing, a method similar to microfiche. There are 31 jackets on cards 5 3/4" x 4 1/4" each, which take up less than one inch of drawer space. The cards can be viewed on a microfiche reader and the size of print is easily read. The charge is \$.12 per card or \$3.72 per set plus \$.93 postage per set. Montana statutes require prepayment on all material furnished by this office. Please direct your orders along with a check in the correct amount to the Secretary of State, Room 202, Capitol Building, Helena, Montana, 59601. Allow one to two weeks for delivery.

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 12

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BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PROPOSED
of Rule 12-2.22(1)-S22050) AMENDMENT OF RULE
relating to elk feeding policy) 12-2.22(1)-S22050
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Interested Persons:

1. At its first meeting after October 30, 1978, the commission proposes to amend Rule 12-2.22(1)-S22050 which relates to the elk feeding policy of the Montana Department of Fish and Game.

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

12-2.22(1)-S22050 ELK FEEDING POLICY (1)

Past experience in Montana and elsewhere has shown that artificial feeding of game animals is not a sound game management program - neither economically nor biologically. It is expensive, is not good for the animals, and not good for the range upon which these animals are dependent. It can only be justified under extreme winter conditions which indicate a winter loss of major proportions is imminent.

Therefore, when it has been determined that extreme winter conditions exist on ~~Commissioner~~ department-owned lands, an emergency feeding program may be undertaken and the following regulations shall be policy:

(a) through (e) no change

(2) In the Gallatin River drainage, elk feeding policy for the department is as follows:

(a) For the area in the vicinity of the north-west corner of Yellowstone National Park encompassed by the drainages of Buffalo Horn Creek, Salmon Creek, Wilson Creek, Teepee Creek, Lodgepole Creek, Sawtooth Creek, Monument Creek, Sage Creek, and the portion of Taylor Creek below the Taylor Narrows; there will be no feeding, whether hay or other food supplements, of elk.

(b) For the remainder of that portion of the Upper Gallatin Canyon where elk feeding is not excluded by the provisions of subsection 2(a), the following guidelines are the elk feeding policy of the department:

INTRODUCTION: The purpose of this plan is to establish criteria for the monitoring and evaluation of winter conditions for a portion of the Upper Gallatin elk herd in order to avoid catastrophic

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losses during a severe winter.

The department is responsible for managing the wildlife on national forest lands in Montana. The Forest Service, however, has responsibility for the management of wildlife habitat, necessitating the two agencies work closely together in game management within the boundaries of the national forest. Yellowstone National Park contains a portion of the Upper Gallatin elk habitat. The three agencies therefore coordinate their responsibilities under a cooperative agreement for the management of the Upper Gallatin elk herd.

In any winter, regardless of severity, natural elk mortality will vary from 1% to 10%. Nature has the ability to recover losses rapidly. The ratio of calves to adult cows may vary from 25% to 60% in a given year. Elk herds have the potential of doubling their size within two years. Nevertheless, a loss in excess of 15% of the total herd could be considered catastrophic, necessitating feeding or other emergency measures.

OBJECTIVE: The objective of this plan is to establish guidelines for evaluating winter conditions affecting Upper Gallatin elk and the condition of the elk themselves. An additional objective of this plan is to establish guidelines for feeding, should the need arise, that will minimize damage to soil, vegetation, and water while providing for the needs of elk through a crisis period.

Hopefully, elk feeding when needed can be achieved through the cooperative efforts of concerned citizens working with the department and Forest Service.

BACKGROUND: Research has shown that once animals are suffering from SEVERE malnutrition, feeding may do no good. Also, once animals have become weak from use of reserve body fat, the animals may not be able to adjust to a change of diet. If feeding is to be done then, it must begin before the animals' condition is so poor that they do not respond. A decision to feed must also recognize the following adverse impact on the environment and the animals:

A. Making healthy animals dependent on artificial feed when they would be better off foraging.

B. Stopping or interrupting natural migration habits.

C. Tending to deplete emergency food reserves in the vicinity of feed grounds. (Research has shown that elk will severely browse conifers and shrubs in the immediate vicinity of the feed ground regardless of the amount of hay put out.)

D. Concentrating animals when their resistance is down, increasing the risk of the spread of any disease or virus present.

E. Decreasing water quality by concentrating animals near open water.

F. Allowing genetically inferior animals to survive, thus interfering with the natural selection process.

G. Changing social behavior patterns may cause problems. For example, if bulls are attracted into cow groups, increased stress may be placed on weaker or smaller animals through fighting and jostling.

Even though late winter storms can be quite severe, usually after a couple of days the snow melts and food becomes available again. Those animals which are too weak to wait out a few days will not be helped by feeding. As a general rule, artificial feeding will not be started after April 1. To avoid losses from a late spring storm, such as occurred in April, 1975, managers will need to make a thorough analysis of the available feed and animal condition prior to April 1.

CRITERIA FOR EVALUATING WINTER CONDITIONS FOR THE UPPER GALLATIN ELK HERD: The department will set up monitoring stations at Taylor Fork and Porcupine to monitor snow depth, icing, and crusting. The following criteria will indicate that feeding may be necessary:

1. Snow depth 20 inches or more with crusts and/or ice forming.
2. Weak adult cows forced to bottom lands along streams and Highway 191.
3. Adult cows foraging during middle of daylight hours.
4. Adult cows not seeking cover after feeding.
5. Emergency food sources not available.
6. Groups of adult cows (not isolated animals) generally in poor condition.
7. Signs of malnutrition in road kills of adult cows. (bone marrow pink, jelly-like, lack of body fat, especially around kidneys).
8. Adult cows weak and moving with difficulty through snow cover.
9. Weather outlook for cooler than normal with above normal precipitation forecast.

Note: Since some calf losses are not preventable but are expected most years and since this plan is designed to prevent catastrophic reductions in the elk herd, the criteria for feeding is based on factors affecting the reproductive base (adult cows) only.

PROCEDURE: In the event hay feeding becomes necessary, the following procedure will be followed:

1. Every effort will be made to avoid concentrating animals. Hay will be fed where the elk are found, scattered over a wide area and in small amounts.
2. Approximately 3 to 7 pounds of hay per animal is sufficient per feeding.
3. Hay will be fed from sleigh or snow machine.
4. Distribute feed away from streams and highway and emergency food sources, such as willow and dogwood.
5. Scatter feed at the break (or toe) of slope.
6. Only "certified weed-free" grass hay will be used.
7. Hay will be furnished or approved by the department.
8. All feeding will be monitored and supervised by the department with assistance of the Forest Service. The results of any feeding program should be carefully documented for future reference.
9. Feeding will stop when natural feed becomes available or when elk stop using hay, whichever comes first.
10. The department will obtain a Forest Service permit for feeding on national forest land.

RESPONSIBILITY AND COORDINATION: The department will be responsible for making the final decision on whether or not to feed hay to elk, and will supervise the procurement and distribution of hay.

The Forest Service will make the final decision on whether to allow the placing of hay on national forest land for feeding of elk. The location of feeding areas on national forest land must receive prior approval from the Forest Service. Feeding will not take place inside Yellowstone National Park.

The Forest Service and department will jointly monitor snow, weather, and animal conditions, with the department having the primary responsibility for monitoring.

If conditions indicate that feeding may be necessary, a thorough analysis of snow and animal conditions will be made by department and Forest Service personnel. Porcupine and Taylor Fork Creek above the narrows will be checked as a minimum. A joint meeting will be held and the department will decide whether or not to feed and where feeding will be most effective.

Proposed national forest feeding sites will be approved at that time.

The department then may invite private ranchers and organizations to participate and establish a

schedule for monitoring the feeding and recording results. Forest Service personnel may participate in monitoring the feeding operation.

(3) The elk herds in the Gallatin drainage provide a peculiar problem for management in this state as they move over their normal winter range.

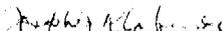
3. This rule is proposed for amendment to provide guidelines for evaluating winter conditions affecting the Upper Gallatin elk herd and the condition of the animals themselves. A further purpose is to provide a feeding plan that will minimize damage to the habitat involved while providing for the needs of elk during periods of crises. The proposed amendment modifies Rule 12-2.22(1)-S22050 found on page 12-76 of the Administrative Rules of Montana.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to Robert F. Wambach, Director, Department of Fish and Game, 1420 East 6th Avenue, Helena, Montana 59601. Written comments in order to be considered must be received no later than October 27, 1978.

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 Dr. Wambach at the above-stated address no later than October 27, 1978.

6. If the agency receives requests for a public hearing on the proposed amendment from more than 10% or 25 or more persons who are directly affected by the proposed amendment, or from the Administrative Code Committee of the legislature, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority of the commission to make the proposed amendment is based on Section 26-103.1, R.C.M. 1947.



Joseph J. Klabunde, Chairman
Montana Fish & Game Commission

Certified to Secretary of State September 12, 1978

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PUBLIC HEARING
of Rule 42-2.22(2)-S22020) ON PROPOSED AMENDMENT OF
Assessment of Manufacturing) RULE 42-2.22(2)-S22020
and Mining Equipment)

TO: All Interested Persons:

1. On October 24, 1978, at 1:30 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Helena, Montana, to consider the amendment of Rule 42-2.22(2)-S22020 which provides for the Assessment of Manufacturing and Mining Equipment.

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

42-2.22(2)-S22020 ~~ASSESSMENT OF MANUFACTURING AND MINING EQUIPMENT~~ ASSESSMENT OF MINING MACHINERY AND EQUIPMENT (1) ~~The minimum assessed value of manufacturing and mining machinery, equipment and supplies shall be forty percent (40%) of the original installed cost. (This is in lieu of an annual depreciation.)~~ The average market value for the mobile equipment used in mining, including coal and ore haulers, shall be the average resale value of such property as shown in "Green Guide", Volumes I and II, Older Equipment, Off Highway Trucks and Trailers and Lift Trucks. The current volumes of the year of assessment, Equipment Guide Book Company, 3980 Fabian Way, P. O. Box 10113, Palo Alto, California 94303. This guide may be reviewed in the Department or purchased from the publisher.

(a) If the above-named guide cannot be used to value these properties, then a depreciation table established by the Department of Revenue shall be used to determine the average market value. This table may be reviewed in the Department or purchased from the Department at cost.

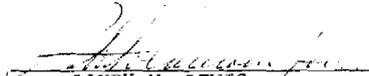
(2) The average market value for stationary machinery and equipment used in mining shall be determined using a depreciation table established by the Department of Revenue. This is a ten year table and reflects the average life of these properties.

3. This rule is proposed to be amended as the result of the amendments made to Section 84-301 by Chapter 566, Laws 1977 (House Bill 70). By the legislation the legislature did away with the concept of assessed value. All personal property is to be assessed at its market value and then classified to determine taxable value. This amendment recognizes the changes by providing that the subject property should be valued at market value for property tax purposes.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment either orally or in writing at the hearing.

5. Mr. Ross Cannon, Esq., has been designated to preside over and conduct the hearing.

6. The authority of the department to make the proposed amendment is based on Section 84-708.1, R.C.M. Implementing Section 84-301.1, R.C.M. 1947.


LAURY M. LEWIS
Acting Director
Department of Revenue

Certified to the Secretary of State 9-19-78.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PUBLIC HEARING
of Rule 42-2.22(2)-S22172) ON PROPOSED AMENDMENT OF
Assessment of Furniture and) RULE 42-2.22(2)-S22172
Fixtures - Commercial Estab-) Assessment of Furniture
lishments) and Fixtures - Commerical
) Establishments

TO: All Interested Persons:

1. On October 20, 1978, at 1:30 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Helena, Montana, to consider the amendment of Rule 42-2.22(2)-S22172 which provides for the Assessment of Furniture and Fixtures - Commercial Establishments.

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

42-2.22(2)-S22172 ASSESSMENT OF FURNITURE AND FIXTURES USED IN COMMERCIAL ESTABLISHMENTS (1) The assessed-value average market value of commercial furniture and fixtures shall be determined using assessment depreciation tables established by the Department of Revenue. ~~These assessment tables reflect the average remaining life of these kinds of property times a forty percent (40%) equalization factor.~~ The average life of these properties necessitates the use of two tables. A five year table to be used for those designated properties which research indicates depreciate rapidly and a ten year table which is to be used for all commercial furniture and fixtures which has a longer life. The kinds of fixtures that the five year assessment depreciation table has been designed for and our instruction specifies for are: electronic machines, computer system, data processing equipment, cash registers and all coin operated equipment. All other property will use the ten year table.

(2) The minimum assessed market value shall be ~~ten~~ twenty-five percent (25%) of the cost.

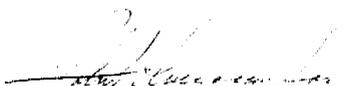
3. This rule is proposed to be amended as the result of the amendments made to Section 84-301 by Chapter 566, Laws 1977 (House Bill 70). By the legislation the legislature did away with the concept of assessed value. All personal property is to be assessed at its market value and then classified to determine taxable value. This amendment recognizes the changes by providing that the subject property should be valued at market value for property tax purposes.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment either orally or in writing at the hearing.

5. Mr. Ross Cannon, Esq., has been designated to preside over and conduct the hearing.

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6. The authority of the department to make the proposed amendment is based on Section 84-708.1, R.C.M. Implementing Section 84-301.1, R.C.M. 1947.



LAURY M. LEWIS
Acting Director
Department of Revenue

Certified to the Secretary of State 9-19-78

12-9/28/78

MAR Notice No. 42-118

BEFORE THE STATE LIBRARY COMMISSION
OF THE STATE OF MONTANA

In the matter of the)	NOTICE OF AMENDMENT
amendment of Rule)	OF ARM 10.10.031 (USE OF
10.10.031, ARM)	FEDERAL FUNDS TO SUPPORT
	LIBRARY FEDERATIONS)

To: All interested persons

1. On August 10, 1978, the State Library Commission published notice of proposed amendment of the above-entitled rule, at pp. 1133-1134, 1978 Montana Administrative Register, issue no. 9.

2. The Commission conducted a public hearing on the proposed amendment September 8, 1978. Mr. Robert Cookingham, representing the South Central Federation, testified in opposition to the proposed change which would require full maintenance of effort within an entire federation in order to be eligible for any type of grant of LSCA funds. His grounds were that the proposed formula might deprive the Commission of the flexibility needed to deal with special circumstances. The Commission felt that the rule change was necessitated by federal law as far as basic grants are concerned, but agreed that full maintenance of effort need not be required in every case for special grants. Accordingly, the opening phrase of paragraph (1)(c) of the amendment has been modified to read as follows:

(c) Maintenance of effort required for basic grant: in order for a library federation to be eligible to receive a basic grant of federal funds, the following item must be satisfied:
No further change.

3. No other testimony was received and the Commission has adopted the amendment as proposed, except as just noted. The Commission has adopted the balance of the amendment for the additional purpose of providing an allocation formula for basic grants of federal funds which is more equitable than the statutory formula for allocating state funds.

In the matter of the)	NOTICE OF AMENDMENT
amendment of Rule)	OF ARM 10.10.050
10.10.050, ARM)	(APPLICATIONS FOR GRANTS)

To: All interested persons

1. On August 10, 1978, the State Library Commission published notice of proposed amendment of the above-entitled rule at p. 1135, 1978 Montana Administrative Register, issue no. 9.

2. The Commission has amended the rule as proposed.

3. No comments or testimony were received. The Commission has changed its rule in order to add an additional sign off on grant applications to assure that projects proposed for funding enjoy the support of the governing body of the responsible headquarters library.

-1390-

STATE LIBRARY COMMISSION
WILLIAM P. CONKLIN, CHAIRMAN

By: *Alma S. Jacobs*
Alma S. Jacobs
State Librarian

Certified to the Secretary of State September 18, 1978.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

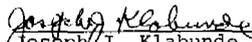
In the matter of the amend-) NOTICE OF THE AMENDMENT
ment of Rule 12-2.10(14)-S10190) OF RULE 12-2.10(14)-S10190
relating to water safety)
regulations)

TO: All Interested Persons:

1. On July 14, 1978, the Fish and Game Commission published notice of a proposed amendment of a rule relating to water safety regulations on page 935 of the 1978 Montana Administrative Register, Issue No. 7.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The commission has amended the rule to include Gartside Reservoir in waters closed to motorboats in the interest of public safety and protection of property.



Joseph J. Klabunde, Chairman
Montana Fish & Game Commission

Certified to Secretary of State September 12, 1978

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION OF
of a rule relating to oil) RULE 12-2.14(8)-S1440
and gas leasing policy for)
department-controlled lands)

To: All Interested Persons:

1. On July 14, 1978, the Fish and Game Commission published notice of public hearing on oil and gas leasing policy on page 934 of the 1978 Montana Administrative Register, issue No. 7. (1978 MAR, page 660, issue No. 5)

2. The commission has adopted the rules as proposed except that the last sentence of subsection (2)(a) relating to test results is deleted.

3. Public hearing was held at which comments were received both written and oral.

Comment: Comments were received in support of the proposed rules. Generally, these comments included no requests for modification of the rule. To the extent there were such requests they are included below.

Comment: Rule should be expanded to provide who and in what manner the determination called for in subsection (2)(d) is made.

Response: The Department of Fish and Game would make these determinations on a case by case basis upon recommendation of the appropriate regional and divisional personnel.

Comment: Where wildlife values are involved joint environmental impact statements should be prepared with the U. S. Fish and Wildlife Service.

Response: The Montana Environmental Policy Act Rules already contemplate joint environmental impact statements where necessary. It is not necessary to include them in these rules.

Comment: Commission has no authority to adopt this rule as the Montana Department of State Lands is the only state agency that may lease "state lands" for oil and gas purposes.

Response: The State Fish and Game Commission or the Montana Department of Fish and Game has leased to others lands for oil and gas as the agency delegated the responsibility for supervision and management of wildlife held in trust by the State of Montana, and also as manager of any lands held to fulfill those responsibilities. As such an agency it may not encourage or permit management of lands subject to its direct control to the detriment of wildlife in this state. This policy is to

provide guidance to the department in its management of wildlife while permitting exploration and development of oil and gas.

Comment: If an environmental impact statement is required for this type lease, then such statement is more appropriate when a notice of intention to drill is filed with the Oil and Gas Board.

Response: Waiting until the notice of intent to drill is filed is too late in the sequence of events prior to development of an oil lease. Environmental review whether of preliminary type or a more complete statement should be initiated as early as possible when matters are likely to cause disturbance to areas specifically managed for wildlife purposes.

Comment: The requirement that information acquired by permittees in exploration be made public is more strict than federal or other state law relating to the extraction of oil and gas.

Response: This comment is concurred in and the specific sentence is deleted.

Comment: The use of stipulations in an oil or gas lease to insure protection of the wildlife resource is a better alternative than this type rule.

Response: While it is possible that appropriate stipulations might be included in each lease as it was executed, such approach does not provide adequate guidance or notice to those who may desire to lease Department of Fish and Game lands for oil and gas purposes. The environmental impact statement requirement also assures public review which is essential since public game ranges are involved.

Comment: The provision adopting the Department of State Lands rules except as set forth in this rule is not specific enough nor does it provide adequate guidance for a person seeking an oil and gas lease.

Response: To this date the difficulties referred to have not developed into problems. The department will continue to review this comment. Where specific modifications are necessary, the department will so recommend to the commission for action.



Joseph J. Klabunde, Chairman
Montana Fish & Game Commission

Certified to Secretary of State September 12, 1978

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

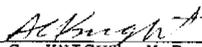
In the matter of the amendment)	NOTICE OF THE AMENDMENT OF
of Rule 16-2.18(10)-S18050,)	RULE 16-2.18(10)-S18050
setting standards for school)	School District Immunization
immunization programs.)	Program

TO: All Interested Persons

1. On July 27, 1978, the Department of Health and Environmental Sciences published notice of a proposed amendment of rule 16-2.18(10)-S18050, concerning immunization standards for school districts which require immunization as a condition of attendance, at page 1002 of the Montana Administrative Register, issue number 8.

2. The agency has amended the rule as proposed.

3. No comments criticizing the substance of the rule were received. Oral inquiries were made regarding the rule's relationship to proposed legislation on the subject, but were satisfied by the information that the amendment implements present statutory law. A written comment from a school board trustee objecting to a school having to enforce immunization requirements was based on the misconception that the rule applied to all school districts. On the contrary, Section (1) of the rule clearly requires the prescribed immunization only "if the trustees of the school district have officially adopted the immunization requirement".



A.C. KNIGHT, M.D., F.C.C.P.,
Director

Certified to the Secretary of State September 19, 1978.

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

The matter of the amendment of rule 32-2.6A(26)-S6020 to alter the definition of proper permanent identification of officially vaccinated animals for brucellosis.

NOTICE OF THE AMENDMENT
OF RULE 32-2.6A(26)-
S6020.

TO: ALL INTERESTED PERSONS

1. On July 14, 1978 the Board of Livestock published notice of a proposed amendment to rule 32-2.6A(26)-S6020 concerning the proper permanent identification of registered animals for brucellosis vaccination purposes at page 937 of the 1978 Montana Administrative Register Issue Number 7.
2. The agency has amended the rule as proposed.
3. One producer of registered cattle opposed the rule without stating grounds. The change in the rule is made to conform our rules to the federal requirements for identification of officially vaccinated animals as found in the Uniform Methods and Rules for Brucellosis Eradication, a publication of the United States Department of Agriculture. In order to properly identify vaccinated animals especially for interstate shipment it is necessary to adhere to the federal requirements. The effect of this rule is that the registration tattoo commonly placed on registered cattle may not be used as official identification for brucellosis vaccination. Such cattle will have to be identified in the manner applicable to all other cattle.


ROBERT G. BARTHELMESS
Chairman, Board of Livestock

Certified to the Secretary of State September 19, 1978.

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

In the matter of the adoption)	NOTICE OF THE ADOPTION
of a rule pertaining to AFDC)	OF RULE 46-2.10(14)-
assistance standards and the)	S11121 AND THE REPEAL
repeal of ARM Rule 46-2.10(14))	OF ARM RULE 46-2.10(14)
-S11120)	-S11120

TO: All Interested Persons:

1. On July 27, 1978, the State Department of Social and Rehabilitation Services published notice of a proposed adoption of a rule pertaining to AFDC assistance standards and the repeal of ARM Rule 46-2.10(14)-S11120 at pages 1013 through 1016 of the 1978 Montana Administrative Register, issue number 8.

2. The agency has adopted and repealed the rules as proposed.

3. No comments or testimony were received. The agency has adopted and repealed the rules to replace and simplify an earlier rule by consolidating the former winter and summer budgets into a single budget. The rule also conforms the assistance level with federal requirements, in particular to reflect the benefit levels already approved and currently being paid for fiscal year 1979.

Keith F. Colts

Director, Social and Rehabili-
tation Services

Certified to the Secretary of the State September 19, 1978.

VOLUME NO. 37

OPINION NO. 157

TEACHERS' RETIREMENT SYSTEM - Retirement credit, dependent upon when applicant joined the system;
TEACHERS - Out-of-state, private and public;
SECTIONS - 75-2705(9), 75-6213 and 75-6209, R.C.M. 1947.

- HELD: 1. Applicants entering the Teachers' Retirement System prior to July 1, 1971, may purchase credit for any type of instructional service previously performed, whether within or without the United States, and whether in a public, private, or federal institution.
2. Applicants entering the Teachers' Retirement System after July 1, 1971, may purchase credit only for certified teaching or administrative functions performed within the United States, its territories or possessions, in state or locally financed public schools and institutions.

7 September 1978

Owen L. Morris, Jr.
Teachers' Retirement System
1500 Sixth Avenue
Helena, Montana 59601

Dear Mr. Morris:

You have requested my opinion concerning the purchase of retirement credits for out-of-state or out-of-country teaching service in private or federally sponsored schools and institutions.

The answer to your inquiry concerning the ability of various applicants to purchase retirement credit in the Teachers' Retirement System for teaching services performed outside Montana or outside the United States depends upon the date upon which the individual applicants joined the System and the controlling statutory provisions at that time. State ex rel. Sullivan v. State of Montana, 34 St. Rptr. 1328, 1329-

Montana Administrative Register

12-9/28/78

30 (Nov. 15, 1977). Therefore, the following analysis is fashioned to provide general guidelines for assessing the validity of claims for retirement credit rather than to address the specific requests submitted.

Teaching services performed prior to 1937 by public school teachers are considered "creditable" under a prior service certificate only if performed in public, i.e., state or locally financed institutions, and only if performed in another state or a territory or possession of the United States. "Prior service" was defined in former Section 75-2701(7), R.C.M. 1947, in terms of work as a "teacher", which in turn was defined in subsection (4) of that statute with exclusive reference to public elementary and high schools and universities. Furthermore, former Section 75-2705(1) provided that an application for membership in the Teachers' Retirement System was to include teaching services performed "in other states," thus indicating that teaching outside the United States was not to be considered in determining creditable prior service. See 17 OP. ATT'Y GEN. 235 (Op. No. 195, Nov. 18, 1937). Section 75-6213, which has been in effect since July 1, 1971, continues the same guidelines as former Section 75-2701(7) for services performed prior to September 1, 1937. See Sections 75-6201(7) and 75-6209.

The 1949 amendments to Section 75-2705, which added subsection (9), allowed out-of-state teachers entering the state public school system to purchase retirement credit for their services elsewhere for the first time, and was made applicable to "any teacher who has become employed as a teacher in Montana" subsequent to September 1, 1937, for his or her out-of-state teaching employment. According to the interpretation given to the statutory subsection by the Montana Supreme Court, a teacher qualifying under the statute for retirement credit for previous teaching experience was anyone who had taught or instructed, State ex rel. Sullivan v. State of Montana, 34 St. Rptr. at 1331, thereby encompassing any type of former teaching activity, whether in public, private, or federal institutions or schools. Section 75-2705(9) also contained the phrase "out-of-state teaching employment" to express the range of locations and positions for which credit would be allowed. Given the plain meaning of this phrase and the broad reading given to the word "teacher" in the same subsection by the Supreme Court, it follows that the "out-of-state" terminology included any area outside the borders of Montana, including other states, United States territories and

possessions, and foreign countries. Cf. Maryland Casualty Co. v. Brown, 115 S.W.2d 394, 395 (Tex. 1938) (in which the Texas Court interpreted similar wording in a Workmen's Compensation statute to include any place outside Texas). As stated in Dunphy v. Anaconda Co., 151 Mont. 76, 80, 438 P.2d 660, 662 (1968), "Where the language of a statute is plain, unambiguous, direct and certain, the statute speaks for itself and there is nothing left for the court to construe." Thus, for those who entered the Teachers' Retirement System between September 1, 1937, and July 1, 1971, any type of former teaching experience in any part of the world qualifies for credit in the System, as long as the other conditions imposed by former Section 75-2705(9) are met by the applicant.

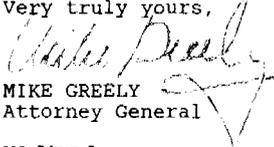
The law concerning out-of-state creditable service was amended in 1971, its scope being narrowed once more to include only prior teaching in public elementary and secondary schools and universities in other states. Section 75-6213, R.C.M. 1947, specifically applies only to "out-of-state employment service that would have been acceptable under the provisions of this Title if such service were performed in the State of Montana." Those services which render a person eligible for membership in the System in Montana are listed in Section 75-6209 and include only teaching and administrative duties for which one has received certification and which are performed in state and district funded schools and institutions. See §75-6101, R.C.M. 1947. Therefore, reading together the section referring to eligibility for membership in the System and the section covering creditable out-of-state service, it is clear that the legislature intended to exclude previous teaching services performed outside the United States and those performed in private or federal schools or institutions.

THEREFORE, IT IS MY OPINION:

1. Applicants entering the Teachers' Retirement System prior to July 1, 1971, may purchase credit for any type of instructional service previously performed, whether within or without the United States, and whether in a public, private or federal institution.

2. Applicants entering the Teachers' Retirement System after July 1, 1971, may purchase credit only for certified teaching or administrative functions performed within the United States, its territories or possessions, in state or locally financed public schools and institutions.

Very truly yours,



MIKE GREELY
Attorney General

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