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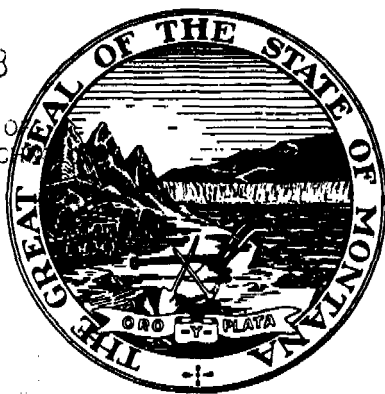
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1978 ISSUE NO. 15

PAGES 1509 — 1540



NOTICE: The July 1977 through June 1978 Montana Administrative Registers have been placed on jacketing, a method similar to microfiche. There are 31 jackets 5 3/4" x 4 1/4" each, which take up less than one inch of file space. The jackets can be viewed on a microfiche reader and the size of print is easily read. The charge is \$.12 per jacket 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. 15

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adop-)	NOTICE OF PROPOSED ADOPTION
tion of a rule concerning	)	OF DISCIPLINE HANDLING RULE.
discipline handling of State	)	NO PUBLIC HEARING CONTEM-
employees.	)	PLATED.

TO: All Interested Persons:

1. On or after December 17, 1978, the Department of Administration proposes to adopt a Rule concerning discipline handling of State employees.

2. The proposed Rule does not replace or modify any section currently found in the Montana Administrative Code.

3. The proposed Rule reads as follows:

RULE I. INTRODUCTION. Management has a right to expect that employees will perform in a satisfactory manner so that the State can accomplish its goals. However, employees have the right to the impartial application of laws, rules, policies and to equal treatment without regard to race, religion, color, age, sex, national origin, handicap, political belief, marital status or any non-merit factor. With these rights in mind, this Rule is written to protect both the rights of management and employees.

RULE II. DEFINITIONS. (a) Corrective discipline means constructive, corrective action taken by management to improve inadequate employee behavior in a positive, non-threatening manner. Corrective discipline is for behavior, attendance, and performance problems, and is designed for self-improvement of the employee. It may involve informal or formal counseling, may be documented and may include specific courses of action to be taken.

(b) Disciplining supervisor(s) means supervisor(s) designated by a Department as having the responsibility and authority to effectively implement appropriate disciplinary procedures.

(c) Documentation is a precise record of facts and incidents that recounts what was observed and what was told the employee concerning a given disciplinary situation; indicates time of such occurrences, and is dated and signed by the disciplining supervisor.

(d) Due process is a legal check designed to ensure an employee: 1) is informed of what action is being taken and the reasons for it, and 2) has an opportunity to respond to and question the action and to defend or explain the questioned behavior or actions.

(e) Employee means all employees who have served a probationary period and are in permanent employment status with the state of Montana, except elected officials, appointed officers and their respective personal staff.

(f) Just cause means that taking disciplinary action is for substantial reasons related to the employee's job duties, job performance, or working relationships and is appropriate. Just cause is determined if the alleged act were an actual violation of an established agency standard, legitimate order, policy, labor agreement, or a series of lesser violations, and if the employee would reasonably be expected to have knowledge of the aforementioned.

(g) Letter of reprimand consists of, but is not limited to a general statement of the problem, a specific statement of fact and charges (what the employee has done wrong, what the series of lesser violations were, examples of poor work performance, standards violated, etc.) and a definite warning that the more serious penalties following can include further punitive discipline.

(h) Personal problem means any personal or medical problem (e.g., alcoholism, drug abuse, mental or emotional illness, family crises, etc.) that interferes with an employee's job performance and is beyond the ability of the agency or unit to resolve through corrective discipline.

(i) Punitive discipline means that action which punishes an employee, such as a letter of reprimand, suspension, termination, or other appropriate action.

(j) Suspension is a type of punitive discipline which places the employee in a leave without pay status for a specific number of days or weeks. Such action may be effective immediately or after a notice, depending on the violation.

(k) Termination is the involuntary separation of an employee from employment - usually one of the last steps taken in a disciplinary process.

RULE III. POLICY. (a) Standards of employee behavior and agency time limits shall be consistently applied to all employees.

(b) Each disciplining supervisor and each employee should be familiar with these requirements and should understand the job duties, working relationships, standards, policies, legitimate orders, agreements, which are pertinent to this Rule.

(c) A personal problem should be identified as early as possible and appropriate action taken to assure proper discipline handling. Such problems should be referred to the Employee Assistance Program (449-3405) for diagnosis and treatment.

(d) Documentation of incidents should commence at the onset of discipline handling.

(e) Management shall consider corrective discipline, in all appropriate instances, before applying punitive discipline.

(f) When punitive discipline is necessary, just cause, documentation of facts and due process are required.

(g) Lengthy suspensions should be avoided. Instead, termination should be considered for serious employee behavior requiring discipline.

(h) A letter of reprimand should be signed by the employee or by a witness if the employee refuses to sign it or should be sent by certified mail. Copies of such written materials should be distributed to all affected parties and retained until no longer needed.

(i) Corrective discipline is usually not grievable, while punitive discipline is grievable.

(j) In the event the employee does not agree with the punitive action, the employee has the right to appeal through a published grievance process.

RULE IV. CONCLUSION. (a) All State agencies shall adopt internal rules and procedures to implement this Rule unless it conflicts with negotiated labor contracts, which shall take precedence to the extent applicable.

4. The reason for this Rule is as follows: There is a critical need to provide uniform rules to be consistently applied concerning discipline handling of State employees. Adoption of these Rules will lessen the possible discriminatory treatment of employees in the application of discipline handling and protect the rights of both management and employees.

5. Interested persons may submit their data, views or arguments concerning the proposed adoption to the Administrator, Personnel Division, Department of Administration, Room 130, Mitchell Building, Helena, Montana 59601.

6. If a person directly affected wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit his request along with any written comments to that office before December 15, 1978.

7. If the department receives requests for a public hearing on the proposed Rule from more than ten percent (10%) or twenty-five (25) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

8. The authority of the Department to make the proposed adoption of the Rule is based on Section 59-913, R.C.M. 1947. Implementation is based on Section 59-913, R.C.M. 1947.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adop-)
tion of a rule concerning pro-)
cedures to apply for leave due)
to emergencies.)

NOTICE OF PROPOSED ADOPTION
OF LEAVE DUE TO EMERGENCIES
RULE. NO PUBLIC HEARING IS
CONTEMPLATED.

TO: All Interested Persons:

15-11/17/78

MAR Notice No. 2-2-33

1. On or after December 17, 1978, the Department of Administration proposes to adopt a Rule concerning leave due to emergencies.

2. The proposed Rule does not replace or modify any section currently found in the Montana Administrative Code.

3. The proposed Rule reads as follows:

RULE I. INTRODUCTION. (a) Emergencies: (i) The closing of State offices due to serious emergencies will be determined by the Governor.

(ii) In the event of an early closing or late opening, only those employees immediately affected (at work or scheduled to report for work) by the adverse conditions will be granted time off.

(iii) State agencies in areas outside of Helena will coordinate decisions regarding working conditions with other State agencies in the general locale. In such instances, the appointing authorities should consult with their counterparts in other agencies of the area so that, when practicable, all employees will receive the same amount of time off.

(b) Emergency Service: Given that the state of Montana recognizes its obligations as an employer in the community, leave may be granted for emergency service purposes as outlined in this Rule.

RULE II. DEFINITIONS. (a) Emergencies means any agency approved excuse (other than those properly chargeable to sick leave) that would prevent an employee from reporting to work at the assigned time or necessitates the employee leaving work earlier than scheduled. This includes emergencies such as severe weather conditions, natural or man-made disasters, and emergency situations declared by the Governor.

(b) Emergency volunteer means any State employee actively participating in local volunteer emergency services, such as volunteer fire fighting, search and rescue and civil defense.

(c) Employee means any individual employed by the state of Montana. This does not include individuals under contract as independent contractors.

(d) Natural or man-made disaster means any circumstance which causes harm, endangerment, or destruction to person(s), property, or security. This includes a natural or man-made disaster area so designated by the Governor which may necessitate the absence of any employee living in such an area. In case of natural or man-made disaster, the Governor may promulgate other procedures as necessary.

(e) Severe weather means weather conditions that create a hazard for the employee either before a working day preventing the employee from reporting for work at the assigned time or weather occurring during the working day that necessitates the employee leaving work earlier than scheduled.

(f) Work day means that day an employee would have normally been in a pay status.

RULE III. GUIDELINES. (a) Necessary absences due to emergencies shall be charged to compensatory time, vacation leave, leave without pay; or if the agency deems it feasible, time lost from work may be made up within the work week. Leave charged to the above shall be consistent within individual agencies. Sick leave may not be used. For a State employee actively participating as an emergency service volunteer, leave time may be charged as provided above.

(b) Absences due to emergencies declared by the Governor shall not be charged to an employee's compensatory time, vacation leave or leave without pay. If an employee is working in a geographical location declared a disaster area or under an emergency situation by the Governor, and the employee cannot report for work, the agency shall grant this as paid time off.

RULE IV. CONCLUSION. (a) This Rule shall apply to all permanent full-time, part-time, seasonal and temporary employees.

(b) All State agencies shall adopt internal rules and procedures to implement this Rule unless it conflicts with negotiated labor contracts, which shall take precedence to the extent applicable.

4. The reason for this Rule is as follows: There is a critical need to provide procedures for an employee either affected by emergencies or participating as an emergency service volunteer. Adoption of these Rules will assure consistent application of leave time for such employees.

5. Interested persons may submit their data, view or arguments concerning the proposed adoption to the Administrator, Personnel Division, Department of Administration, Room 130, Mitchell Building, Helena, Montana 59601.

6. If a person directly affected wishes to express his data, views, or arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit his request along with any written comments to that office before December 15, 1978.

7. If the department receives requests for a public hearing on the proposed Rule from more than ten percent (10%) or twenty-five (25) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

8. The authority of the Department to make the proposed adoption of the Rule is based on Section 59-913, R.C.M. 1947. Implementation is based on Section 59-913, R.C.M. 1947.

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MAJ Notice No. 2-2-33

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adop-)	NOTICE OF PROPOSED ADOPTION
tion of a rule concerning	)	OF EMPLOYEE RECORD KEEPING
employee record keeping.	)	RULE. NO PUBLIC HEARING
	)	CONTEMPLATED.

TO: All Interested Persons:

1. On or after December 17, 1978, the Department of Administration proposes to adopt a Rule concerning employee record keeping.

2. The proposed Rule does not replace or modify any section currently found in the Montana Administrative Code.

3. The proposed Rule reads as follows:

RULE I. INTRODUCTION. This Rule is adopted to provide the minimum criteria that should be met for consistent retention and availability of employee data.

RULE II. DEFINITIONS. (a) Employee personnel record means the individual file(s) containing documentation of current and historically pertinent information maintained in each agency, for every employee, regardless of status.

(b) Personnel Profile is a document referring to information stored in the personnel/payroll data base.

RULE III. POLICY. (a) Employee personnel records may be kept in any type of file folder that will accommodate the accumulated information.

(b) Employee personnel records will be maintained in one or more files consisting of personal, financial, confidential, Personnel Profiles and documents of separation.

(c) As a minimum, the following documents for employees will be kept in the files.

(i) PERSONAL: (A) State application and/or resume of employee, (B) Copy of "Designation of Person Authorized to Receive Decedent's Warrants," (C) individual training record, which may be kept separately for ease of access; combined with personnel file upon termination, (D) Any records pertaining to hiring, promotion, transfer and selection for training or apprenticeship, (E) Enrollment in health insurance plans, (F) Copies of any documentation for licenses or certifications for any applicable positions (e.g., nurses, doctors, teachers, etc.), (G) Longevity computation, certification form and any documentation of previous employment that affects employee benefits, (H) Any other information the agency feels is necessary and important

(ii) FINANCIAL: (I) All copies of Payroll Status Forms affecting employees' pay and/or status, (l) Latest copy of Payroll Turnaround Document (this will eventually replace the Payroll Status Form, which includes all payroll related information, such as voluntary deduction information), (J) W-4 forms, (K) Employee Leave Record and Time and Attendance Reports, which may be kept separately for ease of access; com-

bined with personnel file upon termination, (L) Authorizations to deduct money from paycheck, such as health insurance premiums, credit union, savings bond and/or deferred compensatory deductions, etc.

(iii) CONFIDENTIAL: (M) Performance evaluations, (N) Disciplinary matters, (O) Personal problems requiring employee assistance,

(iv) PERSONNEL PROFILES: A section in the folder should be designated for personnel profiles so data persons may have direct access.

(v) DOCUMENTS OF SEPARATION: (Q) A copy of termination form, (R) letter of resignation,

(d) All documents should be maintained for such period of time as provided in Chapter 1-1300 of the Montana Operations Manual, relating to records management.

(e) Persons who may have access to personnel records are:

(i) The employee may look at his/her record, preferably at a specified time, in the company of the designated custodian of records

(ii) The immediate supervisor and those persons above the supervisor level within the same line of authority

(iii) The payroll or personnel clerk who routinely works with the personnel records

(iv) The Department EEO Officer and/or Personnel Officer

(v) The Office of the Legislative Auditor may have access to personnel records pursuant to 5-13-309, MCA, for purposes of auditing state agencies, except employee confidential information

(vi) For all others, permission to look at an employee's personnel record should be secured from immediate supervisor or other designated authority with knowledge and/or permission of the employee

(f) General employment information such as dates and duration of employment, title of position, and verification of salary range may be furnished upon written request.

(g) Confidential materials contained in personnel files should be separately maintained and not released without the individual employee's permission.

(h) At any time, an employee may file a written rebuttal to material in the record. However, this does not guarantee the removal of such material.

(i) The files should be kept locked, if at all possible, for both the active and inactive personnel records.

RULE IV. CLOSING. (a) This Rule shall be utilized unless it conflicts with negotiated labor contracts, which shall take precedence to the extent applicable.

4. The reason for this Rule is as follows: There is a critical need to provide uniform rules to be consistently applied to employee record keeping. Adoption of these Rules


will assure consistent retention and availability of employee data.

5. Interested persons may submit their data, views or arguments concerning the proposed adoption to the Administrator, Personnel Division, Department of Administration, Room 130, Mitchell Building, Helena, Montana 59601.

6. If a person directly affected wishes to express his data, views, or arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit his request along with any written comments to that office before December 15, 1978.

7. If the department receives requests for a public hearing on the proposed Rule from more than ten percent (10%) or twenty-five (25) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

8. The authority of the Department to make the proposed adoption of the Rule is based on Section 59-913, R.C.M. 1947. Implementation is based on Section 59-913, R.C.M. 1947.



David Lewis, Director
Department of Administration

Certified to the Secretary of State, NOVEMBER 8, 1978.

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

In the matter of proposed	)	REVISED NOTICE
revisions to Montana's	)	OF PUBLIC HEARING
plan implementing the	)	FOR PROPOSED REVISIONS TO
federal clean air act	)	THE STATE IMPLEMENTATION PLAN

1. A public notice was published in the Administrative Register of Montana on October 12, 1978, MAR Notice No. 16-2-101, indicating that the Board of Health and Environmental Sciences would hold public hearings on November 16-18, 1978, to consider proposed revisions to Montana's State Implementation Plan of the Federal Clean Air Act. A list of matters to be considered at those meetings was provided. The Board will not be considering all of those matters at its November meetings, but instead will carry some of them over and hear them along with additional proposed revisions to the SIP at its December 18, 1978, meeting.

2. The proposed revisions are being considered for adoption by the Board in order to comply with the August, 1977, amendment to the Federal Clean Air Act.

3. The following matters will be considered as proposed revisions to the SIP at the Board's November meetings which are scheduled to begin November 16, 1978, at 1:00 p.m. and continue on November 17 and 18, 1978 at 8:30 a.m., in the basement auditorium of the Social and Rehabilitation Services Building, 111 N. Sanders, Helena, Montana:

(a) Sulfur dioxide (SO₂) emission limitation control strategies for the Anaconda, Montana area and East Helena, Montana, areas;

(b) Revisions of the following rules:

(i) ARM 16-2.14(1)-S1410, Definitions affecting limitations of levels of emissions;

(ii) ARM 16-2.14(1)-S1420, Incinerators;

(iii) ARM 16-2.14(1)-S1440, Airborne Particulate Matter;

(iv) ARM 16-2.14(1)-S1460, Visible Air Contaminants;

(v) ARM 16-2.14(1)-S14030, Wood-Waste Burners;

(vi) ARM 16-2.14(1)-S14082, New Source Performance Standards.

(c) New rules pertaining to:

(i) Prevention of significant deterioration of air quality (PSD);

(ii) Limiting the credit given to tall stacks and other dispersion techniques as emission limitation controls;

(iii) Regulating permits for the construction and operation of equipment.

The Board will hold an additional meeting on December 18, 1978, at 8:30 a.m., in the basement auditorium of the Social and Rehabilitation Services Building, 111 N. Sanders, to consider the following matters as proposed revisions to Montana's State Implementation Plan (SIP) of the Federal Clean Air Act:

(a) Sulfur dioxide (SO₂) emission limitation control strategy for the Laurel, Montana, area.

(b) Total suspended particulate (TSP) emission limitation control strategies for the East Helena, Montana, area; Butte, Montana, area; Great Falls, Montana, area; Colstrip, Montana, area; Columbia Falls, Montana, area; Billings, Montana, area; and Missoula, Montana, area.

(c) Carbon monoxide (CO) emission limitation control strategies for the Billings, Montana, area; and Missoula, Montana, area.

Copies of the proposed revisions to the SIP which will be heard before the Board at its November, 1978, meetings may be obtained at this time upon payment of copying costs. Matters to be considered as proposed revisions to the SIP by the Board at its December, 1978, meeting will be available upon payment of copying costs, on November 18, 1978. The following locations listed in each air quality control region have copies of the proposed SIP revisions:

Yellowstone County Air Pollution Control Officer,

3302 Fourth Avenue North, Billings, MT 59101

City-County Health Department, Air Pollution Control

Great Falls, MT 59401

Air Quality Bureau, Department of Health and

Environmental Sciences, Capital Station,

Helena, Montana 59601

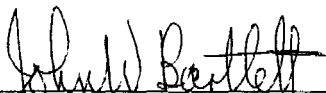
County Sanitarian, Custer County, Miles City, MT 59301

Missoula County Health Department, Air Pollution

Control, Missoula County Courthouse, Missoula, MT 59801

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearings, or may address their comments in writing to Michael Roach, Chief of the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59601. Written comments submitted to Mr. Roach relating to matters scheduled for the November, 1978, meetings must be submitted no later than November 15, 1978, and written comments for the December, 1978, meeting must be submitted no later than December 17, 1978. Persons submitting written comments are requested to enclose at least two copies and a copy for each of the seven members of the Board would be appreciated.

5. C. W. Leaphart, Jr., 1 North Last Chance Gulch, Helena, Montana, has been designated as the hearings officer to preside over and conduct the hearings.



JOHN W. BARTLETT, Chairman

Certified to the Secretary of State November 8, 1978

BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
STATE OF MONTANA

In the matter of the amend-	)	NOTICE OF AMENDMENT OF RULE
ment of the Rule concerning	)	36-2.2(1)-P200 CONCERNING
Attorney General's Model Pro-	)	ATTORNEY GENERAL'S MODEL
cedural Rules.	)	PROCEDURAL RULES
		NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons

1. On December 28, 1978 the Department of Natural Resources and Conservation proposes to amend Rule ARM 36-2.2(1)-P200 related to the Attorney General's Model Procedural Rules with the following changes:

36-2.2(1)-P200 ATTORNEY GENERAL'S MODEL PROCEDURAL RULES

(1) The Department of Natural Resources and Conservation has herein adopted and incorporated the Attorney General's Model Procedural Rules ~~1-through-38~~, and all subsequent amendments, by reference to such rule, ~~as stated in MAC 1-through-36 of this Code.~~

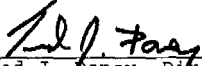
2. The rule is being amended to bring the Department's procedural rule in conformity with the Attorney General's Model Procedural Rules implementing Article II, Section 8 of the 1972 Constitution.

3. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Donald D. MacIntyre, Chief Legal Counsel, Department of Natural Resources and Conservation, 32 South Ewing, Helena, Montana 59601. Written comments, in order to be considered, must be received by no later than December 18, 1978.

4. If a person directly affected wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit his request along with any written comments he has to Mr. MacIntyre on or before December 18, 1978.

5. If the Department receives request for a public hearing on the proposed amendments from more than ten percent (10%), or twenty-five (25) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

6. The authority of the Board to adopt the proposed amendment to MAC Rule 36-2.2(1)-P200 is based on Section 82-4203, R.C.M. 1947.



Ted J. Doney, Director
Department of Natural Resources
and Conservation

Certified to the Secretary of State November 8, 1978.

15-11/17/78

MAR Notice No. 36-2-11

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

IN THE MATTER of the Proposed)	NOTICE OF PROPOSED AMENDMENT
Amendment of ARM 40-3.14(6)-)	OF ARM 40-3.14(6)-S1430
S1430 Licensing Requirements)	LICENSING REQUIREMENTS (1)
Sub-section (1).)	

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 17, 1978, the Board of Athletics proposes to amend rule ARM 40-3.14(6)-S1430(1) relating to licensing requirements for individuals.

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

" (1) All persons, clubs, corporations, organizations, or associations, physicians, referees, professional boxers or wrestlers, seconds, promoters, and/or match-makers must be licensed by the board and no such person, club, corporation, organization, association be permitted to participate, either directly or indirectly, in any boxing, sparring or wrestling match, contest or exhibition, or the holding thereof, unless such club, corporation, organization, association or person shall have first procured a license from the Board."

3. The rule is proposed to be amended in response to a recommendation of the Legislative Code Committee that the Board delete license fees for individuals because the Board does not have statutory authority over individual licenses or to charge fees for individuals. Should have been included on the proposed amendments in Notice 40-3-14-6.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Athletics, Lalonde Building, Helena, 59601 no later than December 15, 1978.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Athletics, Lalonde Building, Helena, Montana 59601 no later than December 15, 1978.


6. If the Board receives requests for a public hearing on the proposed amendment from more than 10% of the persons who are 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.

7. The authority of the Board to make the proposed amendment is based on section 82-303 R.C.M. 1947.

BOARD OF ATHLETICS
PATRICK J. CONNORS, CHAIRMAN

-1519-

BY:


ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State November 8, 1978.

15-11/17/78

MAR NOTICE NO. 40-31-14-7

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

IN THE MATTER of the Proposed) PROPOSED ADOPTION OF A RULE
Adoption of a new rule regard-) FOR CONTINUING EDUCATION FOR
ing Continuing Education for) PHARMACISTS
Pharmacists.)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 17, 1978, the Board of Pharmacists proposes to adopt a rule regarding continuing education for pharmacists.

2. The proposed adoption will read as follows:

"CONTINUING EDUCATION REQUIREMENTS AS A CONDITION TO LICENSE RENEWAL. (1) REQUIREMENTS. The nationally accepted measurement of Continuing Education, the Continuing Education Unit (C.E.U.), will be the measurement employed by the Board of Pharmacists. Ten hours of approved Continuing Education credit equal one C.E.U. The Board of Pharmacists will require 1.5 C.E.U. from the period of January 1, 1978, to June 30, 1980, and thereafter will require 1.5 C.E.U. for each fiscal year.

(a) This requirement will not pertain to a pharmacist applying for his or her first renewal license.

(b) Beyond the requirement, only 1.5 C.E.U. may be accumulated and may be applied only to the following year.

(c) A minimum of 0.5 C.E.U. is to be obtained in approved group programs.

(2) SUBJECTS. Continuing pharmaceutical education will include, but will not be limited to, appropriate professional post graduate education in any of the following subjects:

(a) Properties and actions of drugs and dosage forms.

(b) Etiology, pathophysiology, clinical course, therapy and prognosis of diseases.

(c) Pharmacy practice.

(d) Legal, psychological and socio-economic aspects of health care delivery.

(3) ACCREDITATION. Continuing Education programs sponsored by providers that are approved by the American Council of Pharmaceutical Education (ACPE) will automatically qualify for Continuing Education credit.

(4) ALTERNATIVE PROGRAMS. Pharmacists may receive C.E.U. for programs other than those on the ACPE list of providers by applying for prior approval by the Continuing Education Advisory Council. This Council shall be appointed by the Board of Pharmacists. The duties of the Continuing Education Advisory Council shall be to provide a list of ACPE approved continuing education programs (including subject matter, type of program, provider or sponsor, date, location and C.E.U.), to publish the list

periodically, and to determine approval for alternative programs. Pharmacists participating in programs that have not received prior approval risk disallowance of credit.

(5) NON-RESIDENTS. In order to receive Montana license renewal, any Montana-licensed pharmacist residing in another state shall meet Montana's requirements for Continuing Education.

(6) RENEWAL NOTIFICATION. The Board will mail an appropriate annual renewal notice to all licensed Montana pharmacists prior to June 1 of each year.

(a) The notice will state the annual pharmacist's license renewal fee.

(b) The notice will state the Continuing Education requirements and any other information considered pertinent for the licensee's understanding of the renewal requirements.

(c) Notice will be considered as properly mailed when addressed to the current address on file with the Board of Pharmacists.

(7) RENEWAL APPLICATION. The annual renewal notice shall be returned to the Board with the appropriate fee and with the listing of satisfactorily completed Continuing Education requirements signed by the licensee. The completed form shall identify the approved Continuing Education program or programs completed, C.E.U.'s, date completed, and location. Incomplete renewal applications will not be processed and will be returned to the applicant.

(a) The Board of Pharmacists shall randomly select submitted renewal notice forms for audit and verification of the approved Continuing Education programs listed. It will be the responsibility of each pharmacist to maintain his or her own records of attendance or completion and make them available upon request.

(8) NON-COMPLIANCE. Failure to meet the annual license renewal requirements by June 30 of any year will be cause for the license to lapse. Reinstatement may be considered as provided in Section 66-1507, R.C.M. 1947, as amended. For reinstatement after June 30 and before July 1 of the next year, the applicant shall have completed the Continuing Education requirements and certify that fact to the Board of Pharmacists as stated in Section (7)."

3. The reason for the proposed adoption is to set the guidelines and implement the Continuing Education requirement that is required for pharmacists in renewing their licenses beginning with the fiscal year renewal for 1980/1981. Section 66-1507.2 states that the Board shall adopt rules for the proper

administration of the continuing education provisions of this chapter including but not limited to: (1) determinations as to accredited programs; (2) the number of hours of continuing education required for license renewal; and (3) alternative methods for fulfilling continuing education requirements as prescribed in 66-1507.1(2). Specific reasons for each item adoption are as follows:

Item (1) is a definition of the measurement used in determining the time required to fulfill the continuing education obligations for renewal of license. (a) under (1) above the requirement pertains only to the first renewal license; (b) of (1) is to allow registrant to take advantage of continuing education opportunities available in a one year period, but to prevent the registrant from accumulating numerous CEU's during one year and then not participating in continuing education for a period of years; (c) of (1) is to encourage the registrant to participate in group programs whenever and wherever possible. The number of group programs that are increasingly being made available should ensure that all will have ample opportunity to adhere to this requirement.

Item (2) states subjects that may be included in continuing education.

Item (3) is the national agency for approval of Continuing Education providers and accreditation of professional degree programs in pharmacy.

Item (4) a Continuing Education Advisory Council (CEAC) will be appointed by the Board. Represented on this council will be the Montana State Pharmaceutical Association, the Montana Hospital Pharmacists Association, the School of Pharmacy at the University of Montana, and the Board of Pharmacists, and non-affiliates. All registrants are encouraged to seek approval for alternative programs prior to participation to preclude the possibility that the program will not meet the CEAC's criteria for an approved program. The procedures required for gaining this approval will be mailed to all registrants.

Item (5) Since there is only one type of pharmacist's license in Montana, all pharmacists registered in Montana must meet the continuing education requirements for renewal.

Item (6) The procedures that will be followed by the Board in order that all registrants will be fully informed.

Item (7) The procedures that are to be followed by the registrant in order that he or she will be able to properly complete the renewal form for processing. Random audits of renewal forms will be made and all registrants shall make their records available when requested.

Item (8) is restatement of the present annual renewal requirements plus the amended section that includes the continuing education requirements.

4. Interested parties may submit their data, views or arguments concerning the proposed adoption in writing to the

Board of Pharmacists, Lalonde Building, Helena, Montana 59601 no later than December 15, 1978.


5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Pharmacists, Lalonde Building, Helena, Montana 59601, no later than December 15, 1978.

6. If the Board receives requests for a public hearing on the proposed adoption from more than 25 of those persons who are directly affected by the proposed adoption, 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 Board to make the proposed adoption is based on section 66-1507.2 R.C.M. 1947.

BOARD OF PHARMACISTS
TERRY J. DONAHUE, PRESIDENT

BY:


ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State November 8, 1978.

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

IN THE MATTER of the Proposed)	NOTICE OF PROPOSED AMENDMENT
Amendment of ARM 40-3.78(6)-)	OF ARM 40-3.78(6)-S78030
S78030 Statutory Rules and)	STATUTORY RULES AND REGULA-
Regulations - Dangerous Drugs)	TIONS - DANGEROUS DRUGS (5)
Sub-section (5))	

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 17, 1978, the Board of Pharmacists proposes to amend rule ARM 40-3.78(6)-S78030 sub-section (5) relating to dangerous drugs.

2. The proposed amendment to ARM 40-3.78(6)-S78030 (5) reschedules, redefines and adds several drugs and will read as follows: (new matter underlined, deleted matter interlined)

"(5) In addition to the controlled substances identified and referred to above, the Board of Pharmacists has adopted, pursuant to the authorization in Section 54-302 R.C.M. 1947, the following substances to be added thereto:

(a) Schedule I: Difenoxin, Propiram, Drotebanol, 4-bromo-2, 5-dimethoxyamphetamine, 4-methoxyamphetamine, thiophene analog of phencyclidine, Mecloqualone, N-ethyl-1-phenylcyclohexylamine, 1-(1-phenylcyclohexyl) pyrrolidien.

(b) Schedule II: Amobarbital, Pentobarbital, Secobarbital, Methaqualone, Etorphine Hydrochloride, Diprenorphine, Apomorphine, Codeine, Ethylmorphine, Hydrocodone, Hydromorphone, Metopon, Morphine, Oxycodone, Oxymorphone, Thebaine, Cocaine, Methylphenidate, Norpethidine, Phencyclidine.

Single entity ORAL Dosage forms of amphetamine, dextroamphetamine or methamphetamine, or ORAL amphetamine-dextroamphetamine combinations.

(c) Schedule III: Benzphetamine, Chlorphentermine, Chlorlertamine, Phendimetrazine, Mazindol.

Pursuant to Section 54-302 (1) R.C.M. 1947, Phencyclidine, listed in Schedule III in Section 54-309 (2)(g), R.C.M. 1947, is rescheduled to Schedule II as listed in sub-section (b) above.

(d) Schedule IV: Diethyl propion, Fenfluramine, Phentermine, Clordiazepoxide, Diazepam, Clonazepam, Clorazepate, Flurazepam, Oxazepam, Pemoline, Mebutamate, Prazepam, Dextropropoxyphene: Propoxyphene, it's optical isomers and salts of all optical isomers. Preparations of not more than 1 mg of difenoxin with not less than 0.025 mg of atropine sulfate per dosage unit. Any material, compound, mixture or preparation which contains any quantity of pentazocine, including its salts.

(e) Schedule V: Loperamide. Preparations of not more than 0.5 mg of difenoxin with not less than 0.025 mg of atropine sulfate per dosage unit. "

3. The proposed amendment is that such additional drugs have been controlled or rescheduled by the Federal Government since the last changes made to the Board rules and pursuant to its instructions in Section 54-302 R.C.M. 1947. The Board is likewise proposing controlling or rescheduling the drugs by publication of this notice.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Pharmacists, Lalonde Building, Helena, Montana 59601 no later than December 15, 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 the Board of Pharmacists, Lalonde Building, Helena, Montana 59601, no later than December 15, 1978.

6. If the Board 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. Ten percent of those persons directly affected has been determined to be 30 persons based on the 300 certified pharmacies in Montana.

7. The authority of the Board to make the proposed amendment is based on section 54-302 R.C.M. 1947.

BOARD OF PHARMACISTS
TERRY J. DONAHUE, PRESIDENT

BY: 

ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State November 8, 1978.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF PUBLIC ACCOUNTANTS

IN THE MATTER of the Proposed)	NOTICE OF PROPOSED AMENDMENT
Amendment of ARM 40-3.94(6) -)	OF ARM 40-3.94(6)-S94020 (1)(d)
S94020 Examinations -)	EXAMINATIONS - APPLICATIONS
Applications, Sub-section (1))	
(d))	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 17, 1978, the Board of Public Accountants proposes to amend rule ARM 40-3.94(6)-S94020 (1)(d) concerning the hardship definition under examinations and applications.

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

"(1)...(d) A candidate who misses one or more consecutive examinations because of special hardships may apply to the board for an extension of the provisions of ARM 40-3.94(6)-S94020 (1)(b) of section 66-1826. ~~Special hardship-definition-to-be-restricted-to-death-or-illness in-immediate-family;-and-to-be-Extension~~ may be granted at the Board's discretion on an individual basis."

3. The reason for the amendment is that restriction of the hardship definition to death or illness in the immediate family is too restrictive and does not allow for other unavoidable and/or unexpected happenings that may create a hardship

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Public Accountants, Lalonde Building, Helena, Montana 59601 no later than December 15, 1978.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Public Accountants, Lalonde Building, Helena, Montana 59601 no later than December 15, 1978.

6. If the Board receives requests for a public hearing on the proposed amendment from more than 10% of the persons who are 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.

7. The authority of the Board to make the proposed amendment is based on section 66-1818 R.C.M. 1947.

BOARD OF PUBLIC ACCOUNTANTS
BOYD TAYLOR, CPA, CHAIRMAN

BY: 

ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State November 8, 1978

MAR Notice No. 40-3-94-10

15-11/17/78

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amend-	)	NOTICE OF PROPOSED AMEND-
of the general provisions	)	MENT OF RULES AND ADOPTION
and format instructions for	)	OF NEW RULES.
rulemaking under the Montana	)	NO PUBLIC HEARING
Administrative Procedure Act.	)	CONTEMPLATED.

TO: All Interested Persons:

1. On December 18, 1978, the Secretary of State's office proposes to amend rules and adopt new rules in Title 1, Chapter 2 of the Administrative Rules of Montana.

2. In order to set forth policies to facilitate the publication of the revised edition of the entire Administrative Rules of Montana following the recodification of the statutes, certain general provision rules have been rearranged, language transferred and consolidated to eliminate repetitiousness in the rules and to add clarity. There were no major changes in these rules, therefore, they will not be published in this notice. Copies will be available from this office at a later date.

3. The proposed amended rules with major changes in format procedures will read as follows (matter to be stricken is interlined, new matter underlined):

1.2.030 CODE NUMBERING OF RULES (BEFORE RECODIFICATION)

(The subsections below explain the present numbering method for rules placed in the Administrative Rules of Montana. This rule will remain in ARM for the user's information until the new numbering method explained in Rule 1 has been adopted by all agencies and the transition period for converting to the new numbering method is completed.)

- (1) Remains the same.
- (2) Remains the same.
- (3) Language remains the same - delete examples 4 and 5.
- (4) (5) (6) Remain the same.
- (7) Delete.

1.2.070 PAGE NUMBERING SYSTEM (1) Every page of the code has a page number. For each title of the code, the pages containing the initial rules are numbered serially in order, and Each number is preceded by the title number under which the page falls. Thus, the first page for the Department of Livestock would be numbered 32-1, the second page 32-2, the fifty-fifth page 32-55, etc. Such page number is located in the bottom right and left hand corners of the pages. With the beginning of a new title, the page numbering starts over, with the new title number preceding the page number.

(2) During recodification an agency has the opportunity to renumber its pages. An agency's previous experience will be helpful in reserving page numbers where growth has been steady in the past. If chapter numbers have been reserved in one area, then page numbers should also be reserved in that area. If a

block of numbers is reserved, the last printed page before the reserved numbers should have the wording "NEXT PAGE IS ____". This would indicate the page number of the first printed page following the reserved numbers. In this way, all pages in ARM will be accounted for.

(3) If there is a need to add supplemental pages the following outline should be used:

When supplemental pages are needed then the supplemental pages will take the same page number with the addition of a decimal point and the number 1, 2, 3, etc. such as: (Example: 46-74.1, 46-74.2, 46-74.3 and so on).

When there is need for additional pages between 46-74.1 and 46-74.2 then the pages should be numbered as: (Example: 46-74.1, 46-74.1A, 46-74.1B and so on).

When additional pages are needed between pages 46-74.1A and 46-74.1B they should be numbered as: (Example: 46-74.1Aa, 46-74.1Ab, 46-74.1Ac and so on).

When additional pages are needed between pages 46-74.1Aa and 46-74.1Ab they should be numbered as: (Example: 46-74.1Aaa, 46-74.1Aab, 46-74.1Aac and so on).

1.2.090 POSITIONING OF CODE ITEMS (1) The total contents of the code appear in order as follows+, however, during recodification sub-titles will be deleted from the ARM format.

(a) Remains the same.

(b) After an agency has recodified its portion of ARM, an "Old to New" table will be inserted directly behind the chapter table of contents which will indicate the old rule number and the new simplified rule number assigned. Repealed rules that have been removed from ARM during recodification will also be listed on this table.

(b)(c)(d) re-designated (c)(d)(e)

(e) (f) Remains the same.

It is necessary to retain the rules on the present format in the General Provisions for the user's information until recodification is completed and the transition period is ended. In order to differentiate and avoid confusion, some changes in format will be set forth in new rules. The proposed new rules will read as follows:

RULE I NEW RULE NUMBERING METHOD FOR THE ADMINISTRATIVE RULES OF MONTANA (1) During 1979, the Administrative Rules of Montana will be recodified and rules will be given shorter, simpler numbers. A three-part identifier will be used with each part separated by decimal points. Ex: 44.2.101. The first part, "44", is the title number assigned to the department under which the rule is located. The second part, "2", is the chapter number under which the rule falls. The first one or two digits in the third part, "1", represents the subchapter number under which the rule is located. The last two digits, "01", represent the individual rule number.

(2) Since the first two parts of the rule number are self-explanatory, the following example will explain how the third part of the rule identifier is set up.

(a) The first one or two digits of Part 3 of the identifier represent the subchapter under which the rule falls.

Ex: 44.2.101 First subchapter in chapter 2
44.2.9901 Last possible subchapter in chapter 2

101 Digit "1" is the subchapter. The subchapter numbers may run consecutively and if necessary, numbers reserved for future growth.
 There may be from 1 to 99 subchapters in one chapter. If there are more than 99 subchapters in one chapter, a new chapter would be assigned in that area.

9901 Digits "99" represent the last possible subchapter in a chapter.

(b) The last two digits of Part 3 of the identifier represents the individual rule number.

Ex: 44.2.101 Digits "01" represent the first rule in a subchapter. "0" must be placed before digits 1 through 9 so that there will always be 2 digits represented. Rule numbers may run consecutively, and if necessary, rule numbers reserved for future growth.
 There may be from 1 to 99 rules in one subchapter. If there are more than 99 rules in one subchapter, a new subchapter would be assigned in that area.

 44.2.199 Digits "99" represent the last possible rule in a subchapter.

Ex: 44.2.101 "44" represents the title
 "2" represents the chapter
 "1" represents the first subchapter in chapter 2
 "01" represents the first rule in subchapter 1

 44.2.9999 "44" represents the title
 "2" represents the chapter
 "99" represents the last possible subchapter number in chapter 2
 "99" represents the last possible rule in subchapter 99

(c) A department's organizational rule will be:

(title).1.101
| | |
| | first rule number
| | first subchapter
| chapter

(d) A department's procedural rules will begin:

(title).2.101
| | |
| | first rule number
| | first subchapter
| chapter

(e) In spacing groups of rules within a subchapter, it is recommended that if a group of rules is likely to undergo expansion, succeeding groups of rules should start with the next number divisible by 10 plus 1. In other words, it is not a requirement that there be a gap between related rules or groups and other related rules. Gapping should be used as the need arises. For example, if there are to be two groups of rules in a subchapter, and there are seven rules in the first group, the numbering would be as follows: 69.3.201 --- 69.3.207, 69.3.211 ---. The second group of rules within chapter 3, subchapter 2, begin with 11, the next number after 7 that is divisible by 10 plus 1. If there were 8 or more rules in the first group (69.3.201 --- 69.3.208) it would normally be advisable to skip to 21 to begin the second group, in order to allow necessary room for growth. It may also be advisable to skip from 7 or 6 to 21, or even 31, if considerable growth is anticipated in that area. The agency's past experience will help determine the number of spaces to be left open for expansion.

The following is an example of how to change existing rule numbers over to the new simplified numbering system:

SIMPLIFICATION OF RULE/SECTION NUMBERS; e.g. 46-2.10(18)-S10010

(i) Eliminate the "-2" or "-3" immediately following the title so that title and chapter are separated by a decimal point: 46.10(18)-S10010

(ii) Eliminate the subchapter and the parenthesis around it. Reinsert later. 46.10-S10010

(iii) Eliminate the hyphen and insert a decimal point in its place. 46.10.S10010

(iv) Eliminate the "O", "P" or "S" in front of the final set of digits: 46.10.10010

(v) Shorten the final set of digits by eliminating the first number or numbers which represent the chapter number. In its place insert the subchapter number which had appeared in the parenthesis in the old

numbering system. Subchapter numbers begin with number 1, the maximum being number 99.

46.10.18010

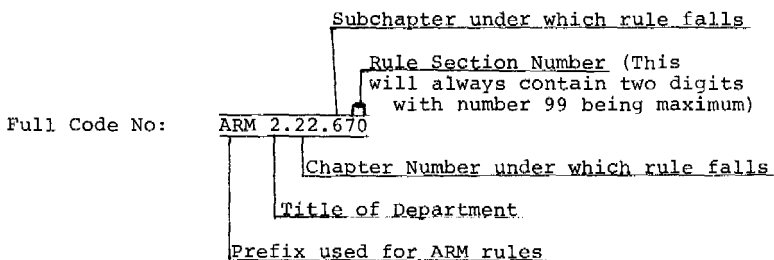
(vi) Change the section/rule number. In the past these progressed by tens. In the new numbering system the section/rule numbers will run from 01, 02, 03---10, 11, 12---up to and including 99 with numbers reserved where agencies anticipate growth.

46.10.1801

Simplified Numbering Method:

Before Recodification: ARM 2.2.22(6)-S2270

New Method: ARM 2.22.670



The following new rule pertains to the assignment of chapters and the numbering of chapters during recodification of the Administrative Rules of Montana. At a later date this rule will also incorporate language transferred from ARM 1.2.010 Breakdown of the Code. ARM 1.2.010 will remain in effect for the user's information until after recodification is completed.

RULE II NEW ARRANGEMENT OF THE ADMINISTRATIVE RULES OF MONTANA (1) During recodification, the chapters now existing under each title in the Administrative Rules of Montana will be renumbered and rearranged, if necessary, in a more logical sequence.

An agency's past experience will prove invaluable in organizing its rules and placing them in a logical order under chapters and subchapters and where the rules will be readily located by interested persons.

One important factor is to allow space for future expansion by reserving chapter numbers, subchapter numbers and page numbers in areas where growth has been consistent in the past. However, reserving numbers should only be used when the need arises and is not a requirement.

As in the past, the first chapter under every title will be assigned to the department's organizational rule and organizational charts. Chapter 2 will be assigned to the department's overall procedural rules. Thereafter, a department may begin the numbering of its chapters with number 3, 4, etc., running

consecutively and reserving chapter numbers in areas where future growth is anticipated.

It is not necessary to arrange the chapters in alphabetical order as practiced in the past. It is more important to organize the chapters so that the rules fall in a logical sequence with substantially related rules placed in chapter groups that follow each other.

Chapters that contain rules common to the entire department should be listed first, i.e. Centralized Services.

Divisions who have rule administering authority should be assigned chapter groups so that substantially related rules may be listed together.

It is no longer necessary to assign a chapter to a division for the purpose of stating only where the division's rules are located. This will be indicated by the name of the chapter in the table of contents.

A bureau may be assigned chapter(s) with its rules organized in subchapters according to related subject matter. In some instances, it may not be necessary to assign a chapter to a bureau, rather its rules may be placed in a subchapter under the division's chapter.

It is suggested that no chapters be assigned below the bureau level unless there is a particularly large group of rules being administered by a unit within the bureau. In this instance, a chapter may be assigned to a unit, however, it is recommended that the group of rules be placed in a subchapter of the bureau's or division's chapter.

Chapters may be assigned to autonomous agencies who are attached to a department for administrative purposes only. They may be alphabetized and listed after the department's chapters.

Subchapters will be numbered beginning with 1, 2, 3, etc. and may run consecutively with numbers reserved where necessary. There may be up to 99 subchapters in one chapter. They should be organized in logical sequence. In the case of autonomous agencies, the first and second subchapters will contain the agency's organizational rule and overall procedural rules respectively.

RULE III REMOVAL OF REPEALED RULES FROM ARM (1) Repealed rules may be removed from the Administrative Rules of Montana during recodification. To accomplish this, remove the rule number, catchphrase and history of the rule from its location in the body of rules. Then the rule number should be placed in order on the "Old to New" table that is set up to list the originally assigned rule number to the new simplified shorter rule number. After the rule number, type "Repealed" and the history citation when the rule was repealed.

Ex: 44-2.6(10)-P6010 Repealed Eff. 4/24/78

(2) After recodification, repealed rules will be removed during an agency's annual review. At that time, they will be
MAR Notice No. 44-2-3 15-11/17/78

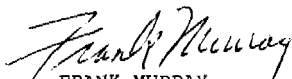
listed on a "Repealed Rule" table in the same manner as listed above.

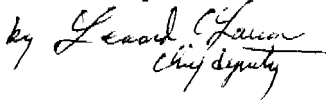
4. Since the format and general provisions are not substantive rules, a public hearing thereon is not required under 82-4204. However, the office of the Secretary of State will utilize the informal conference authorized by 82-4204(4) and will hold such a meeting to discuss the proposed changes on December 7, 1978, at 9:00 a.m. in Room 405 of the Capitol Building, Helena, Montana.

In addition, interested persons may, until December 15, 1978, comment in writing on the proposed changes, addressing their comments to Leonard Larson, Room 202, Capitol Building, Helena, Montana.

5. The authority of the Secretary of State to prescribe revisions in the format and general provisions for style and arrangement of rules is found in 82-4205(2), R.C.M. 1947.

Dated this 8th day of November, 1978


FRANK MURRAY
Secretary of State

by 
Chief Deputy

BEFORE THE SUPERINTENDENT OF PUBLIC
INSTRUCTION OF THE STATE OF MONTANA

In the matter of the amend-) NOTICE OF PROPOSED AMEND-
ment of Rule 48-2.18(42)-) MENT OF A.R.M. RULE 48-
P18760 concerning adminis-) 2.18(42)-P18760 concerning
trative appeals of special) administrative appeals of
education controversies) special education contro-
) versies. NO PUBLIC HEARING
) CONTEMPLATED.

TO: All interested persons:

1. On December 29, 1978, the Superintendent of Public Instruction proposes to amend A.R.M. Rule 48-2.18(42)-P18760, Administrative Appeal.

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

48-2.18(42)-P18760. ADMINISTRATIVE APPEAL. (1) Scope. An impartial hearing officer shall conduct an impartial review of a hearing on appeal from a decision in special education controversies heard pursuant to the provisions of Rule 48-2.18(42)-P18750.

(2) Impartial Review. The hearing officer conducting the review of the hearing shall:

(a) Examine the entire hearing record;

(b) Insure that the procedures at the hearing were consistent with the requirements of due process;

(c) Seek additional evidence if necessary, and if by hearing, the hearing shall be conducted in accordance with Rule 48-2.18(42)-P18750(6), (7) and (8)(a)-(h), at a time and place which is reasonably convenient to the parent or guardian and child and the trustees;

(d) Afford the parties an opportunity for oral or written argument, or both; at the discretion of the hearing officer; and

(e) On completion of the review, submit a proposed decision to the Superintendent of Public Instruction in accordance with the provisions of section 82-4212, R.C.M. 1947, and the rules promulgated pursuant thereto, and not later than 30 days after the Superintendent of Public Instruction receives the notice of appeal plus specific time extensions granted at the request of a party and decision written in language understandable to the general public and in the native language of the parent or guardian, or other mode of communication used by the parent or guardian, unless it is clearly not feasible to do so, whereupon the decision will be translated orally to the parent or guardian in his native language or other means of communication; and

(f) Personally serve or mail a copy of the decision on the parties, the county superintendent and the Superintendent of Public Instruction.

(3) ~~Timeliness. Not later than 30 days after the Superintendent of Public Instruction receives the notice of appeal plus specific time extensions granted at the request of a party and delays attributable to the parties.~~

~~(a) The Superintendent of Public Instruction shall make a decision written in language understandable to the general public and in the native language of the parent or guardian or other mode of communication used by the parent or guardian, unless it is clearly not feasible to do so, whereupon the decision will be translated orally to the parent or guardian in his native language or other means of communication; and~~

~~(b) Personally serve or mail a copy of the decision on the parties and the county superintendent. Delays attributable to the parties include the time for compiling and forwarding the record and the time during which the provisions of rule 48-2.18(42)-P18760(2)(c) and (d) are in effect and while the parties are reviewing and making exceptions to the hearing officer's proposed decision.~~

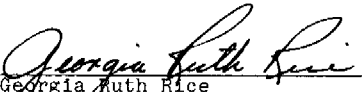
(4) Court Action. The decision of the hearing officer is final unless a party seeks judicial review pursuant to section 82-4216, R.C.M. 1947, or brings a civil action pursuant to 20 U.S.C. 1415.

(5) Placement. The child shall remain in his current educational placement until the hearing officer enters a decision, except in an emergency situation when the health and safety of the child or other children would be endangered or when the child's presence substantially disrupts the educational programs for other children as provided in Rule 48-2.18(14)-S18120(1)(c)(vi). (History: Section 75-7802, R.C.M. 1947; IMP Sec. 75-7802, R.C.M. 1947.)

3. The rule is proposed to be amended to make it consistent with other laws governing due process procedures in special education controversies.

4. Interested persons may present their data, views, arguments or requests for oral hearing concerning the proposed adoption in writing to the Superintendent of Public Instruction, Capitol Building, Helena, Montana 59601, not later than December 15, 1978.

6. The authority of the agency to make the proposed amendment is based on section 75-7802, R.C.M. 1947.


Georgia Ruth Rice
Superintendent of Public
Instruction

VOLUME NO. 37

OPINION NO. 166

DETAINERS - Interstate Agreement on Detainers, responsibility for transporting criminal defendants;
DETAINERS - Interstate Agreement on Detainers, application for speedy trial, waiver of extradition;
CRIMINAL LAW - Interstate Agreement on Detainers, responsibility for transporting criminal defendants;
CRIMINAL LAW - Interstate Agreement on Detainers, application for speedy trial, waiver of extradition;
SECTIONS 95-3131, et seq.; 95-3101, et seq.

- HELD: 1. No state agency has been given the duty or the authority to bear the expense of transporting criminal defendants to and from Montana under the Interstate Agreement on Detainers.
2. When a criminal defendant charged in Montana but imprisoned in another state makes application for speedy trial under the Interstate Agreement on Detainers, that application operates as a waiver of extradition.

27 October, 1978

Harold F. Hanser, Esq.
Yellowstone County Courthouse
Billings, Montana 59101

Dear Mr. Hanser:

You have requested my opinion on the following questions:

1. Is any state agency responsible for the expense of transporting criminal defendants to and from Montana under the Interstate Agreement on Detainers, Sections 95-3131 through 95-3136?
2. When a criminal defendant charged in Montana but imprisoned in another state makes application for speedy trial under the provisions of Sections 95-3131 through 95-3136, may the county attorney of the county in which the defendant is charged proceed to request extradition of the defendant under Sections 95-3101 through 95-3130?

The Interstate Agreement on Detainers, Section 95-3131, et seq., was adopted to provide a uniform method for bringing to trial a person charged with crime in this state, but who

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is in custody pursuant to a conviction in another state. (Article I.) When the prosecuting authorities of this state lodge a detainer against the prisoner in another state, the prisoner may demand final disposition of the charges in this state pursuant to Article III, or the prosecuting authorities of this state may demand the presence of the prisoner for trial pursuant to Article IV. After disposition of the charges in this state, the prisoner must be returned to the custody of the sending state. (Article V(e).)

Article V(h) of the agreement addresses the responsibility for the costs of transporting and caring for the prisoner:

From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

When a prisoner is brought to this state pursuant to a detainer some agency in this state must pay the costs. The Agreement, however, specifically disclaims any intention to determine which person or agency within the state is responsible.

The Legislature has provided no specific guidance for answering this question. No statute has been found placing the obligation on any agency of state government or authorizing any agency to expend public funds for these purposes. If the Legislature had intended for any state agency to be responsible for the transportation costs under Agreement on Detainers, it would have expressly provided therefor as it has done under the Extradition Act. (Section 95-3124.) The

similarity between the two acts makes the absence of payment provisions from the Agreement on Detainers a significant factor.

Therefore, the costs must be paid by the county in which the charges have been brought, and whose county attorney has filed the detainer. This is consistent with the difference between the Agreement on Detainers and the Extradition Act. While the state, through the Governor, is intimately involved in extradition proceedings, the decision to bring charges and file a detainer involves only the county. Unless the Legislature specifically provides otherwise, the county must pay.

Your second question is answered by Article III(3) of the Agreement on Detainers, at least in situations in which the prisoner himself demands final disposition of the charges in this state under Article III(a). In these cases, the agreement specifically provides that the prisoner's demand is "deemed to be a waiver of extradition..." Therefore, extradition would be a useless act, and the Agreement on Detainers (Art. V) provides an express procedure for securing the presence of the prisoner for trial. The Governor has no mandatory duty under the Extradition Act to commence an extradition proceeding. Therefore, if extradition is requested in a situation in which it has been waived, and if there is another method, such as the Agreement on Detainers, provided for returning the person to this state for trial, then the Governor would be justified, and in fact should, refuse to commence extradition.


The decision as to whether to request extradition or lodge a detainer, is one to be made by the county attorney. If he is serious about his desire to obtain a prisoner's presence for trial, and if he is concerned about the cost responsibility under the Agreement on Detainers, then he can proceed to request extradition under Section 95-3105, which specifically provides for the extradition of persons "imprisoned or ... held under criminal proceedings then pending against him in another state...."

THEREFORE, IT IS MY OPINION:

1. No state agency has been given the duty or the authority to bear the expense of transporting criminal defendants to and from Montana under the Interstate Agreement on Detainers.

2. When a criminal defendant charged in Montana but imprisoned in another state makes application for speedy trial under the Interstate Agreement on Detainers, that application operates as a waiver of extradition.

Very truly yours,



MIKE GREELY
Attorney General

MG/ABC/br