RESERVE

MONTANA ADMINISTRATIVE REGISTER

1979 ISSUE NO. 10

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 10

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BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 12-2.10(14)-S10190 relating to water safety regulations	NOTICE OF PROPOSED AMENDMENT OF RULE 12-2.10(14)-S10190 RELATING TO WATER SAFETY REGULATIONS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. At its first meeting after June 23, 1979, the commission proposes to amend the following rule.

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

12-2.10(14)-S10190 WATER SAFETY REGULATIONS

((1)(a)(b)(i)(ii) remain the same)

(c) The following waters are limited to a controlled no wake speed. No wake speed is defined as a speed whereby there is no "white" water in the track or path of the vessel or in created waves immediate to the vessel:

Bigfork Bay - Flathead County

Upper Carter Pond - Fergus County

Lower Carter Pond - Fergus County

Cooney Reservoir - Carbon County - all of Willow Creek arm as buoyed

Canyon Ferry Reservoir - Lewis & Clark County and Broadwater County - in the area of Yacht Basin, Cave Bay, and Goose Bay, White Earth, and Little Hellgate within 300 feet of the docks or as buoyed

Clearwater River - Missoula County - from Camp Paxson swim dock downstream to first bridge

Hauser Reservoir - Lewis & Clark County - in the area of Lakeside Marina within 300 feet of the docks or as buoyed.

(remainder of the rule remains the same)

3. The proposed amendment modifies Rule 12-2.10(14)-S10190 found on page 12-46 of the Administrative Rules of Montana.

4. Observations of boating traffic and fishing and swimming activity indicate that in the interests of public safety, additional "no wake" zones should be established in certain bays at Canyon Ferry State Recreation Area.

5. 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 E. 6 Avenue, Helena, Montana 59601. Written comments in order to be considered must be received no later than June 21, 1979.

6. If a person who is directly affected wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request along with any written comments to Dr. Wambach at the above-stated address prior to June 21, 1979.

7. 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. Ten percent of those persons directly affected has been determined to be in excess of 25.

8. The authority of the commission to amend the rule is based upon sections 87-1-303 and 23-1-106(1), MCA. (26-104.9 and 62-306 R.C.M.)

Joseph J. Klabunde, Chairman
Montana Fish & Game Commission

Certified to Secretary of State May 8, 1979.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 12-2.10(1)-S1032 relating to ice fishing regulations	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 12-2.10(1)-S1032 RELATING TO ICE FISHING REGULATIONS

TO: All Interested Persons:

1. On June 19, 1979, a public hearing will be held in the commission room of the Fish and Game Building, 1420 E. 6 Avenue, Helena, Montana, to consider the amendment of the above rule.

2. The proposed amendment modifies present rule 12-2.10(1)-S1032 found in the Administrative Rules of Montana. This amendment relates to the removal of ice fishing shelters from Hauser Lake and Lake Helena during non-daylight hours and makes some general changes in the requirement for identification of an ice fishing shelter.

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

12-2.10(1)-S1032 GENERAL ICE FISHING REGULATIONS

(1) Applicability. Any person who shall use, place, or cause to be placed an ice fishing shelter on the surface of the following bodies of water shall be subject to the provisions of this rule:

(a) Brown's Lake
(b) Georgetown Lake
(c) Deadman's Basin
(d) Lake Frances
(e) Bearpaw Lake
(f) Beaver Creek Reservoir
(g) Hauser Lake
(h) Lake Helena

(2) Definition of ice fishing shelter. An ice fishing shelter shall be any form of hut or shelter constructed of canvas, cardboard, paper, plastic, poles or boards, sheet metal, pressed wood, or any other material, except those shelters or windbreaks constructed entirely of snow or ice.

(3) Identification of shelter. Each shelter owner must mark his shelter with his name and as well as his address and/or phone number, painted or otherwise permanently affixed to the shelter in legible letters, not less than two ~~(2)~~ inches in height, of contrasting color to the background, and plainly visible from outside of the shelter, at a distance of 100 feet.

(4) Shelter access. Each shelter of closed type construction shall have a door readily opened from the outside for inspection by an officer while the shelter is occupied. The door shall not be latched from the inside.

(5) Unlawful use. It shall be prohibited for any person to use, fish from, or occupy an ice fishing shelter if such shelter does not conform to (3) and (4) of this section.

(6) Removal each day. (A) Users of fishing shelters on the following waters shall remove such shelters in their entirety from the ice each day after fishing:

(a) Brown's Lake
(b) Georgetown Lake
(c) Deadman's Basin.

(B) Users of fishing shelters on the following waters may not set said shelters on the ice until after sunrise and must remove said shelters in their entirety from the ice and from the area before sunset each day. This includes removal from all adjacent private and public property unless special permission is granted:

(a) Hauser Lake
(b) Lake Helena.

(7) Removal after season. The owner of a fishing shelter shall remove the shelter from the area and from public property and properly dispose of it within 7 days after the close of ice fishing season or within 5 days of receiving notification to remove. If there is no closure or removal notice or spring thaw precedes the closure date, a fishing shelter must be removed from the ice before being made irretrievable via over-ice means and must be disposed of within 7 days.

(8) Transporting shelters. Transportation of shelters to and from the shoreline shall be only over authorized roads.

(9) Responsibility for clean-up. It shall be the responsibility of the owners and users of each fishing shelter to keep the immediate area around their shelter free from rubbish or debris. All litter and rubbish shall be gathered by each ice fisherman and either deposited in designated containers or taken with the ice fisherman daily when he leaves the area.

4. The amendments are proposed to eliminate the problem landowners have encountered with vandalism and littering during the hours of darkness.

5. Interested persons may present their data, views, or arguments either orally or in writing at the hearing.

6. F. Woodside Wright has been designated to preside over and conduct the hearing.

7. The authority of the commission to amend the rule is based upon sections 87-1-301, 87-1-303, and 87-1-201(7) MCA (26-103.1, 26-104.9, and 26-202.4 R.C.M.).

Joseph J. Klabunde, Chairman
Montana Fish and Game Commission

Certified to Secretary of State May 8, 1979.

BEFORE THE DEPARTMENT OF STATE
LANDS AND BOARD OF LAND COMMISSIONERS
OF THE STATE OF MONTANA

In the matter of the repeal of) Rules 26-2.10(10)-S10190) through S10350 (Subchapter 10)) and Rules 26-2.10(14)-S10360) and S10370 (Subchapter 14) and) the adoption of New Rules I) through XXXI, pertaining to) control of strip and under-) ground mining and reclamation) of strip and underground mined) land, departmental reclamation) of abandoned coal, uranium,) hardrock, and open cut mined) lands through use of federal) funds, conservation of coal,) designation of lands unsuit-) able for coal mining; and) alternate reclamation of coal) and uranium mined lands)	NOTICE OF PUBLIC HEARING FOR THE REPEAL OF PRESENT STRIP AND UNDERGROUND MINE RECLAMATION AND COAL CONSERVATION RULES; ADOPTION OF NEW STRIP AND UNDERGROUND MINE RECLAMATION AND COAL CONSERVATION RULES; ADOPTION OF A METAL MINE RECLAMATION RULE; AND ADOPTION OF AN OPEN CUT MINING RULE

TO: All Interested Persons:

1. On June 18, 1979, at 1:30 P.M., a public hearing will be held in the Senate Chambers, State Capitol Building, Helena, Montana to consider repeal of the present rules for the administration and enforcement of the department's strip and underground mine control and reclamation and coal conservation programs and adoption of new rules pertaining to those programs, to the reclamation of all types of abandoned mined lands, to designation of lands unsuitable for all or certain types of coal mining, and to alternate reclamation.

2. The proposed New Rules replace the present rules on coal strip and underground mining control and reclamation and coal conservation. Although the new rules are similar to the repealed rules in certain respects, the new format and massive changes require a publication as new rules rather than amended rules. Other rules do not replace or modify any rule currently found in the Administrative Rules of Montana.

3. A copy of the proposed rules may be obtained by contacting John F. North or Dennis Hemmer, Department of State Lands, Capitol Station, Helena, Montana 59601 (449-2074). The proposed rules provide in summary as follows:

Rule I Definitions. This proposed rule defines many of the terms used in Rules II through XXXI.

Rule II Strip Mine Application Requirements. This proposed rule sets forth the required information, maps, and diagrams for a strip mine permit application.

Rule III Application Review Process. This proposed rule sets forth the time frames, public notice and hearing requirements, and criteria for review and issuance or denial of a permit application.

Rule IV Mining, Backfilling and Grading. This rule sets forth the performance standards for mining, backfilling, and grading. It includes, signs and markers, disposal of spoil, burial of toxic material, highwall elimination, contemporaneous reclamation, and approximate original contour requirements.

Rule V Roads and Railroad Loops. This rule sets forth performance standards including hydrologic standards, for construction and reclamation of roads and railroad loops. It includes provisions for location, drainage, surfacing, maintenance, and restoration.

Rule VI Use of Explosives. This rule sets forth the performance standards for use of explosives in mining operations and procedures for notice to the public of blasting schedules, and monitoring requirements.

Rule VII Hydrology. This rule sets the performance standards for the conduct of mining and reclamation activities relative to protection of hydrologic systems, both surface and subsurface. It includes provisions for diversions, sediment control, discharge structures, and acids and toxic forming spoil handling, monitoring, and rehabilitation of structures.

Rule VIII Topsoil. This rule sets performance standards for the removal, stockpiling, redistribution, and conditioning of topsoil

Rule IX Revegetation. This rule sets forth performance standards for the revegetation of disturbed areas. It includes standards for measuring the success of revegetation.

Rule X Protection of Fish and Wildlife and Related Environmental Values. This rule sets forth performance standards for the conduct of mining and reclamation operations to minimize disturbance to fish and wildlife and to provide for enhancement of habitat, where praticable.

Rule XI Air Resources Protection. This rule sets forth performance standards for the control of fugitive dust from mining and reclamation operations and monitoring.

Rule XII Post Mining Land Use. This rule requires reclamation to livestock and wildlife grazing habitat unless alternate reclamation is proposed and approved.

Rule XIII Coal Conservation. This rule sets forth performance standards for the conservation of coal in strip or underground mining.

Rule XIV Alluvial Valley Floors. This rule sets forth performance standards for the conduct of strip or underground mining operations on alluvial valley floors and requires monitoring to ensure compliance.

Rule XV Prime Farmland. This rule sets forth performance standards for the removal, stockpiling, and replacement of topsoil in areas defined as prime farmland.

Rule XVI Alternate Reclamation. This rule provides standards and procedures for approval or denial of an alternate reclamation plan, including alternate revegetation.

Rule XVII Performance Standards for Special Operations. This rule provides special performance standards for auger mining and coal processing plants and support facilities near the mine but not within the mine area proper.

Rule XVIII Underground Mining. This rule provides all application requirements and performance standards for underground mining, including subsidence control plans and standards.

Rule XIX Prospecting. This rule sets forth application requirements and performance standards for the conduct of prospecting operations.

Rule XX Bonding and Liability Insurance. This rule sets forth standards for the amount, form, conditions, terms, and release of bonds. Bond modification and release procedures and liability insurance requirements are also provided.

Rule XXI Annual Report. This rule sets forth the requirement for information to be contained in annual reports by operators and prospectors.

Rule XXII Areas Upon Which Coal Mining is Prohibited. This rule prohibits mining, subject to valid existing rights, (1) that would adversely affect any publicty owned park or places included in the National Register of Historic Sites, or (2) on lands within the National System of Trails. The rule also provides standards and procedures for implementation of 82-4-227(7), as amended by Chapter 550, Laws of Montana 1979; prohibitions on coal mining and the prohibitions described above.

Rule XXIII Designation of Lands Unsuitable for Coal Mining. This rule sets forth the procedures for petition and action on petitions to have lands declared unsuitable or to have a designation terminated, including notice and hearing provisions. Also included are definitions of key terms and a requirement that the department develop a data base and inventory system for departmental and public use in the designation process.

Rule XXIV Inspection and Enforcement. This rule establishes procedures for inspections of operators and prospectors, including reports, a procedure for inspections based on citizen complaints (including citizen accompaniment on the inspection) or notification by the Office of Surface

Mining, and informal public hearings on notices of violation and cessation orders.

Rule XXV Suspension and Revocation. This rule establishes standards for determining whether a pattern of violations exists and procedures for suspension and revocation of permits, including show cause orders and petitions.

Rule XXVI Small Miner Assistance Program. This rule provides for a procedure whereby the department may select and pay a qualified laboratory to collect hydrologic data for small miners to the extent federal funds are available. The rule sets out criteria for eligibility and data requirements and procedures for application and granting of assistance.

Rule XXVII Abandoned Mine Land Reclamation Program. This rule establishes an Abandoned Mine Land Reclamation Fund and procedures whereby the department may expend monies from that fund to reclaim lands mined for coal and abandoned in an unreclaimed condition. The rule establishes criteria for determining which lands will be reclaimed and for acquisition, management, and disposition of lands. Also included is a requirement for filing of a lien against private lands for work which increases the value of that land.

Rule XXVIII Restrictions on Financial Interests. This rule defines the financial interest which are proscribed to department employees and establishes procedures for filing of financial interest statements to ensure compliance.

Rule XXIX Abandoned Mine Land Reclamation Program. This rule is substantially similar to Rule XXVII except that it applies to metal (hard rock) mined lands and provides that, with certain exceptions, unreclaimed coal mined lands must be reclaimed before metal mined lands can be reclaimed with abandoned mine land funds.

Rule XXX Abandoned Mine Land Reclamation Program. This rule is substantially similar to Rule XXVII except that it applies to open cut mined lands and provides that, with certain exceptions, unreclaimed coal mined lands must be reclaimed before open cut coal mined lands may be reclaimed with abandoned mine lands funds.

Rule XXXI Applicability. This rule provides an effective date for the repeal of the old rules and for adoption of the new rules and provides that certain rules or portions of rules are applicable to coal mining only.

4. The repeal and adoption of rules is being proposed to bring Montana's strip and underground mine reclamation program into compliance with the Surface Mine Control and Reclamation Act of 1977 (Public Law 95-87) and the permanent rules adopted thereunder (30 CFR, Chapter VII, Subchapters F, G, J, K, L, and R) and thereby obtain Office of Surface

Mining approval of Montana's program pursuant to Public Law 95-87, section 503. The repeal and adoption are also being proposed to implement Chapters 172 (HB 406), 196(HB 739), and 550(SB 515) Laws of Montana, 1979, and to implement and clarify other provisions of Part 2, Chapter 3, Title 82 MCA.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may be submitted to Leo Berry, Jr., Commissioner, Department of State Lands, Capitol Station, Helena, Montana 59601, on or before June 22, 1979.

6. Leo Berry, Jr., Commissioner, Department of State Lands, has been designated to preside over and conduct the hearing.

7. The authority of the Department of State Lands and Board of Land Commissioners to adopt the proposed rules is sections 82-4-204 and 205 for New Rules I through XXVIII and New Rule XXXI, section 82-4-321 for New Rules XXIX and XXXI, and section 82-4-422 for New Rules XXX and XXXI.

Leo Berry Jr., Commissioner
Department of State Lands

Certified to the Secretary of State May 15, 1979.

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

IN THE MATTER of the Proposed) Emergency Amendment on) Abbreviated Notice of ARM 40-) 3. 14(10)-S14030 subsection) (1) concerning weights and) classes.)	NOTICE OF EMERGENCY AMENDMENT ON ABBREVIATED NOTICE OF RULE ARM 40-3.14(10)-S14030 (1) WEIGHTS AND CLASSES, AND OPPORTUNITY FOR HEARING

TO: All Interested Persons:

1. On June 4, 1979, the Board of Athletics will amend ARM 40-3.14(10)-S14030 to add a cruiser weight class with a 3 pound overweight limitation. This amendment will make a cruiser weight class contest permissible in the state of Montana. Prior to this amendment, there was no permissible weight class between the existing light heavyweight class and the heavyweight class. As the World Boxing Council has recently approved the concept of a cruiser weight class, and as Montana currently has contestants who would qualify to compete in such class, the Board feels that it is in the best interest of boxing and the boxing public to recognize and add this weight class to its rules.

The reasons for making this amendment as an emergency amendment on abbreviated notice are as follows:

a. After having considered the merits of inclusion of the cruiser weight in its rules, the Board, on April 24, 1979 moved to amend its rules to include the cruiser weight catagory. On May 1, 1979 the World Boxing Council approved the addition of the cruiser weight class as a recognized class. On or about that time, the North American Boxing Federation announced the plans for a North American championship in the cruiser weight division. Such plans scheduled a series of elimination bouts. As Montana has contestants in this class who are nominated for an elimination round, the opportunity became available for holding such contest in Montana. However, because of advance scheduling of the other elimination rounds and because the success of the elimination round in Montana depends upon maximizing the attendance of the interested boxing public, the persons responsible for scheduling the bout in Montana determined that the bout could or should be held not later than early June. A date of June 5 was then selected of which the board was notified on or about May 1, 1979.

b. If the board were to follow and await the time periods required in the regular rule adoption process, it would be unable to make the cruiser weight catagory effective and approved in its rules in time for the June 5th elimination contest. The Board further feels that to have Montana participate in the elimination rounds and ultimate selection of the North American champion in the cruiser weight division is of vital and significant interest to the boxing sport and boxing public in the state of Montana. The Board further has determined that if approval

of the cruiser weight class is not made prior to the June 5th date, that the elimination contest will not be held in the state of Montana and that the welfare of the boxing sport and the boxing public in Montana would be significantly imperiled.

2. The Board would point out that by notice dated May 1, 1979, it has proposed inclusion of the cruiser weight catagory through the regular rule adoption process, therein offering opportunity for comment and a public hearing if requested. The Board will further make available through this emergency adoption on abbreviated notice, opportunity to make written comment and opportunity to request a hearing before the rule amendment becomes effective. Therefore if the Board receives requests for hearing from 10% or 25 persons of those directly affected, a hearing will be held in the Conference Room of the Lalonde Building, Helena, Montana at 10:00 a.m. on Friday, June 1, 1979. Interested persons should call the Board office at area code 406 449-3737 in advance of that date to find out if a hearing has become necessary and will in fact be held. No further notice will be made. The Board would finally point out that this notice, in addition to being filed with the Secretary of State for publication, will be mailed to interested persons directly affected, immediately after this certification to the Secretary of State.

3. The amendment of ARM 40-3.14(10)-S14030, which is the subject of this notice, involves only subsection (1) and reads as follows: (new matter underlined, deleted matter interlined)

" (1) The following limitations or weights are placed on all boxing bouts:

Between Junior Flyweights.....	(109 lbs.),	4 lbs.
Between Flyweights.....	(112 lbs.),	4 lbs.
Between Junior Bantamweights..	(115 lbs.),	5 lbs.
Between Bantamweights.....	(118 lbs.),	6 lbs.
Between Junior Featherweights.	(122 lbs.),	6 lbs.
Between Featherweights.....	(126 lbs.),	7 lbs.
Between Junior Lightweights...	(130 lbs.),	9 lbs.
Between Lightweights.....	(135 lbs.),	11 lbs.
Between Junior Welterweights..	(140 lbs.),	11 lbs.
Between Welterweights	(147 lbs.),	11 lbs.
Between Middleweights.....	(160 lbs.),	13 lbs.
Between Light Heavyweights....	(175 lbs.)	13 lbs.
Between Cruiser Weights.....	(175-190 lbs.),	3 lbs.
Heavyweights, all over 175 lbs..	(no limitation)	"

(The overweights on the rest of the catagories have been proposed for change to 3 pounds in each instance, which proposal is included in the notice of amendment filed May 1, 1979. Those changes have been left out of this emergency adoption as the Board determined that there was no justification of emergency in making that change.)

4. The rational for the proposed rule is as set forth in the statement of reasons for emergency.

5. Interested persons may comment in writing to the Board of Athletics, Lalonde Building, Helena, Montana. Requests for a hearing on this emergency amendment on abbreviated notice must be made in writing no later than May 30, 1979.

6. The authority of the Board to make the proposed amendment is based on section 23-3-102 MCA (82-301 R.C.M. 1947). The proposed amendment implements section 23-3-201 MCA.

BOARD OF ATHLETICS
PATRICK J. CONNORS, CHAIRMAN

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

Certified to the Secretary of State, May 15, 1979.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF NURSING HOME ADMINISTRATORS

IN THE MATTER of the proposed Amendments of ARM 40-3.66(6)-S66060 concerning Temporary license; ARM 40-3.66(6)-S66070 subsection (4) concerning examinations; ARM 40-3.66(6)-S66085 subsection (3) concerning continuing education; ARM 40-3.66(6)-S66090 subsection (2) concerning reciprocity licenses; ARM 40-3.66(6)-S66100 concerning a fee schedule; and adoption of a new rule concerning standards for Nursing Home Administrators.	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENTS OF ARM 40-3.66(6)-S66060 TEMPORARY LICENSE; ARM 40-3.66(6)-S66070 (4) EXAMINATIONS; ARM 40-3.66(6)-S66085 (3) CONTINUING EDUCATION; ARM 40-3.66(6)-S66090 (2) RECIPROCITY LICENSES; ARM 40-3.66(6)-S66100 FEE SCHEDULE; AND ADOPTION OF A NEW RULE CONCERNING STANDARDS FOR NURSING HOME ADMINISTRATORS

TO: All Interested Persons:

1. On June 20, 1979 at 10:00 A.M. a public hearing will be held in the Highway Auditorium of the Scott Hart Building, 6th and Roberts, Helena, Montana to consider the amendments of ARM 40-3.66(6)-S66060 concerning temporary licenses; ARM 40-3.66(6)-S66070 subsection (4) concerning examinations; ARM 40-3.66(6)-S66085 subsection (3) concerning continuing education; ARM 40-3.66(6)-S66090 subsection (2) concerning reciprocity license fees; ARM 30-3.66(6)-S66100 which places all fees under one fee schedule; and adoption of a new rule setting standards for nursing home administrators.

2. The proposed amendment to ARM 40-3.66(6)-S66060 changes the catch phrase and removes the fee amount, which is placed under the amendment to ARM 40-3.66(6)-S66100 and will read as follows: (new matter underlined, deleted matter interlined)

"40-3.66(6)-S66060 TEMPORARY ~~LICENSE~~ PERMIT (1) An application for a temporary permit must be accompanied by the required fee ~~of sixty dollars ($60.00)~~ which shall not be refunded. This permit is effective for a maximum of 180 days or until the date the scores of the examination for which the permit holder was eligible, are announced."

3. The Board is proposing this amendment to delete the reference to the fees for temporary permit and to place them in the fee schedule rule.

4. The proposed amendment to ARM 40-3.66(6)-S66070 subsection (4) again removes the reference to the amount of the fee and places it under ARM 40-3.66(6)-S66100 and will read as follows: (deleted matter interlined)

"(4) Examination: An application for examination shall be filed at least thirty (30) days prior to the examination date and must be accompanied by the

required fee ~~of twenty-five dollars ($25.00) plus $25. for inactive license or $60.00 for active license~~ which shall not be refunded. Examinations will be administered in May and November of each year. In the advent of failure, the individual may re-take the examination within the period of one year, by paying only the examination fee ~~of $25.00~~."

5. The Board is proposing the amendment to delete the reference to the fees for examination and place them in the fee schedule rule.

6. The amendment as proposed of ARM 40-3.66(6)-S66085 subsection (3) will read as follows: (new matter underlined, deleted matter interlined)

"(3) Effective January 1, 1976 twenty-five (25) hours of continuing education will be required annually for renewal of license or renewal of inactive registration. ~~Those administrators who are presently under the three (3) year continuing education program, will be allowed to complete the present three (3) year cycle. Upon completion of this three (3) year cycle, they will then be required to attain at least twenty five (25) hours of continuing education credits annually.~~

Those persons granted a licensed after January 1, 1976, shall be subject to the educational requirements stated above, but the hours of continuing education will not commence until January 1 of the year following the year of original license. ~~Any credits received prior to the date that the continuing education requirement commences may not be applied toward that requirement.~~ Any excess or surplus hours earned in the last three months of a calendar year may be carried over into the succeeding year."

7. The Board is proposing the amendment stated above to delete material no longer current, to correctly describe license and inactive registration and to allow excess or surplus hours of continuing education to be carried into the succeeding year. This will allow an administrator to attend a course, in the last quarter, which may be applicable to their needs and still receive credit on the continuing education requirement for the succeeding year.

8. The amendment of ARM 40-3.66(6)-S66090 subsection (2) deletes the reference to the amount of the fee for reciprocity licenses and will read as follows: (deleted matter interlined)

"(2) An application for license by reciprocity may be filed at any time and must be accompanied by the required fees ~~of eighty five dollars ($85.00) which shall not be refunded~~."

9. The Board is proposing the amendment to delete the reference to the reciprocity fee amount and place it under the fee schedule rule.

10. The proposed amendment to ARM 40-3.66(6)-S66100 will place all fees schedule under this rule and will read as follows: (new matter underlined, deleted matter interlined)

"40-3.66(6)-S66100 FEE SCHEDULE (1) In accordance with the provisions of ~~section-66-3105-(b),-R.C.M. 1947~~-Title 37, Chapter 9, MCA,~~-the-temporary-permit-and-license-fee-shall-be-sixty-dollars-($60.00).~~ each person applying for active license, inactive registration, reciprocity or temporary permit shall pay an application fee of $25 and the application fee is not refundable.

(2) Each person granted a license as a nursing home administrator shall pay an original license fee of $50 if granted after the May exam and $100 if granted after the November exam. The licenses granted at the May exam expire as of December 31 unless renewed. The licenses granted at the November exam remain in effect until December 31 of the following year and then must be renewed.

(3) Each person registered as an inactive nursing home administrator shall pay a registration fee of $25.

(4) Each person taking the examination shall pay an examination fee of $100. Each re-examination shall cost $100.

(5) Each person granted a temporary permit shall pay a permit fee of $60.

(6) Each person granted reciprocity licensure shall pay a reciprocity fee of $85 and this shall include the original license or registration, but not the application fee. The reciprocity license expires on December 31 unless renewed.

(7) Each person applying for renewal of an active nursing home administrators license shall pay $100 annually on or before December 31 each year.

(8) Each person applying for renewal of an inactive nursing home administrators registration shall pay $25 annually on or before December 31 of each year.

(9) Each person applying for a duplicate license, registration or temporary permit shall pay $10.

(10) Each person applying for reinstatement of an expired license or registration must pay all delinquent renewal fees. Reinstatement is subject to board approval and is limited to applications within two years of expiration date.

(11) Each person requesting a list of active and inactive nursing home administrators shall pay a fee of $10 for the list."

11. The Board is proposing this amendment to place in the fee schedule all applicable fees and not have each fee in a separate rule and also to increase the fees to provide revenue to meet the appropriation level required to carry on the duties imposed by law and rules and to provide for an application fee in each catagory.

12. The new rule proposed for adoption will provide standards for nursing home administrators and will read as follows:

"The Board may suspend, revoke or take any other action in relation to the disciplining of the individual as the board in its discretion considers proper after an appropriate hearing or personal waiver of hearing rights.

(1) The following constitute standards for nursing home administrators in compliance with Section 37-9-203 (1), MCA:

(a) Willful and/or repeated violation of any board statute or rule or the statutes and rules of any federal, state, county or city agency having licensing and certifying authority in the licensing and operation of nursing homes or administrators.

(b) Conviction of a felony by a court of competent jurisdiction, unless exempt by section 37-1-203 MCA.

(c) Has used fraud, deceit or misrepresentation in the securing of a nursing home administrators license.

(d) Is mentally and/or physically incompetent to engage in or act in the professional status as a nursing home administrator. This will include the intemperate use of alcoholic beverages or addictive drugs.

(e) Has accepted or paid valuable consideration for the solicitation or procurement, either directly or indirectly of nursing home usage

(f) Has used fraudulent, misleading or deceptive advertising.

(g) Has knowingly allowed individuals to falsely impersonate another licensee of like or different name.

(h) Has knowingly failed to exercise true regard for the safety, health and welfare and life of the patient or resident.

(i) Has willfully permitted unauthorized disclosure of information relative to the patients' or residents' records.

(j) Has disclosed or used confidential information in the course of duties as a nursing home administrator which would further substantially his own economic interests.

(k) Has failed to uphold his professional status by virtue of continuous failures to comply with standards for the operation of the nursing home for which they are responsible.

(l) Has willfully failed to correct deficiencies or

failed to maintain corrective measures in the nursing home as cited by any agency of government which has nursing home administration responsibility.

(m) Has failed to maintain or provide accounting of a patient's or resident's property or assets during confinement in the nursing home.

(n) Has allowed harrassment of patients or residents by employees.

(o) Has failed to cooperate with an authorized investigation of a complaint.

(p) Has violated orders of the board while under probation or other disciplinary measures."

13. The Board is proposing adoption of this rule to impose standards on nursing home administrators so that individual administrators will have guidelines to follow in their capacity as nursing home administrators. Failure to meet the standards will place the licensee in the position that a license could be revoked, suspended or other disciplinary action taken to properly assure quality nursing home care.

14. Interested parties may present their data, views or arguments either orally or in writing at the hearing.

15. Ed Carney, Director of the Department of Professional and Occupational Licensing or his designee will preside over and conduct the hearing.

16. The authority of the Board to make the proposed amendments and adoption is based on section 37-9-203 MCA (66-3109 R.C.M. 1947). The proposed amendments and adoption implement the following sections: 37-9-301 MCA (66-3103 R.C.M. 1947); 37-9-203, 37-9-305 MCA (66-3109, 66-3110 R.C.M. 1947); 37-9-303 MCA (66-3111 R.C.M. 1947); 37-9-304, 302, 203, 305 MCA (66-3105, 3104, 3109, 3110 R.C.M. 1947); and 37-9-203 MCA (66-3109 R.C.M. 1947).

BOARD OF NURSING HOME ADMINISTRATORS
MARVIN BULGATZ, Ph.D., CHAIRMAN

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

Certified to the Secretary of State, May 15, 1979.

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

IN THE MATTER of the Proposed) Amendment of ARM 40-3.70(6)-) S7080 concerning Renewals)	NOTICE OF PROPOSED AMENDMENT OF ARM 40-3.70(6)-S7080 RENEWALS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 23, 1979, the Board of Optometrists proposes to amend ARM 40-3.70(6)-S7080 concerning continuing education requirements for renewals.

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

"40-3.70(6)-S7080 RENEWALS (1) Continuing Education

(a) As stated in Section 37-10-308 MCA, ~~B~~beginning June 1, 1971 each ~~Montana~~ licensed optometrist in active practice in the State of Montana shall be required to attend not less than ~~twelve-(12)~~ hours annually of scientific clinics, forums, or optometric educational studies as may be provided or approved by the Board of Optometrists as a prerequisite for his license renewal. A copy of this act shall be sent to each licensee by the Board prior to the license renewal date each year. The Board may exempt from this requirement those licensees who submit satisfactory proof that they were prevented from attending educational programs during the preceding year due to illness or for other good reasons.

(b) For the purpose of implementation of the Continuing Education Act, the term "annually" shall refer to the fiscal year July 1 through June 30.

(c) The type of educational programs ~~generally~~ approved by the Board shall be those affiliated with National, Regional or State Optometric Associations, Societies, ~~or~~ Academies or Colleges of Optometry. ~~Continuing-education-courses-as-presented-by-the Colleges-of-Optometry-are-approved-also.~~ In office training or privately sponsored education programs, however, are not generally acceptable. ~~-If-there-is any-question-regarding-approval-of-programs-you-plan to-attend-please-contact-the-Board-Secretary.~~ Any other continuing education course not covered above must have prior approval by the board to qualify.

(d) The board will accept up to two hours of continuing education credit per licensing year of practice management courses."

3. The reasons for the amendment are as follows: in subsection (a) now includes the reference to the statute and removes unnecessary language; subsection (c) re-arranges the wording and removes unnecessary language; subsection (d) was

added because the Board feels that practice management does have an effect on the services rendered to the public by the optometrist and does not want to discourage optometrists from taking courses related thereto, but at the same time wants to limit the optometrist from obtaining continuing education credits in practice management only.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Optometrists, Lalonde Building, Helena, Montana 59601, no later than June 21, 1979.

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 Optometrists, Lalonde Building, Helena, Montana 59601 no later than June 21, 1979.

6. If the Board receives requests for a public hearing on the proposed amendment from 10% or more of those persons directly affected by the proposed adoption, 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 37-10-202 MCA (66-1303 R.C.M. 1947). The proposed amendment implements section 37-10-308 MCA (66-1318 R.C.M. 1947).

BOARD OF OPTOMETRISTS
CHRIS E. BERG, O.D., PRESIDENT

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

Certified to the Secretary of State, May 15, 1979.

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

IN THE MATTER of the Proposed) Amendments of ARM 40-3.82(6)-) S8280 concerning examinations) and ARM 40-3.82(6)-S8290 sub-) section (2) concerning) renewal fees.)	NOTICE OF PROPOSED AMENDMENT OF ARM 40-3.82(6)-S8280 EXAMINATIONS AND ARM 40-3.82(6)-S8290 (2) RENEWAL FEES NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 23, 1979, the Board of Plumbers proposes to amend ARM 40-3.82(6)-S8280 by adding a new subsection (d) to include examination fees for journeyman and master plumbers and to amend ARM 40-3.82(6)-S8290 subsections (2) concerning the renewal fee for a master plumber.

2. The proposed amendment to ARM 40-3.82(6)-S8280 will add a new subsection (d) and will read as follows:

"(d) All master and journeyman applications must be accompanied by the $50 examination fee.

(i) Re-examination fees for master and journeyman examinations will be $50."

3. The Board is proposing the above scheduled fees because the 1979 Legislature left the examination fees to be prescribed by the Board. The Board has taken into consideration the actual cost of administering the examination and set the fees for both the journeyman and master applications at $50. The change made by the Legislature will become effective on July 1, 1979 and the Board is proposing the amendment to be effective on July 13, 1979.

4. The proposed amendment to ARM 40-3.82(6)-S8290 subsection (2) changes the renewal fee for a master plumber to $10 and will read as follows: (new matter underlined, deleted matter interlined)

"(a) The annual renewal fee for a master plumber shall be ~~$50.00~~ $10.00."

5. The Board is proposing the above change in the fee for a master plumber renewal to be equal to that for a journeyman plumber because of the Sunset Audit report, which suggested that because there is little difference in the amount of time spent issuing a master's renewal over a journeyman's renewal, the fees should be comparable. The Board is also proposing the fee as stated because the Legislature as stated above left the fee schedule to be prescribed by the Board. The proposed fee schedules are set to reduce the Board's surplus money in their earmarked revenue funds by approximately $24,000 per license year. By lowering the fees, the Board feels they are indirectly returning to the licensees some of the surplus money they had paid in the past several years. The surplus was created when the Legislature removed the code enforcement program from the Board of Plumbers and thus decreased operating costs. The effective date of the proposed amendment will be

July 13, 1979.

6. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Plumbers, Lalonde Building, Helena, Montana 59601, no later than June 21, 1979.

7. If a person who is directly affected by the proposed amendments 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 Plumbers, Lalonde Building, Helena, Montana 59601 no later than June 21, 1979.

8. If the Board receives requests for a public hearing on the proposed amendments from 25 or more of those persons directly affected by the proposed adoption or 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.

9. The authority of the Board to make the proposed amendments is based on section 37-69-202 MCA (66-2409 R.C.M. 1947). The proposed amendments implement Senate Bill No. 458 signed into law as Chapter No. 549. [section 37-69-307 MCA (66-2405 R.C.M. 1947)]

BOARD OF PLUMBERS
DONALD KRISTENSEN, CHAIRMAN

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

Certified to the Secretary of State, May 15, 1979.

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

In the matter of the adoption of rules pertaining to property limitations and the repeal of ARM Rule 46-2.10(14)-S11210	))))))	NOTICE OF PROPOSED ADOPTION OF A RULE PERTAINING TO PROPERTY LIMITATIONS AND REPEAL OF ARM RULE 46-2.10(14) -S11210. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons

1. On June 25, the State Department of Social and Rehabilitation Services proposes to adopt a rule pertaining to property limitations and repeal ARM Rule 46-2.10 (14)-S11210.

2. The rules proposed to be repealed can be found on pages 46-77 and 46-77.1 of the Administrative Rules of Montana.

3. The proposed rule provides as follows:

RULE I PROPERTY LIMITATIONS (1) General Rule: To arrive at a determination of whether a condition of need exists, the department shall evaluate real and personal property resources which are currently available to applicants for or recipients of assistance, and shall apply the limitations set out in this rule. Real and personal property resources in excess of the limitations established in this rule shall disqualify an individual for assistance.

(2) Definitions: For purposes of this rule, the following definitions apply:

(a) "Real property" means land or buildings, including but not limited to a house and lot, or a trailer affixed to land or any other structure or appurtenance affixed to land so as to become a part of the real property.

(b) "Lot" means: a building site of a size in accordance with any applicable zoning ordinance for the area in which the lot is located; or a rural plot.

(c) "Rural Plot" means the smallest subdividable acreage allowable under a county ordinance for the area in which the lot is located, except that the Department may approve an exception to this provision for good cause.

(d) "Home" means the applicant or recipient's principle residence, including a house, a trailer, or other residential building.

(e) "Personal Property" means any property not defined in this rule as real property, including but not limited to cash, liquid assets such as stocks, bonds, postal savings, and other savings, checking accounts, other negotiable instruments, and furniture and livestock.

(f) "Equity Value" means the amount an individual would realize upon sale of real or personal property. To arrive at equity value include the down payment, monthly payments on the principal, and the present fair market value over purchase price.

(g) "Currently available" means both when actual available and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance.

(3) General Property Limitations: The value of all real and personal property owned by an applicant or recipient shall be included as currently available resources of the applicant or recipient for purposes of determining eligibility for assistance, unless such property is specifically excluded by this rule.

(4) Real Property Exclusions: The following real property is excluded from treatment as currently available resources:

(a) The total equity value, not to exceed $26,000, for an applicant or recipient's home and the lot on which the home is located;

(b) The total equity value, not to exceed $26,000, for an applicant or recipient's income producing property necessary for self support, if such property produces return that is reasonable for similar properties in the community. Income from such property, less all costs in producing the income, shall be deducted from the assistance payments.

(c) Other real property of a value which, when combined with the value of personal property excluded under section (5)(a), does not exceed the appropriate maximum exclusion under that section.

(5) Personal Property Exclusions: The following personal property is excluded from treatment as currently available resources:

(a) Cash, liquid assets such as stocks, bonds, postal savings, other savings, checking accounts, other negotiable instruments, and the cash or loan value of life insurance or livestock, in a total amount of all such assets not to exceed: $1,500.00 for a household.

(b) Household goods, clothing, other essential personal effects; and home produce and livestock-producing food for family use and consumption only.

(c) Essential tools for a trade, or equipment needed for employment.

(d) Hunting and fishing equipment necessary for securing food.

(e) One vehicle for family transportation. An additional vehicle may be excluded if equity value does not exceed $1,500 and this vehicle is necessary for medical or employment purposes.

(6) Special Personal Property Rules: (a) Recreational equipment not essential for securing food shall be counted as

currently available resources. Such equipment includes but is not limited to boats, snowmobiles, motorcycles, motorbikes, and bikes, except as otherwise excluded under section (5) of this rule.

4. This new rule is actually a substantially redrafted version of former rule 46-2.10(14)-S11210, which is being repealed. The complete redrafting was necessary for purposes of clarity. The most significant change in the rule is that it removes the limit on value of the first vehicle and defines equity value of residence for purposes of AFDC.

5. Interested parties may submit their data, views, arguments, or requests for an oral hearing concerning the proposed adoption and repeal in writing to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601, no later than June 22, 1979. A Public Hearing will be scheduled if requested by 10% or 25 of the persons directly affected by the rules.

6. The authority of the department to make the proposed rule is based on Section 53-4-212, MCA (Section 71-503, R.C.M. 1947). The implementing authority is based on Section 53-4-231, MCA (Section 71-504, R.C.M. 1947).

Keith L. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 15, 1979.

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

In the matter of the amendment of Rule 46-2.10(18)-S11420 pertaining to medical assistance, eligibility requirements.	) NOTICE OF PROPOSED AMENDMENT OF RULE 46-2.10(18)-S11420 pertaining to medical assistance, eligibility requirements.) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 25, 1979, the Department of Social and Rehabilitation Services proposes to amend Rule 46-2.10(18)-S11420, subsection (1)(b)(iii) which pertains to medical assistance, eligibility requirements.

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

46-2.10(18)-S11420 MEDICAL ASSISTANCE, ELIGIBILITY REQUIREMENTS (1) No changes.
(a) No changes.
(i) No changes.
(ii) No changes.
(iii) No changes.
(iv) No changes.
(v) No changes.
(vi) No changes.
(b) No changes.
(i) No changes.
(ii) No changes.
(aa) No changes.
(aaa) No changes.
(aab) No changes.
(aac) No changes.
(aad) No changes.
(aae) No changes.
(aaf) No changes.
(ab) No changes.
(aaa) No changes.
(aab) No changes.
(iii) Delete in its entirety.
~~(iv)~~ (iii) Who meet eligibility requirements under any federally aided assistance program above enumerated with the exception that where the other requirements of Aid to Dependent Children are met, assistance will be granted where it is an unemployed father in the family who qualifies for assistance as an unemployed father under ~~MAE~~ 46-2.10(14)-S11150.

~~(v)~~ (iv) Medically Needy individuals who have incomes in excess of 133 1/3% of AFDC eligibility standards become eligibile for medical assistance when their incurred medical expenses, both paid and unpaid, are greater than or equal to their excess incomes for four consecutive months, including the month in which eligibility is sought. These medical expenses may be for medical insurance premiums and/or medical services licensed under state law not subject to third party liability.

~~(vi)~~ (v) Individuals under the age of 21 who are placed in foster homes or private institutions by a public or private non-profit agency or who reside in intermediate care facilities or psychiatric hospitals are eligible for Title XIX, Medically Needy, if they meet the following requirements:

(aa) No changes.

(ab) No changes.

(ac) No changes.

3. The medically needy premium has not served its original purpose as a deterrent to excessive utilization because of its tokenism. The cost of collecting the premium exceeds the amount collected while taking up time that could be better spent making other eligibility determinations. For all the above reasons, this amendment is proposed to eliminate the medically needy premium from the Medicaid program.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601, no later than June 21, 1979.

5. The Department's authority to make this proposed amendment is based on Section 53-6-113, MCA (Section 71-1511, R.C.M. 1947). The implementing authority for the proposed rule is based on Section 53-6-131, MCA (Section 71-1516, R.C.M. 1947).

Keith L. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 15, 1979.

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

In the matter of the amendment of rule 46-2.10(14)-S11150(5) and (5)(a) pertaining to eligibility requirements for AFDC.	) NOTICE OF PROPOSED AMENDMENT)OF RULE 46-2.10(14)-S11150(5)) and (5)(a)) NO PUBLIC HEARING) CONTEMPLATED

TO: All Interested Persons:

1. On June 29, 1979, the Department of Social and Rehabilitation Services proposes to amend rule 46-2.10(14)-S11150(5) and (5)(a) which clarifies when a stepparent or a spouse of a incapacitated natural or adoptive parent can be included in an AFDC grant.

2. The Department proposes to amend rule 46-2.10(14)-S11150(5) and (5)(a) as follows:

(5) Delete in entirety.

(a) Delete in entirety.

(5) When a natural or adoptive parent is physically or mentally incapacitated his spouse may be included as a qualified recipient. However, the spouse also must be a natural or adoptive parent of the children included in the AFDC grant.

(a) A stepparent may only be included as a caretaker relative when both natural parents are absent from the home.

3. The rule as proposed to be amended clarifies those situations in which the spouse of a natural or adoptive parent may be included as a qualified recipient and when a stepparent also may be included in an AFDC grant.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment to Office of Legal Affairs, P.O. Box 4210, Helena, MT 59601, no later than June 22, 1979.

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 comment he has to the Office of Legal Affairs, P.O. Box 4210, Helena, MT, no later than June 22, 1979.

6. The authority of the Department to make the proposed amendment is based on Section 53-4-212 MCA (71-503(e) RCM). The implementing authority is 53-4-231 MCA (71-504 RCM).

Keith P. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 15, 1979.

10-5/24/79

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

In the matter of the amendment of Rule ARM 46-2.6(2)-S684 establishing day care rates.	NOTICE OF PROPOSED AMENDMENT OF RULE ARM 46-2.6(2)-S684 DAY CARE RATES NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On July 1, 1979, the agency proposes to amend rule ARM 46-2.6(2)-S684(2)(a) regarding day care rates.

2. The proposed amendment will increase the daily reimbursement rate for state-paid day care facilities.

3. The Department proposes to amend rule ARM 46-2.6(2)-S684(2)(a) as follows:

(a) Full day care services are paid at the rate of ~~$4~~ $4.50 per day per child in day care homes. The maximum rate for centers is ~~$5~~ $5.50 per child per day of care.

4. The legislature has appropriated funds to the Department of Social and Rehabilitation Services for the proposed increase in day care reimbursement rates.

5. No public hearing is contemplated. Interested persons may submit their data, views, or arguments concerning the proposed amendment to the Office of Legal Affairs of the Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59601, no later than June 22, 1979.

6. The authority of the agency to make the proposed amendment is based on Session Law, Chapter 662 and Section 53-4-111, MCA (71-708, R.C.M., 1947). The implementing authority is Section 53-4-514, MCA (10-812 R.C.M., 1947).

Keith P. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of the State May 15, 1979.

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

In the matter of the amendment of Rule ARM 46-2.6(2)-S680(2)(f) extending eligibility for day care assistance.	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 46-2.6(2)-S680 pertaining to extending eligibility for day care assistance

TO: All Interested Persons

1. On June 25, 1979, at 9:00 a.m., a public hearing will be held in the auditorium of the Department of Social and Rehabilitation Services, 111 Sanders Street, Helena, Montana to consider the amendment of Rule 46-2.6(2)-S680 pertaining to extending eligibility for day care assistance.

2. The proposed amendment replaces present rule 46-2.6(2)-S680 found in the Administrative Rules of Montana. The proposed amendment would extend eligibility for day care assistance.

3. The rule, 46-2.6(2)-S680, subsection (2)(f), as proposed to be amended provides as follows:

(f) Expanded day care assistance requires a determination by the local affiliate of Social Services Bureau which is the County Welfare Department that:

(i) The single parent or parents are working or employed outside the home on a full or part-time basis.

(ii) The family is not eligible for Title XX of the U.S. Social Security Act related day care, Child Welfare Service related day care, Work Incentive Program related day care or Aid to Families with Dependent Children.

(iii) The family is qualified on the basis of deprivation and property ownership as defined in ARM sections 46-2.10(14)-S11150 and 46-2.10(14)-S11210.

(iv) The family income must be less than 75% of the state's median income for families of like size as published each year in the Federal Register.

(v) The expanded day care assistance will provide for the gradual assumption of the total costs of day care by parents of eligible children based upon a 12-step progressive scale establishing income brackets between 150% of the AFDC level and 75% of the state's median income, and establishing support levels between 100% and 0% of day care costs. Tables illustrating income and support levels are as follows:

Household Size	Lower Limit 150% AFDC	Steps											Upper Limit 75% Median
		1	2	3	4	5	6	7	8	9	10	11	12
2	290	324	358	392	426	460	494	527	561	592	629	663	697
3	388	427	467	506	545	585	624	663	703	742	781	821	860
4	496	554	611	669	727	784	842	900	957	1,015	1,073	1,130	1,188
5	572	637	702	767	832	897	962	1,027	1,092	1,157	1,222	1,287	1,352
6	650	711	772	833	894	955	1,016	1,078	1,139	1,200	1,261	1,322	1,383
7	711	770	828	887	945	1,004	1,062	1,121	1,180	1,238	1,297	1,355	1,414
8	806	859	912	966	1,019	1,072	1,126	1,179	1,232	1,285	1,338	1,392	1,445
9	900	948	996	1,044	1,092	1,140	1,188	1,236	1,284	1,332	1,380	1,428	1,476
10	995	1,038	1,080	1,123	1,166	1,208	1,251	1,294	1,336	1,379	1,422	1,464	1,507
11	1,089	1,126	1,164	1,201	1,239	1,276	1,314	1,351	1,388	1,426	1,463	1,501	1,538
12	1,184	1,216	1,248	1,280	1,312	1,344	1,376	1,409	1,441	1,473	1,505	1,537	1,569
% SRS Contribution		92.3%	84.6%	76.9%	69.2%	61.5%	53.8%	46.2%	38.5%	30.8%	23.1%	15.4%	7.7%

4. In response to a demonstrated need, the legislature has appropriated funds to the Department of Social and Rehabilitation Services for the implementation of an expanded day care assistance program. The proposed rule is consistent with the legislation enacted as HB282.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing.

6. The Office of Legal Affairs of the Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, MT 59601, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rule is based upon Session Law, Chapter 637; and Section 53-4-111, MCA (Section 71-708, R.C.M. 1947). The implementing authority is based on Section 53-4-514, MCA (Section 10-812, R.C.M. 1947).

Keith P. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 15, 1979.

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

In the matter of the adoption of rule 46-2.6(2)-S6181 pertaining to child care agencies, payments and rule 46-2.6(2)-S6191 pertaining to group homes, payments.	NOTICE OF PROPOSED ADOPTION OF RULE 46-2.6(2)-S6181 CHILD CARE AGENCIES, PAYMENTS AND RULE 46-2.6(2)-S6191 GROUP HOMES, PAYMENTS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 25, 1979, the Department of Social and Rehabilitation Services proposes to adopt rule 46-2.6(2)-S6181 pertaining to payments to child care agencies and rule 46-2.6(2)-S6191 pertaining to payments to group homes.

2. The proposed rules provide as follows:

46-2.6(2)-S6181 CHILD CARE AGENCIES, PAYMENTS The Department shall make payments to child care agencies for care of children for whom the Department is responsible. The amount of the payment shall be based upon a rate system developed by the Department and will include the following requirements:

(1) Child care agencies must be licensed by the Department to receive payments for care from the Department.

(2) The rate system shall include levels of care to be provided by child care agencies and categories of care needed by children with varying problems. The Department shall provide descriptions of care and services to be provided within each level of care and descriptions of behavior and needs of children to be served.

(3) The Department shall establish supplemental licensing standards which relate to each level of care within the rate system. Each child care agency shall be responsible to apply for the appropriate level of care and to provide the Department with the necessary information to establish and monitor compliance with the licensing standards.

(4) The rate system will include payment for the provision of board, room, supervision, school expenses, clothing, allowance, transportation, social services, and miscellaneous care items for the children in residence.

(5) The payment structure for child care agencies will include a base rate and specific supplemental rates for each level of care as required by the licensing standards.

(6) The rate system will include incentives for child care agencies to obtain private funds for maintenance and development of the program. All income from public sources and the provision of "in-kind" goods or services through public sources shall be considered as a resource to the child care agency for the determination of the rate to be paid by the Department.

(7) The rate system for child care agencies providing short-term care as defined by the Department may vary from the rate system for providers of long-term care for children.

46-2.6(2)-S6191 GROUP HOMES, PAYMENTS The Department shall make payments to group home providers for children for whom the Department is responsible. The payments will be based upon a rate system developed by the Department and will include the same requirements as listed for payments to child care agencies in 46-2.6(2)-S6181, ARM.

3. The rules are proposed to be adopted to respond to the need of an equitable payment system for substitute care of children which is based upon care and services provided by group homes and child care agencies and the identified needs of the residents. Such a rate system would replace the present rate system which is based currently upon individual facility costs.

4. No public hearing is contemplated. Interested persons may submit their data, views, or arguments concerning the proposed rules to the Office of Legal Affairs of the Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59601, no later than June 22, 1979.

6. The authority of the agency to adopt the proposed rules is based on Sections 53-4-111, MCA (71-708 R.C.M.), 53-4-212, MCA (71-503 R.C.M.), 53-2-201(1)(a) and (b), MCA (71-210 R.C.M.), and 53-4-211, MCA (71-503(a) R.C.M.). The implementing authority is 53-4-211, MCA (71-503(a) R.C.M.).

Keith L. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of the State May 15, 1979.

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

In the matter of the amendment of Rule ARM 46-2.6(2)-S680 pertaining to requirements for Title XX related day care and the adoption of a rule establishing limitations to special needs of day care.	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE ARM 46-2.6(2)-S680 PERTAINING TO REQUIREMENTS FOR TITLE XX RELATED DAY CARE AND THE ADOPTION OF A RULE ESTABLISHING LIMITATIONS TO SPECIAL NEEDS OF DAY CARE.

TO: All Interested Persons:

1. On June 25, 1979, at 11:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services building, 111 Sanders, Helena, Montana 59601, to consider the amendment of Rule ARM 46-2.6(2)-S680 pertaining to requirements for Title XX related day care and the adoption of a rule establishing Limitations to Special Needs of Day Care.

2. The proposed amendment modifies present Rule ARM 46-2.6(2)-S680(2)(a) found in the Administrative Rules of Montana. The proposed amendment would eliminate eligibility for parents who are in training from Title XX related day care.

3. The rule, 46-2.6(2)-S680, subsection (2)(a), as proposed to be amended, provides as follows:

46-2.6(2)-S680 REQUIREMENTS

(a) Title XX of the U.S. Social Security Act related day care requires: (i) The single parent or parents are working or employed ~~or in training~~ **on a full or part-time basis (outside the home) and are financially eligible to receive Title XX day care (AFDC, 150% welfare).**

4. The Rule proposed to be adopted, provides as follows:

RULE I SPECIAL NEEDS, TITLE IV-A DAY CARE FOR RECIPIENTS IN TRAINING In addition to the basic AFDC grant, day care payment will be included for children of recipients who are attending employment related training unless otherwise provided. AFDC recipients who attend WIN training shall be referred for WIN related day care. AFDC recipients who are employed shall be referred to Title XX for payment of day care services. 45 CFR 233.20 (a)(2)(v).

(1) Limitations to Special Needs Day Care:

(a) Title IV-A day care is payments for children of single parents and working parents who are AFDC recipients in training on a full or part-time basis. Training is, but is not limited to: (1) Vocational-Technical schools, (2) Business Colleges (3) Junior Colleges (4) University students (5) special classes which may be classified as "employment related training."

(b) Day Care needs will be taken into consideration for eligibility determination of an applicant. If an applicant requires special needs day care, this need will be considered in addition to the AFDC grant amount to determine eligibility.

(c) Day care payment shall be added to the AFDC grant amount, and in no cases will Title IV-A day care be paid in the form of vendor payment.

(d) Day care payment will be paid upon evidence of need. (Evidence of need includes an estimate for the first month and receipts thereafter from the provider of day care services.) Evidence of need shall include the signature of the individual provider or his/her designee, the month of services, and the day and year completed.

(e) Day care payment shall not exceed $143 per month, per child. The recipient shall choose his/her day care provider.

5. The rules proposed to be amended and adopted are consistent with legislation enacted in 1979 as HB483 which will extend eligibility for day care assistance to AFDC recipients in training and transfer day care funding for such recipients from Title XX to Title IV-A of the Social Security Act.

6. Interested persons may submit their data, views, or arguments, either orally or in writing, at the hearing.

7. The Office of Legal Affairs of the Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

8. The authority of the agency to make the proposed rule is based upon HB483, and Section 53-4-111, MCA (Section 71-708, R.C.M. 1947.) The implementing authority is Section 53-4-514, MCA (Section 10-812, R.C.M. 1947.)

Keith L. Colbo

Keith L. Colbo, Director

Certified to the Secretary of State May 15, 1979

10-5/24/79

MAR Notice No. 46-2-175

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the repeal of Chapter 54 of Title 48 (rules 48-2.54(1)-S5400 through 48-2.54(1)-S5460) establishing Indian studies training requirements for certified personnel teaching on or near an Indian reservation	))))))	NOTICE OF PROPOSED REPEAL OF CHAPTER 54 OF TITLE 48 (RULES 48-2.54(1)-S5400 through 48-2.54(1)-S5460) establishing Indian studies training requirements for certified personnel teaching on or near an Indian reservation. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons:

1. On July 9, 1979, the Board of Public Education proposes to repeal Chapter 54 of Title 48 (rules 48-2.54(1)-S5400 through 48-2.54(1)-S5460) which established Indian studies training requirements for certified personnel teaching on or near an Indian reservation.

2. The rule proposed to be repealed is on pages 48-751 through 48-754 of the Administrative Rules of Montana.

3. The agency proposes to repeal this rule because HB-219, passed by the 46th Legislature (1979), makes the Indian studies program optional.

Marjorie W. King
MARJORIE W. KING, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: Marilyn Miller
ASSISTANT TO THE BOARD

Certified to the Secretary of State May 15, 1979.

BEFORE THE BOARD OF PUBLIC EDUCATION

OF THE STATE OF MONTANA

In the matter of the amendment of Rule 48-2.6(2)-S680 referencing the Board of Public Education's Indian Studies rule in accreditation standards.	NOTICE OF PROPOSED AMENDMENT OF RULE 48-2.6(2)-S680 referencing the Board of Public Education's Indian studies rule in accreditation standards. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons:

1. On July 9, 1979, the Board of Public Education proposes to amend ARM Rule 48-2.6(2)-S680, Boards of Trustees.

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

(1) Remains the same

(2) Remains the same

(3) Remains the same

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

~~(a)--The board of trustees of school districts that lie wholly or partially within the confines of an Indian reservation or school districts that adjoin (i.e., share a common border with) an individual reservation shall employ certified personnel in accordance with Section 20-4-213, MCA, and Board of Public Education rules contained in ARM Title 48, Chapter 54, Indian Studies.--(Note:--the provisions of this standard shall be implemented by the 1979-80 school term.)~~

(5) Remains the same

(6) Remains the same

(7) Remains the same

3. The rule is proposed to be amended because HB-219, passed by the 46th Legislature, makes the Indian studies program optional.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Marjorie W. King, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59601, at any time prior to June 29, 1979.

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 Marjorie W. King, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59601, no later than June 20, 1979.

6. If the agency receives requests for a public hearing on the proposed amendment from more than 10 percent 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 hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 350, based on 3500 teachers in schools affected by the rule.

7. The authority of the Board to make the proposed amendment is based on HB-219, 46th Legislature (1979).

Marjorie W. King
MARJORIE W. KING, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: Marilyn Miller
ASSISTANT TO THE BOARD

Certified to the Secretary of State May 15,1979.

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

In the matter of the amendment of Rule 16-2.14(1)-S1490, prescribing restrictions on open burning	) NOTICE OF THE AMENDMENT) OF RULE 16-2.14(1)-S1490,) OPEN BURNING RESTRICTIONS)

TO: All Interested Persons:

1. On February 15, 1979, the Board of Health and Environmental Sciences published notice of a proposed amendment to rule 16-2.14(1)-S1490, which prescribes restrictions on open burning, at page 60 of the 1979 Montana Administrative Register, issue number 3.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule in order to extend the date by which owners and operators of oil fields with sludge pits must submit to the Department of Health and Environmental Sciences plans for the disposal of the pits in a manner other than burning. The amendment was requested by the Montana Petroleum Association, which has been unable to meet the original deadline. Since the date after which open burning of sludge would be forbidden remained the same -- July 1, 1980 -- the Board agreed to the amendment.

Vice-Chairman

Certified to the Secretary of State May 15, 1979

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

IN THE MATTER of the Amendment of Rule 38-2.6(1)-S6000.) NOTICE OF AMENDMENT OF RULE 38-2.6(1)-S6000 INSURANCE

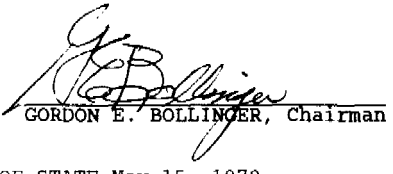
TO: All Interested Persons

1. On August 10, 1978, the Department of Public Service Regulation published notice of amendment of rule 38-2.6(1)-S6000 at pages 1140-1142 of the 1978 Montana Administrative Register, issue number 9, and on March 29, 1979 renoticed at pages 308-310 of the 1979 Montana Administrative Register, issue number 6.

2. The agency has amended the rule as proposed.

3. This rule is being amended to bring it into conformity with Montana statutes dealing with countersigning by Montana resident agents.

4. Authority of the Department to make the proposed amendment is based on Sections 69-13-201, 2-4-302 and 2-4-305, MCA.



GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE May 15, 1979.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS

In the matter of the Adoption) NOTICE OF ADOPTION OF A NEW
of a new rule providing guide-) RULE ARM 40-3.96(6)-S9675
lines for Permit Issuance) PERMITS

To: All Interested Persons:

1. On April 12, 1979, the Board of Radiologic Technologists published a notice of a proposed adoption of a new rule concerning guidelines for issuance of permits at pages 380-381, 1979 Montana Administrative Register, issue number 7.

2. The Board has adopted the rule exactly as proposed.

3. No comments or testimoney were received. The Board has adopted the rule to implement section 37-14-306 MCA (66-3707 R.C.M. 1947) by providing guidelines for the Board in reviewing and approving applications to take the permit examination.

ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, May 15, 1979.

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

In the matter of the adoption of rules pertaining to contested cases and appeals to the Board of Social and Rehabilitation Appeals and the Repeal of Rules 46-2.2(2)-P210 through 46-2.2(2)-P2070 pertaining to contested cases and appeals to the Board of Social and Rehabilitation Appeals.	NOTICE OF THE ADOPTION OF RULES 46-2.2(2)-P211, 46-2.2(2)-P221, 46-2.2(2)-P231, 46-2.2(2)-P241, 46-2.2(2)-P251, 46-2.2(2)-P261, 46-2.2(2)-P271, 46-2.2(2)-P281, 46-2.2(2)-P291, 46-2.2(2)-P300, 46-2.2(2)-P310, 46-2.2(2)-P320, 46-2.2(2)-P330, 46-2.2(2)-P340, and the REPEAL OF RULES 46-2.2(2)-P210 THROUGH 46-2.2(2)-P2070.

TO: All Interested Persons:

1. On February 28, 1979, the State Department of Social and Rehabilitation Services published notice of a proposed adoption of rules pertaining to contested cases and appeals to the Board of Social and Rehabilitation Appeals and the Repeal of Rules 46-2.2(2)-P210 through 46-2.2(2)-P2070 at page 186 of the 1979 Montana Administrative Register, issue number 4.

2. The agency has repealed ARM 46-2.2(2)-P210 through 46-2.2(2)-P2070 found on pages 46-16 through 46-25.1 of the Administrative Rules of Montana.

3. The rules to be adopted have been assigned the following rule numbers:

46-2.2(2)-P211 DEFINITIONS (Rule I)

46-2.2(2)-P221 OPPORTUNITY FOR HEARING (Rule II)

46-2.2(2)-P231 NOTICE UPON APPLICATION (Rule III)

46-2.2(2)-P241 NOTICE UPON ADVERSE ACTION (Rule IV)

46-2.2(2)-P251 DENIAL OR DISMISSAL OF HEARING (Rule V)

46-2.2(2)-P261 CONTINUATION OF BENEFITS (Rule VI)

46-2.2(2)-P271 HEARING OFFICER, POWERS AND DUTIES (Rule VII)

46-2.2(2)-P281 ADMINISTRATIVE REVIEW (Rule VIII)

46-2.2(2)-P291 HEARING PROCEDURE (Rule IX)

46-2.2(2)-P300 PROPOSAL FOR DECISION BY HEARING OFFICER (Rule X)

46-2.2(2)-P310 BOARD REVIEW OF PROPOSAL FOR DECISION (Rule XI)

46-2.2(2)-P320 JUDICIAL REVIEW (Rule XII)

46-2.2(2)-P330 IMPLEMENTATION OF HEARING DECISIONS (Rule XIII)

46-2.2(2)-P340 AVAILABILITY OF HEARING RECORDS (Rule XIV)

4. The agency has adopted the rules as proposed with the following minor changes in Rule 46-2.2(2)-P281:

46-2.2(2)-P281 ADMINISTRATIVE REVIEW

(1) No changes.

(2) No changes.

(a) at the claimant's discretion, an informal conference with the ~~**Department's local supervisor;**~~ Department.

(b) a review of relevant facts, regulations and circumstances involved in the adverse action by the ~~**Department's local supervisor**~~ Department and the preparation of an administrative review report for submission to the ~~**state**~~ hearing ~~**office**~~ officer within ~~**seven (7)**~~ fifteen (15) days ~~**of the request for hearing; and**~~ from the date the request for administrative review is mailed from the hearing officer to the person responsible for conducting the review;

(c) Delete in its entirety.

(3) No changes.

(4) No changes.

5. On March 21, 1979, a public hearing was conducted at which time no comment or testimony was received. The agency did receive one written comment and responds to that comment as follows:

COMMENT: Written comment was received from Lake County, Montana concerning appeals and judicial review of decisions only if county funds are involved. The county argues that they have the responsibility over any funds channeled through their system and should have the right to appeal any decision adverse to the county.

Response: Federal rules state that the final decision on a hearing request is binding on the state agency, and the rules do not provide for appeals by local agencies. 43 FR 47876, 7 CFR 273.15(g)(2) (found in 43 FR 47921, formerly Section 7 CFR 271.1(0)(7)); 42 CFR 431.10(e)(2)(3) found in 44 FR 17930.

County departments are under the supervision of the Department of Social and Rehabilitation Services and all local administration must conform to federal and state laws and the rules established by the department. Sections 53-2-305, MCA (Section 71-218, R.C.M.); Section 53-2-306, MCA (Section 71-221, R.C.M.); Section 53-2-307, MCA (Section 71-216, R.C.M.).

Futhermore, the Montana Administrative Procedure Act implies that an agency (which would include the local county welfare department) may not seek judicial review. Section 2-4-702, MCA (Section 82-4216, R.C.M.).

The rules do allow the Board of County Commissioner to seek judicial review if the Board was a party to the original hearing by virtue of the involvement of county funds in the benefits which were the subject of the hearing.

Keith L. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 15, 1979.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of rules outlining standards for state approval of teacher education programs leading to interstate reciprocity of teacher certification	NOTICE OF THE ADOPTION OF RULES outlining standards for state approval of teacher education programs leading to interstate reciprocity of teacher certification. (Chapter 12; 48-2.12(1)-S1200 through 48-2.12(6)-S12150)

TO: All Interested Persons

1. On August 24, 1978, the Board of Public Education published notice of a proposed adoption of a rule concerning standards for state approval of teacher education programs leading to interstate reciprocity of teacher certification at pages 1248-1301 of the 1978 Montana Administrative Register, issue number 10.

2. On the basis of comments received, the Board determined that the proposed rule should be substantially modified and re-noticed. On January 20, 1979, a second hearing was held. The agency has adopted the rule with minor editorial changes but substantially as proposed.

3. Twenty-three persons testified at the January 20 hearing; four opposed the rule, 13 favored it, and six commented with no position. Over the course of the two hearings, the Board received approximately 235 letters from interested persons and organizations. About 95 percent of those letters favored the proposed rule in principle, though there were numerous suggestions about the details of the rule. In response to written and oral comment received pursuant to the second hearing, technical details of the rule were modified in about 50 instances.

Proponents of the rule stated that the rule was necessary and desirable in order to qualify the graduates of Montana's teacher-training institutions for automatic teacher certification in other states. Some proponents also believe the new standards would improve the quality of teacher education in Montana.

The major objection to the rule was voiced by representatives of teacher training institutions which are accredited by the National Council for Accreditation of Teacher Education (NCATE). These persons believe the proposed rule would necessitate costly duplication in the review processes which are conducted on their programs. They favored a provision in the rule which would exempt NCATE accredited institutions from those standards in the rule which duplicated NCATE standards. In response to this objection, the Board added a statement which says "Joint visitations and cooperation with other accrediting agencies will be encouraged." The Board also took official action to adopt procedures to implement the rule and voted that "such procedures

should seek to eliminate duplication with other accrediting agencies." The Board believed that potential duplication of requirements between the proposed rule and NCATE standards could best be addressed in the subsequent procedures.

MARJORIE W. KING, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY
ASSISTANT TO THE BOARD

Certified to the Secretary of State May 15, 1979.

VOLUME NO. 38 OPINION NO. 16

HOLIDAYS - Entitlement of public employees to paid days off on legal holidays;
HOSPITAL DISTRICTS - Entitlement of hospital district employees to paid days off for legal holidays;
EMPLOYEES, PUBLIC - Holidays and vacation days;
MONTANA CODES ANNOTATED - 1-1-216; 2-18-603; 2-18-611, 612, 614, 621; 20-1-305;
REVISED CODES OF MONTANA, 1947 - 19-107; 59-1001; 59-1009; 75-7406.

HELD: 1. Section 2-18-603, MCA (59-1009, R.C.M. 1947), which generally entitles each state, city and county employee to a day off on the day preceding or following a holiday which falls on the employee's regular day off, is applicable to full-time salaried employees of a county hospital district.

2. A public employee may be required to work on a holiday or its complement under section 2-18-603, MCA (section 59-1009, R.C.M. 1947). However, a public employee who works a holiday or its complement must be either compensated for the lost holiday or given an opportunity to take a paid day off at a later time.

3. Vacation and holiday leave time for public employees are cumulative. If a holiday or its complement under section 2-18-603, MCA (59-1009, R.C.M. 1947) falls during a public employee's annual vacation, that day should not be counted against the employee's leave time; if counted against leave time the employee must be given a paid day off at a later time to make up for the lost holiday.

4. The holiday provisions of section 2-18-603, MCA (59-1009, R.C.M. 1947), apply to full-time, salaried public employees. They do not apply to part-time, temporary or seasonal employees who are paid on an hourly or per diem basis for work actually performed.

3 May 1979

David E. Fuller, Commissioner
Department of Labor & Industry
Employment Security Building
Room 412
Helena, Montana 59601

John Forsyth, Esq.
Rosebud County Attorney
Courthouse Building
Forsyth, Montana 59327

Gentlemen:

Each of you has requested an opinion concerning paid holidays for public employees. I have stated your questions as follows:

1. Are employees of a county hospital district considered "State" or "county" employees under the provisions of section 2-18-603, MCA (59-1009, R.C.M. 1947), which entitle each state, city and county employee to a day off on the day preceding or following a holiday which falls on the employee's regular day off?

2. Is a public employee who works on a holiday, or works on a complementary day which he is entitled to take off in lieu of a holiday entitled to an additional day's pay for the holiday or its complement?

3. Where a holiday falls during a public employee's regularly scheduled annual vacation, is he entitled to an additional day off?

4. Do the holiday provisions of section 2-18-603, MCA (59-1009, R.C.M. 1947), apply to part-time, temporary and seasonal public employees?

Your questions involve interpretation of section 2-18-603, MCA (59-1009, R.C.M. 1947), which provides:

> Any employee who is scheduled for a day off on a day which is observed as a legal holiday, except Sundays, shall be entitled to receive a day off

> either on the day preceding or the day following the holiday, whichever allows a day off in addition to the employee's regularly scheduled days off.

That section is facially ambiguous and has been the subject of several prior Attorney General opinions. E.g., 34 OP. ATT'Y GEN. NO. 27 (1971); 36 OP. ATT'Y GEN. NO. 105 (1976); and 37 OP. ATT'Y GEN. NOs. 96 and 150. In the first instance, it is dependent upon other statutory provisions for a definition of holidays. In the case of school district employees, holidays are defined in section 20-1-305, MCA (75-7406, R.C.M. 1947). For other public employees, holidays are defined in section 1-1-216, MCA (19-107, R.C.M. 1947). 37 OP. ATT'Y GEN. NO. 150 (1978). Secondly, the section does not expressly state that public employees are entitled to days off on holidays but prior Attorney General opinions have found such entitlement implicit in the section. "If the legislature mandates a day off for state employees when a legal holiday happens to fall on a weekend, surely the same is true when a holiday falls during the week." 35 OP. ATT'Y GEN. NO. 105, p. 551 (1976).

The questions presented here further illustrate the ambiguity of section 2-18-603. The section makes no express provision with respect to any of the questions. In answering the questions, I am therefore guided by several general rules of statutory construction. First, the apparent objects sought to be achieved by the legislature through section 2-18-603 are a prime consideration in interpreting the section. Corwin v. Bieswanger, 126 Mont. 337, 340, 251 P.2d 232 (1952). Second, the construction adopted should not lead to absurd results if a reasonable construction is available. State ex rel. Ronish v. School District No. 1, 136 Mont. 449, 460, 348 P.2d 797 (1960). Third, since the statute is vague and ambiguous, the consequences of a proposed construction may be considered to avoid objectionable or absurd results. State ex rel. Griffin v. Butte, 151 Mont. 546, 549, 445 P.2d 739 (1968). Finally, the meaning of the section must be gleaned by examining the overall purpose of the act rather than from an isolated clause or sentence. In re Senate Bill No. 23 v. Lamoreaux, 168 Mont. 102, 105, 540 P.2d 975 (1975).

I. APPLICABILITY OF SECTION 2-18-603, MCA, TO EMPLOYEES OF A COUNTY HOSPITAL DISTRICT.

As originally enacted, section 2-18-603, MCA, referred to "any employee of the state of Montana, or any county or city thereof ***." Laws of Montana (1971), ch. 108, sec. 1. In recodification, reference to state, county and city government has been deleted. The section has been placed in the same chapter as annual and military leave provisions, and a comprehensive definitional section has been supplied for the chapter. For purposes of the chapter, "employee" is defined in the equivalent terms as provided in the original enactment of section 2-18-603, being "any person employed by the state, county, or city government."

In 37 OP. ATT'Y GEN. NO. 102, I determined that reference to "state, county and city employees" in annual vacation and sick leave provisions included employees of a county hospital district. That conclusion was compelled by Teamsters Local No. 45 v. Cascade County School District No. 1, 162 Mont. 227, 511 P.2d 339 (1973), when the Montana Supreme Court considered the vacation leave provisions of section 59-1001, R.C.M. 1947 (recodified as sections 2-18-611, 612, 614 and 621, MCA). The Court held that in referring to "State," "county" and "city" employees: "The legislature used the term employees in its generic sense to include all employees of the state or state agencies of which a school district is included." While section 2-18-603 was separately enacted by the legislature, it uses the same reference to employees of the "state, county and city" as used in the vacation and sick leave statutes. The rationale of Opinion No. 102 and Teamsters Local No. 45 is equally applicable to section 2-18-603 and it is my opinion full-time salaried employees of a county hospital district are entitled to the benefits provided by that section.

II. APPLICATION OF SECTION 2-18-603, MCA, WHERE A PUBLIC EMPLOYEE WORKS ON A LEGAL HOLIDAY OR WORKS A DAY WHICH HE WOULD OTHERWISE BE ENTITLED TO TAKE OFF UNDER SECTION 2-18-603.

The plain and obvious purpose of section 2-18-603 is to give public employees paid days off on specified holidays or days in lieu of those holidays. It is equally obvious, however,

that not every public employee can be given his or her day off on every holiday or its complement under section 2-18-603. Most public offices may be closed to accomodate a holiday or its complement, 34 OP. ATT'Y GEN. NO. 27 (1971), but essential governmental operations, such as law enforcement and hospital services, must continue notwithstanding the holiday. It would be an absurd and unreasonable construction of section 2-18-603 to interpret it as requiring that all governmental services be suspended on holidays so that all public employees can have the same day off. Section 2-18-603 therefore does not forbid a governmental body from requiring employees to work on holidays or holiday complements. However, if an employee is required to work a holiday or its complement, he must be either compensated for the lost holiday or given an opportunity to take a paid compensatory day off at some other time. This requirement follows from the overall purpose of section 2-18-603, to give public employees a specific number of paid days off each year which correspond to specific holidays.

Whether the employee receives additional compensation for a working holiday or is given a different day off is in the sound discretion of the employing governmental body. However, the employee may not unilaterally determine which of the two alternatives his employer must pursue. If the employing governmental body directs the employee to take a different day off in lieu of the holiday and the employee refuses, the governmental body is not required to compensate the employee for the lost holiday. If, however, the employing governmental body agrees to allow the employee to work without taking a compensatory day off, it must pay him for that additional day.

III. HOLIDAYS FALLING DURING A PUBLIC EMPLOYEE'S REGULARLY SCHEDULED ANNUAL VACATION.

Since the purpose of section 2-18-603 is to give public employees a fixed number of paid days off corresponding to legal holidays, the entitlement to a day off for a holiday cannot be lost merely because the holiday falls during the employee's regularly scheduled vacation. Vacation and holiday leave are cumulative. Therefore, if a holiday or its section 2-18-603 complement falls during an employee's annual vacation, that day should be counted against the employee's holiday time and not against leave time. In the

alternative, the day of the holiday or its complement could be counted against vacation leave time if the employee is allowed to take a paid day off at some future time to make up for the lost holiday. In any event, the employee should not lose a day off for a holiday merely because the holiday falls during his annual vacation.

IV. PART-TIME, TEMPORARY AND SEASONAL PUBLIC EMPLOYEES.

Section 2-18-603 does not facially distinguish among part-time, permanent and temporary employees. However, "employee" cannot be isolated from the context of the section. The section refers specifically to days off "in addition to the employee's regularly scheduled days off." Reference to an employee's regular days off is commonly used in connection with full-time, salaried employees. From the context of the statute it is therefore my opinion that the holiday provisions refer to such full-time, salaried employees and has no application for part-time, temporary or seasonal employees who are paid on a per diem or hourly basis for work actually performed and who are not generally entitled to paid holidays off.

THEREFORE, IT IS MY OPINION:

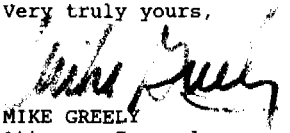
1. Section 2-18-603, MCA (59-1009, R.C.M. 1947), which generally entitles each state, city and county employee to a day off on the day preceeding or following a holiday which falls on the employee's regular day off, is applicable to full-time salaried employees of a county hospital district.

2. A public employee may be required to work on a holiday or its complement under section 2-18-603, MCA (section 59-1009, R.C.M. 1947). However, a public employee who works a holiday or its complement must be either compensated for the lost holiday or given an opportunity to take a paid day off at a later time.

3. Vacation and holiday leave time for public employees are cumulative. If a holiday or its complement under section 2-18-603, MCA (59-1009, R.C.M. 1947) falls during a public employee's annual vacation, that day should not be counted against the employee's leave time; if counted against leave time the employee must be given a paid day off at a later time to make up for the lost holiday.

4. The holiday provisions of section 2-18-603, MCA (59-1009, R.C.M. 1947), apply to full-time, salaried public employees. They do not apply to part-time, temporary or seasonal employees who are paid on an hourly or per diem basis for work actually performed.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 38 OPINION NO. 17

ELECTIONS - School bond elections; elector qualifications;
ELECTORS - Qualifications for school bond elections; taxpayer qualifications;
SCHOOL DISTRICTS - Bond elections, elector qualifications;
STATUTES - Repeal by implication.
MONTANA CODE ANNOTATED - Section 20-20-302 (84-4711, R.C.M. 1947).

HELD: Property ownership is not a qualification for voting in an election called to create or increase a school district's indebtedness.

7 May 1979

Mr. Bruce E. Becker
Park County Attorney
P.O. Box 823
Livingston, Montana 59047

Dear Mr. Becker:

You have requested my opinion on a question which may be stated as follows:

> Is property ownership a qualification for voting in an election called to create or increase a school district's indebtedness?

You make reference to section 20-20-302, MCA (formerly section 84-4711, R.C.M. 1947), which provides:

> From and after March 7, 1923, only such registered electors of the school district whose names appear upon the last preceding assessment roll should be entitled to vote upon any proposal to create or increase any indebtedness of the school district required by law to be submitted to a vote of the electors thereof; provided, however, that no such elector, otherwise qualified hereunder, shall be denied the right to vote by reason of the fact that the polling place for a general election for the precinct wherein he resides and is entitled to vote lies within another district.

You also refer to the fact that the taxpayer qualification presently found in the above statute formerly appeared in section 75-6411, R.C.M. 1947, as well, and that section 75-6411 was expressly repealed in 1971. I agree an apparent conflict exists and, in my opinion, the conflict must be resolved against the validity of the taxpayer qualification.

As originally enacted in 1923, and as re-enacted since, the taxpayer qualification now found in section 20-20-302, MCA, was applicable to elections concerning the creation or increase of indebtedness of counties, cities and towns, and school districts. Laws of Montana (1923), ch. 98, sec. 1; section 5199.1, R.C.M. 1935, section 84-4711, R.C.M. 1947. In the course of the recent recodification, the qualification was placed in each of two sections; section 20-20-302, MCA, the statute in issue here, and section 7-7-4103, MCA, which prescribes voter qualifications applicable to questions of municipal indebtedness. Senate Bill 322, which was signed by the governor on March 22, 1979, amended section 7-7-4103 to delete the taxpayer qualification in that statute. Section 20-20-302, however, is not under consideration by the legislature.

While section 20-20-302, MCA, as such has not received legislative attention, its subject matter has. In 1971, the legislature passed chapter 83, Laws of 1971. Section 14 of that Act expressly repealed section 75-6411, R.C.M. 1947, which had imposed the same taxpayer qualification embodied in former section 84-4711, R.C.M. 1947, now section 20-20-302, MCA. The title of the Act, which provides in part as follows, speaks for itself:

> An act to repeal the taxpayer qualification of electors voting at school elections for issuing school district bonds, additional levy for general fund, ***

Chapter 83, Laws of 1971, became effective upon its approval on February 27, 1971.

In construing an enactment, courts will presume the legislature intended to make some change in existing law. State ex rel. Irvin v. Anderson, 164 Mont. 513, 523, 524, 525 P.2d 564 (1974). The change intended by chapter 83, Laws of 1971, is obvious: repeal of the taxpayer qualification for voting in school elections. That Act did not refer to the identical qualification then found in section 84-4711, R.C.M. 1947, now section 20-20-302, MCA. To the extent they

deal with the same subject matter, the two enactments are wholly inconsistent and incompatible and cannot be reconciled. Therefore, the earlier, codified then as section 84-4711, R.C.M. 1947, was to that extent repealed by implication. State v. Langan, 151 Mont. 558, 564, 445 P.2d 565 (1968).

Furthermore, once repealed by implication, the taxpayer qualification in issue could not be revived even though it was carried forward into Montana Code Annotated as section 20-20-302. State ex rel. Jenkins v. Carisch Theaters, Inc., ___ Mont. ___, 564 P.2d 1316, 1320 (1977).

It should be noted that chapter 83, Laws of 1971, did not originate in a vacuum. By 1971 the Supreme Court of the United States had struck down property ownership qualifications as they applied to school board elections, Kramer v. Union Free School District, 395 U.S. 621 (1969); municipal utility revenue bond elections, Cipriano v. City of Huoma, 395 U.S. 701 (1969); and general obligation bond elections, City of Phoenix v. Kolodziejski, 399 U.S. 204 (1970). The court made it clear that as long as an election is not one of special interest, any classification restricting the franchise on grounds other than residence, age and citizenship violates equal protection unless the district or state can demonstrate the classification serves a compelling state interest.

By repealing the taxpayer qualification in issue here, the legislature brought Montana into line with clearly established constitutional principles.

THEREFORE, IT IS MY OPINION:

> Property ownership is not a qualification for voting in an election called to create or increase a school district's indebtedness.

Very truly yours,

MIKE GREELY
Attorney General

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