RESERVE

MONTANA ADMINISTRATIVE REGISTER

1979 ISSUE NO. 11
PAGES 504 — 613

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 11

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BEFORE THE WORKERS' COMPENSATION COURT
OF THE STATE OF MONTANA

In the matter of the adoption of procedural rules of the Workers' Compensation Court	)))))	NOTICE OF PROPOSED ADOPTION OF NEW RULES (No public hearing contemplated)

TO: All Interested Persons:

1. On July 16, 1979, the Workers' Compensation Court of the State of Montana proposes to adopt procedural rules of court. These rules were published by the Workers' Compensation Court in November of 1975, by the Workers' Compensation Division in its compilation of the laws pertaining to Workers' Compensation and Occupational Disease Law, commonly referred to as the "Blue Book" and in the State Bar of Montana's Montana Lawyers Rule Book.

2. The proposed rules of court provides as follows:

RULE I. PETITION FOR HEARING. (1) All requests for hearing before the Workers' Compensation Court shall be in petition form. The petition shall include the following information:

(a) That the parties have made an effort to solve the dispute existing between the parties and that a solution of the dispute cannot be reached by them. A copy of the letter or document the petitioner relies upon as evidence that a solution to the dispute cannot be reached by the parties must be attached to the petition. If a letter or document cannot be obtained, then a paragraph in the petition should state what the petitioner has done to resolve the dispute and the circumstances surrounding the failure to reach a resolution.

(b) A reference to every particular section of the ~~Revised Codes of Montana, 1947~~ Montana Code Annotated or the rules in the Montana Administrative Code that are involved in the dispute.

(c) A short and plain statement of the matters as asserted and ~~of~~ every disputed issue that the petitioner wishes the Court to make a determination of after a hearing.

(d) A description of the accident.

(2) There is no filing fee. Petitions and all other matters are to be filed with the Clerk of Court at ~~1122~~ 1422 Cedar-Airport Way, P. O. Box 4127, Helena, MT 59601. The party should file an original and as many copies of the petition as are necessary to serve adverse parties. Include the names and addresses of parties to be served. ~~Usually two (2) copies are sufficient.~~ The Clerk will issue a

receipt for all documents filed. Request for an emergency hearing should be in petition (see Rule ~~8B~~ 8(6). Request for venue other than as set forth in Rule ~~8B~~ 8(4) should be included in the petition.

RULE II. ANSWERS. (1) A party may answer a petition for hearing within ~~twenty (20)~~ days of receipt of the petition or the Court may demand a written answer to a petition from a party at any time before the hearing date. All answers shall respond in detail to each matter asserted by the petitioner and to each issue that the petitioner has requested that the Court make a determination.

(2) A party may demand upon application, within ~~ten (10)~~ days of receipt of the petition, a more definite and detailed petition before answering the petition, and the Court shall determine whether the application must be complied with. Party answering will send a copy of answer to adverse party.

RULE III. SIGNED PLEADING. (1) Every petition requesting a hearing and every answer from a party represented by an attorney shall be signed by the party's attorney of record or by the party. A party who is not represented by an attorney shall sign the petition or answer and state the party's address. Petitions and answers need not be verified or accompanied by affidavit.

RULE IV. ALTERNATIVE PLEADING. (1) Pleading in the alternative is permissible in petitions for hearing and answers.

RULE V. AMENDING PLEADING. (1) Petitions for hearing and answers to petitions may be amended within ~~twenty (20)~~ days of receipt by the Court of the petition or answer. The Court may, in its discretion, allow parties at any time to amend petitions or answers prior to a hearing or at a hearing. Parties may respond to amended petitions and answers within ~~ten (10)~~ days of receipt of an amended petition or answer and shall respond to amended petitions and answers when requested by the Court. Normally amendments are considered at the pretrial and are contained in the pretrial order.

RULE VI. JOINING THIRD PARTIES. (1) A party may request that a third party be joined in the dispute or controversy and the Court may, on good cause shown, require a third party to become a party to a dispute or controversy. The Court may require a third party to answer in detail a petition for hearing or an answer.

RULE VII. INTERVENTION. (1) Anyone may request to intervene and become a party in a matter that is coming to

hearing before the Court. The applicant requesting intervention shall serve a motion to intervene upon all parties. The motion shall state grounds why intervention is sought. The Court, in its discretion, will determine whether to allow intervention of the applicant and shall notify the applicant and all parties of its decision.

RULE VIII. TIME AND PLACE OF HEARINGS. (1) For the purposes of hearings, the Court uses the fiscal year of July 1 to June 30, and has four terms of three months each and has designated them as the July term, October term, January term and April term.

(2) In addition, the Court has divided the state into nine geographic areas made up of the several counties (Rule ~~8B~~ 8(4)). Except for emergency hearings (Rule ~~8C~~ 8(5)) or upon stipulation of all the parties and consent of Court for hearings elsewhere, hearings will be held at the time and in the place designated in Rules ~~8A~~ 8(3) and ~~8B~~ 8(4).

~~8A~~ (3) Time of Hearing. Court will be in session at the call of the Court, but normally will be in the following areas during the October, January and April terms, at the following times:

Kalispell Area	The first Tuesday ~~of each term;~~
Missoula Area	The second Tuesday ~~of each term;~~
Butte Area	The third Tuesday ~~of each term;~~
Bozeman Area	The fourth Tuesday ~~of each term;~~
Billings Area	The fifth Tuesday ~~of each term;~~
Miles City Area	The sixth Tuesday ~~of each term;~~
Glasgow Area	The seventh Tuesday ~~of each term;~~
Great Falls Area	The eighth Tuesday ~~of each term;~~
Helena Area	The ninth Tuesday ~~of each term;~~

Court will commence at 9:30 a.m., Tuesday and will be in session until noon and will reconvene at 1:30 p.m. and recess at the convenience of the Court. If all matters before the Court are not completed on Tuesday, the Court will reconvene on the following and as many days thereafter as is necessary to complete the docket. If Tuesday is a holiday, Court will convene on the following Wednesday.

~~8B;~~ (4) Venue of Hearings. Hearings will be held in the nine areas at the cities listed for the counties making up the area as follows:

Kalispell Area	Flathead Lincoln
Missoula Area	Lake Mineral

	Missoula
	Ravalli
	Sanders
Butte Area	Beaverhead
	Deer Lodge
	Granite
	Jefferson
	Madison
	Powell
	Silver Bow
Bozeman Area	Gallatin
	Park
	Sweetgrass
	Wheatland
Billings Area	Big Horn
	Carbon
	Golden Valley
	Musselshell
	Petroleum
	Stillwater
	Treasure
	Yellowstone
Miles City Area	Carter
	Custer
	Dawson
	Fallon
	McCone
	Powder River
	Prairie
	Richland
	Rosebud
	Wibaux
Glasgow Area	Daniels
	Garfield
	Phillips
	Roosevelt
	Sheridan
	Valley
Great Falls Area	Blaine
	Cascade
	Chouteau
	Fergus
	Glacier
	Hill
	Judith Basin

Liberty
Pondera
Teton
Toole

Helena Area — Broadwater
Lewis and Clark
Meagher

~~8C.~~ (5) Setting Hearings. Upon receipt of a petition meeting the requirements of these rules, the Court will set a hearing in the area where the accident occurred and at a time that will allow ~~twenty (20)~~ days notice to be given of the hearing. However, the Court may, for good cause, hold a hearing over to the next regular hearing date in that area.

~~8D.~~ (6) Emergency Hearings. Emergency hearings may be granted by the Court upon good cause shown and after due notice of a time and place set by the Court. The Court, on its own motion, may set a hearing as an emergency hearing and designate the time and place of hearing.

~~8E.~~ (7) Other. Upon stipulation of the parties and consent of the Court, a hearing may be had at any time in any area including an area other than the area where the accident occurred. When in the best interests of the Court's duties, the Court deems a particular area the place to hold a trial, it may order the trial held in that area.

RULE IX. WITNESS LIST. (1) A party may demand a list of all witnesses the opposing party will call at a hearing or the Court may demand a witness list from any party. Such a demand can only be made after a hearing date has been set and such a demand must be complied with within ~~ten (10)~~ days of the date the party received the demand. A complete list of witnesses shall be included in the pretrial order. A witness may not be called by a party at a hearing if the name of the witness was not timely given to the opposing party upon demand or by the Court as stated above. However, the Court may, in its discretion and for good cause, waive the provisions of this rule at a hearing.

RULE X. MEDICAL REPORTS. (1) There ~~shall be a free~~ must be an exchange of medical reports and medical information between the parties to the dispute prior to any scheduled hearing. ~~All~~ Medical reports ~~and medical information must be~~ may be submitted ~~to~~ as ~~the Division of Workers' Compensation by every party prior to the filing of a petition~~ evidence by stipulation between parties at the time of pretrial or at the time of trial. ~~After the petition has been filed with the Court, all medical reports and medical information shall be filed with the Court until the parties have been notified otherwise.~~

RULE XI. DEPOSITIONS. (1) Depositions of witnesses who cannot be available at the time of the hearing may be taken prior or subsequent to a hearing with the approval of the Court. The cost of the depositions shall be borne by the party requesting the depositions.

RULE XII. PRETRIAL CONFERENCE. ~~At any time before the hearing day, the Court, in its discretion, may direct parties to appear before it at a certain time and place or to be present at a telephone conference call for a conference to consider the simplification or clarification of issues to be determined at a hearing, amendments to petitions or answers, the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, the names of witnesses that are to testify or the limitation of the number of witnesses or~~ (1) A pretrial conference shall precede every trial unless otherwise ordered by the Court.

(2) The Court shall make an order which recites the action taken at the conference and shall set forth the following:

(a) statement of jurisdiction pursuant to 39-71-2905, MCA;

(b) motions of either party;

(c) uncontested facts which the parties may agree are true and which will require no proof;

(d) issues of fact and law;

(e) exhibits which may be introduced;

(f) witnesses which may be called;

(g) pretrial discovery desired, i.e., depositions, interrogatories;

(h) estimated length of trial, time and place; and

(i) such other matters ~~that~~ as may aid in the disposition of the matter.

RULE XIII. INTERROGATORIES. ~~(3)~~ (1) A party may serve upon an adverse party any time after a hearing has been set, written interrogatories to be answered by the party served. Interrogatories may not be served within ~~twenty~~ (20) days of the date a hearing is set. The interrogatories shall be answered separately and fully in writing under oath. The answers shall be signed by the person making them and the party upon whom the interrogatories have been served shall serve a copy of the answers on the party submitting the interrogatories and the Court within ~~twenty~~ (20) days after the service of the interrogatories, unless the Court on motion and notice for good cause shown, ~~enlarges~~ lengthens or shortens the time.

~~(3)~~ (2) A party may by motion and within ~~ten~~ (10) days of receipt of interrogatories, request the Court to order any interrogatories in a set or an entire set of

interrogatories as invalid because of annoyance, expense, embarrassment, oppression, irrelevance, or other good cause. If the Court order the interrogatories invalid, the party does not have to answer the interrogatories ordered invalid.

RULE XIV. VACATING OR CONTINUING HEARING. (1) No hearing may be vacated or continued without consent of the Court. Counsel may at the time of the pretrial request that the matter be vacated and continued. The hearing examiner, for good cause shown, may grant this request. After a hearing has been vacated or continued once, subsequent requests for continuance shall be accompanied by ~~an affidavit~~ a statement in writing of the ~~parties~~ party or ~~their~~ counsel setting forth the reasons for the continuance.

RULE XV. CONDUCT OF HEARING. (1) Hearings will be held in courtrooms when available or any other designated place. ~~and~~

(2) ~~the~~ The hearing will be conducted in the same manner as a trial without a jury. The hearing shall proceed in the following order, unless the Court, for good cause and special reason, otherwise directs:

(a) The party on whom rests the burden of the issues may briefly state his case and the evidence by which he expects to sustain it.

(b) The adverse party may then, or at the beginning of his case, briefly state his defense and the evidence he expects to offer in support of it.

(c) The party on whom rests the burden of the issues must produce his evidence; the adverse pary will then produce his evidence.

(d) The parties will then be confined to rebutting evidence, unless the Court, for good reasons, in furtherance of justice, permits them to offer evidence in their original case.

(e) Upon completion of the case by both sides, the party upon whom the burden rests may make a closing argument or statement followed by one by the adverse party.

RULE XVI. INFORMAL DISPOSITION. (1) Informal disposition, in the discretion of the Court, may be made of a dispute or controversy by stipulation, agreed settlement, consent order, or default.

RULE XVII. FINDINGS OF FACT AND CONCLUSIONS OF LAW AND BRIEFS.

~~17A.~~ (1) The Court may require briefs or other documents to be filed by a party.

~~17B.~~ (2) The Court may require either or both parties ~~party~~ to file Findings of Fact and Conclusions of Law.

~~17C.~~ (3) Briefs, Findings of Fact and Conclusions of

Law will normally be filed within ~~twenty (20)~~ days of the hearing.

RULE XVIII. MASTERS AND EXAMINERS. (1) The Court shall appoint masters or examiners when in the judgment of the Court, justice will be served. Masters will be appointed and serve pursuant to Rule 53 M.R. Civ. P. Examiners will be appointed and serve pursuant to ~~Section 82-411 R.C.M. 1947~~ 2-4-611, MCA.

RULE XIX. REHEARING. ~~19A.~~ (1) The Court will, after the hearing, issue findings of fact and conclusions of law and an order setting forth the Court's determination of the disputed issues. The parties to the dispute may consider this order as a final decision of the Court for appeal purposes. However, any party to the dispute may request a rehearing before the Court within ~~twenty (20)~~ days after a party receives a copy of the order, and if any party submits a request for rehearing, the order issued by the Court shall not be considered a final decision of the Court for appeal purposes.

~~19B.~~ (2) If a request for a rehearing is filed, the parties requesting the rehearing shall set forth specifically and in full detail the grounds upon which the party considers the order to be incorrect. If the Court denies the request for rehearing, the original order issued by the Court shall be considered the final decision of the Court as of the day the rehearing is denied. If a rehearing is granted, the matter will be set for hearing. The matter will be determined by the testimony taken at the initial hearing and at the rehearing. After the rehearing, the Court will issue an order setting forth the Court's final determination of the disputed issues.

~~19C.~~ (3) If a rehearing is not requested within ~~twenty (20)~~ days after a party receives a copy of the order, the Court shall order the file ~~returned~~ sent to the Division of Workers' Compensation subject to any order the Court may make in the future.

RULE XX. APPEALS. (1) Appeals from the Workers' Compensation Court shall be as in the case of an appeal from a district court as provided in Rule 72 M.R. Civ P.

(2) The appellants required appearance fee is $20. This fee should accompany the Notice of Appeal when sent to the Workers' Compensation Court. The check should be made payable to the Clerk of the Supreme Court.

RULE XXI. RULES COMPLIANCE. (1) If a party neglects or refuses to comply with the provisions of this section, the Court may dismiss a matter with or without prejudice, grant an appropriate order for a party, or take other appropriate

action. However, the Court may, in its discretion and in the interests of justice, waive irregularities and noncompliance with any of the provisions of this section.

RULE XII. REVIEW. (1) The Court will annually review and when necessary revise the Rules of Court.

3. These rules are proposed to enable the Court to carry out the mandate of the legislature, to give guidance of the operation of the Court which will allow all parties who appear before the Court to have their claim judicially considered and decided.

4. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to Judge William E. Hunt, Workers' Compensation Judge, P. O. Box 4127, Helena, Montana 59601; no later than July 12, 1979.

5. The authority of the Court to make these proposed rules is based on sections 2-4-201 MCA, 2-15-102 MCA and 39-71-2903 MCA.

William E. Hunt, Judge

6-5-79
Certified to Secretary of State

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of Rule 4.6.260, Discontinuing New Student Loans.	NOTICE OF PROPOSED ADOPTION OF RULE 4.6.260, DISCONTINUING NEW STUDENT LOANS. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons

1. On the 17th day of July, 1979 the department proposes to adopt Rule 4.6.260. Catchphrase to Rule is DISCONTINUING NEW STUDENT LOANS.

2. The rule is proposed to be adopted in order that no new student loan applications will be filed with the department.

3. The Rule proposed to be adopted provides as follows:

RULE 4.6.260, DISCONTINUING NEW STUDENT LOANS.

No new student loan applications will be accepted hereafter for filing, nor will any new student loans be made or granted by the department. Hereafter any application that would have been filed with the department shall be filed with the Commissioner of Higher Education.

4. The rule proposed to be adopted is necessary to allow additional time to service other loan programs within the department, and to conform to the mandate of Senate Bill 448.

5. Interested parties may submit their data, views or arguments concerning the proposed rule to be adopted in writing to Tim Gill, Room 218, Agriculture/Livestock Building, Capitol Post Office, Helena' Mt. 59601 no later than July 16, 1979.

6. The authority of the department to adopt the proposed rule is section 80-2-106 MCA, and Senate Bill 448.

W. Gordon McOmber

W. Gordon McOmber, Director

Certified to the Secretary of State, May 30, 1979

AUDITOR'S OFFICE, STATE OF MONTANA

DEPARTMENT OF INSURANCE JUNE 26, and 27, 1979

In the matter of an investigative hearing on the rates and controlled) business aspects of title insurance)	NOTICE OF PUBLIC INVESTIGATIVE HEARING ON TITLE INSURANCE

9:00 A.M., June 26 and 27, 1979
Senate, Capitol Building, Helena, Montana

TO: ALL INTERESTED PERSONS:

A PUBLIC HEARING will be held under the authority of Title 33, Chapter 1 and Title 2, Chapter 4, MCA, at 9:00 a.m., on June 26 and 27, in the Senate, Capitol Building, Helena, Montana to receive and hear all who have pertinent comments, information, or arguments to present in regard to any aspects of the title insurance business in the State of Montana. Testimony and comments on Tuesday, June 26, will be limited to issues related to title insurance rates. Testimony and comments on Wednesday, June 27, will be limited to issues related to controlled - business aspects of the title insurance industry. Following the comments and testimony relating to controlled - business, the hearing will be open to any area not specifically relating to rates and controlled - business.

1. The purpose of this hearing is to determine and define current practices in the title insurance business in Montana and determine whether the Commissioner should promulgate rules to ensure protection of the public. Should the Commissioner promulgate proposed rules as a result of this investigative hearing, proper notice will be given, and a hearing held on the proposed rules pursuant to Sections 33-1-313, 33-1-703 and 2-4-302, MCA.

2. This investigation is undertaken because of recent allegations of unfair trade practices in the area of title insurance, and is authorized by Sections 33-1-311 and 33-18-1002, MCA.

3. This hearing is to be an informal conference, within the meaning of Section 2-4-304, MCA, to obtain the viewpoints and advice of interested persons.

4. Specific issues to be considered include but are not limited to the following:

TITLE INSURANCE RATES (JUNE 26)

Section 33-25-102, MCA, reads: "Rates filed with commissioner.

> (1) Every title insurer shall file with the commissioner a complete schedule of risk rates to be charged by it for title insurance as to property located in this state.
> (2) No such rate shall be excessive, inadequate, or unreasonably discriminatory.
> (3) No title insurer shall charge any rate for such insurance other than the applicable rate previously filed by it with the commissioner.
> (4) Title insurers lawfully transacting business in this state on January 1, 1961, shall comply with the provisions of this section within 90 days thereafter."

- What costs for services are included in title premiums (title search, risk, closing costs, others) to be filed with the Commissioner?
- Should title insurance companies be required to file a "risk rate" or an "all-inclusive" rate?
- What are companies presently filing?
- Are companies adhering to their filed rates?
- If discounting occurs, which element of the premium is adjusted?
- Are commissions reasonable?
- Does competition exist?
- How does the consumer make his choice?
- Does the present statutory situation in this area ensure adequate protection?

CONTROLLED - BUSINESS ASPECTS (JUNE 27)

For purposes of this hearing, "controlled business" means that portion of a title entity's business of title insurance in this state which is referred to it by all those producers of title business who have financial interests in such title entity and by all associates of all such producers.

- Does "controlled business" constitute an undefined unfair trade practice (33-18-1003, MCA), boycotting (33-18-303, MCA), rebating (33-18-210, MCA), improper sharing of commission (33-17-1103, MCA), or any other act or practice which is not in the best interest of the public?
- Should the commissioner promulgate rules restricting controlled business in the area of title insurance?
- Is there competition for the consumer's title insurance dollar?

- How does the consumer make his choice?
- What is an acceptable percentage, if any, for ownership or control of a title insurance plant by a producer(s) of title business?
- What is an acceptable percentage, if any, for business of a title insurance plant referred by producers of title business having a financial interest in the plant?

5. Interested persons may submit data, views or arguments orally, or in writing, at the hearing. Comments may also be submitted in writing to the Commissioner of Insurance, Mitchell Building, Helena, Montana 59601, prior to June 22, 1979. Interested parties shall have an additional two weeks after the hearing to submit written supplemental evidence relevant to information discussed at the hearing. The Commissioner requests all those who plan on attending and testifying at the hearing to notify the Insurance Department prior to June 22, 1979, to facilitate scheduling. The Commissioner or his designated Hearing Officer reserve the right to limit the presentation time of each witness, in order to allow all to be heard.

6. Questioning of witnesses will be allowed by submission of written questions to the Insurance Department. Such questions will be screened and asked by the Department or the Hearings Examiner. This practice is adopted to economize on time and avoid harassment or embarrassment of witnesses.

7. Roger L. McNitt of Fredman, Silverberg & Lewis, Inc., 3252 Fifth Avenue, San Diego, CA 92103 has been designated to preside over and conduct the hearing under the authority of Section 33-1-303, MCA. The Hearings Officer shall have until August 15, 1979 to file with the Commissioner his Findings of Fact and Recommendations.

8. This notice shall be mailed to all licensed title insurance companies and title agents in the State of Montana. The Commissioner shall also provide for newspaper publication.

Dated this 23rd day of May, 1979.

E. V. "Sonny" Omholt

E. V. "SONNY" OMHOLT
State Auditor & Ex Officio
Commissioner of Insurance

Certified to the Secretary of State of June 1, 1979.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of adoption of rules relating to the handling of brucellosis quarantined herds	))))	NOTICE OF PUBLIC HEARING (Handling of Brucellosis Quarantined Herds)

TO: All Interested Persons

1. On July 17, 1979 at 3:00 p.m. or as soon thereafter as it may be had, a public hearing will be held in the auditorium of the Scott Hart Building, 6th & Roberts, Helena, Montana, to consider the adoption of rules in the above captioned matter.

2. The proposed rules do not replace or modify any sections currently found in the Administrative Rules of Montana.

3. The proposed rules provide as follows:

"Rule 1. PROCEDURE UPON DETECTION OF BRUCELLOSIS - (1) Immediately upon quarantine of a herd for brucellosis a district veterinarian shall conduct an epidemiological investigation of the infected herd and premises involved to determine the specific methods and actions necessary to eradicate the disease from the herd and to determine contact herds and animals.

(2) Upon request of the owner of the infected herd, the investigation provided for in paragraph (1) of this rule may be conducted with the assistance and participation of a licensed veterinarian selected and paid for by the owner.

(3) An official epidemiological report must be prepared that specifies the methods necessary to eradicate the disease and includes a time table for the accomplishment of the various tasks.

(4) A person who is aggrieved by determination made pursuant to this section may appeal in writing to the State Veterinarian within five days after notice of such determination. The State Veterinarian may affirm, reverse or modify such determination after he has reviewed the epidemiological report and the issues involved.

Rule 2. MEMORANDUM OF UNDERSTANDING - (1) Using the epidemiological report required by [Rule 1] as its basis, a memorandum of understanding must be developed between the owner of the infected herd and the department to establish a disease eradication effort. The memorandum shall cover at least the following points:

(a) Herd management practices that will be employed to facilitate disease eradication.

(b) Any physical facility modification that will be required.

(c) Specific dates for accomplishing the tasks required.

(2) This memorandum of understanding will be developed with the participation of a licensed veterinarian selected by the owner. [Rule 1].

(3) The memorandum of agreement shall be the basis for management of the quarantined herd until the quarantine is released. Any modifications of the memorandum shall be made in writing and subscribed by both parties. In the event of emergency circumstances, the Department may take such action as are lawful and necessary to control the disease, beyond the terms of the memorandum.

(4) The memorandum of understanding shall be considered a binding agreement between the parties having the force of an order as contemplated under Section 81-2-102 MCA. Failure by a quarantined herd owner or his agent to come to an agreement on the memorandum of understanding or to follow its terms shall be considered a violation of orders under that section of the statutes."

4. The department is proposing these rules in order to establish better communication and understanding of disease control methods which are necessary in the eradication of brucellosis from a herd.

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

6. The hearing will be before the Board of Livestock, Robert G. Barthelmess, Chairman, presiding.

7. The authority of the department to make the proposed rule is based on Section 81-2-102 MCA. **(Sec. 46-208 R. C.M. 1947) (IMP - same)**

ROBERT G. BARTHELMESS
Chairman, Board of Livestock

Certified to the Secretary of State June 5, 1979

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

In the matter of the adoption of a rule relating to the extraordinary handling of reactor cows with unweaned calves	)))))	NOTICE OF PUBLIC HEARING (Brucellosis Reactor Cows With Unweaned Calves)

TO: ALL INTERESTED PERSONS

1. On July 17, 1979 at 3:00 p.m. or as soon thereafter as it may be had, a public hearing will be held in the auditorium of the Scott Hart Building, 6th & Roberts, Helena, Montana, to consider the adoption of the above captioned rule.

2. The proposed rule does not replace or modify any sections currently found in the Administrative Rules of Montana except as noted in the text of the rule.

3. The proposed rule provides as follows:

"EXTRAORDINARY HANDLING OF REACTOR COWS WITH UNWEANED CALVES.

(1) When the prompt removal and slaughter of reactor cows as required by ARM 32-2.6A(26)-S6045 would cause severe economic loss because of premature weaning of calves at side, and upon a finding by the State Veterinarian that harm to other livestock and human health is remote, reactor cows with unweaned calves may be retained under quarantine subject to the following conditions:

(a) Reactor cows together with progeny shall be separated from the main herd and maintained in strict isolation from all other herd units or other livestock, in premises specifically approved by the department for that purpose. Quarantined feedlots are required where such are feasible.

(b) Indemnity on all such reactor animals is forfeited.

(c) All reactor cows prior to or at the time of being placed in isolation shall be reactor tagged and "B" branded with a hot iron brand on the left jaw as set forth in ARM 32-2.6A(26)-S6040. Calves shall be identified with eartags numbered to correlate with their dams eartags.

(d) All reactor cows shall be spayed not more than 30 days following parturition or diagnosis of brucellosis, whichever is applicable, at owner's expense.

(e) Calves held in isolation with reactor dams shall be spayed or casterated at owner's expense no later than 4 months of age.

(f) All reactor cows shall be slaughtered not more than 30 days after weaning.

(g) The above requirements shall be written into the memorandum of agreement required by ARM
[see MAR Notice 32-2-46, page 517, MAR Issue #11]

(2) The balance of the quarantined herd will be handled according to normal procedures.

(3) In the event that emergency circumstances arise or the terms of this rule or the agreement required under it are not met then the department at its option may require that normal procedures for the handling of reactor animals be followed."

4. The department is proposing this rule in order to minimize economic loss when reactors are found shortly after parturition. By allowing reactor cows to continue nursing, the calves will more successfully grow to feeder size. The spread of brucellosis is minimized by the requirements of spaying and castration and strict isolation. This rule will not apply to reactor bulls or to reactor cows without calves at side.

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

6. The hearing will be before the Board of Livestock, Robert G. Barthelmess, Chairman, presiding. The authority of the department to make the proposed rule is based on section 81-2-102 MCA. **(Sec. 46-208 R.C.M. 1947) (IMP - same)**

Robert G. Barthelmess
ROBERT G. BARTHELMESS, Chairman
Board of Livestock

Certified to the Secretary of State June 5, 1979

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32-2.14(1)-S1400 through 32-2.14(1)-S1440 and the adoption of additional new rules relating to aerial hunting of predatory animals.	NOTICE OF PUBLIC HEARING ON THE AMENDMENT OF RULES ARM 32-2.14(1)-S1400 THROUGH 32-2.14(1)-S1440 AND THE ADOPTION OF ADDITIONAL NEW RULES (Aerial Hunting of Predatory Animals)

TO: ALL INTERESTED PERSONS

1. On July 18, 1979 at 9:00 a.m. a public hearing will be held in the auditorium of the Scott Hart Building, 6th & Roberts, Helena, Montana, to consider amendments of ARM 32-2.14(1)-S1400 through 32-2.14(1)-S1440 and the adoption of additional new rules on the subject of aerial hunting of predatory animals.

2. The proposed amendments read as follows:

32-2.14(1)-S1400 Purpose and Scope ~~This subchapter is designed to meet the requirements of 16 U.S.C. 742j-1 which prohibits the airborne hunting of wildlife except when performed by an employee, authorized agent of permittee of a state or the federal government for the protection of land, water, wildlife livestock domesticated animals, human life, or crops.~~ This subchapter implements the provisions of Chapter 704, Laws of Montana 1979, which provides for a permit system for the aerial hunting of predatory animals. Under legislative directive these rules are not to interfere with the needs of livestock producers protecting their livestock from predation, but are to assist in the prevention and/or reduction of livestock loss from predatory animals. They are also to protect landowners, administrators or leasees who do not wish aerial hunting to occur over land under their ownership, management or control. This subchapter ~~provided~~ provides a system for the issuance of aerial hunting permits to protect livestock from ~~depredation by coyotes, foxes and other predators~~predatory animals, and establishes the duties of permittees.

32-2.14(1)-S1410 Issuance of Permits (1) ~~No person, not acting within the scope of his employment by the federal or state government as an aerial hunter, may pilot an aircraft for the purpose of hunting predatory animals, or act as gunner in such an aircraft without first being issued an aerial hunting permit by the Department of Livestock.~~

~~(2)~~ A person desiring an aerial hunting permit as ~~a pilot or as a gunner~~ shall apply for the permit by completing ~~an~~application and aerial hunting request ~~form~~forms provided by the Department of Livestock. Application and aerial hunting

request forms are available upon request from the Vertebrate Pest Control Bureau, Department of Livestock, Capitol Station, Helena, MT. 59601.

(2) ~~(a) Pilot permits~~ Permits will be issued only to persons currently ~~properly~~ licensed as pilots by the Federal Aviation Administration, ~~and having~~ who have a private pilot's license as a minimum rating. ~~A pilot~~ An applicant must have at least 500 total flying hours, including a minimum of 200 flying hours in the type of aircraft to be used for aerial hunting. Applicants and their aircraft must also meet FAA and Montana Aeronautics Commission requirements for aircraft and pilots.

~~(b) Permits will be valid for periods to be determined by the department not to exceed three (3) years except as provided elsewhere in these rules. First time permittees will be upon probationary status during the first twelve months of the permit, and may have the permit cancelled at any time during that period for any cause. Among factors to be considered in setting the length of the permit will be the likelihood of the permittee's providing adequate service to producers affected by predation and his flight safety record.~~

(3) ~~(c) Pilot permits~~ Permits will be issued only to individuals resident and domiciled in Montana ~~or owning farm or ranch property within the state. This requirement may be waived upon approval of the Board of Livestock.~~ The Board of Livestock, may authorize non-resident permits when adequate service cannot be provided by Montana permittees.

(4) ~~(3)~~ The department may refuse the issuance of a permit, or revoke an already issued permit, if ~~upon investigation~~ information contained in the application for a permit is found to be false.

(5) Individuals not employed by the Fish and Wildlife Service, U.S. Department of Interior, who engage in aerial hunting for the Fish and Wildlife Service on a contract basis must obtain a permit under these rules. For that part of their aerial hunting performed with a federal trapper over land cleared for aerial hunting by the Fish and Wildlife Service, the aerial hunting request form signup required by this rule and ARM 32-2.14(1)-S1420 is waived.

32-2.14(1)-S1420 Restrictions Upon Use of Permit. (1) A permittee may engage in aerial hunting only over areas specifically approved for him to hunt by the Department of Livestock. Such approval will be given only upon a showing that livestock depredation has occurred or is likely to occur in the area to be approved, or in an area adjacent thereto, and that the land owner administrator, lessee, or ~~his~~ their agent has given written approval for the aerial hunting to take place.

(2) Only coyotes and/or foxes may be hunted as set forth in the permit. The hunting or harassment of any other animal will result in revocation of the permit. Aerial

hunting of coyotes and/or foxes may occur only for the protection of livestock, domestic animals or human life. For extraordinary reasons, the permit may be modified to allow the aerial hunting of other predatory animals not protected by federal law.

(3) No permittee may engage in aerial hunting who is not in full compliance with all applicable rules and regulations governing pilots and aircraft issued by the Federal Aviation Administration or the Montana Division of Aeronautics.

(4) A permittee may not use an aircraft in aerial hunting until the department has been notified of that use, has received adequate identifying information about the aircraft, and the aircraft has been marked as required by ARM 32-2.14(1)-S1417.

32-2.14(1)-S1430 Reporting Requirements (1) All permittees shall file ~~quarterly~~ semi-annual reports with the Vertebrate Pest Control Bureau of the Department of Livestock on forms supplied by the bureau. The reports are due no more than thirty (30) days after the end of each ~~quarter~~ half year. For purposes of these reports ~~quarters~~ half years shall end on ~~March 31,~~ June 30, ~~September 30,~~ and December 31 of each year.

(2) The department may require such other information or reports of permittees as it may from time to time need.

32-2.14(1)-S1440 Revocation, Suspension, or Modification of Permit. (1) Failure to comply with these rules or statutes governing aerial hunting ~~or with the requirements of federal law concerning aerial hunting~~ will result in the suspension or revocation of the permit.

(2) Upon ~~a showing that the possibility livestock losses due to predation no longer exists in a given area, or upon~~ the written refusal of the landowner, administrator or lessee, or their agent ~~or his agent~~ to allow further aerial hunting, sent to the Department of Livestock, the department shall close such areas to aerial hunting and modify any permits issued for such areas accordingly.

(3) Landowners, administrators or lessees may also direct the department to modify certain permits while allowing other permits to remain in effect over land under their control.

3. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana and read as follows:

32-2.14(1)-S1415 Duration of Permits (1) Permits will be valid for a period to be determined by the department not to exceed three years.

(2) Fees for permits will be:

(a) $9 for a permit issued for less than six months

(b) $17 for a permit issued for six months to one year

(c) $25 for a permit issued for more than one year but less than 18 months

(d) $33 for a permit issued for 18 months to two years

(e) $42 for a permit issued for more than two years but less than 30 months
(f) $50 for a permit issued for 30 months to three years

32-2.14(1)-S1417 Identifying Of Aircraft Used In Aerial Hunting of Predatory Animals. Each aircraft used in aerial hunting shall be identified by a permit symbol consisting of a letter and number or numbers assigned by the department. The permit symbol shall be permanently affixed to the aircraft by painting or other method satisfactory to the department, and shall be of a contrasting color to the color of the rest of the aircraft. The symbol shall not be obscured or removed during the term of the permit.

(1) Except with specific permission of the department given in writing each character in the symbol shall:
(a) be at least 15 inches high
(b) have a width equal to 2/3 of the height, except
(i) the symbol "1" which must be 1/6 its height in width,
(ii) the symbol "M" and "W" which may be as wide as they are high;

(c) be spaced not less than one fourth of a character width apart; and
(d) be formed by solid lines one-sixth as thick as the character is high.

(2) The permit symbol shall be placed in a manner which does not interfere with or obscure aircraft registration numbers in the following locations:
(a) on fixed wing aircraft;
(i) on the top of the one wing and the bottom of the other and
(ii) on each side of the fuselage or
(iii) on each side of the major vertical tail surfaces
(b) on rotorcraft;
(i) on both side surfaces of the fuselage and/or
(ii) on other highly visible surface approved by the department on a case by case basis.

4. These rules are being amended and proposed for adoption because of the passage of Senate Bill 497, (Chapter 704, Laws of Montana, 1979) which provides a statutory basis for an aerial hunting permit system for predatory animals and the adoption of rules to reduce livestock loss from predation while protecting the rights of land owners, administrators or leasees who do not desire aerial hunting to occur over lands under their control.

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

6. The hearing will be before the Board of Livestock, Robert G. Barthelmess, Chairman presiding.

7. The authority of the agency to make the proposed rules is based on Section 2 of Chapter 704, Laws of Montana, 1979.

Robert G. Barthelmess

ROBERT G. BARTHELMESS,
Chairman, Board of Livestock

Certified to the Secretary of State June 5, 1979

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

In the matter of the amendment of ARM 32-2.6A(26)-S6025 and 32-2.6A(78)-S6330 to eliminate the requirement that bulls be tested for brucellosis at a change of ownership or importation into Montana.	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS TO ARM 32-2.6A(26)-S6025 AND 32-2.6A(78)-S6330 (Brucellosis Testing of Bulls)

TO: ALL INTERESTED PERSONS

1. On July 17, 1979 at 3:00 p.m. or as soon thereafter as it may be had a public hearing will be held in the auditorium of the Scott Hart Building, 6th & Roberts, Helena, Montana to consider amendments to ARM 32-2.6A(26)-S6025 and 32-2.6A(78)-S6330.

2. The proposed amendments eliminate the current requirement to test bulls for brucellosis at an in-state change of ownership or upon importation into Montana.

3. The rules as proposed to be amended provide as follows: (deleted material interlined; new material underlined)

ARM 32-2.6A(26)-S6025 TESTING OF ANIMALS

(1) Remains the same.

(2) Remains the same.

(3) Any female cattle, bison or elk under domestication, capable of breeding in which the eruption of the first pair of permanent incisor teeth has occurred, or which are in the third trimester of the first pregnancy and female swine and boars 6 months of age and over not consigned for immediate slaughter or to an out-of-state destination which change of ownership, shall

(a) through and including (e) Remain the same.

(4) (a) ~~Cattle~~ Female cattle capable of breeding in which the eruption of the first pair of permanent incisor teeth has occurred, or which are in the third trimester of the first pregnancy, owned or managed by an investment service or an out-of-state corporation the majority of whose shareholders are not primarily engaged in the production of livestock, which are moved from one premise to another noncontiguous premise shall be found negative to an official test for brucellosis made not more than 30 days prior to such a movement. The owner or manager of such cattle may petition the state veterinarian for a waiver of such test requirements. Upon a finding that the interests of animal disease control will not be harmed, the waiver may be granted.

4(b) Remains the same.

ARM 32-2.6A(78)-S6330 IMPORTATION REQUIREMENTS

(15) Cattle. Cattle may enter ~~the state of~~ Montana provided they are transported or moved into the state in

confomity with paragraphs (1) through (14) and:

(a) With regards to Brucellosis:

(i) All female cattle over 12 months of age entering Montana must be found negative to a brucellosis test performed within 30 days prior to the date of entry into the State of Montana, (and confirmed in a state or federally approved animal diagnostic laboratory) except the following:

(aa) ~~Steers and spayed~~ Spayed heifers;

(ab) through and including (ad) Remain the same

(ae) ~~Cattle,~~ Female cattle, not already excluded from test requirements under paragraphs (aa) through (ad) of this sub-section, which are consigned directly to a livestock market in this state specifically approved by the U.S. Department of Agriculture under the provision of Part 78, Volume 9, Code of Federal Regulations, to receive brucellosis affected cattle. Such cattle except those sold to an immediate destination outside Montana, must be officially tested for brucellosis at the market prior to release to the purchaser, and must be quarantined and kept separate and apart from all other livestock until determined to be negative to an official test for brucellosis made not less than 30 nor more than 60 days after entry and quarantine. The cost of quarantine and testing shall be at the owner's expense. The requirements for quarantine and retest do not apply to ~~bulls regardless of state of origin or~~ to female cattle originating in states having no known brucellosis infection in the previous 6 months.

(ii) All cattle required to be tested for brucellosis prior to entry into the State of Montana shall be quarantined upon entry and kept separate and apart from all other livestock until determined to be negative to an official test for brucellosis made not less than 30, nor more than 60 days after entry and quarantine. The cost of quarantine and testing shall be at the owner's expense. The requirements for quarantine and retest after entry do not apply to ~~bulls regardless of state of origin or~~ to female cattle originating in states having no known brucellosis infected in the previous 6 months.

4. The department is proposing these amendments because after 3 1/2 years of testing, no bulls have reacted to the brucellosis test except those which were known to come from infected herds. Approximately 25,000 bulls have been tested in this four year period with negative results. The department believes in light of that evidence that continued testing is an unnecessary expense to the livestock industry.

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

6. The hearing will be before the Board of Livestock, Robert G. Barthelmess, Chairman presiding.

7. The authority of the department to make the proposed amendment is based on section 81-2-102 MCA. **(Sec. 46-208,R.C.M. 1947) (IMP Same)**

Robert G. Barthelmess

ROBERT G. BARTHELMESS
Chairman, Board of Livestock

Certified to the Secretary of State June 5, 1979

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

In the matter of the amend-) ment of rule 32-2.6BI(1)-) S671 relating to mastitic) milk.)	NOTICE OF PROPOSED AMENDMENT OF RULE 32-2.6BI(1)-S671 (Mastitic Milk) NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On July 17, 1979 the Board of Livestock proposes to amend ARM 32-2.6BI(1)-S671 relating to the disposal of mastitic milk from Grade A dairy herds when the mastitic milk does not exceed the limit for manufactured dairy products.

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

(1) (a) through(e) remain the same.

(f) All cows and/or goats found affected with mastitis shall be individually identified by ear tag and quarantined in accordance with the rules contained in Title 32 Chapter 6BI. The Quarantine Order shalldirect the cows and/or goats affected with mastitis to be milked last or with separate equipment and the milk obtained shall not be used for human consumption, unless the WMT or total cell count readings are within the limits for manufactured dairy products milk found in ARM 32-2.6BI(10)-S6210 (1) (a) (ii) and (iii). In such a case the producer may sell the milk unusable for human consumption as grade "A" milk to a manufactured dairy products plant for use in non grade "A" manufactured dairy products.

(g) and (h) remain the same.

3. The rule is proposed to be amended in order to allow grade A producers to have a market for milk that is unusable for grade A purposes because of mastitis when the mastitis test readings indicate the milk could be safely used for manufactured dairy product purposes.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to Everett Tudor, Chief, Milk & Egg Bureau, Department of Livestock, Capitol Station, Helena, Montana no later than July 16, 1979.

5. If a person 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 Everett Tudor no later than July 16, 1979

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

Montana Administrative Register.

7. The authority of the agency to make the proposed amendment is based on section 81-2-102 MCA. **(Sec. 46-208,R.C.M. 1947)**

(IMP same)

Robert G. Barthelmess

ROBERT G. BARTHELMESS, Chairman
Board of Livestock

Certified to the Secretary of State June 5, 1979

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

IN THE MATTER of Proposed Adoption of rules prohibiting employee and other discounts by public utilities.	))))	NOTICE OF PUBLIC HEARING ON NEW RULES PROHIBITING DISCOUNTS GRANTED BY PUBLIC UTILITIES

TO: All Interested Persons

1. On July 17, 1979, in the House Chambers, State Capitol, Helena, Montana at 2:00 p.m., a public hearing will be held to consider the proposed adoption of rules prohibiting all discounts granted by public utilities.

2. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana.

3. The proposed rules provide as follows:

RULE I. DEFINITIONS (1) "Discount" is defined for the purposes of this rule as any reduction in charges otherwise due under tariffs for utility service as approved by the Public Service Commission, on the basis of employment, profession, or status as a charitable institution.

RULE II. FUTURE DISCOUNTS NOT ALLOWED (1) Following the effective date of this rule all public utilities are prohibited from offering any new discount to any customer.

RULE III. EXISTING DISCOUNTS OTHER THAN UTILITY EMPLOYEE DISCOUNTS (1) All utilities shall discontinue discounts for any customer other than its employees within one year of the effective date of this rule.

RULE IV. EXISTING DISCOUNTS FOR UTILITY EMPLOYEES (1) All utilities shall discontinue employee discounts. Discounts shall be eliminated within one year of the effective date of this rule except for employees whose wages are covered by contracts, in which case employee discounts shall be eliminated upon the expiration of such contracts.

RULE V. EXEMPTIONS (1) Any retired utility employee and any surviving spouse of a retired utility employee who is receiving a discount on the effective date of this rule, may continue to receive a discount on utility service.

(2) Any employee who retires within one year of the effective date of this rule may receive the retirees' discount in effect on June 1, 1979.

4. The Commission recognizes that discounts are a long established practice and does not wish, by this rule, to cause any loss of compensation to utility employees. However, the Commission finds that discounts have become an inappropriate form of employee compensation for the following reasons:

(a) Discounts for energy use is inappropriate in an era when the state and nation have adopted energy conservation policies in view of finite traditional energy sources.

(b) In the present era of rapidly increasing energy and telecommunication costs, percentage discounts for utility service become automatic salary increases which do not reflect

employment related criteria.

(c) Employee discounts for utility service inappropriately mask the impact of constantly increasing costs on the utility's customers. Utility employees should be fully aware of these costs and their impact.

(d) Montana law, 69-3-305, MCA (Sec. 70-114, R.C.M. 1947), expresses a policy against any kind of special privilege for any consumer.

(e) The credibility of the Commission with the consuming public is vital in order for the system of regulated monopolies to exist. During these times of rapidly escalating utility rates and rampant inflation consumer confidence tends to erode. The existence of employee discounts are a highly visible and inflammatory example of discriminatory rates for a selected few which contributes to this erosion of confidence.

5. Interested parties may submit their data views or arguments concerning the proposed adoption in writing to Eileen Shore, 1227 11th Avenue, Helena, Montana 59601, no later than July 12, 1979.

6. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana 59601 (Telephone 449-2771) is available and may be contacted to represent consumer interests in this matter.

7. The authority for the Commission to make this rule is based on Section 69-3-103, MCA (Sec. 70-104, R.C.M. 1947).

GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE June 4, 1979.

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

In the matter of the amendment) of ARM 40-3.34(10)-S3470 sub-) sections (3), (4), and (5).)	NOTICE OF PUBLIC HEARING FOR AMENDMENT OF ARM 40-3.34(10)-S3470 SUBSECTIONS (3), (4), and (5).

TO: All Interested Persons:

1. On July 13, 1979 at 2:00 p.m., a public hearing will be held in the House Chambers of the State Capitol Building, Helena, Montana to consider the amendment of ARM 40-3.34(10)-S3470 subsections (3),(4), and (5) concerning allowable functions for dental auxiliaries.

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

"40-3.34(10)-S3470 ALLOWABLE FUNCTIONS FOR DENTAL AUXILIARIES.....

(3) Allowable functions permitted for dental assistants without expanded duty training shall be the traditional duties allowed by custom and practice, including, but not limited to;

(a) taking impressions for study casts,
(b) removing sutures and dressings,
(c) applying topical anesthetic agents,
(d) providing oral health instructions,
(e) applying topical floride agents,
(f) removing excess cement from coronal surfaces of teeth~~.~~,
(g) placing and removing rubber dams,
(h) placing and removing matrices,
(i) collecting patient data,
(j) polishing amalgam restorations,
(k) placing and removing temporary restorations with hand instruments only.

(4) Allowable expanded duty functions for assistants after 6 months clinical experience as a dental assistant and after becoming qualified by successfully meeting the requirements specified by the Montana Board of Dentists are as follows:

(a) making radiograph exposures,
~~(b) placing and removing rubber dams;~~
~~(c) placing and removing matrices;~~
~~(d) collecting patient data;~~
~~(e) polishing amalgam restorations;~~
~~(f) placing and removing temporary restorations with hand instruments only.~~

(5) The requirements for expanded duty certification shall be as follows;

(a) ~~the applicant shall have successfully completed a training program for dental assistants approved by the American Dental Association or shall have completed~~

~~the Colorado Dental Assistants training program;~~

~~(b)~~ the applicant shall sit for and successfully pass a written and practical examination administered by the Montana Dental Association under agreement with the Board. The applicant shall pay an examination fee commensurate with costs and as set by the Montana Dental Association."

3. The amendments as proposed remove from the expanded duty catagory all functions except making radiograph exposures, and place those functions under the existing catagory of allowable functions for which expanded duty certification is not required. It is the Board's position in this proposal that such functions, as reversible procedures do not present a serious enough risk of harm to the consuming public to justify state regulation through certification. This position is taken with the expectation that the individual dentist employing the dental assistant will properly discharge his responsibility imposed under existing subsection (8) of the rule to assure that the assistant is properly trained and qualified and is carrying out her duties consistent with her training and qualifications.

The amendments as proposed to do not remove making radiograph exposures from the expanded duty catagory, but rather maintain intact the requirement that any assistants, prior to certification in making of radiograph exposures have a fixed period of training and demonstrate competency through examination. The Board feels that making radiograph exposures involves significantly more risk of non-reversible harm than do the expanded duty functions which this amendment would remove from the expanded duty catagory, and thus feel that some kind of regulation through training and examination is required and is consistent with the proper protection of the consuming public.

All persons holding expanded duty certification in Montana at the effective date of this proposed amendment will not be required to re-certify.

4. Interested persons may present their data, views, or arguments, either orally or in writing at the hearing. The Board is asking that those persons planning on attending the hearing confirm their attendance in writing to the Board of Dentists, Lalonde Building, Helena, Montana no later than Friday, July 6, 1979.

5. The hearing will be conducted by a board member or their designee.

6. The authority of the Board to make the proposed amendment is based on section 37-4-408 MCA (66-923.1 R.C.M. 1947) and implements section 37-4-408 MCA (66-923.1 R.C.M. 1947).

BOARD OF DENTISTS
J. ROBERT HICKMAN, D.D.S., PRESIDENT

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

Certified to the Secretary of State, June 5, 1979.

11-6/14/79 MAR Notice No. 40-34-10

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF MEDICAL EXAMINERS

IN THE MATTER of the Proposed) Amendment to ARM 40-3.54(6)-) S54010, subsection (2) con-) cerning examination fees.)	NOTICE OF PROPOSED AMENDMENT OF ARM 40-3.54(6)-S54010 (2) EXAMINATIONS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 14, 1979, the Board of Medical Examiners proposes to amend ARM 40-3.54(6)-S54010 subsection (2) concerning examination fees.

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

"(2) All applicants for licensure to practice medicine and surgery by examination shall pay an examination fee of ~~eighty-dollars-($80)~~ one hundred dollars ($100).

3. The Board is proposing the amendment as the examination service (FLEX) is raising their fees July 1, 1979 to $90 per examination. The Board is requesting $100, the additional $10 is to cover the administrative costs.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Medical Examiners, Lalonde Building, Helena, Montana 59601, no later than July 12, 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 Medical Examiners, Lalonde Building, Helena, Montana 59601, no later than July 12, 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 amendment 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.

7. The authority of the Board to make the proposed amendment is based on section 37-3-203 (2) [66-1017 R.C.M. 1947]. The proposed amendment implements section 37-3-308 (1) [66-1031 R.C.M. 1947].

BOARD OF MEDICAL EXAMINERS
JOHN C. SEIDENSTICKER, M.D.,
PRESIDENT

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

Certified to the Secretary of State, June 5, 1979.

MAR Notice No. 40-54-17 11-6/14/79

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of Rule 42-2.22 (2)-S22172 Assessment of Furniture and Fixtures - Commercial Establishments)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 42-2.22(2)-S22172 Assessment of Furniture and Fixtures - Commercial Establishments

TO: All Interested Persons:

(1) On July 11, 1979, at 9:30 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Helena, Montana, to consider the amendment of Furniture and Fixtures - Commercial Establishments.

(2) The rule as proposed to be amended provides as follows:

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

(2) The minimum ~~assessed~~ market value shall be ~~ten~~ twenty-five percent ~~(10%)~~ (25%) of the cost.

(3) The following tables are the depreciation schedules referred to in subsection (1) of the rule. The tables were compiled by reference to the Wholesale Price Index for Commercial Furniture and Fixtures published by the Bureau of Labor Statistics.

TABLE 1 - 5 YEARS

YEAR	R-3 % GOOD	*TREND FACTOR	TRENDED & GOOD OR MARKET VALUE
1 yr. old	80%	1.000	80%
2 yr. old	61%	1.057	64%
3 yr. old	44%	1.133	50%
4 yr. old	28%	1.179	33%
5 yr. old	17%	1.289	22%

TABLE 2 - 10 YEARS

YEAR	R-3 % GOOD	*TREND FACTOR	TRENDED & GOOD OR MARKET VALUE
1 yr. old	91%	1.000	91%
2 yr. old	82%	1.057	87%
3 yr. old	73%	1.133	83%
4 yr. old	64%	1.179	75%
5 yr. old	55%	1.289	71%
6 yr. old	47%	1.573	74%
7 yr. old	39%	1.635	64%
8 yr. old	31%	1.662	52%
9 yr. old	24%	1.716	41%
10 yr. old	19%	1.819	35%
11 yr. old	14%	1.891	26%

TABLE 1 Vending Machine, Computer Systems, Cash Registers, Coin Operated Equipment, Radio and T.V. Studio Broadcasting Equipment, Motel and Hotel T.V.'s.

TABLE 2 Furniture and Fixtures, Signs, Billboards, Specialized Medical and Dental Equipment, Radio and T.V. Transmitting and Antenna Equipment, Shop Equipment and Tools, Service Station Pumps and Equipment.

(3) The rule was previously the subject of a rule-making hearing on October 20, 1978. At that time, one of the major criticisms expressed was that depreciation schedules used by the Department were not contained in the rule. The tables have now been included as subsection (3) of the rule. Further criticism was made as to the source of the depreciation schedules. The 1979 Tables are based upon the Wholesale Price Index for Commercial Furniture and Fixtures contained in "Monthly Labor Reviews" published by the Bureau of Labor Statistics. The original underlying reason for the rule was the change in assessment procedure mandated by the Legislature. Chap. 566, Laws 1977. This change requires that all property be valued at its market value for property tax purposes.

(4) The Department will receive written comments up to and including July 20, 1979. Written comments should be directed to:

R. Bruce McGinnis
Tax Counsel
Department of Revenue
Mitchell Building
Helena, Montana 59601

(5) Mr. Ross Cannon has been designated to preside over and conduct the hearing.

(6) The authority of the Department to make the proposed amendment is based on Section 15-1-201 MCA, 84-708.1 R.C.M.; Imp. Section 15-6-110 MCA, 84-301 R.C.M.

DEPARTMENT OF REVENUE

MARY L. CRAIG, Director

Certified to the Secretary of State 6/5/79

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE Amendment of Rule 42-2.22(2)-S22010 Assessment of Livestock	)))	NOTICE OF PROPOSED AMENDMENT OF RULE 42-2.22(2)-S22010 Regarding Assessment of Livestock

TO: All Interested Persons:

(1) On July 10, 1979, at 9:30 a.m. in the Fourth Floor Conference Room of the Mitchell Building, Helena, Montana, a public hearing will be held to consider the amendment of Rule 42-2.22(2)-S22010, Assessment of Livestock.

(2) The proposed amendment replaces present Rule 42-2.22 (2)-S22010 Assessment of Livestock, found in the Administrative Rules of Montana. The proposed amendment reflects the change in assessment procedure mandated by Chap. 566, Laws 1977. The factors previously used have been converted to a market basis.

(3) The rule as proposed to be amended provides as follows:

42-2.22(2)-S22010. ASSESSMENT OF LIVESTOCK. (1) ~~The minimum assessed value of livestock shall be approximately forty percent (40%) of the average sale price for the preceding twelve (12) months to the year of assessment.~~ The average market value for cattle shall be determined by multiplying the weighted average price per cwt. for beef cattle, marketed in Montana during the preceding twelve month period December through November, times established factors for each of the seven catagories of cattle. The established factors are:

Bulls - 9 months thru 20 months	15
Bulls - 21 months and older	17.5
Cattle - 9 months thru 20 months	5
Cattle - 21 months thru 32 months	6.25
Cows - 33 months and older	7.5
Steers - 33 months and older	10
Dairy Cows - 21 months and older	10

(a) The average market value for blooded or registered cattle shall be thirty percent (30%) more than the average market value for stock cattle.

(2) ~~The minimum assessed value of blooded or registered livestock shall be 30% more than the minimum assessed valuation for other livestock.~~ The average market value for sheep shall be determined by multiplying the average price per cwt. for slaughter lamps, marketed in Montana during the preceding twelve month period December through November, times established factors for each of the four catagories of sheep. The established factors are:

Registered Bucks - 9 months and older	2.6
Stock Bucks - 9 months and older	2
Sheep - 9 months thru 70 months	.7
Sheep - 71 months and older	.2

(3) The average market value for swine shall be determined pursuant to Section 15-24-931 MCA.

(a) The most recent five year average U.S.D.A. Omaha quotation prices are: Grades 1 to 3 at 200 to 240 pounds $40.68; sows 270 to 330 pounds $34.51.

(4) This rule would be effective for tax years beginning after December 31, 1978.

(4) The Department is conducting this hearing at the request of the Montana Stockgrowers' Association. The amendment had previously noticed no hearing contemplated. The proposed amendment accounts for the change in assessment procedure. The Legislature has done away with the concept of assessed value and mandated all property taxed at a percentage of market value. Chap. 566, Laws 1977.

(5) Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written comments will be accepted by the Department until July 18, 1979. Written comments should be directed to:

R. Bruce McGinnis
Tax Counsel
Mitchell Building
Helena, Montana 59601

(6) Mr. Ross W. Cannon has been designated to preside over and conduct the hearing.

(7) The authority of the agency to make the proposed amendment is based on Section 15-1-201 M.C.A., 84-708.1 R.C.M.; Imp. Section 15-6-115(d) MCA, 84-301 R.C.M.

DEPARTMENT OF REVENUE

Mary L. Craig
MARY L. CRAIG, Director

Certified to the Secretary of State 6-5-79

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of Rule 42-2.22(2)-S22000 Assessment of Heavy Equipment	))))	NOTICE OF PROPOSED AMENDMENT OF RULE Rule 42-2.22(2)-S22000 Regarding Assessment of Heavy Equipment

TO: All Interested Persons:

(1) On July 10, 1979, at 1:30 p.m. in the Fourth Floor Conference Room of the Mitchell Building in Helena, Montana, a public hearing will be held to consider the amendment of Rule 42-2.22(2)-S22000 Assessment of Heavy Equipment.

(2) The proposed amendment replaces present Rule 42-2.22 (2)-S22000 Assessment of Heavy Equipment. The proposed amendment would require the use of various "Green Guide" valuation books to value heavy equipment. It would also permit the use of a schedule to value property not contained in the Green Guides.

(3) The rule as proposed to be amended provides as follows:

42-2.22(2)-S22000. ASSESSMENT OF HEAVY EQUIPMENT. (1) The minimum assessed value of heavy equipment shall be the wholesale value average market value of heavy equipment shall be the average resale value of such property as shown in "Green Guides", Volumes I and II, ~~or~~ "Green Guides Older Equipment Guide"~~.~~ , "Green Guides Life Trucks", or "Green Guides Off Highway Trucks and Trailers". The current volumes of the year of assessment, Equipment Guide Book Company, 3980 Fabian Way, P. O. Box 10113, Palo Alto, California 94303. This guide may be reviewed in the Department or purchased from the publisher.

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

(3) This rule would be effective for tax years beginning after December 31, 1978.

(4) The public hearing on this rule is being held at the request of the Montana Coal Council and the Anaconda Company. The Department is making the amendments to the rule to account for the legislatively mandated change in assessment procedure. The legislature requires all property to be valued at its market value and then taxed on a certain percentage. There no longer exists the concept of market value. Chap. 566, Laws 1977. The hearing on this rule will be conducted in conjunction with the rule 42-2.22(2)-S22020, Assessment of Mining Machinery and Equipment. The Department has previously noticed an amendment on that rule upon which a hearing was conducted as a result of that notice. Modifications were made to the rule, which will subject a public hearing.

(5) Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. The Department will accept written comments until July 18, 1979. Written comments may be submitted to:

R. Bruce McGinnis
Tax Counsel
Montana Department of Revenue
Mitchell Building
Helena, Montana 59601

(6) Mr. Ross W. Cannon has been designated to preside over and conduct the hearing.

(7) The authority of the agency to make the proposed amendment is based on Section 15-1-201 M.C.A, 84-708.1 R.C.M.; Imp. Section 15-6-118 MCA, 84-301 R.C.M.

DEPARTMENT OF REVENUE

MARY L. CRAIG, Director

Certified to the Secretary of State 6-5-79

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of Rule 42-2.22(2)-S22020 Assessment of Manufacturing and Mining Equipment	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 42-2.22(2)-S22020

TO: All Interested Persons:

(1) On July 10, 1979, at 1:30 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Helena, Montana, to consider the amendment of 42-2.22(2)-S22020 which provides for the Assessment of Mining Machinery and Equipment.

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

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

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

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

(3) The depreciation schedules referred to in subparagraph (1)(a) and (2) are as follows. The 10 year table was prepared from information contained in Marshal Swift Valuation publication.

10 YEARS

YEAR	10-A	10-B	10-C	10-D	10-E
1978	92%	92%	92%	92%	92%
1977	90%	90%	107%	90%	91%
1976	86%	85%	102%	86%	87%
1975	80%	80%	95%	81%	81%
1974	78%	77%	92%	78%	81%
1973	77%	77%	91%	75%	79%

YEAR	10-A	10-B	10-C	10-D	10-E
1972	64%	63%	75%	62%	65%
1971	51%	50%	60%	49%	52%
1970	44%	42%	51%	42%	44%
1969	39%	37%	45%	37%	39%
Industry:	Paint Mfg.	Electronic Equip. Mfg. Apparel Mfg. Printing & Publishing	Chemical Production	Lumber & Wood Products Sawmills	Mining & Milling Equip.

YEAR	PERCENT GOOD	*TREND FACTOR	TRENDED % GOOD OR MARKET VALUE
1 yr. old	92%	1.000	92%
2 yr. old	84%	1.053	88%
3 yr. old	76%	1.119	85%
4 yr. old	67%	1.248	84%
5 yr. old	58%	1.446	84%
6 yr. old	49%	1.497	73%
7 yr. old	39%	1.547	60%
8 yr. old	30%	1.639	49%
9 yr. old	24%	1.744	42%
10 yr. old	20%	1.820	36%

For 1979 Models use 95% of 1979 Cost.

*Trend Factor developed using Marshall Swift Cost Index, average of all industries, January 1, 1978 publication.

(3) This was the subject of previous rule-making procedures. During the first hearing on this rule, the objection was raised because the depreciation schedules were not included with the rule. These schedules have been inserted in support of (3) of the rule. The underlying purpose of amending this rule is to account for the change in assessment procedure. Chap. 566, Laws 1977. All property for property tax purposes is to be valued at market value. This rule will be considered in conjunction with Section 42-2.22(2)-S22000, Assessment of Heavy Equipment. The Montana Coal Council and the Anaconda Company have expressed interest in both rules. Since many of their comments relate to both rules, the Department feels this is the most efficient way of disposing of the matter.

(4) Interested parties may submit their data, views or arguments concerning the proposed amendment either orally or in writing at the hearing. The Department will receive written comments through July 18, 1979. Written comments should be directed to:

R. Bruce McGinnis
Tax Counsel
Montana Department of Revenue
Mitchell Building
Helena, Montana 59601

(5) Mr. Ross Cannon has been designated to preside over and conduct the hearing.

(6) The authority of the Department to make the proposed amendment is based on Section 15-1-201 M.C.A, 84-708.1 R.C.M.; Imp. Section 15-6-111 MCA, 84-301 R.C.M.

DEPARTMENT OF REVENUE

MARY L. CRAIG, Director

Certified to the Secretary of State 6-5-79

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of a Rule for Accounting Control of Cigarette Distribution)	)))	NOTICE OF PROPOSED ADOPTION OF A RULE Regarding Accounting Control of Cigarette Distribution. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons:

(1) On July 14, 1979, the Department of Revenue proposes to adopt a rule regarding accounting control of cigarette distribution.

(2) The proposed rule provides as follows:

ACCOUNTING CONTROL OF CIGARETTE DISTRIBUTION. (1) Each wholesaler will prepare forms CT-205, together with supporting forms CT-206, and file with the Department of Revenue on or before the fifteenth day of the month covering the preceding month's activities. Form CT-205 will indicate the purchase and distribution of cigarettes and the consumption of cigarette tax indicia.

(2) Sales of unstamped cigarettes must be itemized on Form CT-206 which is then used as a supporting document for Form CT-205.

(3) This rule is proposed as a result of the amendments made to Sections 16-11-113, 16-11-131, 16-11-132 and 16-11-133, MCA, by Chapter No. 382, Montana Laws 1979 (House Bill No. 486). This legislation allows the sale of unstamped cigarettes to unlicensed parties who furnish documentary evidence that they are exempt from state cigarette taxation, and sign a receipt as such.

IN THE MATTER OF THE ADOPTION of a Rule for Sales of Unstamped Cigarettes	)))	NOTICE OF PROPOSED ADOPTION OF A RULE Regarding Sales of Unstamped Cigarettes NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons:

(1) On July 14, 1979, the Department of Revenue proposes to adopt a rule regarding sales of unstamped cigarettes.

(2) The proposed rule provides as follows:

SALES OF UNSTAMPED CIGARETTES. Any person who purchases unstamped cigarettes, claiming that the State of Montana lacks jurisdiction over his cigarette sales activities must be fully identified by name, address of residence, address and location of business, social security number, tribal enrollment number, name of tribe. Information must also be furnished to the wholesaler indicating that he has received authority to conduct a cigarette sales activity within the external boundaries of an Indian Reservation. The required information will be entered on Form CT-206 which will also be a receipt requiring the signature of the person purchasing the cigarettes to acknowledge the purchase and physical possession of the unstamped cigarettes itemized thereon.

(3) This rule is proposed as a result of the amendments made to Section 16-11-113, 16-11-131, 16-11-132 and 16-11-133, MCA, by Chapter No. 382, Montana Laws 1979 (House Bill No. 486). This legislation allows the sale of unstamped cigarettes to unlicensed parties who furnish documentary evidence that they are exempt from state cigarette taxation, and sign a receipt as such.

(4) Interested parties may submit their data, views or arguments to Jeannette Ellen Berry, Deputy Chief Tax Counsel, Legal Division, Department of Revenue, Mitchell Building, Helena, Montana 59601, no later than July 12, 1979.

(5) The authority of the Department to make the proposed rules is based on Section 15-1-201, MCA. Implementing Section 16-11-132, MCA. (Section 84-708.1 R.C.M., Imp. 84-5606.9 R.C.M.)

DEPARTMENT OF REVENUE

Mary L. Craig

MARY L. CRAIG, Director

Certified to the Secretary of State June 5, 1979.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE PROMULGATION of a rule on delivery of table wine.	))))	NOTICE OF PUBLIC HEARING (on abbreviated notice) on the Petition for the Adoption of a Rule on the Delivery of Table Wine.

TO: All Interested Persons:

(1) On November 7, 1978, the voters of the State of Montana adopted Initiative 81. That Initiative created a new system for the distribution of table wine. The Legislature amended the Initiative by the passage of Chapter 699, Laws 1979. Also contained in that Chapter was a section creating a transition period.

"SECTION 12. TRANSITION PERIOD. (1) IN ORDER TO MAKE AN ORDERLY TRANSITION TO THE WINE MARKETING POLICIES SET FORTH IN INITIATIVE 81 AND [THIS ACT], THE DEPARTMENT SHALL, PRIOR TO JULY 1, 1979:

"(A) ISSUE LICENSES OR TEMPORARY AUTHORIZATIONS TO DISTRIBUTE OR RETAIL WINE TO APPLICANTS WHO QUALIFY UNDER THE PROVISIONS OF INITIATIVE 81 AND [THIS ACT]; AND

"(B) AUTHORIZE LICENSED WINE DISTRIBUTORS TO IMPORT AND, DURING THE LAST 20 DAYS OF JUNE 1979, DISTRIBUTE TO LICENSED WINE RETAILERS, STOCKS OF TABLE WINE THAT MAY NOT BE SOLD TO THE PUBLIC PRIOR TO JULY 1, 1979."

The legislation also gives the Department the power to adopt temporary emergency rules without a showing of imminent peril.

"(2) THE DEPARTMENT MAY ADOPT TEMPORARY RULES UNDER 2-4-303 TO IMPLEMENT INITIATIVE 81 AND [THIS ACT] WITHOUT BEING REQUIRED TO FIND AN IMMINENT PERIL TO SAFETY, OR WELFARE."

On April 11, 1979, the Montana Beer Distributors filed a Petition with the Department of Revenue requesting the adoption of a rule. The requested rule requires that a distributor may only deliver wine to a retailer at the premises where the table wine will be sold to the ultimate consumer. Further, a retailer may take delivery of table wine at a distributor's premises but for only one retail location. Finally, all house label wines must be distributed by the distributor who handles the producing winery's products. Because this Petition may affect the new distribution system and could possibly have impact on whether an individual may or may not become licensed, the Department believes that

it is in the best interest of the public that this hearing be held on abbreviated notice. The hearing will be held four days after publication in the June 14, 1979 Register. The Montana Beer Wholesalers petitioners in this matter have supplied the Department with a list of interested parties. All such interested parties will be notified of the hearing by June 1, 1979, by certified mail.

(2) The Hearing will take place on June 19, 1979, at 9:30 p.m. in the Fourth Floor Conference room of the Mitchell Building.

(3) The Montana Beer Wholesalers petition the Department to adopt the following rule:

"DELIVERY BY DISTRIBUTOR. A distributor shall deliver table wine to a licensed retailer only at the premises on which the retailer sells such wine to the public. A retailer may also take delivery of table wine on the distributor's premises, to be sold at not more than one retail outlet. House label wines produced by a registered winery for a particular retailer must be distributed in a given community by the same distributor or distributors who handle the producing winery's regular labels. (Authority: 16-1-303, IMP Sec. 5, Initiative 81).

(4) The Montana Beer Wholesalers provide the following rationale for the adoption of the rule:

"The rationale for petitioner's proposed rule is that the statewide distribution of house label wines by large grocery chains would be akin to the abuses of a 'tied house' system and should not be permitted at the outset of private sector wine distribution."

(5) Interested persons may comment in writing to:

John Clark
Department of Revenue
Mitchell Building
Helena, Montana 59601

(6) John Clark has been appointed Hearing Officer to preside over and conduct the hearing.

(7) The Petitioner, Montana Beer Wholesalers, have listed the following as interested parties:

"Persons known to petitioner to have an interest in the proposed agency action are: Safeway Stores, Oakland, California; Albertson's, Boise, Idaho; Buttrey's, Great Falls, Montana; Montana Independent Food Distributors

Association, Missoula, Montana; and the Montana Tavern Association, Helena, Montana."

(8) The authority of the board to adopt the proposed rule is Section 15-1-201, MCA.

DEPARTMENT OF REVENUE

MARY CRAIG, Director

Certified to the Secretary of State 5-30-79

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

In the matter of the adoption of rules pertaining to guidelines, criteria and procedures for the application of and receipt of grants of grant money to battered spouses and domestic violence programs.	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES PERTAINING TO GUIDELINES, CRITERIA, AND PROCEDURES FOR THE APPLICATION OF AND RECEIPT OF GRANTS TO BATTERED SPOUSES AND DOMESTIC VIOLENCE PROGRAMS.

TO: All Interested Persons

1. On July 10, 1979, at 9:00 a.m., a public hearing will be held in the Auditorium of the State Department of Social and Rehabilitation Services, 111 Sanders Street, Helena, Montana to consider the adoption of rules pertaining to the guidelines, criteria and procedures for the application of and receipt of grants to battered spouses and domestic violence programs.

2. The proposed rules do not replace or modify any section currently found in the Administrative Rules of Montana.

3. The proposed rules provide as follows:

RULE I DEFINITIONS "Department" means the Department of Social and Rehabilitation Services.

(1) "Grant application" means a written application to the Department under the terms of Chapter 677, Laws 1979 and these rules.

(2) "Domestic violence" means any act or threatened act of violence, including any forceful detention of an individual, which results or threatens to result in physical injury; and is committed by a person eighteen years of age or older against another person to whom such person is or was related, or by a person of any age against another person of the opposite sex with whom the assaulted person cohabits or formerly cohabited. "Spouse abuse" is included within the definition of "domestic violence."

(3) "Local battered spouse and domestic violence program" means a community-based program directed at the problems of domestic violence which may include but is not limited to providing direct services to victims of domestic violence.

(4) "Shelter" means a permanent facility that offers emergency, short term shelter to victims of domestic violence and may provide other support services such as crisis counseling and referral to appropriate community services.

(5) "Safe homes" means private homes available to provide emergency short term shelter to victims of domestic violence when needed.

(6) "Local contribution" means the twenty percent of the operational costs of the program in the form of cash or in-kind contributions generated from the community to be served.

(7) "In-kind contributions" means program support other than direct funding and may include such things as volunteer time, donated space and donated supplies.

(8) "Local control unit" means a community-based body which may be a governmental entity or non-profit board, agency or committee which is responsible and accountable for the administration and execution of the program.

(9) "Counseling" means crisis or longer term individual or group counseling by professionals or trained volunteers for victims and others involved in domestic violence situations.

(10) "Advocacy programs" means programs that assist or act on behalf of victims in obtaining such things as services and information.

(11) "Educational programs" means programs related to battered spouses and domestic violence which may be designed for the community at large or specialized groups such as hospital personnel and law enforcement officials.

RULE II DEPARTMENT ADMINISTRATIVE POLICIES AND RESPONSIBILITIES (1) The goal of the Department is to develop a coordinated comprehensive statewide network of local domestic violence programs. In keeping with this goal, grants will be allocated for:

(a) expansion or maintenance of existing programs;

(b) new programs; and

(c) innovative programs with the potential for replication. Equity will be sought through geographic distribution and individual access to programs.

(2) The Department reserves the right to fund all or part of a program or to reject a grant application.

(3) The Director of the Department shall appoint a Domestic Violence Advisory Committee consisting of five members, one member from each of the Department's five administrative regions. Each shall have experience in an area related to the problems of domestic violence.

(a) The Advisory Committee will review the grant applications and make recommendations for grant awards.

(b) The Department will make the final decisions on grant awards.

(4) Grants will be awarded annually for a maximum of twelve months. Applications for renewal will be evaluated in the same manner as new applications.

(5) Applications for grant awards are to be received by the Social Services Bureau of the Department by May 15. Decisions for grant awards will be made on or before June 15 with awards to be made on July 1. For the first program year, applications are to be received by August 15, 1979, decisions will be made on or before September 15 with awards made on October 1.

(6) Grant awards shall be made to locally controlled units such as a non-profit board or administrative body that shall be responsible and accountable to the Department under an agreement based on the grant application.

(7) The grant award agreement shall require quarterly progress and final reports.

(8) Funds granted shall be used only for the purposes outlined and described in the application and approved by the Department. Expense records and reports will be required. Programs awarded grants are subject to audit by the Office of the Legislative Auditor and the Department.

(9) Programs receiving grants will be monitored by the Social Services Bureau of the Department.

(10) Applications submitted to the Department become government documents subject to public scrutiny. Names of individuals or information about facilities that require confidentiality protection will not be disclosed.

RULE III AWARDING GRANTS -- CRITERIA

(1) Grants will be awarded on the basis of these rules and the following criteria:

(a) Demonstrated need as documented by such sources as data from the community involving incidence of the problem, inadequacy of resources to meet needs, needs assessments and community letters of support.

(b) Project merit which will include factors such as cost benefit and clear meeting of identified needs.

(c) Administrative design which includes method of evaluation, program organizational structure such as staff and board of directors if applicable, and relationships with other community organizations and agencies.

(d) Efficiency of administration including the maximum use of other resources and the capability to sustain programs without grant money.

RULE IV GRANT APPLICATION ELIGIBILITY REQUIREMENTS

(1) "Local control" by a community-based body must be documented through a description of that body and names and addresses of key individuals who will be responsible and accountable for the program.

(2) There shall be no residency requirement for persons served by programs to which grants are awarded.

(3) Shelters must be licensed by the State Department of Health and Environmental Sciences as a "rooming house" in order to be eligible for a grant award.

(4) Programs which include any payments to safe homes must document that the homes carry home owners liability and fire insurance.

(5) Programs which include funding for counseling services must demonstrate that the counseling is directed towards assisting the victim and others involved to be free from violent situations.

(6) Programs that include funding for advocacy services must keep records that document results in assisting victims.

(7) Programs that include funding for educational programs must define clear objectives and include an evaluation design.

RULE V GRANT APPLICATIONS -- GENERAL REQUIREMENTS

(1) Six copies of the grant application should be sent to the Domestic Violence Grant Program, Social Services Bureau, Montana Department of Social and Rehabilitation Services, Box 4210, Helena, MT 59601.

(2) Although not required, it is suggested that applications meet the following requirements:

(a) The application should be typed, printed or otherwise legibly reproduced on 8½ x 11" paper.

(b) All pages in an application should be consecutively numbered.

(3) The application should state the name, title, telephone number and post office address of the person to whom communication in regard to the application should be made.

(4) The Department will review the application to determine compliance with these rules. If the Department determines that the application does not comply, the Department will reject the application, notifying the applicant in writing and listing the application deficiencies. The application may be re-submitted if corrections are made before the final submittal deadline.

(5) After an application is filed, the applicant should submit supplemental material upon request or as soon as possible after it becomes available.

(6) There is no form adopted by the Department for use in making an application.

RULE VI GRANT APPLICATION CONTENT REQUIREMENTS

(1) Each grant application must include:

(a) Project title.

(b) Applicant's name, title, address, and phone number.

(c) Amount requested.

(d) Amount of match -- cash, in-kind and total.

(e) Signature(s) of responsible person(s).

(f) Statements regarding protection of rights for confidentiality and nondiscrimination.

(g) Budget balance sheet and budget justification.

(2) The application must also include brief program narrative which shall consist of but is not limited to the following specific areas:

(a) A general statement of the scope and purpose of the program, including services to be offered.

(b) Demonstrated need -- documentation of the need for the program including any available needs assessment pertinent to the program.

(c) Administration -- description of the responsible local body; organization chart or outline showing lines of authority, responsibility and accountability; staff and job descriptions, including volunteers.

(d) Program objectives -- clearly stated objectives relevant to the services to be provided and number of clients served. The objectives should be measurable so the evaluation of a program can be based on actual performance of a program in relation to stated objectives.

(e) Community support including documentation of twenty percent local contribution for operating costs and letters of support.

(f) Geographic area to be served including outreach activity and linkages with other agencies and organizations.

(g) Maintenance of effort -- if an ongoing program, describe stability and community commitment through a maintenance and expansion of programmatic and fiscal effort, describe other funding sources explored.

(h) Evaluation design.

(i) Desired method of payment.

4. Chapter 677, Laws 1979 establishes a grant program within the Department of Social and Rehabilitation Services for the allocation of grant money to local battered spouses and domestic violence programs. The purpose of the rules being proposed for adoption is to provide guidelines, criteria and procedures for application of and for receipt of grants authorized by the law.

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

6. The Office of Legal Affairs, Department of Social and Rehabilitation Services, 111 Sanders, Helena, Montana has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rules is based on Chapter 677, Laws 1979.

Keith L. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State June 5, 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)-S11121(1), (1)(a), and (1)(b) pertaining to the table of assistance standards for AFDC.	)))))	NOTICE OF PROPOSED AMENDMENT OF RULE 46-2.10(14)-S11121(1), (1)(a) and (1)(b) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On July 16, 1979, the Department of Social and Rehabilitation Services proposes to amend rule 46-2.10(14) -S11121(1), (1)(a) and (1)(b) which sets assistance standards for individuals and families.

2. The Department proposes to amend rule 46-2.10(14) -S11121(1), (1)(a) and (1)(b) as follows:

(1) Delete in entirety.

(a) Delete in entirety.

(b) Delete in entirety.

(1) The table of assistance standards contains the requirements of individuals or families according to the number of persons, the type of living arrangement, and whether shelter is or is not included.

(a) Basic Requirements - Adults included in the assistance unit.

BUDGET TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. Of Persons in Household	With Shelter Obligation per month	With Shelter Obligation per day	Without Shelter Obligation per month	Without Shelter Obligation per day
1	$ 154	$ 5.13	$117	$ 3.90
2*	193	6.43	146	4.86
3	259	8.63	196	6.53
4	331	11.03	248	8.26
5	381	12.70	286	9.53
6	433	14.43	329	10.97
7	474	15.80	360	12.00
8	537	17.90	408	13.60
9	600	20.00	455	15.17
10	663	22.10	503	16.77
11	726	24.20	551	18.37
12	789	26.30	599	19.97
13	852	28.40	647	21.57
14	915	30.50	694	23.13
15	978	32.60	742	24.73
16	1041	34.70	790	26.33

* For two adult no child cases use $230 (with shelter obligation) and $175 (without shelter obligation).

(b) Basic Requirements - No adults included in the assistance unit.

BUDGET TO BE USED WHEN NO ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. of children in household	Grant amount per month	Grant amount per day
1	$ 67	$ 2.23
2	132	4.40
3	192	6.40
4	241	8.03
5	307	10.23
6	348	11.60
7	411	13.70
8	474	15.80
9	537	17.90
10	600	20.00
11	663	22.10
12	726	24.20
13	789	26.30
14	852	28.40
15	915	30.50
16	978	32.60

The Per Day column in both tables is to be used to compute basic requirements for part of a month. Example - A household of four with shelter obligation eligible for 10 days in a month = $11.03 x 10=$110.30 or $110.00. The total is rounded off to the nearest dollar.

SPECIAL ALLOWANCE

Personal needs in a Nursing Home--------$25.00
Children in Boarding School----------$16.00
Adult Foster Care---$257.20
Children in Boarding School Home on Weekends----$ 31.00

In Boarding School situations where children are in the boarding school on a full time or part time basis, the children are to be budgeted according to the special allowance table. In situations where all the children are in boarding school, the needy caretaker relative is to be budgeted on the basis of a single person household.

3. The rule as proposed to be amended sets new payment standards for those individuals and families receiving assistance.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment to the Office of

Legal Affairs, P.O. Box 4210, Helena, Montana 59601, no later than July 13, 1979.

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

Keith P. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State June 5, 1979.

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

In the matter of the adoption of a rule pertaining to the Food Stamp program and repeal of rules 46-2.10(22)-S11500 through 46-2.10(22)-S11750.	NOTICE OF PROPOSED REPEAL OF FOOD STAMP RULES AND ADOPTION OF NEW FOOD STAMP PROGRAM RULE NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On July 14, 1979, the Department of Social and Rehabilitation Services proposes to repeal ARM 46-2.10(22)-S11500 through 46-2.10(22)-S11750 pertaining to Food Stamps and adopt a new rule pertaining to the Food Stamp program.

2. The rules proposed to be repealed can be found on pages 46-94.13B through 46-94.30 of the Administrative Rules of Montana.

3. The proposed rule provides as follows:

RULE I FOOD STAMP PROGRAM (1) The Department of Social and Rehabilitation Services adopts and incorporates by reference the Food Stamp program rules as adopted by the Food and Nutrition Services, United States Department of Agriculture and as set forth in the Federal Register, Volume 43, No. 201, pages 47881 through 47934 Food Stamp Program. A copy of the entire Food Stamp program rules may be obtained by contacting the Food and Nutritional Services Bureau, Department of Social and Rehabilitation Services, Box 4210, Helena, MT 59601.

4. The Department of Social and Rehabilitation Services administers the Food Stamp program and acts as agent on behalf of the United States Department of Agriculture, Food and Nutrition Service. See 53-2-206, MCA (71-211(1), R.C.M.). The rules as adopted by the Department of Agriculture, Food and Nutrition Service, implement the Food Stamp Act of 1977 and are binding upon the state. The United States Department of Agriculture received extensive comment on their rules. The new federal rules have substantially revised and changed the Food Stamp program. Major aspects of the Food Stamp program include the issuance of allotments at no cost, eligibility criteria, certification and issuance procedures, and fraud disqualification. The changes are intended to tighten eligibility criteria, to facilitate participation by eligible households, to strengthen program administration, and to reduce program fraud and abuse.

Because the United States Department of Agriculture, Food and Nutrition Services Food Stamp program rules are binding upon the state and the department may not change or alter these

rules, no public hearing is contemplated.

5. Interested parties may submit their views, arguments, or requests for an oral hearing concerning the proposed adoption and repeal in writing to the Office of Legal Affairs, Department of SRS, P.O. Box 4210, Helena, MT 59601, no later than July 12, 1979. A public hearing will be scheduled if requested by 10% or 25 of the persons directly affected by the changes to the rules.

6. The authority of the department to make the proposed rule is based on Section 53-2-201, MCA (71-210, R.C.M.) and implements Title 53, Chapter 2, MCA (Title 71, Chapter 2, R.C.M.).

Keith P. Colbo

Director, Social and Rehabilitation Services

Certified to the Secretary of State June 5, 1979.

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

In the matter of the amendment of rules 46-2.10(38)-S101960 and 46-2.10(38)-S101970 pertaining to application for county medical certification and county residency.	NOTICE OF PROPOSED AMENDMENTS OF RULES 46-2.10(38)-S101960 AND 46-2.10(38)-S101970 PERTAINING TO APPLICATION FOR COUNTY MEDICAL CERTIFICATION AND COUNTY RESIDENCY. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons:

1. On July 16, 1979, the Department of Social and Rehabilitation Services proposes to amend rules 46-2.10(38)-S101960 and 46-2.10(38)-S101970 which pertains to the determination of which county has financial responsibility for medically needy persons who receive assistance from a county medical program.

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

46-2.10(38)-S101960 APPLICATION FOR COUNTY MEDICAL CERTIFICATION (1) Applications are to be processed ~~within the county~~ within 30 days of the date of application, however, payment for services may be delayed until any pending Medicaid application is determined.

(2) Delete in entirety.

(2) When a person who is receiving general assistance medical, moves to reside in another county, he becomes the financial responsibility of the new county from the date he begins to reside in that county.

(3) Applicant ~~must~~ shall be notified ~~by the county office ruling upon applicant's~~ in writing of the county's ruling on his application. If properly authorized, the provider of medical services shall also be notified of the county's ruling.

(4) Upon receipt of an application for county medical, the county ~~welfare department~~ will make a determination of relative responsibility and determine the willingness of ~~certain~~ relatives to meet the need in full or in part, ~~as required in Section 71-233 through 71-240 of the Revised Codes of Montana, 1947.~~

(5) Nonresidents or interstate transients may receive temporary relief from county funds in cases of extreme necessity and destitution until they may be returned at state expense to their state of residence or origin. (Medical expenses arising from accidental injury to interstate transients shall be paid from county funds and reimbursed by

the state upon submission of a proper claim.)

(6) Interstate transient, as the term is used in this act, is defined as an individual who has signed a declaration that he is unable to pay for his own necessities or transportation to return to his state of residence or origin and is enroute to a point outside of this state, being unable due to unexpected distress, to reach his destination.

46-2.10(38)-S101970 COUNTY RESIDENCY

(1) Delete in entirety.

(1) For determination of an applicant or recipient's county of residence for assistance purposes, the financial responsibility of a county begins the date an applicant or recipient begins to reside in that county.

3. The rule is proposed to be amended to conform with Section 2, Chpt. 450, L 1979 that was passed by the Montana Legislature and which will become effective July 1, 1979. The new law removes the 1 year residency requirement for county liability when a recipient of public assistance moves to another county.

4. Interested parties may submit their data, views, arguments, or requests for an oral hearing concerning the proposed amendment to the Office of Legal Affairs, P.O. Box 4210, Helena, Montana 59601, no later than July 13, 1979. A Public Hearing will be scheduled if requested by 10% or 25 of the persons directly affected by the amendment.

6. The authority of the department to make the proposed amendment is based on Section 53-3-103(3) MCA; (71-308(4) RCM) Implementing Section 2, C 450, L 1979.

Keith L. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State June 5, 1979.

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

In the matter of the amendment of Rule ARM 46-2.10(14)-S11050 pertaining to AFDC reporting period.	) NOTICE OF PROPOSED AMENDMENT OF RULE ARM 46-2.10(14)-S11050 pertaining to AFDC reporting period. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On July 16, 1979, the Department of Social and Rehabilitation Services proposes to amend Rule ARM 46-2.10(14)-S11050 which pertains to AFDC reporting periods.

2. Section (3) of the rule as proposed to be amended provides as follows:

(3) Recipients ~~Clients~~ are to be informed at the time of application and reminded at the time of redetermination to report to the county welfare department within ten (10) ~~thirty (30)~~ days any changes in employment, income, resources, and/or ~~and~~ any other changes in economic circumstance. ~~circumstances.~~ Living or marital circumstances are considered to affect income and ~~the person's general situation and~~ any changes ~~change~~ in these or the individual's general economic situation are to be reported to the county welfare office.

3. The rule is proposed pursuant to Section 1, Chapter 257, Laws 1979 which requires recipients to report income not previously declared.

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 July 13, 1979.

5. The Department's authority to make the proposed amendment is based on Section 53-4-212, MCA. The implementing authority for the proposed amendment is based on Title 53, Chapter 4, Part I, MCA.

Keith L. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State June 5, 1979.

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

In the matter of the amendment of Rules 46-2.2(2)-P211 through 46-2.2(2)-P340 pertaining to appeal procedures available to skilled nursing facilities and intermediate care facilities whose participation in the Medicaid program is being denied, terminated or not renewed.	NOTICE OF PROPOSED AMENDMENT OF RULES PERTAINING TO APPEALS PROCEDURES AVAILABLE TO SKILLED NURSING AND INTERMEDIATE CARE FACILITIES NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On July 14, 1979, the Department of Social and Rehabilitation Services proposes to amend rules 46-2.2(2)-P211 through 46-2.2(2)-P340 which pertain to appeal procedures available to skilled nursing and intermediate care facilities whose participation in the Medicaid program is being denied, terminated or not renewed.

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

46-2.2(2)-P211 DEFINITIONS The proposed amendment adds that an action to deny terminate or refuse to renew participation in the Medicaid program to a provider is an adverse action. Adds Provider as meaning a skilled nursing facility or intermediate care facility and adds provider participation to the term Benefit.

46-2.2(2)-P221 OPPORTUNITY FOR HEARING The proposed amendment adds that provider shall be afforded the opportunity for a hearing.

46-2.2(2)-P241 NOTICE UPON ADVERSE ACTION The proposed amendment adds provider shall be provided notice, and notice will be timely if mailed 30 days prior to proposed adverse action.

46-2.2(2)-P261 CONTINUATION OF BENEFITS The proposed amendment adds provider who is terminated or not renewed shall not be eligible for Medicaid payments pending appeal. The provider shall be eligible to bill the Department for covered services if the appeal is decided in favor of the provider.

46-2.2(2)-P291 HEARING PROCEDURE The proposed amendment provides that the hearing for the provider shall be at a place designated by the Department.

In all the other sections the term provider is added where appropriate to conform with the Department's hearing procedure.

A copy of the entire rules as proposed to be amended may be obtained by contacting the Medical Assistance Bureau, Department of SRS, P.O. Box 4210, Helena, MT 59601.

3. Federal regulations require that the Department provide an opportunity for an administrative hearing for skilled nursing and intermediate care facilities which the state denies or terminates, or fails to renew certification or provider agreements for the Medicaid program. See Federal Register, Volume 44, NO. 33, pages 8 and 9. With the proposed amendments the Department will provide for the appeals procedure through the use of the Department's contested cases rules.

4. Interested parties may submit their data, views, and arguments concerning the proposed amendments to the Office of Legal Affairs of the Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59601 no later than July 12, 1979.

6. The authority of the agency to make the proposed amendments is based on Section 53-2-201, MCA (71-210, R.C.M.) and 53-6-113, MCA (71-1511(5), R.C.M.). The proposed amendments implement Title 53, Chapter 6, MCA (Title 71, Chapter 15, R.C.M.).

Keith L. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State June 5, 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)-S11451E(5)(e) pertaining to reimbursement for skilled nursing and intermediate care services, cost reporting.	NOTICE OF PROPOSED AMENDMENT OF RULE 46-2.10(18)-S11451E (5)(e) pertaining to reimbursement for skilled nursing and intermediate care services, cost reporting. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On July 16, 1979, the Department of Social and Rehabilitation Services proposes to amend Rule 46-2.10(18)-S11451E, subsection (5)(e) pertaining to reimbursement for skilled nursing and intermediate care services, cost reporting.

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

~~(e) The data contained in the cost reports is financial information particular to the facility and therefore is confidential and exempts such information from disclosure under the Freedom of Information Act.~~

3. ARM 46-2.10(18)-S11451E(5)(e) has been determined invalid and must be removed from regulatory language due to its direct conflict with and total contradiction of express statutory authority contained in 2-6-101 et seq., MCA.

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 July 14, 1979.

5. The Department's authority to make this proposed amendment is based on Section 53-6-113, MCA. The implementing authority is based on Section 53-6-141, MCA.

Keith L. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State June 5, 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)-S11451D(2) and (6) pertaining to reimbursement for skilled nursing and intermediate care services, reimbursement method and procedures.	NOTICE OF PROPOSED AMENDMENT OF RULE 46-2.10(18)-S11451D pertaining to reimbursement for skilled nursing and intermediate care services, reimbursement method and procedures. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons

1. On July 16, 1979, the Department of Social and Rehabilitation Services proposes to amend sections (2) and (6) of Rule 46-2.10(18)-S11451D pertaining to reimbursement for skilled nursing and intermediate care services, reimbursement method and procedures. This notice is being brought about due to previous amendments. Refer to the Emergency Amendment, 46-2.10(18)-S11451D dated 4/25/79; Emergency Amendment 46-2.10(18)-S11451D dated 5/22/79; and MAR Notice No. 46-2-168 dated 5/1/79.

2. The sections of the rule as proposed to be amended provide as follows:

(2) Prospective Rates. Prospective rates are the rates on record with the department's fiscal intermediary as of March 31, 1979, or the rates determined as follows, whichever are higher. ~~and~~ Prospective rates shall be announced no later than the beginning date of the period for which the prospective rate is to be effective, unless a prospective rate is determined through the alternative rate review process according to rule 46-2.10(18)-S11451D(6):

(6) Reviews and Adjustment of Rates. The department will review a rate determined under rule 46-2.10(18)-S11451D for a possible increase if it is found that the established rate is set below the minimum level defined in rule 46-2.10(18)-S11451B (1).

(a) A rate may be reviewed according to this rule if a provider submits to the department a letter requesting a rate review, which letter:

(i) references a letter of warning from the State Department of Health and Environmental Sciences that the facility is in jeopardy of being decertified as a provider of nursing home care to Medicaid patients due to certain specified deficiencies, and/or

(ii) provides documentation which clearly indicates that the established rate affects facility revenues to such an extent that reductions in essential services will be necessary and will very likely, in the provider's opinion, cause deficiencies that could lead to decertification by the Department of Health and Environmental Sciences.

(b) Within 14 days of receipt of a letter according to rule 46-2.10(18)-S11451D(6)(a), the department will determine, based on the documentation provided and other information available to the department, whether the circumstances warrant rate review.

(i) The department will reject an application for rate review if substantial evidence shows that the established rate is not set below the minimum level defined in rule 46-2.10(18)-S11451B(1). The department will use measurable indices of central tendency for facility cost centers and staff volumes to make this determination.

(ii) If the provider is not satisfied with the departmental decision to reject a request for rate review, such provider may seek a fair hearing in accordance with rule 46-2.10(18)-S11451F.

(c) If the department determines that a rate should be reviewed, the department will negotiate an interim prospective rate with the provider, which rate will be in effect during the time it takes to review the adequacy of the established rate and effect a rate revision should such be the result of the review. In no case will the negotiated interim rate exceed 120% of the rate on record with the department's fiscal intermediary on the day previous to the beginning of the state's fiscal quarter in which the request for rate review is initiated according to rule 46-2.10(18)-S11451D(6)(a).

(d) If the department determines that a rate should be reviewed according to 46-2.10(18)-S11451D(6)(a), the provider will supply the department with the following information so that the department may conduct the review in terms of a budget for the facility. The budget period to be used for the review and rate setting will include at least one fiscal year for any provider who is determined to be eligible for rate review. If extraordinary or unanticipated circumstances dictate, a request for budget amendment can be submitted and a revised prospective rate determined. A longer budget period may be included if it is mutually agreeable to the department and the provider. All of the following items submitted for the purposes of review shall be evaluated

for reasonableness and cost relatedness, the conclusions of which are subject to administrative and judicial review.

(i) Total revenue estimates for the period using private and established Medicaid rates and patient occupancy projections;

(ii) Detailed expenditure projections according to line items mutually acceptable to the provider and the department along with supporting documentation justifying each item;

(iii) Other normally available information that the department may request in support of its review efforts.

(e) After determining the necessary costs that will contribute to economic and efficient operation during the budget period, the department will recommend to the provider a rate that will reasonably compensate those necessary costs. For those facilities that are profit making, in addition to reasonable and necessary costs, a profit factor shall be included as a component of reasonable compensation in the rate. Should the provider disagree with the recommended rate, the provider may seek a fair hearing according to rule 46-2.10(18)-S11451F.

(f) The rate determined according to rule 46-2.10(18)-S11451D(6)(e) will be made effective for the budget period used to conduct the review. The rate may be revised from time to time as the provider and the department may mutually agree or until the rates established under rule 46-2.10(18)-S11451D(2) may be found to be adequate.

(g) If the interim prospective rate determined in 46-2.10(18)-S11451D(6)(c) is found to produce an overpayment or underpayment with respect to the rate determined through review for the period the interim rate was in effect, then such overpayment or underpayment will be administered according to rule 46-2.10(18)-S11451E(8)(b) through (g). As thorough examinations of and limits on staffing patterns will be accomplished prior to full facility evaluation, no recovery of directly patient care related staffing salary amounts shall be undertaken following the review process. In addition, recovery of non-directly patient care related staffing salary sums shall be effected only upon completion of administrative and judicial review of such contested amounts.

3. On March 20, 1979, the Department adopted final nursing home reimbursement rules to be effective April 1, 1979. These rules set new procedures which caused both increases and decreases in rates being paid to nursing homes prior to April 1, 1979. Administrators for many of the homes which experienced decreased rates submitted letters terminating their participation in the State's Medicaid Program. Most of these administrators stated they were compelled to terminate because they felt newly established rates would not compensate them for their actual costs.

Based on lengthy discussions with representatives of the nursing home industry, it became apparent that the difficulties many administrators were having with the new reimbursement system and the generated rates could be substantially mitigated by the following rule amendments:

a) continuing the rates in effect prior to April 1, 1979, until such time as the new formula structure caught up with the continued rate, and

b) raising the upper limit rate from the 80th to the 90th percentile;

c) establishing a detailed budget review and evaluation process by which to determine prospective rates,

d) allowing for an interim prospective rate to be established during the rate review period, and

e) allowing after evaluation for the recovery of excess payments based on the interim prospective rate only of operating amounts not directly related to patient care staffing salaries; such recovery could not be undertaken until administrative and judicial review of those sums contested had been completed.

If administrators were to discontinue participation in the program, Medicaid-supported patients would have to seek new residence. For many, this could mean leaving a home community, encountering severe mental and physical hardship and possibly experiencing life threatening trauma. The Department believes these amendments, when fully instituted will cause most of the administrators to reconsider their withdrawal from the program and thereby prevent imminent peril to the patients' health, safety and welfare.

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 July 14, 1979.

5. The Department's authority to make these proposed amendments is based on Section 53-6-113, MCA. The implementing authority for the proposed rule is based on Section 53-6-141, MCA.

Keith P. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State June 5, 1979.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the repeal of Subchapters 22 through 50 of Chapter 26, Title 48 (Rules 48-3.26(22)-S26300 through 48-2.26(50)-S26810) outlining vocational-technical center requirements	))))))	NOTICE OF PROPOSED REPEAL OF SUBCHAPTERS 22 THROUGH 50 OF CHAPTER 26 OF TITLE 48 (RULES 48-2.26(22)-S26300 THROUGH 48-2.26(50)-S26810) outlining vocational-technical center requirements. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons:

1. On September 10, 1979, the Board of Public Education will repeal Subchapters 22 through 50 of Chapter 26 of Title 48 (rules 48-2.26(22)-S26300 through 48-2.26(50)-S26810) which outlined vocational-technical center requirements.

2. The rules to be repealed are on pages 48-505 through 48-524 of the Administrative Rules of Montana.

3. The Board is repealing these rules because HB-634 (46th Legislature, 1979) transferred governance of vocational education to the Superintendent of Public Instruction.

In the matter of the repeal of Subchapter 1 of Chapter 26 of Title 48 (rule 48-2.26(1)-S2600) establishing definitions of vocational education terms	))))	NOTICE OF PROPOSED REPEAL OF SUBCHAPTER 1 OF CHAPTER 26 OF TITLE 48 (RULE 48-2.26(1)-S2600) establishing definitions of vocational education terms. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons:

1. On September 10, 1979, the Board of Public Education will repeal Subchapter 1 of Chapter 26 of Title 48 (rule 48-2.26(1)-S2600) which established definitions of vocational education terms.

2. The rule to be repealed is on pages 48-467 through 48-476 of the Administrative Rules of Montana.

3. The Board is repealing these rules because HB-634 (46th Legislature, 1979) transferred governance of vocational education to the Superintendent of Public Instruction.

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

BY Jack Crosser
ASSISTANT TO THE BOARD

Certified to the Secretary of State June 5, 1979.

MAR 48-3-17 11-6/14/79

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Subchapters 2 through 18 of Chapter 26 of Title 48 (Rules 48-2.26(2)-S2610 through 48-2.26(18)-S26230) establishing rules for vocational education	))))))	NOTICE OF PROPOSED AMENDMENT OF SUBCHAPTERS 2 THROUGH 18 OF CHAPTER 26 OF TITLE 48 (RULES 48-2.26(2)-S2610 THROUGH 48-2.26(18)-S26230) establishing rules for vocational education. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons:

1. On September 10, 1979, the Board of Public Education proposes to amend Subchapters 2 through 18 of Chapter 26 of Title 48 (rules 48-2.26(2)-S2610 through 48-2.26(18)-S26230) which establish rules for vocational education.

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

48-2.26(2)-S2610 AUTHORITY OF THE ~~BOARD OF PUBLIC EDUCATION~~ SUPERINTENDENT OF PUBLIC INSTRUCTION. ~~(1)--Board of Public Education Policy:--There shall be a comprehensive state plan for vocational education in Montana and the Board of Public Education shall be the sole agency to disburse federal and state vocational funds and to plan, coordinate, govern and provide leadership for the total state vocational education system at all levels and in all areas of the state so that vocational education can be coordinated, articulated, and made relevant for students, parents, business, industry, labor and society.--The Board of Public Education recognizes the need for coordination with other governing agencies where a possible conflict of authority may exist.~~

~~(2)~~(1) Remains the same.

48-2.26(2)-S2620 RESPONSIBILITY OF THE EXECUTIVE OFFICER OF VOCATIONAL EDUCATION. ~~(1)--Board of Public Education Policy:--The Executive Officer of vocational education is the State Superintendent of Public Instruction who is the Board's executive officer for vocational education programs and courses offered in Montana which are under the jurisdiction of the Board of Public Education.--The Executive Officer shall have the authority necessary to carry out the duties and responsibilities placed upon the Executive Officer by the Board of Public Education and shall be responsible for following and enforcing all policies and procedures adopted by the Board of Public Education.~~

~~(2)~~(1) Remains the same.

48-2.26(2)-S2630 APPOINTMENT OF STATE VOCATIONAL EDUCATION STAFF. ~~(1)--Board of Public Education Policy: The Executive Officer of vocational education shall have the authority to appoint the necessary staff, with confirmation by the Board, to assure the Board of Public~~

~~Education that Board policies are adhered to and that state program consultants are available to serve the educational institutions of Montana which are now, or shall be in the future, offering vocational education programs and/or courses.~~

~~(2)~~(1) Remains the same.

48-2.26(2)-S2640 PROMOTION AND IMPROVEMENT OF VOCATIONAL EDUCATION PROGRAMS. ~~(1) Board of Public Education Policy. The Executive Officer of vocational education shall be responsible for promoting and improving vocational education programs offered in the educational institutions of the state.~~

~~(2)~~(1) Remains the same.

48-2.26(2)-S2650 COMPLIANCE WITH FEDERAL RULES AND REGULATIONS. ~~(1) Board of Public Education Policy. The Executive Officer will determine and inform the Board of Public Education that approved vocational education activities within the state are being conducted according to federal and state rules and regulations, and will inform the Board of changes in laws, rules and regulations.~~

~~(2)~~(1) Remains the same.

48-2.26(2)-S2660 MONTANA ADVISORY COUNCIL FOR VOCATIONAL EDUCATION ~~(1) Board of Public Education policy: The Executive Officer of vocational education shall actively solicit the advise and counsel of the Montana Advisory Council for Vocational Education on matters pertaining to the evaluation and further development and improvement of vocational education.~~

~~(2)~~(1) Remains the same.

48-2.26(2)-S2670 PUBLIC INFORMATION ON VOCATIONAL EDUCATION. ~~(1) Board of Public Education Policy. The Executive Officer of vocational education shall keep the Board of Public Education and the public informed of both the progress and the problems of vocational education in Montana and shall collect, analyze, interpret, and communicate vocational education information impartially and independently.~~

~~(2)~~(1) Remains the same.

48-2.26(2)-S2680 LOCAL VOCATIONAL ADMINISTRATORS' RESPONSIBILITY FOR PROGRAM QUALITY. ~~(1) Board of Public Education Policy. Vocational education programs offered at the local level shall be under the guidance of a vocationally approved administrator, supervisor, or instructor who has the responsibility within his/her own institutional level to ensure that quality is maintained in vocationally funded programs under his/her guidance and that these programs are in compliance with all federal and state requirements, directives, and laws.~~

~~(2)~~(1) Remains the same.

48-2.26(2)-S2690 LOCAL POLICIES AND PROCEDURES. ~~(1) Board-of-Public-Education-Policy:--Policies-and-procedures adopted-for-vocational-education-at-the-state-and-local levels-shall-be-consistent-with-the-Board-of-Public-Education-policies-and-procedures.~~

~~(2)~~(1) Remains the same.

48-2.26(2)-S26000 MANPOWER TRAINING PROGRAMS ADMINISTRATION. ~~(1)--Board-of-Public-Education-Policy:--Manpower training-flowing-through-the-Board-of-Public-Education which-provides-for-instruction-by-educational-institutions shall-be-administered-by-the-Executive-Officer-of-vocational education-through-collaboration-with-local-education-institutions-and/or-other-state-agencies-where-such-training-is needed.--The-Board-recognizes-that-students-from-Indian reservations-and/or-other-groups-within-the-State-of-Montana-may-need-special-consideration.~~

~~(2)~~(1) Remains the same.

48-2.26(2)-S26010 VOCATIONAL EDUCATION RECORDS. ~~(1) Board-of-Public-Education-Policy:--The-Executive-Officer-of vocational-education-shall-keep-all-vocational-education records-in-his/her-office.~~

~~(2)~~(1) Remains the same.

48-2.26(6)-S26020 AFFIRMATIVE ACTION POLICIES. (1) ~~Board-of-Public-Education-Policy:--Recruitment-selection, employment-and-advancement-of-vocational-education-personnel-shall-be-consistent-with-current-approved-institution and/or-agency-Affirmative-Action-Plans.~~

~~(2)~~(1) Remains the same.

48-2.26(6)-S26030 OCCUPATIONAL AND PROFESSIONAL CERTIFICATION STANDARDS. ~~(1)--Board-of-Public-Education Policy:--Vocational-education-instructional-and-administrative-personnel-staff-shall-satisfy-minimum-occupational-and professional-certification-standards-established-and-periodically-reviewed-and-updated-by-the-Board-of-Public-Education, and-shall-continually-meet-the-state's-recertification-standards-established-by-the-Board-of-Public-Education-if-any part-of-their-salary-is-to-be-paid-from-funds-appropriated for-vocational-education.~~

~~(2)~~(1) Remains the same.

48-2.26(6)-S26040 INSTRUCTIONAL COMPETENCIES. (1) ~~Board-of-Public-Education-Policy:--The-development-of-instructional-competencies-and-the-maintenance-and-improvement-of-occupational-skills-shall-be-the-shared-responsibility-of-the-individual,-the-local-educational-institution,-the-teacher-training-institutions,-and-the-executive officer-of-vocational-education.~~

~~(2)~~(1) Remains the same.

48-2.26(6)-S26050 PRESERVICE AND INSERVICE PROGRAMS. ~~(1)--Board of Public Education Policy:--The Executive Officer of vocational education shall promote programs of preservice and inservice educational for instruction, supervisory, administrative, teacher training, and support personnel in vocational education.~~

~~(2)~~(1) Remains the same.

48-2.26(10)-S26060 PROGRAM APPROVAL. ~~(1)--Board of Public Education Policy:--Vocational education programs shall have prior approval by the Board of Public Education upon recommendation of the Executive Officer of vocational education if they are to receive vocational education funds.~~

~~(2)~~(1) Remains the same.

48-2.26(10)-S26070 BASIS FOR PROGRAM OFFERINGS. ~~(1) Board of Public Education Policy:--Vocational education program offerings shall be determined on the basis of identifiable student interest and needs, vocational advisory committee recommendations, employment statistics, and current occupational surveys.~~

~~(2)~~(1) Remains the same.

48-2.26(10)-S26080 TYPES OF PROGRAMS TO BE OFFERED. ~~(1)--Board of Public Education Policy:--Vocational education programs shall be designed to prepare or retrain youth and adults for employment or for advancement in recognized and new and emerging occupations, or to prepare individuals for enrollment in advanced vocational education programs, recognizing the prevocational aspects of some programs.--Consumer homemaking programs as established in the Montana State Plan for Vocational Education shall also be included under this policy.~~

~~(2)~~(1) Remains the same.

48-2.26(10)-S26090 LOCAL ADVISORY COUNCILS. ~~(1) Board of Public Education Policy:--Institutions offering vocational education programs shall have a local advisory council composed of representatives from management, labor, and citizens at large to consult with and advise school administrators on matters pertaining to the development and improvement of vocational education.~~

~~(2)~~(1) Remains the same.

48-2.26(10)-S26100 PROGRAM ADVISORY COMMITTEES. ~~(1) Board of Public Education Policy:--Each vocational education program shall have a program advisory committee composed of but not limited to representatives from management and labor to consult with administrators and teachers on program matters.~~

~~(2)~~(1) Remains the same.

48-2.26(10)-S26110 EDUCATIONAL INFORMATION SYSTEM. ~~(1)--Board-of-Public-Education-Policy:--Institutions-offering-vocational-education-programs-and/or-courses-shall-provide-information-to-the-Executive-Officer-for-a-state-educational-information-system-to-aid-in-program-decision-making-and-Board-of-Public-Education-analysis.~~

~~(2)~~(1) Remains the same.

48-2.26(10)-S26120 INFORMATION, GUIDANCE AND PLACEMENT. ~~(1)--Board-of-Public-Education-Policy:--Institutions offering-vocational-education-programs-and/or-courses-shall provide-occupational-information,-guidance-and-placement services-for-their-students.~~

~~(2)~~(1) Remains the same.

48-2.26(10)-S26130 PROGRAM DUPLICATION. ~~(1)--Board of-Public-Education-Policy:--There-shall-be-cooperative planning-at-the-local-and-state-levels,-between-institutions-offering-vocational-education-programs,-labor,-industry,-and-other-governmental-or-civic-agencies-concerned with-delivery-of-vocational-education,-to-avoid-unnecessary duplication.~~

~~(2)~~(1) Remains the same.

48-2.26(10)-S26140 LEVEL OF PROGRAM FUNDING. ~~(1) Board-of-Public-Education-Policy:--Vocational-education funds-shall-not-be-used-for-programs-below-the-9th-grade-of an-educational-institution,-and-programs-shall-be-designed to-serve-individuals-of-secondary-school-age-or-older,-including-those-who-have-education,-socioeconomic,-physical disadvantages-and-handicaps,-or-those-who-have-been-identified-to-have-cultural-differences-with-special-needs.~~

~~(2)~~(1) Remains the same.

48-2.26(14)-S26150 FEDERAL, STATE, AND LOCAL FUNDING. ~~(1)--Board-of-Public-Education-Policy:--The-Board-of-Public Education-and-the-Executive-Officer-of-vocational-education shall-work-toward-assuring-adequate-funding-of-Montana's-vocational-education-programs-from-all-levels-of-government (federal,-state-and-local).~~

~~(2)~~(1) Remains the same.

48-2.26(14)-S26160 DISBURSEMENT OF FEDERAL FUNDS. ~~(1)--Board-of-Public-Education-Policy:--The-Board-of-Public Education-shall-be-responsible-for-the-disbursement-of-state and-federal-funds-for-vocational-education.~~

~~(2)~~(1) Remains the same.

48-2.26(14)-S26170 ALLOCATION OF VOCATIONAL EDUCATION FUNDS. ~~(1)--Board of Public Education Policy:--In determining the allocation of vocational education funds to local educational institutions, the Board of Public Education and the Executive Officer of vocational education shall review and consider such factors as:--identified needs of vocational education for the population with the local educational institution's district, region, state, and the nation; the compatability of such program offerings with the state's long range vocational education objectives; the excess cost of the program offerings and local and state ability to support the program; and program duplication and how this duplication might affect the other educational institutions in the state.~~

(2)(1) Remains the same.

48-2.26(14)-S26180 EXPENDITURE OF FUNDS. ~~(1)--Board of Public Education Policy:--The expenditures by an institution of any funds received under the provisions headed "Vocational Education" shall be limited to those elements of costs approved by the Board of Public Education for vocational education.~~

48-2.26(14)-S26190 ~~BOARD OF PUBLIC EDUCATION~~ SUPERINTENDENT OF PUBLIC INSTRUCTION STUDENT FEES. ~~(1)--Board of Public Education Policy:--Unless otherwise provided by state statute, the Board of Public Education shall be responsible for and have the power to establish student enrollment fees and the rules governing the collection and expenditure of such fees.--The Board recognizes the need for a cooperative coordination with other governing agencies where a possible conflict of authority may exist.--(This section applies to postsecondary vocational technical center students only.)~~

~~(2)~~(1) Remains the same.

48-2.26(14)-S26200 UNIFORM ACCOUNTING AND REPORTING. ~~(1)--Board of Public Education Policy:--A uniform accounting and reporting system shall be developed and implemented by the Executive Officer and approved by the Board of Public Education which will clearly identify receipts, disbursements, and balances of all funds used to finance vocational education.~~

~~(2)~~(1) Remains the same.

~~48-2.26(18)-S26220~~ 48-2.26(18)-S26210 EVALUATION. ~~(1)--Board of Public Education Policy:--Evaluation shall be an integral part of Montana's vocational education system.~~

~~(2)~~(1) Remains the same.

48-2.26(18)-S26220 PERIODIC AND CONTINUOUS EVALUATION. ~~(1)--Board of Public Education Policy:--Where shall be provisions for periodic and continuous evaluation at both state and local levels.~~

~~(2)~~(1) Remains the same.

48-2.26(18)-S26230 COOPERATIVE EVALUATION EFFORTS. ~~(1)--Board-of-Public-Education-Policy:--The-Executive-Officer-of-vocational-education-and-the-Montana-Advisory-Council for-Vocational-Education-shall-cooperate-in-vocational-education-evaluation.~~

~~(2)~~(1) Remains the same.

3. The rule is proposed to be amended because HB-634 passed by the 46th Legislature transfers governance of vocational education to the Superintendent of Public Instruction.

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 July 27, 1979.

5. 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 Marjorie W. King, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59601, no later than July 18, 1979.

6. If the agency receives requests for a public hearing on the proposed amendments from more than 10 percent or 25 or more persons who are directly affected by the proposed amendments, 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.

7. The authority of the Board to make the proposed amendments is based on HB-634, 46th Legislature (1979).

Marjorie W. King

MARJORIE W. KING, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: Jack Crosser

Assistant to the Board

Certified to the Secretary of State June 5, 1979.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 4.14.530(1) Proclaiming and Establishing U.S. Standard Grades In the matter of the adoption of Rules I, II, III, IV, V, VI, VII, VIII, and IX.	) NOTICE OF AMENDMENT OF RULE 4.14.530(1) A.R.M.; AND NOTICE) of Adoption of Rules I (4.14.650),) II (4.14.651), III (4.14.652),) IV (4.14.653), V (4.14.654), VI) (4.14.655), VII (4.14.656), VIII) (4.14.657) and IX (4.14.658).

TO: All Interested Persons:

1. On March 29, 1979, the Montana Department of Agriculture published a notice of its proposal to amend A.R.M. Rule 4.14.530(1) by deleting from the listing set forth therein, the word "cherries"; and also published notice of intent to adopt proposed new rules: I, II, III, IV, V, VI, VII, VIII, and IX, at pages 280-283, inclusive, Montana Administrative Register issue number 6 of 1979.

2. No comments were received either as to the proposed rule amendment, nor as to the proposed adoption of new rules.

3. The agency has amended A.R.M. Rule 4.14.530(1) as proposed.

4. The department has adopted Rules: I (4.14.650 MONTANA NO. 1 GRADE AND TOLERANCES DEFINED), II (4.14.651 APPLICATION OF TOLERANCES), III (4.14.652 DEFINITIONS), IV (4.14.653 DAMAGE), V (4.14.654 DIAMETER), VI (4.14.655 SERIOUS DAMAGE), VII (4.14.656 PERMANENT DEFECTS), VIII (4.14.657 CONDITION DEFECTS), and IX (4.14.658 MARKING CONTAINERS), all as proposed.

W. Gordon McOmber, Director

Certified to the Secretary of State May 25, 1979.

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

In the matter of the adoption of a rule setting requirements for the control of outbreaks of measles	NOTICE OF THE ADOPTION OF A RULE TO CONTROL MEASLES OUTBREAKS

TO: All Interested Persons:

1. On March 29, 1979, the Department of Health and Environmental Sciences published notice of a proposed adoption of a rule concerning the control of measles outbreaks, especially in regard to public schools, at page 288 of the 1979 Montana Administrative Register, issue number 6.

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

16-2.18(10)-S18055 MEASLES QUARANTINE (1) The provisions of this rule apply to outbreaks of measles, exclusive of quarantine measures contained in any other rules for control of communicable diseases.

(2) Definitions. Unless otherwise specified, for the purposes of this rule, the following definitions apply:

(a) "Measles" means an acute, highly communicable febrile disease caused by Rubeola virus.

(b) "Measles case" means a person suffering from measles, from five days before the onset of rash to five days after the onset of rash.

(c) "Immunity" means immunity to measles, as demonstrated by:

(i) a school health record of receipt of an approved measles vaccine in ~~1967~~ 1968 or later, at or after the age of 12 months, and showing the month and year of administration;

(ii) a signed statement from a licensed physician or osteopath, or either's designee that the person has had measles disease, indicating the date of diagnosis; or

(iii) other evidence of measles immunization with an approved vaccine administered after 1967 and at or older than 12 months of age, such evidence to be verified by a licensed physician or county health department.

(d) "Approved vaccine" means a measles vaccine approved by the Food and Drug Administration, U. S. Public Health Service, or the Department.

(e) "Susceptible contact" means any person not able to demonstrate immunity who is less than 21 years of age, and who has been exposed face-to-face to a measles case, or attends the same school as a case or rides the same school bus, ~~or attends a school which shares one or more school buses with the school in which a case has occurred~~ as a case.

(3) Reporting. Suspected cases of measles are to be reported by telephone immediately to the local health department and to the State Health Department by any person having knowledge of the case, or having reason to believe that a person has this disease.

(4) Quarantine.

(a) Quarantine measures may be ordered by the local health ~~department~~ officer or by the state health department, based on the diagnosis of measles in one or more persons as confirmed by a licensed physician. The ordering authority shall post public notice of the effective date of the quarantine and ~~provide~~ make immunizations available, free of charge, to the extent of its resources, to all who might desire or need such immunization, on or before the effective date.

(b) Cases of measles are to be confined to home until five days after the onset of rash. The movements of other household members in or out of the household are not restricted or prohibited unless they are susceptible contacts. The local health department shall advise the residents of the home where the measles case is quarantined to warn visitors who are not immune against measles against entering the household.

(c) Susceptible contacts are to be confined to home until 14 calendar days after their last exposure to the disease, whether face-to-face with a case or by attendance at school or school sponsored activities. The movements of other household members or visitors in or out of the household are not restricted or prohibited.

(d) A susceptible contact may be released from confinement to receive immunization against measles, and may return to school and school sponsored activities after having received measles immunization from a physician or health department and having submitted written documentation of such immunization to the school.

~~(e) The department shall, to the extent of its resources, provide measles immunizations free of charge to all susceptible contacts.~~

~~(f)~~ (e) Schools may have in attendance children who were immunized recently because they were susceptible contacts of a case. Such schools shall not participate in interscholastic events until 14 calendar days have elapsed since the last such child was immunized.

(5) Removal of quarantine measures. The restrictions on measles cases and on susceptible contacts will automatically terminate after the time periods indicated. If a case of measles occurs beyond the 14th day from the onset of rash of the last case, the quarantine measures may be reimposed.

3. No comments were received at the public hearing May 14, 1979. Several comments, written and oral, were received prior to the hearing, however.

Dr. Ralph Campbell, Lake County Health Officer, wrote to question the wisdom of allowing a "susceptible contact" back in school immediately following immunization. The department agreed that such a child may not be protected, unless the

vaccine had been given within two days after exposure; however, the majority of children so defined do not develop measles disease. This experience in other states has demonstrated that the education does not need to be interrupted for 14 days, and that further transmission from the children who develop measles does not occur because the other children in school are immunized and, therefore, not at risk.

Mr. Harold Tokerud and Mr. James L. Kimmet, Superintendents of the Opheim and Wibaux Schools, respectively, both objected to section (4)(f), suggesting that susceptible contacts who get immunized should nevertheless be barred from school for fourteen days so that the school could participate in interscholastic events during that period. In response, the department amended the definition of "susceptible contact" so that interscholastic participation is jeopardized only if a case occurs in the immediate school population, not if one occurs in another school with which a school bus is shared. However, since the department considered its obligation to be to take the course least restrictive of a student's education while still preventing the spread of measles, it declined to flatly exclude subsequently immunized susceptible contacts for the quarantine period, retaining instead the restriction on interscholastic contacts with other schools.

Jacqueline Uivary, Whitehall school nurse, felt the rule was unnecessary in view of the recent passage of Senate Bill 174 (Chapter 147, Laws of 1979), requiring immunization as a condition of school attendance unless an exemption is claimed. Since that law allows exemptions from immunization, measles outbreaks may still occur, necessitating the control measures in this rule.

A telephone conversation with Mrs. Jackie Stonnell, Nursing Supervisor, Gallatin County Health Department, provided the comment that a physician's clerk or nurse should be able to certify a record and not tie up a doctor's time signing certificates. This comment led to the change made in section (2)(c)(ii).

A Knight
Director

Certified to the Secretary of State June 5, 1979

BEFORE THE BOARD OF CRIME CONTROL
OF THE STATE OF MONTANA

In the matter of the Amendment of Rule 23-3.14(10)-S104040	)))	NOTICE OF THE AMENDMENT OF RULE 23-3.14(10)-S14040

TO: All Interested Persons:

1. On April 26, 1979 the Board of Crime Control published notice of a proposed amendment to rule 23-3.14(10)-S14040 concerning requirement for peace officer certification at page 389 of the 1979 Montana Administrative Register, issue number 8.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule as it sets forth the requirements for certification of peace officers serving in the supervisory, command and administrative roles. The original concept of peace officer certification included certifying supervisors and managers. This was not accomplished as the necessary training programs were not available at the Montana Law Enforcement Academy. These courses are now available and law enforcement personnel have requested that the certification program be implemented

Administrator

Certified to the Secretary of State June 1, 1979

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

In the matter of the amendment of rule 32-2.10(7)-S10025 to change the fees for filing notices regarding livestock security agreements	NOTICE OF THE AMENDMENT OF RULE 32-2.10(7)-S10025

TO: ALL INTERESTED PERSONS

1. On April 26, 1979 the Department of Livestock published notice of a proposed amendment to rule 32-2.10(7)-S10025 concerning the filing of notice for livestock security agreements at page 392 of the 1979 Montana Administrative Register, Issue No. 8.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule to cover increased costs involved in the processing of notices relating to livestock security agreements required under Section 81-8-301 MCA. Section 81-8-304 MCA requires that fees for such filings be set by rule "upon the basis of actual cost to the department not to exceed $15 for each brand listed."

4. As set forth in the notice all filings after July 1, 1979 will be subject to the increased fee.

ROBERT G. BARTHELMESS
Chairman, Board of Livestock

Certified to the Secretary of State June 5, 1979

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

IN THE MATTER of Adoption of a rule Defining "Energy Conservation Materials" as that Term is Used in Sec. 84-7405, R.C.M. 1947 [MCA, Sec. 15-32-107].	NOTICE OF ADOPTION OF A RULE DEFINING ENERGY CONSERVATION MATERIALS

TO: All Interested Persons

1. On January 25, 1979, the Department of Public Service Regulation published notice of a proposed new rule defining "energy conservation materials" at pages 29-30 of the 1979 Montana Administrative Register, issue no. 2.

2. The Commission has adopted the rule as proposed, with the following changes:

Rule I. (38-2.14(22)-S14910) DEFINITION (1) No change.

(a) No change.

(b) No change.

(1) No change.

(2) No change.

(3) No change.

(c) No change.

(d) No change.

(e) No change.

(f) No change.

~~(g) Devices to utilize solar energy for assisting in theheating of domestic hot water.~~

C O M M E N T: Between the time this rule was proposed and the time it was adopted, the 1979 Montana Legislature passed, and the Governor signed, HB 649. This bill specifically added the phrase "recognized nonfossil forms of energy generating systems" to 15-32-107, MCA [84-7405, R.C.M. 1947] and gave different tax treatment to loans for such purposes than those given for energy conservation. The Commission believes that "devices to utilize solar energy for assisting in the heating of domestic hot water" is properly a "recognized nonfossil form of energy generating system," and therefore, should not be included in the definition of "energy conservation materials."

(g) Outside air combustion sources.

C O M M E N T: The Montana Power Company proposed at the hearing on this rule that outside air combustion sources be added to the list of energy conservation materials. The Commission believes that outside air combustion sources can conserve energy as well as provide a safety device for natural gas heated dwellings.

C O M M E N T: The Commission received suggestions from a variety of sources (Montana Department of Natural Resources and Conservation, Alternative Energy Resources Organization, Northern Plains Resources Council) that the following should be added to the list of "energy conservation materials": Thermal shutters, earth berming, thermal mass, air locks, air exchanges, south-facing windows, recuperators, energy efficient appliances, devices associated with load management techniques, solar and wind devices, and solar greenhouses.

The Commission rejected these suggestions for the following reasons:

1). Suggestions fell into the category of "recognized nonfossil forms of energy generation systems," as contemplated by HB 649, 1979 Legislature.

2). Suggested devices were too experimental, either in terms of commercial availability or of proven energy conserving properties, to warrant approval at this time.

3). Suggestions involved a large capital outlay.

4). HB 649 placed a tax credit limit on utilities offering energy conservation loans, of $200,000 per year. The Commission believes that, given this tax credit imposed limitation, loans should be made for the most well accepted, least capital intensive, most commercially available measures, for retrofitting of dwellings to increase energy conservation. The Commission concluded that the materials, as approved, are the most dependable and inexpensive of the energy conserving materials presently available.

3. Section 84-7405, R.C.M. 1947 (MCA, Section 15-32-107) provides for a tax credit, available to electric and natural gas utilities, for the amount of interest foregone by utilities lending money for or installing "energy conservation materials" in dwellings.

This Rule is being adopted at this time as the result of a Petition by The Montana Power Company. The Company alleges that the Rule is necessary to the implementation of a no-interest loan program that it proposes to implement with respect to residential dwellings receiving space heating service directly from the Company's electric and natural gas utilities.

4. The authority for the Commission to make this rule is based on Section 15-32-107 MCA (Section 84-7405, R.C.M. 1947).

GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE June 4, 1979.

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

IN THE MATTER OF Adoption of Rules Determining the "Prevailing Average Interest Rate for Home Improvement Loans" as that Term is Used in Sec. 84-7405, R.C.M. 1947 [MCA, Sec. 15-32-107].	NOTICE OF ADOPTION OF NEW RULES DETERMINING THE PREVAILING AVERAGE INTEREST RATE FOR HOME IMPROVEMENT LOANS

TO: All Interested Persons

1. On January 25, 1979, the Department of Public Service Regulation published notice of proposed new rules determining the "prevailing average interest rate for home improvement loans" at pages 27-28 of the 1979 Montana Administrative Register, issue no. 2.

2. The Commission has adopted the rules as proposed:

Rule I. (38-2.14(22)-S14920) PREVAILING INTEREST RATE (1) No change.

Rule II. (38-2.14(22)-S14930) MODIFICATIONS OF PREVAILING INTEREST RATE (1) No change.

C O M M E N T: No change has been made in the rules as proposed. The Montana Power Company offered affidavits of twelve individuals associated with institutions making home improvement loans, affirming that the prevailing interest loan rate for home improvements was 12.5%. Parties testifying at the hearing on this rule endorsed the 12.5% rate (Northern Plains Resource Council, Montana Department of Natural Resources and Conservation). The Alternative Resources Energy Organization, the only other party testifying on the matter, stated that it had no reason to challenge the 12.5% interest rate.

3. Section 84-7405, R.C.M. 1947 (MCA, Section 15-32-107) provides for a tax credit, available to electric and natural gas utilities, equal to the difference between the interest the utility actually receives on loans to consumers used for the installation of energy conservation materials and the amount which would have been received at the prevailing average interest rate for home improvement loans.

This Rule is being adopted at this time as the result of a Petition by The Montana Power Company. The Company alleges that the Rule is necessary to the implementation of a no-interest loan program that it proposes to implement with respect to residential dwellings receiving space heating service directly from the Company's electric and natural gas utilities.

4. The authority for the Commission to make this rule is based on Section 15-32-107, MCA (Section 84-7405, R.C.M. 1947).

GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE June 4, 1979.

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

NEW EMERGENCY RULE

1. The Public Service Commission has been informed by regulated carriers and state officials that diesel fuel supplies in Montana are dangerously low. The Commission has been further informed that this critical situation will continue and even worsen through the comming summer months, through harvest time. A lack of diesel fuel presents an imminent peril to the health, safety, and welfare of the people of Montana. If motor carriers are unable to serve the state because of lack of fuel, shortages of many basic goods will quickly develop. The critical situation is exacerbated by the serious possibility that the Milwaukee Railroad will no longer serve most of Montana.

Therefore, the Commission has adopted, effective June 1, 1979, the following rule. Under Commission practice, Class A motor carriers file schedules of service which they are then required to follow. It is the Commission's belief that these carriers should have the flexibility to change these schedules without specific approval in order to conserve diesel fuel. The rule does not apply to regularly scheduled passenger carriers.

The rule, as adopted, will be sent to all Class A motor carriers, the Montana Consumer Counsel, the state wire service and television and newspaper media. By terms of the rule itself, carriers will be required to make every effort to notify their shippers of the rule, and to consult with affected shippers prior to changing any schedules.

2. Under the law governing emergency rulemaking this rule will be effective until September 29, 1979. Since this period is the same as the period of expected diesel fuel shortages, a regular rulemaking proceeding is not being initiated at this time. The Commission will carefully monitor the diesel fuel situation during the coming months. If it appears that shortages will persist beyond September 29, 1979 and, further, that this rule is effective in alleviating the shortages to some degree, a regular rulemaking proceeding will be initiated.

3. The text of the rule is as follows:

Rule I. SCHEDULE CHANGES AUTHORIZED (1) Due to the critical condition of the diesel fuel supply in Montana, any Class A motor carrier authorized to transport commodities (not including persons) may alter any time schedule (schedule of service) filed by such carrier, without specific individual Commission approval, after having consulted with their shippers.

(2) Class A motor carriers must notify the Commission of any changes in their schedules.

(3) Any changes in existing schedules made pursuant to this rule must be posted by the carrier in a conspicuous place at its major offices and major points along its route. Carriers must also make other reasonable attempts to give their

shippers actual notice of any schedule change.

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

5. The authority of the Commission to adopt the rule is 69-12-201 and 2-4-303, MCA (Sections 8-103, 8-104.1 and 82-4202(2), R.C.M. 1947).

GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE June 1, 1979.

REVENUE

LIQUOR DIVISION

EMERGENCY RULES TO AMEND

Statement of reasons for emergency.

On November 7, 1978, the voters of the State of Montana approved Initiative 81. By its terms, the Initiative set up a program of wine distribution by licensed wholesalers to grocery and drug stores for retail sale. The effective date of Initiative 81 is July 1, 1979.

Senate Bill 99, Chapter 699, Laws 1979, was introduced in the 1979 session of the Legislature to amend the Initiative for the purpose of retaining the State of Montana in the importation, distribution and sale of table wine. Included in that legislation as Section 12 was a transition period. The purpose as expressed by the Legislature is:

"(1) IN ORDER TO MAKE AN ORDERLY TRANSITION TO THE WINE MARKETING POLICIES SET FORTH IN INITIATIVE 81 AND [THIS ACT], THE DEPARTMENT SHALL, PRIOR TO JULY 1, 1979:
"(A) ISSUE LICENSES OR TEMPORARY AUTHORIZATIONS TO DISTRIBUTE OR RETAIL WINE TO APPLICANTS WHO QUALIFY UNDER THE PROVISIONS OF INITIATIVE 81 AND [THIS ACT]; AND
"(B) AUTHORIZE LICENSED WINE DISTRIBUTORS TO IMPORT AND, DURING THE LAST 20 DAYS OF JUNE 1979, DISTRIBUTE TO LICENSED WINE RETAILERS, STOCKS OF TABLE WINE THAT MAY NOT BE SOLD TO THE PUBLIC PRIOR TO JULY 1, 1979."

The bill also allows the Department to implement Initiative 81 and the Act by the adoption of emergency rules.

"(2) THE DEPARTMENT MAY ADOPT TEMPORARY RULES UNDER 2-4-303 TO IMPLEMENT INITIATIVE 81 AND [THIS ACT] WITHOUT BEING REQUIRED TO FIND AN IMMINENT PERIL TO PUBLIC HEALTH, SAFETY, OR WELFARE.

Therefore, the Department pursuant to that authority amends the following rules:

42-2.12(6)-S12055 SCHEDULE OF LICENSE APPLICATION PROCESSING FEES-PAYMENT (1) The following are the fees to be charged for processing applications for new licenses or transfers of licenses:

Processing Fee for New License Application:

All Beverage License	$100.00
Retail Beer License.	50.00
Wine Amendment.	50.00
Retail Beer License and Wine Amendment (When applied for concurrently) . . .	50.00

Retail beer and Table Wine for Off-Premises Consumption	100.00
Wholesale Beer License	50.00
Wholesale Table Wine License	100.00
Wholesale Beer and Table Wine License	100.00
Brewer's License	100.00
Determination of Resort Area	250.00
Resort All-Beverage License	100.00

Processing Fee for Application for Transfer of Ownership and/or Location of License:

All-Beverage License	$100.00
Retail Beer License	75.00
Retail Beer License and Wine Amendment	75.00
Retail Beer License for Off-Premises Consumption	75.00
Retail Table Wine for Off-Premises Consumption	75.00
Retail Beer and Table Wine for Off-Premises Consumption	75.00
Wholesale Beer License	100.00
Wholesale Table Wine License	100.00
Wholesale Beer and Table Wine License	100.00
Brewer's License	100.00

(2) (Remains the same)

(3) ~~Fees for addition or deletion of a mortgage are set forth in 42-2.12(6)-S12023 and fees for the registration of liquor agents are set forth in MAC 42-2.12(1)-S1210, and are not included in this schedule.~~ Each winery or importer desiring to ship table wines to licensed wholesalers located within the state shall submit an application for registration to the Department of Revenue as specified under Section 3, Initiative 81. Each application shall be accompanied by a $25.00 processing fee and a copy of each product label the winery or importer intends to ship into the state.

No table wines may be shipped into the state until such registration is granted by the department.

42-2.12(6)-S12060 BEER WHOLESALERS-WHOLESALE BEER LICENSE

(1) In cases where beer, or table wine is held in storage in wholesaling or jobbing quantities at a fixed place of business and deliveries made or orders filled therefrom by the person in charge or his employee, the Department will treat same as carrying on the business of ~~wholesaling beer~~ wholesaler, requiring such person to have a wholesale license for such place of business.

(2) Every wholesale beer, or table wine dealer must have a principal place of business in the state of Montana with ~~facilities for the~~ proper storage ~~of beer~~ facilities. All deliveries in the state must be made from such principal place of business or from a sub-warehouse and all books, records and duplicate invoices of sales must be kept at the principal place of business within the state, subject to inspection by the Department or its authorized representative. No wholesale ~~beer~~ license will be issued to any corporation or individual unless such corporation or individual has the qualifications and facilities specified in Section ~~4-4-103, R.C.M. 1947~~ 16-4-102 and 16-6-104 MCA. (History: Sec. 4-4-103, R.C.M.1947; Eff. 11/3/75.)

42-2.12(6)-S12065 SUB-WAREHOUSE LICENSE-BREWER'S STORAGE DEPOT (1) Each wholesale beer and/or table wine licensee shall be entitled to a duplicate license for one warehouse other than his designated principal place of business, which license shall be designated a sub-warehouse license. Brewers may establish storage depots as provided in Section 4-4-102, R.C.M. 1947. (History: Sec. 4-4-102, R.C.M. 1947; Eff. 11/3/75.)

42-2.12(6)-S12080 OFF-PREMISE LICENSE-GROCERY STORE (1) A retail license to sell beer or table wine in the original packages for off-premise consumption only may be issued to any person, firm or corporation who shall be approved by the Department as a fit and proper person, firm or corporation to sell beer or table wine and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy.

(2) (Remains the same)

Mary L Craig
Director, Department of Revenue

CERTIFIED TO THE SECRETARY OF STATE May 22, 1979

46-2.10(18)-S11451D SOCIAL AND REHABILITATION SERVICES

EMERGENCY RULES TO AMEND

Statement of reasons for emergency.

On March 20, 1979, the Department adopted final nursing home reimbursement rules to be effective April 1, 1979. These rules set new procedures which caused both increases and decreases in rates being paid to nursing homes prior to April 1, 1979. Administrators for many of the homes which experienced decreased rates submitted letters terminating their participation in the State's Medicaid Program. Most of these administrators stated they were compelled to terminate because they felt newly established rates would not compensate them for their actual costs.

Based on discussions with representatives of the nursing home industry, it initially appeared that the difficulties many administrators were having with the new rates could be substantially mitigated by:

1. continuing the rates in effect prior to April 1, 1979, until such time as the new formula structure caught up with the continued rate, and
2. raising the upper limit rate from the 80th to the 90th percentile.

The reimbursement structure was amended to reflect these changes by Emergency Rule 46-2.10(18)-S11451D dated April 25, 1979. Further discussions with nursing home representatives indicated these rule changes would not sufficiently overcome cost related issues generated by the formula approach to setting rates. Therefore, specification of an exceptional rate review was developed to evaluate the adequacy of certain formula rates and to establish an equitable rate if the formula rate were found to be inadequate. The rule amendments would include:

3. establishing a detailed budget review and evaluation process by which to determine prospective rates,
4. allowing for an interim prospective rate to be established during the rate review period, and
5. allowing after evaluation for the recovery of excess payments based on the interim prospective rate only of operating amounts not directly related to patient care staffing salaries; such recovery could not be undertaken until administrative and judicial review of those sums contested had been completed.

If administrators discontinue participation in the program, Medicaid-supported patients will have to seek new residence. For many, this could mean leaving a home community, encountering severe mental and physical hardship and possibly experiencing

life threatening trauma. The Department believes these latter amendments, when instituted in addition to the former, will cause most of the administrators to reconsider their withdrawal from the program and thereby prevent imminent peril to the patients' health, safety and welfare.

The section to be amended is 46-2.10(18)-S11451D(2) with the addition of a new section, 46-2.10(18)-S11451D(6). The remainder of the rule will continue as currently written with the new amended sections to provide as follows:

(2) Prospective Rates. Prospective rates are the rates on record with the department's fiscal intermediary as of March 31, 1979, or the rates determined as follows, whichever are higher. Prospective rates shall be announced no later than the beginning date of the period for which the prospective rate is to be effective, unless a prospective rate is determined through the alternative rate review process according to rule 46-2.10(18)-S11451D(6).

(6) Reviews and Adjustment of Rates. The department will review a rate determined under rule 46-2.10(18)-S11451D for a possible increase if it is found that the established rate is set below the minimum level defined in rule 46-2.10(18)-S11451B (1).

(a) A rate may be reviewed according to this rule if a provider submits to the department a letter requesting a rate review, which letter:

(i) references a letter of warning from the State Department of Health and Environmental Sciences that the facility is in jeopardy of being decertified as a provider of nursing home care to Medicaid patients due to certain specified deficiencies, and/or

(ii) provides documentation which clearly indicates that the established rate affects facility revenues to such an extent that reductions in essential services will be necessary and will very likely, in the provider's opinion, cause deficiencies that could lead to decertification by the Department of Health and Environmental Sciences.

(b) Within 14 days of receipt of a letter according to rule 46-2.10(18)-S11451D(6)(a), the department will determine, based on the documentation provided and other information available to the department, whether the circumstances warrant rate review.

(i) The department will reject an application for rate review if substantial evidence shows that the established rate is not set below the minimum level defined in rule 46-2.10(18)-S11451B(1). The department will use measurable indices of

central tendency for facility cost centers and staff volumes to make this determination.

(ii) If the provider is not satisfied with the departmental decision to reject a request for rate review, such provider may seek a fair hearing in accordance with rule 46-2.10(18)-S11451F.

(c) If the department determines that a rate should be reviewed, the department will negotiate an interim prospective rate with the provider, which rate will be in effect during the time it takes to review the adequacy of the established rate and effect a rate revision should such be the result of the review. In no case will the negotiated interim rate exceed 120% of the rate on record with the department's fiscal intermediary on the day previous to the beginning of the state's fiscal quarter in which the request for rate review is initiated according to rule 46-2.10(18)-S11451D(6)(a).

(d) If the department determines that a rate should be reviewed according to 46-2.10(18)-S11451D(6)(a), the provider will supply the department with the following information so that the department may conduct the review in terms of a budget for the facility. The budget period to be used for the review and rate setting will include at least one fiscal year for any provider who is determined to be eligible for rate review. If extraordinary or unanticipated circumstances dictate, a request for budget amendment can be submitted and a revised prospective rate determined. A longer budget period may be included if it is mutually agreeable to the department and the provider. All of the following items submitted for the purposes of review shall be evaluated for reasonableness and cost relatedness, the conclusions of which are subject to administrative and judicial review.

(i) Total revenue estimates for the period using private and established Medicaid rates and patient occupancy projections;

(ii) Detailed expenditure projections according to line items mutually acceptable to the provider and the department along with supporting documentation justifying each item;

(iii) Other normally available information that the department may request in support of its review efforts.

(e) After determining the necessary costs that will contribute to economic and efficient operation during the budget period, the department will recommend to the provider a rate that will reasonably compensate those necessary costs. For those facilities that are profit making, in addition to reasonable and necessary costs, a profit factor shall be included as a component of reasonable compensation in the rate. Should the provider disagree with the recommended rate, the provider may seek a fair hearing according to rule 46-2.10(18)-S11451F.

(f) The rate determined according to rule 46-2.10(18)-S11451D(6)(e) will be made effective for the budget period used to conduct the review. The rate may be revised from time to time as the provider and the department may mutually agree or until the rates established under rule 46-2.10(18)-S11451D(2) may be found to be adequate.

(g) If the interim prospective rate determined in 46-2.10(18)-S11451D(6)(c) is found to produce an overpayment or underpayment with respect to the rate determined through review for the period the interim rate was in effect, then such overpayment or underpayment will be administered according to rule 46-2.10(18)-S11451E(8)(b) through (g). As thorough examinations of and limits on staffing patterns will be accomplished prior to full facility evaluation, no recovery of directly patient care related staffing salary amounts shall be undertaken following the review process. In addition, recovery of non-directly patient care related staffing salary sums shall be effected only upon completion of administrative and judicial review of such contested amounts. **(History: Sec. 53-6-113,MCA; IMP, 53-6-141, MCA; NEW 1979 MAR, p 333, Eff. 4/1/79.)**

Keith P. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 22, 1979.

DECLARATORY RULING
DEPARTMENT OF PUBLIC SERVICE REGULATION

In the Matter of the Petition by The Montana Power Company for Declaratory Rulings with Respect to the Commission's Minimum Rate Case Filing Standards for Electric, Gas and Water Utilities.	))))))	DECLARATORY RULING

On December 21, 1978, the Petitioner, The Montana Power Company, filed with the Commission a Petition for the adoption of rules and the issuance of declaratory rulings in connection with a "Conservation and Alternative Energy Loan Program" proposed by the Petitioner.

The Petitioner requested the Commission to enter a declaratory ruling regarding the application of two provisions of the Commission's "Minimum Rate Case Filing Standards for Electric, Gas and Water Utilities" to the proposed loan program. The specific requests embodied in the Petition were as follows:

> "C. Find and declare that under Commission Filing Requirement Rule 38-2.14(6)-S14630, "Statement 'K' -- Other Taxes," and in ratemaking proceedings involving this Petitioner, the "Other Taxes" of Petitioner, in such proceedings, are not properly reduced by the tax credit Petitioner obtains by virtue of Sec. 84-7405, R.C.M. 1947, (Sec. 15-32-107, MCA). The declaration is necessary to implement, in rate proceedings, the evident intent of the tax credit provision of Sec. 84-7405, R.C.M. 1947 (15-32-107, MCA).
>
> "D. Find and declare that:...Under Commission Filing Requirement Rule 38-2.14(6)-S14510, "Statement 'G' -- Operating and Maintenance Expenses," and in ratemaking proceedings involving this Petitioner, the "Operating and Maintenance Expenses," in such proceedings, properly include the costs of administering the program, including uncollectible loans, as described in Appendix "A." The declaration is necessary to implement, in rate proceedings, the evident intent of the tax credit provision of Sec. 84-7405, R.C.M. 1947 (15-32-107, MCA)."[1]

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[1] A separate request for a declaratory ruling on the propriety of assignment of the administrative costs of the program to all customers was formally withdrawn by Petitioner's Motion filed on March 1, 1979.

On January 16, 1979, the Commission issued, and certified to the Secretary of State, notices of public hearings on the proposed rules requested by the Applicant in connection with the loan program. The hearings were conducted as scheduled on March 1, 1979, and testimony and comment was received on the proposed rules as well as the Applicant's request for declaratory rulings.

During the hearing, under the specific questioning of the Commission, representatives of the Company stated that the Company did not intend to make a profit from the loan program.

> "Commissioner Shea: Let me interrupt you there. Is that what your object is to make no money on it in sum total and lose no money?
>
> "Mr. Clark: That is our object, yes, sir." Tr. p. 48

While the Petition in this proceeding was pending before the Commission, the Montana Legislature considered and adopted an amendment to the law upon which the Petition is founded. (§15-32-107, MCA) House Bill No. 649 (Chapter 666, Laws of 1979), provides that:

> "The Public Service Commission shall regulate rates in such a manner that a utility making loans under the section may not make a profit as a result of this section."

The record before the Commission contains no opposition to the requested declaratory rulings. The Commission concludes that the proposed program is consistent with the public interest and that the expenses to be incurred in implementing and administering the program are public utility expenses which are appropriately included in the utility's cost of service presentation in rate proceedings.

The requested declaratory rulings are consistent with both the Company's representation at the hearing and the amendment of §15-32-107, MCA, and are appropriate to provide a rate regulatory framework that will allow utilities implementing consumer loan programs under that section to recover no more than the costs of the program.

In determining the rates of a utility implementing a loan program of the type proposed by Petitioner, the administrative costs of the program may be properly included in the utility's operation and maintenance expense presentation. If such costs were not included, the utility would not, as to that cost, be made whole. Through collection of the administrative cost of the program as an operating and maintenance expense, the utility will recover no more than the cost of administering the program.

Likewise, the tax credit the utility obtains by virtue of the program should not, to the extent of the capital costs associated with the money lent, be used as a reduction of the utility's test year taxes. The tax credit provides recovery of the cost of the money lent to consumers. To the extent the tax credit exceeds the cost of the sum lent consumers, the credit must be recognized, however, to comply with the amendment of 15-32-107 quoted above.

Thus, consistent with §15-32-107, MCA, as amended, this Commission will, in rate proceedings, (a) recognize and allow as an operation and maintenance expense, reasonable costs of administering the program on a normalized test year basis and (b) not reduce the other taxes of the Applicant to the extent that the test year tax credit does not exceed cost of capital to the Applicant as found in the particular proceeding.

Subject to the qualifications that it may not bind future commissions, and that it may not make rate determinations except under the contested case provisions of 2-4-601 et seq., MCA and its rules of procedure, ARM 38-2.2(2)-P210 et seq.,: The Montana Public Service Commission, being fully advised in these premises, after hearing duly conducted and analysis and consideration of all comments received, does hereby find and declare that, and this order does find and declare that:

1. Under Commission Filing Requirement Rule 38-2.14(6)-S14510, the expenses shown on Statement "G" may and should properly include the administrative costs incurred by the filing utility in the implementation and administration of loan programs under which filing utilities make loans to consumers for energy conservation purposes, including programs under which th applying utility receives a tax credit under MCA §15-32-107;

2. Under Commission Filing Requirement Rule 38-2.14(6)-S14630, the taxes shown on Statement "K" should not be adjusted for rate purposes to reflect a tax credit obtained by the filing utility under MCA §15-32-107 to the extent that such tax credit, as a percentage of the amounts of loans outstanding under an energy conservation loan program, does not exceed the overall cost of capital found in the rate proceeding by the Commission.

This Order entered by the Public Service Commission of Montana this 4th day of June, 1979.

GORDON E. BOLLINGER, Chairman

CLYDE JARVIS, Commissioner

THOMAS J. SCHNEIDER, Commissioner

JAMES R. SHEA, Commissioner

GEORGE TURMAN, Commissioner

ATTEST:
Madeline L. Cottrill
Secretary

(SEAL)

VOLUME NO. 38 OPINION NO. 18

WATER AND WATERWAYS - Yellowstone River Compact; applicability of Article X to Little Bighorn River.
MONTANA CODE ANNOTATED - Section 85-20-101.

HELD: Article X of the Yellowstone River Compact requires the consent of the states of Montana and North Dakota before water from the Little Bighorn River may be exported from the Yellowstone River basin by a coal slurry pipeline.

14 May 1979

The Honorable Ted Schwinden
Lieutenant Governor
State Capitol
Helena, Montana 59601

Dear Lieutenant Governor Schwinden:

You have requested my opinion on the following question:

> Does the Yellowstone River Compact, section 85-20-101, MCA (hereinafter "The Compact"), require the State of Wyoming to secure the approval of the states of Montana and North Dakota before water may be appropriated from the Little Bighorn River in Wyoming and exported to Texas by a coal slurry pipeline?

I have reviewed the memorandum prepared by the Department of Natural Resources on the question, as well as materials submitted by the Attorney General of Wyoming relating to the legislative history of the Compact, and it is my opinion that Article X of the Compact, which requires the approval of each signatory state before water may be diverted out of the Yellowstone River basin, applies fully to the Little Bighorn River, and that Montana therefore must give its approval before water from that river may be diverted outside the basin.

Statutory construction involves the search for legislative intent, and where that intent is clear from the language used and no ambiguity exists, resort to extrinsic sources

such as legislative history to aid in construction is not required. State ex rel. Hinz v. Moody, 71 Mont. 473, 481-82, 230 P. 575 (1924). It has been suggested that an ambiguity exists in the Compact as to the inclusion of the Little Bighorn within the Compact's coverage, and that the legislative history of the Compact strongly suggests the exclusion of coverage. I have reviewed the Compact and its history, and I conclude that no ambiguity exists as to the coverage of the Compact, and that in any event the legislative history does not compel the conclusion that the commissioners and legislators who drafted the Compact intended to completely exclude the Little Bighorn from its coverage.

Articles II and X of the Compact contain the pertinent provisions. The first sentence of Article X provides: "No water shall be diverted from the Yellowstone River basin without the unanimous consent of all the signatory states." The definitions set forth in Article II suggest that this provision applies with full force to the Little Bighorn. Under Article II(A), the Yellowstone River basin comprises all "areas in Wyoming, Montana, and North Dakota drained by the Yellowstone River and its tributaries... but excludes those lands lying within the Yellowstone National Park." The Little Bighorn is a "tributary" of the Yellowstone under Article II(E), since in its natural state it contributes to the flow of the river. Since the "Yellowstone River basin" includes the Little Bighorn as a "tributary," it follows that a diversion of water from the Little Bighorn is a diversion of Yellowstone River basin water which falls within the limitation of Article X of the Compact.

The suggested ambiguity arises from the provisions of Article V, which apportions the water of the Yellowstone and its "interstate tributaries" between the various signatory states. The Little Bighorn is excluded from the definition of "interstate tributary," Article II(F), and Article V(B)(2) specifically excludes the Little Bighorn from the apportionment.

I find no ambiguity or conflict between the exclusion of the Little Bighorn from the interstate apportionment in Article V and its inclusion in the protective provisions of Article X. Initially, the legislative history of the Compact suggests that the Little Bighorn water was not apportioned because of the claim of the Crow Indians to the water from the river under the Crow Treaty of 1868. The requirement

that Montana and North Dakota consent before Wyoming may export Little Bighorn water to Texas is entirely consistent with any Indian water rights. Further, the purpose of the Compact, as set forth in its preamble, is two-fold: "to provide for an equitable division and apportionment of such waters, and to encourage the beneficial development and use thereof...." (Emphasis added.) The exclusion of the Little Bighorn for apportionment purposes in no way evidences an abdication of the intention of the Compact to encourage the beneficial use and development of its waters for all the signatory states. Finally, while Article V only apportions the "interstate tributaries" of the Yellowstone River, Article X applies by its terms to the entire geographic region drained by the Yellowstone River system, which obviously includes the Little Bighorn. If the framers had intended to exclude the Little Bighorn from Article X, they could easily have done so by requiring unanimous consent from the signatory states for diversions from the Yellowstone and its "interstate tributaries," a term which expressly excludes the Little Bighorn.

It is my conclusion that the terms of the Compact, when read according to their plain meaning, are clear and unambiguous in their inclusion of the Little Bighorn under the provisions of Article X. However, even assuming that resort to the Compact's legislative history is necessary, I find that history to be fully consistent with my conclusion. Three aspects of the legislative history are said to suggest that the Little Bighorn is not covered by the Compact. Initially, the report of the deliberations of the Senate Committee on Interior and Insular Affairs on the bill providing congressional ratification of the Compact is said to evidence an intent to exclude the Little Bighorn. The language in question is found on page 2 of the report, S.Rep. No. 883, 82nd Cong., 1st Sess. (1951). There, under the heading of "Apportionment of Use of Water," the following statement appears:

> The Yellowstone River Basin and the Yellowstone River System (i.e., the river and its tributaries) are, for the purposes of the Compact, exclusive of the Yellowstone National Park area and its waters, and the waters of the Little Bighorn River.

This statement is not compelling proof of an intent to exclude the Little Bighorn under Article X, since it is

found in the section of report dealing with apportionment of water under Article V. As noted above, Article V expressly excludes the Little Bighorn from its provisions while Article X does not.

Attention is also drawn to the checkered history of exclusion and inclusion of the Little Bighorn in prior drafts of the Compact. The original 1942 draft expressly included the Little Bighorn, then known as the "Little Horn," and apportioned all its water to the State of Wyoming. This approach met with strenuous protests from Federal and Indian representatives, and the 1942 draft as adopted by the Commissioners simply made no apportionment of the Little Bighorn, on the theory that any attempted allocation would be deemed pre-empted by federally created Indian treaty rights. See United States v. Powers, 94 F.2d 783 (9 Cir. 1938), aff'd 305 U.S. 527 (1939). This theory apparently carried through to the 1949 version which was finally adopted by the signatory states and ratified by Congress. This history carries little weight as far as Article X is concerned, since the protection of Indian treaty rights afforded by the exclusion of the Little Bighorn from Article V is in fact aided by the provisions of Article X, which obviously make it more difficult to impair Indian water rights by exporting water from the region.

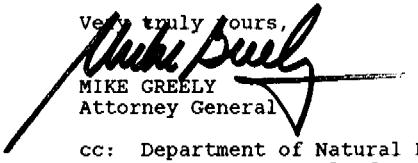
Finally, reference is made to a provision in a prior draft requiring unanimous approval of the Commissioners before water could be transferred from one interstate tributary to another within the Yellowstone River system. The provision was deleted in the negotiations regarding the proper protection of Indian water rights. I am not persuaded that Article X was intended as a substitute for the deleted provision, and was therefore intended to be similarly limited in scope to "interstate tributaries." Transportation of water from tributary to tributary is a matter entirely different from the exportation of water from the geographic area of the basin to another region of the country. Further, even if the framers of the Compact intended to substitute Article X for the deleted interbasin diversion provision, the fact that they drafted Article X in terms of diversions from the entire Yellowstone River basin rather than merely from its "interstate tributaries" suggests an intent to broaden the scope of the provision.

I conclude that the Compact is clear on its face. Wyoming may not divert Little Bighorn River water out of the Yellowstone Basin without the consent of the states of Montana and North Dakota. The fact that the waters of the Little Bighorn were not apportioned under Article V of the Compact does not alter the coverage of Article X, nor does the legislative history indicate an intention contrary to my conclusion.

THEREFORE, IT IS MY OPINION:

> Article X of the Yellowstone River Compact requires the consent of the states of Montana and North Dakota before water from the Little Bighorn River may be exported from the Yellowstone River basin by a coal slurry pipeline.

Very truly yours,



MIKE GREELY
Attorney General

cc: Department of Natural Resources
Attorney General of North Dakota
Attorney General of Wyoming

VOLUME NO. 38 OPINION NO. 19

COUNTY OFFICERS AND EMPLOYEES - PERS Coverage For County Employees Funded by CETA;
COUNTY GOVERNMENT - Amendment of Adopted Budget For Expenditures Required By Law;
RETIREMENT SYSTEMS - PERS Coverage For County Employees Funded By CETA;
MONTANA CODES ANNOTATED - 19-3-201; 19-3-402(2); 19-3-403; 7-6-2324; 7-6-2341.

HELD: 1. A county which contracts into PERS may not adopt a policy of blanket exclusion of workers hired under a CETA program.

2. A county may make emergency expenditures not reflected in its budget to cover the employer's share of PERS, when the responsibility to pay that share arose after adoption of the budget for that fiscal year.

22 May 1979

J. Fred Bourdeau, Esq.
Cascade County Attorney
Cascade County Courthouse
Great Falls, Montana 59401

Dear Mr. Bourdeau:

You have requested an opinion on several questions arising from the following facts. Cascade County is a party to an agreement with the State of Montana under which the County's employees are covered by the Public Employees Retirement System ("PERS"). Section 19-3-201, MCA (68-1701, R.C.M. 1947). As of September 26, 1978, the County employed thirty-four persons with funds provided by the federal government under the Comprehensive Employment and Training Act, ("CETA"), 29 USC §801, et seq. On September 26, 1978, the Employment Security Division of the State Department of Labor and Industry ("the Division") notified the County that effective October 1, 1978, federal regulations prohibited use of CETA funds to pay the employer's share of the CETA employees' PERS coverage. The notification letter further stated:

> Effective October 1, 1978, agencies that employ PSE [CETA] participants, and provide retirement benefits to employees, will be required to pay, from non-CETA funds, the employer's share of funds that go for CETA-PSE employee's retirement. (Emphasis in the original.)

You have requested my opinion on the following questions:

1. Since the thirty-four employees in question were hired prior to the enactment of the regulation in question, is the State obligated to pay the employer's share of PERS on each of these employees until he or she is terminated or assumes status as a permanent, non-CETA employee?

2. May the County legally exclude CETA employees from coverage under PERS?

3. May the County alter its adopted budget to finance the payment of the employer's share of PERS for these employees?

Regarding your first question, I am aware of no statute or rule of law which would allow the County to shift to the State the burden of paying the employer's PERS share for CETA workers employed by the County. Generally, when a county partakes in a program administered or funded by the State, it does so subject to the rules and regulations laid down by the State. The County could assert a contract between the County and the State giving rise to an enforceable right to shift this burden to the State, but the existence of such a contract and its potential consequences are not appropriate subjects for an Attorney General's opinion. Likewise, the question of whether the Division's action in requiring the County to pay the employer's share from its non-CETA revenues impairs the obligation of such a contract under Article I, Section 10 of the United States Constitution is a question of federal law. I therefore express no opinion on these questions.

You also inquire whether the County may exclude its CETA employees from the coverage of its PERS agreement with the State. Section 19-3-402(6), MCA (68-2510, R.C.M. 1947), provides that employees whose compensation is paid from federal funds are eligible for PERS if they are not members

of the federal retirement system. In contrast, however, section 19-3-201(b), MCA (68-1701, R.C.M. 1947), seems to allow political subdivisions whose employees are covered by PERS through contract with the State to exclude groups of employees by "departments, duties, age, or similar classifications." Theoretically, under this provision a county could amend its agreement with PERS to exclude CETA employees from coverage.

Two considerations forestall this result. Initially, it appears likely that exclusion of CETA employees from PERS would jeopardize Montana's continued participation in the program. 29 U.S.C. §848(a)(4) requires each CETA program receiving federal funds to assure that CETA employees receive "workmen's compensation, health insurance, unemployment insurance, and other benefits at the same level and to the same extent as other employees..." (Emphasis added). A blanket exclusion of CETA employees from PERS coverage would arguably violate this provision and could result in loss of CETA funds for state and county programs.

More significantly, the 46th Legislature explicitly addressed the question of PERS coverage for CETA workers. Senate Bill 190, a copy of which is enclosed, amended section 19-3-403 to exclude from PERS coverage those CETA employees who elect to be excluded, and to allow a CETA worker who elects exclusion to opt back into the program if he or she subsequenty assumes a non-CETA position. The negative implication of this amendment requires a county which has contracted into PERS to offer PERS coverage to those CETA workers who do not elect exclusion. I therefore conclude that political subdivisions may not exclude from PERS those CETA employees who do not wish to be excluded.

You also inquire whether a county may alter its adopted budget to finance the employer's contribution to PERS. Generally, county budgets must be adopted by the second Monday in August of each year, and section 7-6-2324, MCA (16-1906, R.C.M. 1947), limits the county to expenditure of only those funds set forth in the adopted budget. However, section 7-6-2341, MCA (16-1907, R.C.M. 1947), allows the commissioners of a county to make expenditures and incur liabilities in excess of budget by unanimous adoption of a resolution stating the fact that the expenditures or liabilities are necessary to "meet mandatory expenditures required by law...." Assuming the validity of the requirement that counties pay the employer's contribution, it is my

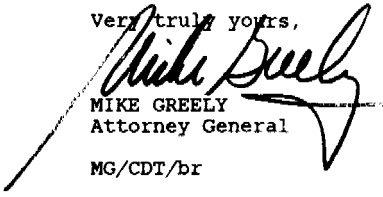
opinion that this section allows the county to make the necessary expenditure notwithstanding its absence from the adopted budget.

THEREFORE, IT IS MY OPINION:

1. A county which contracts into PERS may not adopt a policy of blanket exclusion of workers hired under a CETA program.

2. A county may make emergency expenditures not reflected in its budget to cover the employer's share of PERS, when the responsibility to pay that share arose after adoption of the budget for that fiscal year.

Very truly yours,



MIKE GREELY
Attorney General

MG/CDT/br

VOLUME NO. 38 OPINION NO. 20

EMPLOYEES, PUBLIC - Non-teaching school district employees;
LABOR UNIONS - Modification of statutory benefit levels by collective bargaining prohibited;
STATE AGENCIES - School districts and post-secondary vocational technical center;
SCHOOL DISTRICTS - School districts and post-secondary vocational technical center;
SICK LEAVE - Non-teaching exmployees of school districts and vo-tech centers entitled to benefits as public employees;
VACATIONS - Non-teaching employees of school districts and vo-tech centers entitled to benefits as public employees;
EDUCATION - Post-secondary vocational technical centers as state agencies;
MONTANA CODES ANNOTATED - 2-18-611; 2-18-618; 20-1-101(8); 7-4-2505; 39-31-305(2); 2-18-307.

HELD: 1. Non-teaching employees of school districts and post secondary vocational technical centers are entitled to vacation and sick leave benefits under Title 2, Chapter 18, Part 6, MCA.

2. Title 2, Chapter 18, Part 6, MCA, establishes maximum and minimum benefits which may not be varied through collective bargaining or other negotiation.

23 May 1979

Mr. Morris L. Brusett
Legislative Auditor
State Capitol
Helena, Montana 59601

Dear Mr. Brusett:

You have requested my opinion on the following questions:

1. Do the provisions of Title 2, Chapter 18, Part 6, MCA, pertaining to sick leave and vacation benefits for public employees, apply to non-teaching employees working in vocational-technical centers and public schools?

2. If so, is the extent of benefits a proper subject of negotiation between the employees and the school district?

Your first question was partially answered by the Montana Supreme Court in Teamsters Local #45 v. School District No. 1, 162 Mont. 277, 511 P.2d 339 (1973). In Teamsters, the Court held that a school district was a political subdivision of the State of Montana, and "that school district employees other than teachers are entitled to vacation benefits under section 59-1001, R.C.M. 1947" (now codified as 2-18-611, MCA). Attorney General Woodahl further held that Teamsters also applied to assure sick leave benefits to non-teaching employees under section 2-18-618, MCA (59-1008, R.C.M. 1947). 35 OP. ATT'Y GEN. NO. 69 (1974). It is therefore clear that non-teaching employees of a school district are entitled to sick leave and vacation benefits. If employees who work at a vocational technical center are considered to be school district employees, they too are entitled to benefits.

No principled basis appears to distinguish a vocational-technical center from any other school for purposes of determining the status of the employees who work there. Such a center is denominated a "school" by definition. Section 20-1-101(8), MCA (75-7701, R.C.M. 1947). Further, the governing body of a vocational-technical center - be it a high school board, a community college district, or some other entity -operates as an agent of the state for that purpose, just as a county school board does for the purpose of operating a common school. See Teamsters, 162 Mont. at 289; Pierson v. Hendricksen, 98 Mont. 244, 253, 38 P.2d 991 (1934). If ordinary non-teaching employees of a school district are considered to be state employees under an agency theory, as Teamsters suggests, the same rationale requires extension of identical benefits to the non-teaching employees at a post secondary vocational-technical center.

You also inquire whether the employing agency and the non-teaching employees may negotiate for vacation and sick leave benefits different than those provided by statute. My conclusion is that they cannot. Benefit levels set by statute have consistently been considered mandatory rather than minimum. For example, in City of Billings v. Smith, 158 Mont. 197, 490 P.2d 221 (1971), the Montana Supreme Court held that section 26-604, R.C.M. 1947, now codified at 7-4-2505, MCA, establishes both a maximum and a minimum salary level which could not be altered by payment of "time

and a half" for overtime. See also 37 OP. ATT'Y GEN. NO. 113 (1978). In my opinion, a similar rationale applies to vacation and sick leave benefits. The statutes in question are couched in mandatory terms, and they represent a legislative declaration of public policy regarding the extent of these benefits for employees of the state and its agencies. School District No. 12 v. Hughes, 170 Mont. 267, 274, 552 P.2d 328 (1976). While public employees have the right to bargain collectively as to fringe benefits, section 39-31-305(2), MCA, that right does not confer upon the employer school boards the authorization to ignore the mandatory maximum/minimum vacation and sick leave benefits set by the legislature. Compare section 2-18-307 (pay plan procedures for increasing salary may be altered by collective bargaining in some cases.)

THEREFORE, IT IS MY OPINION:

1. Non-teaching employees of school districts and post secondary vocational technical centers are entitled to vacation and sick leave benefits under Title 2, Chapter 18, Part 6, MCA.

2. Title 2, Chapter 18, Part 6, MCA, establishes maximum and minimum benefits which may not be varied through collective bargaining or other negotiation.

Very truly yours,

MIKE GREELY
Attorney General

MG/CDT/br