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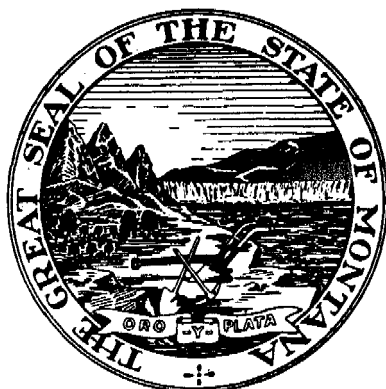
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MONTANA ADMINISTRATIVE REGISTER

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1979 ISSUE NO. 18
PAGES 1086-1147



NOTICE: The July 1977 through June 1979 Montana Administrative Registers have been placed on microfiche. For information, please contact the Secretary of State, Room 202, Capitol Building, Helena, Montana, 59601.

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 18

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

IN THE MATTER of Proposed	)	NOTICE OF PROPOSED ADOPTION
Adoption of rules eliminating	)	OF NEW RULES ELIMINATING USE
the nonessential use of	)	OF NATURAL GAS FOR OUTDOOR
Natural Gas for Outdoor	)	LIGHTING.
Lighting.	)	NO PUBLIC HEARING
		CONTEMPLATED

TO: All Interested Persons

1. On November 5, 1979, the Department of Public Service Regulation proposes to adopt new rules eliminating the nonessential use of natural gas for outdoor lighting.

2. The proposed rules provide as follows:

Rule I. PURPOSE AND OBJECT OF RULES. (1) The purpose of these Rules is to implement Section 402 of Pub. L. 95-620, the Powerplant and Industrial Fuel Use Act of 1978 (the Act), and the delegation of authority to this Commission made therein and by 10 CFR Part 516. The objective of Section 402 of the Act and of these Rules, is to eliminate the nonessential use of natural gas for outdoor lighting and to conserve such gas for the benefit of present and future generations.

Rule 11. DEFINITIONS. (1) The term "natural gas utility" means any person or firm engaged in the business of interstate or intrastate transportation and local distribution of natural gas for ultimate consumption subject to this Commission's jurisdiction under Title 69 of the Montana Code Annotated.

(2) The term "natural gas outdoor lighting fixture" means a complete stationary natural gas outdoor lighting unit, or any parts thereof, which may include a mantle(s), together with the parts designed to distribute the light to position and protect the mantle(s) and fuel supply lines and to connect the mantle(s) to the fuel supply.

(3) The term "residence" means any single or multiple family dwelling unit, including commonly held areas associated with such unit and including multiple family dwelling units which may be classified by the natural gas utility as "commercial" customers.

(4) The term "substitute lighting" means outdoor lighting which does not directly burn natural gas.

Rule III. PROHIBITIONS. (1) No natural gas utility shall install any natural gas outdoor lighting fixture. The prohibition stated in this paragraph (1) shall be effective beginning on November 9, 1978, as required by Section 402 of Pub. L. 95-620.

(2) No local distribution company shall supply natural gas for use in outdoor lighting.

(a) In the case of any residential, commercial or industrial customer, the prohibition stated in this paragraph (2) of this section is effective on May 8, 1979 under the terms of Pub. L. 95-620 unless a later effective date is applicable

under paragraphs (2)(b) or (2)(c) of this section.

(b) In the case of any industrial or commercial structure to which natural gas was being supplied by a natural gas utility for outdoor lighting use on November 9, 1978, the prohibition stated in paragraph (2) of this section is effective on November 5, 1979.

(c) In the case of any outdoor lighting fixture used in connection with a residence to which natural gas was being supplied by a natural gas utility for outdoor lighting use on November 9, 1978, the prohibition stated in paragraph (1) of this section is effective January 1, 1982.

Rule IV. EXEMPTIONS. (1) An Order exempting certain natural gas outdoor lighting fixtures from the prohibitions set forth in Rule III may be issued, based on a Petition writing, on the basis of:

- (a) Lighting of historical significance;
- (b) Memorial lighting;
- (c) Commercial lighting of historical significance;
- (d) Lighting which is necessary to protect the safety of persons and property;
- (e) The necessity to permit the installation of substitute lighting where no adequate outdoor lighting (other than that using natural gas) existed on November 9, 1978;
- (f) Substantial expense which would not be cost justified; or
- (g) The public interest and consistency with the purposes of the Act.

Rule V. EXEMPTIONS BASED ON HISTORICAL SIGNIFICANCE.

(1) A federal, state or local governmental agency, or an appropriate historical association, may petition the Commission for an exemption from the prohibitions set forth in Rule III for any property on the basis of historical significance. In the case of a petition for an exemption from the general prohibition on installation of natural gas outdoor lighting fixtures set forth in Rule III (1), an exemption may be granted only for replacement of a natural gas outdoor lighting fixture(s) that was installed prior to November 9, 1978. A replacement fixture will not be approved unless it consumes the same or less natural gas than the existing fixture. Such replacement shall include:

- (a) Replacement of an existing original reproduction fixture; or
- (b) Installation of an original or reproduction fixture to replace a fixture which existed during the life of the specified historic property.

(2) Criteria. The criteria for an exemption on the basis of historic significance shall be satisfied upon certification, by the petitioner, that the specifically identified natural gas outdoor lighting fixture(s) directly contributes to the quality of significance of the specifically identified historic property or district, as applicable; and upon a finding that the specifically identified historic property:

(a) Is listed on the National Register of Historic Places maintained by the Heritage Conservation and Recreation Service, Department of Interior, or is officially determined eligible for listing by the Secretary of Interior, pursuant to the National Historic Preservation Act (16 U.S.C. 470 as amended), applicable regulations (36 CFR Parts 60 and 63), and Executive Order 11593; or

(b) Is in a district whose state statutes or local ordinances are certified as providing adequate protection of historic places by the Secretary of the Department of Interior, pursuant to the Tax Reform Act of 1976 (26 U.S.C. 191, 280B) and applicable regulations.

(3) Stays. An exemption request shall result in a stay from the prohibitions set forth in Rule III if:

(a) The petitioner has certified that the specifically identified natural gas outdoor lighting fixture(s) directly contributes to the quality of significance of the specifically identified historic property or district, as applicable; and

(b) An application is pending, before the Department of Interior, for inclusion in one of the categories specified in subparagraphs (a) or (b) of paragraph (2) of this section.

Rule VI. EXEMPTIONS BASED ON MEMORIAL LIGHTING. (1) A federal, state or local government agency, or an appropriate historical association, may petition the Commission for an exemption from the prohibitions set forth in Rule III on the basis of memorial lighting. In the case of a petition for an exemption from the general prohibition on installation of natural gas for outdoor lighting fixtures set forth in Rule III (1), an exemption may be granted only for the replacement of a natural gas outdoor lighting fixture(s) that was installed prior to November 9, 1978. Such replacement shall include replacement of an extant fixture only. A replacement fixture will not be approved unless it consumes the same or less natural gas than the existing fixture.

(2) Criteria. The criteria for an exemption on the basis of memorial lighting shall be satisfied upon a finding that the specifically identified outdoor lighting fixture(s) directly contributes to preserving the memory of a deceased person or persons.

Rule VII. EXEMPTIONS BASED ON COMMERCIAL LIGHTING OF HISTORICAL SIGNIFICANCE. (1) Scope. A person using natural gas outdoor lighting for commercial purposes may petition the Commission for an exemption from the prohibitions set forth in Rule III on the basis of historical significance. In the case of a petition for an exemption from the general prohibition on installation of natural gas outdoor lighting fixtures, set forth in Rule III (1), an exemption shall be granted only for replacement of a natural gas outdoor lighting fixture(s) that was installed prior to November 9, 1978. A replacement fixture will not be approved unless it consumes the same or less natural gas than the existing fixture. Such replacement shall include:

(a) Replacement of an existing original or reproduction fixture; or

(b) Installation of an original or reproduction fixture to replace a fixture which existed during the life of the specified historic property.

(2) Criteria. The criteria for an exemption on the basis of historical significance will be satisfied upon certification, by the petitioner, that the specifically identified natural gas outdoor lighting fixture(s) directly contributes to the quality or significance of the specifically identified historic property or district, as applicable; and upon a finding that the specifically identified historic property:

(a) Is listed on the National Register of Historic Places maintained by the Heritage Conservation and Recreation Service, Department of Interior, or is officially determined eligible for listing by the Secretary of Interior, pursuant to the National Historic Preservation Act (16 U.S.C. 470 as amended), applicable regulations (36 CFR Parts 60 and 63), and Executive Order 11593; or

(b) Is in a district whose state statutes or local ordinances are certified as providing adequate protection of historic places by the Secretary of the Department of Interior, pursuant to the Tax Reform Act of 1976 (26 U.S.C. 191, 280B) and applicable regulations.

(3) Stays. An exemption request shall result in a stay from the prohibitions set forth in Rule III if:

(a) The petitioner has certified that the specifically identified natural gas outdoor lighting fixture(s) directly contributes to the quality of significance of the specifically identified historic property or district, as applicable; and

(b) An application is pending before the Department of Interior, for inclusion in one of the categories specified in subparagraphs (a) or (b) of paragraph (2) of this section.

Rule VIII. EXEMPTION BASED ON SAFETY OF PERSONS AND PROPERTY (1) Scope. A natural gas utility, any of its customers, or an interested person may petition the Commission for an exemption from the prohibitions set forth in Rule III on the basis of the necessity to protect the safety of persons and property if such natural gas was being supplied on November 9, 1978.

(2) Criteria. The criteria for an exemption on the basis of a necessity to protect the safety of persons and property shall be satisfied upon a finding that:

(a) (i) Compliance with the prohibition would significantly increase the chances of bodily injury or damage to property;

(ii) Compliance with the prohibition would significantly increase the chances of occurrence of crime; or

(iii) The lighting is necessary because other existing lighting does not provide lighting adequate to insure conformance with American National Standards Institute (ANSI) Standard No. D12.1, "The American National Standard Practice for Roadway

Lighting." and

(b) (i) Installation of substitute lighting would impose a substantial hardship on a person other than the natural gas utility or a company that manufactures or supplies natural gas outdoor lighting fixtures in terms of personal income or savings; or

(ii) Would not be justified by the savings likely to be accrued over the useful life of the substitute lighting facility.

Rule IX. TEMPORARY EXEMPTION BASED ON TIME NEEDED TO INSTALL SUBSTITUTE LIGHTING (1) Scope. A customer, or an interested person, may petition the Commission for a temporary exemption from the prohibitions set forth in Rule III. Such an exemption shall be on the basis of the time needed to permit the installation of substitute lighting where no adequate outdoor lighting (other than that using natural gas) exists, if such natural gas was being supplied on November 9, 1978.

(2) Criteria. The criteria for an exemption on the basis of time to install substitute lighting shall be satisfied upon a finding that:

(a) No adequate outdoor lighting (other than that using natural gas) is available at the time the applicable prohibition became effective; and

(b) The time required for installation of the substitute lighting will not extend beyond one year from the date the applicable prohibition became effective, unless facts and circumstances warrant a longer period.

Rule X. EXEMPTION BASED ON SUBSTANTIAL EXPENSE.

(1) Scope. Any customer or an interested person may petition the Commission for an exemption from the prohibitions set forth in Rule III on the basis of substantial expense which would not be cost justified, if such natural gas was being supplied on November 9, 1978.

(2) Criteria. The criteria for an exemption on the basis of substantial expense which would not be cost justified shall be satisfied upon a finding that compliance with the prohibitions set forth in Rule III would substantially and negatively affect the profit margin, return on investment or rates of the petitioning customer.

Rule XI. EXEMPTION BASED ON THE PUBLIC INTEREST

(1) Scope. A customer, or any interested person, may petition the Commission for an exemption from the prohibitions set forth in Rule III on the basis of the public interest and consistency with the purposes of the Act, if such natural gas was being supplied on November 9, 1978.

(2) Criteria. The criteria for an exemption on the basis of the public interest and consistency with the purposes of the Act shall be satisfied upon a finding that converting a specific natural gas outdoor lighting fixture(s) to substitute lighting would not reduce the use of natural gas.

3. The purpose of these Rules is to implement Section 402 of Public Law 96-62, the Powerplant and Industrial Fuel Use Act

of 1978 (the Act), and the delegation of authority to this Commission made therein and by 10 CFR Part 516. The objective of Section 402 of the Act and of these Rules, is to eliminate the nonessential use of natural gas for outdoor lighting and to conserve such gas for the benefit of present and future generations.

4. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to Eileen Shore, 1227 11th Avenue, no later than October 29, 1979.

5. If the agency receives requests for a public hearing on the proposed rules from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed rules, 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.

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 these proposed rules is based on Sections 69-3-102, MCA (70-103, R.C.M., 1947), 69-3-101, MCA (70-104, R.C.M., 1947), 69-3-103(1), MCA (70-108, R.C.M., 1947), 69-3-106, MCA (70-115, 117 and 121, R.C.M., 1947), IMP, Pub. L. No. 95-620, Sec. 402, 92 Stat. 3290, (1978).



GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE September 18, 1979.

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

IN THE MATTER of the Proposed) NOTICE OF PROPOSED AMENDMENT
Amendment of ARM 40-3.10(6)-) OF ARM 40-3.10(6)-S10010
S10010 subsection (1) concern-) RECIPROCITY
ing reciprocity fees.)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 27, 1979, the Board of Architects proposes to amend ARM 40-3.10(6)-S10010 subsection (1) concerning reciprocity fees.

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

"40-3.10(6)-S10010 RECIPROCITY (1) The application fee for registration by reciprocity shall be one hundred-dollars-(\$100.00) forty dollars (\$40.00)."

3. The Board is proposing the change as they do not feel the cost of processing a reciprocity application is \$100 and that a \$40.00 reciprocity fee would suffice to cover the costs.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Architects, Lalonde Building, Helena, Montana no later than October 25, 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 Architects, Lalonde Building, Helena, Montana 59601 no later than October 25, 1979.

6. If the Board receives requests for a public hearing on the proposed amendment from 10% or 25 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 hearing will be published in the Montana Administrative Register.

7. The authority of the Board to make the proposed amendment is based on section 37-65-305 MCA (66-103(3) R.C.M. 1947) and implements the same section.

BOARD OF ARCHITECTS
GEORGE C. PAGE, AIA, PRESIDENT

BY:


ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, September 18, 1979.

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

IN THE MATTER of the Proposed	)	NOTICE OF PUBLIC HEARING
Amendments of ARM 40-3.82(6)-	)	FOR PROPOSED AMENDMENT OF
S8230 subsections (4) and (5)	)	ARM 40-3.82(6)-S8230 (4)
concerning definitions, ARM 40-	)	& (5) DEFINITIONS; ARM 40-
3.82(6)-S8260 concerning applica-	)	3.82(6)-S8260 APPLICATIONS;
tions, ARM 40-3.82(6)-S8280 con-	)	ARM 40-3.82(6)-S8280
cerning examinations, ARM 40-	)	EXAMINATION; ARM 40-3.82(6)-
3.82(6)-S8290 concerning renewals,	)	S8290 RENEWALS; ARM 40-
ARM 40-3.82(6)-S82000 concerning	)	3.82(6)-S82000 DUPLICATE
duplicate licenses, and ARM 40-	)	OR LOST LICENSE; AND ARM
3.82(6)-S82060 concerning employ-	)	40-3.82(6)-S82060 MASTER
ment of journeyman plumbers and	)	PLUMBERS; EMPLOYMENT OF
the responsibilities therefore;	)	JOURNEYMAN AND RESPONSIBIL-
and the proposed repeal of ARM	)	ITIES THEREFORE; AND THE
40-3.82(6)-S8270 concerning the	)	PROPOSED REPEAL OF ARM 40-
granting and issuing of licenses	)	3.82(6)-S8270 GRANT AND
and ARM 40-3.82(6)-S82010 con-	)	ISSUE LICENSES AND ARM 40-
cerning provisions to whom not	)	3.82(6)-S82010 PROVISIONS
applicable.	)	TO WHOM NOT APPLICABLE

TO: All Interested Persons:

The notice of proposed board action published in the Montana Administrative Register on August 30, 1979 is amended because the Board of Plumbers received a request from more than the required number of persons for a public hearing.

1. On October 22, 1979 at 9:00 a.m., a public hearing will be held in the Old Highway Department Auditorium, Sixth Avenue and Roberts, Helena, Montana to consider the amendments and repeals in the above entitled matter.

2. The original notice can be found at pages 960 through 965 of the Montana Administrative Register, Issue number 16.

3. The rules are proposed for amendments and repeals for the reasons stated in the notice.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written statements will also be accepted until October 25, 1979.


5. The Board or its designee will preside over and conduct the hearing.

6. The authority of the board to make the proposed amendments and repeals is based on section 37-69-202 MCA (66-2409 R.C.M. 1947). The implementing sections for the proposed amendments and repeals are those stated in the original notice.

BOARD OF PLUMBERS
DON KRISTENSEN, CHAIRMAN

-1094-

BY:


ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, September 18, 1979.

18-9/27/79

MAR Notice No. 40-82-24

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF SPEECH PATHOLOGISTS AND AUDIOLOGISTS

IN THE MATTER of the Proposed)	NOTICE OF PROPOSED AMENDMENT
Amendment of ARM 40-3.101(6)-)	OF ARM 40-3.101(6)-S101010
S101010 subsections (ii),)	CODE OF ETHICS
(iii), (iv) and (v) of sub-)	
section (8)(1)(a) concerning)	NO PUBLIC HEARING CONTEMPLATED
code of ethics.)	

TO: All Interested Persons:

1. On October 27, 1979, the Board of Speech Pathologists and Audiologists proposed to amend subsections (ii), (iii), (iv), and (v) of subsection (8)(a) of ARM 40-3.101(6)-S101010 concerning code of ethics.

2. The amendment as proposed will delete subsections (ii), (iii), (iv) and (v) of subsection (8)(1)(a) of the above cited rule and will read as follows: (deleted matter interlined)

"40-3.101(6)-S101010 CODE OF ETHICS.....

(8) The speech pathologist and/or audiologist has other special responsibilities.

(a) He must guard against conflicts of professional interest.

(i) He must not accept compensation in any form from a manufacturer or dealer in prosthetic or other devices for recommending any particular product.

~~(ii) He must not advertise--it is permissible only to employ a business card or similar announcement and to list one's name, highest relevant academic degree, location, and types of services in the classified section of the telephone directory in the manner customarily followed by other health professionals--He may state that he holds a license in the appropriate area(s) of speech pathology and/or audiology--issued by the Board of Speech Pathology and Audiology.~~

~~(iii) He must not engage in commercial activities that conflict with his responsibilities to the persons he serves professionally or to his colleagues.~~

~~He must not permit his professional titles or accomplishments to be used in the sale or promotion of a product related to his profession.~~

~~He must not perform clinical services or promotional activity for any profit-making organization that is engaged in the retail sales of products associated with the profession.~~

~~He may be employed by a manufacturer or publisher, provided that his duties are consultative, scientific, or educational in nature.~~

~~(iv) He may dispense products associated with his professional practice, but not for the purpose of supplementing his income or the income of his employer, neither he nor his employer may receive profits from~~

~~his patient; other than payment for professional services rendered;~~

~~(v) Fees for professional services and fees for products dispensed shall be separately itemized for the patient; The supplier's charge to the licensed speech pathologist and/or audiologist for all products shall be the maximum charge allowable to the patient;~~

~~(9)....."~~

3. The Board is proposing the deletion as these subsections are in violation of state and federal anti-trust laws.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Speech Pathologists and Audiologists, Lalonde Building, Helena, Montana 59601 no later than October 25, 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 Speech Pathologists and Audiologists, Lalonde Building, Helena, Montana 59601 no later than October 25, 1979.

6. If the Board receives requests for a public hearing on the proposed amendment from 10% or 25 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 hearing will be published in the Montana Administrative Register.

7. The authority of the Board to make the proposed amendment is based on section 37-15-202(1)(e) and (3) MCA [66-3905 (5) and (7)(e) R.C.M. 1947] and implements section 37-15-321 (1)(b) MCA [66-3911 (1)(b) R.C.M. 1947].

BOARD OF SPEECH PATHOLOGISTS
AND AUDIOLOGISTS
SHIRLEY DEVOE, CHAIRMAN

BY:


ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, September 18, 1979.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF PUBLIC HEARING ON
AMENDMENT OF RULE	)	PROPOSED AMENDMENT OF RULE
42-2.12(6)-S12005	)	42-2.12(6)-S12005 Wine
relating to wine license	)	License Amendment
amendments to retail)	
beer licenses)	

TO: All Interested Persons:

1. On November 2, 1979, at 9:00 A.M., a public hearing will be held in the conference room of the University System Building, 33 South Last Chance Gulch, Helena, Montana, to consider the amendment of rule 42-2.12(6)-S12005.

2. The proposed amendment amends present rule 42-2.12(6) - S12005 found in the Administrative Rules of Montana. The proposed amendment would permit the sale of wine for both off-and on-premises consumption when wine sales are supplementary to the operation of a restaurant or prepared food business.

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

42-2.12(6)-S12005 WINE LICENSE AMENDMENT (1) Any person holding a retail beer license for consumption on the premises may apply, on forms prescribed by the Department, for an amendment to the retail beer license permitting the applicant to sell wine, provided that applicant conducts, on the same premises, a restaurant or prepared food business that is properly licensed by state and local authorities for the purpose of operating a restaurant or prepared food business and to which the sale of wine shall be supplementary.

~~(2)--For purposes of this regulation, a "restaurant or prepared food business" shall be defined as an establishment wherein appropriate and necessary facilities are provided for the preparation of refreshments and meals for the public, wherein the refreshments and meals are made ready for eating by due assembling, dressing or cooking.~~

~~(3) (2)~~ The sale of wine as being "supplementary" to a restaurant or prepared food business ~~shall mean that the sale of food shall constitute the principal business of the establishment to be licensed.~~ means that both the sale of food and the sale of wine add to the income of the establishment. Neither the sale of food nor wine need be the principal source of income for the establishment.

~~(4) (3)~~ It shall be lawful for a retailer holding a beer and wine license to sell and serve wine on the premises for consumption either on draught or in bottles to be consumed on or off the premises.

4. The department is proposing the amendment in response to a petition, dated July 17, 1979, submitted by the legislative Revenue Oversight Committee. The petition sets forth the Committee's reasons for the amendments and copies of the petition

are available from the department. At present the rule permits the sale of wine only for consumption on the premises. The proposed amendments would permit sales for consumption off the premises. The rationale is that sales of beer and wine should be treated similarly. Under sections 16-3-302 and 16-3-303, MCA, the holder of a retail beer license is permitted to make sales of beer for both off- and on-premises consumption. Subsection (2) of 16-4-105, MCA, speaks of the sale of wine for consumption on the premises but is silent with respect to off-premises consumption. The subsection also provides in part that the holder of a wine license amendment to a retail beer license may "sell wine as well as beer", indicating the two beverages are to receive the same treatment. The proposed amendments achieve this equality of treatment.

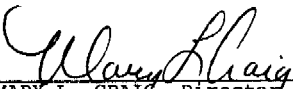
The rule is also amended to redefine the meaning of "supplementary" as used in subsection (1) of the rule. The revision will permit a larger class of establishments to sell wine. In order to avoid abuses by establishments that are in fact not restaurants or prepared food businesses, subsection (1) has been amended to require proper licensure of the establishment under state and local laws.

5. Interested persons may present their data, views, or arguments either orally or in writing at the hearing. The department will accept written comments up to November 2, 1979. These comments, as well as any questions on the proposed amendments, should be directed to:

Laurence Weinberg
Staff Attorney
Legal Division
Department of Revenue
Mitchell Building
Helena, Montana 59601
(406) 449-2852

6. Ross Cannon has been designated to preside over and conduct the hearing.

7. Authority to make the proposed amendment is based on section 16-1-303, MCA. The proposed amendments and the rule itself implement section 16-4-105, MCA.


MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State 9-17-79

18-9/27/79

MAR Notice No. 42-2-137

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

In the matter of the amendment of)	NOTICE OF PROPOSED
Rule 46-2.18(38)-S18210 (46.7.1504))	AMENDMENT OF A RULE
pertaining to forms utilized in)	PERTAINING TO FORMS
case recording.)	UTILIZED IN CASE
)	RECORDING
)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Interested Persons

1. On October 29, 1979, the Department of Social and Rehabilitation Services proposes to amend Rule 46-2.18(38)-S18210 (46.7.1504) which pertains to forms utilized in case recording.

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

46-2.18(38)-S18210 (46.7.1504) FORMS UTILIZED IN
CASE RECORDING (1) In complying with case recording
requirements, the Division has developed the following forms
which are utilized when dealing with the public:

- (a) BVS-1, Application.
- (b) VSB-2, Authorization for Services.
- (c) VSB-3, Certification of Eligibility.
- (d) BVS-4, Statement of Understanding.
- (e) BBS-9, Authorization and Request to Perform Medical Services and Release from Liability.
- (f) BVS-10M, Medical Examination.
- (g) BBS-10B, Dentist Report.
- (h) BBS-10H, Hearing Report.
- (i) MDPW-ANB-13, Eye Exam Report.

(1) In compliance with case recording requirements, the
Division has developed and will revise as necessary, forms
which are utilized when conducting public business.

(2) Copies of these forms may be obtained by writing the Administrator of the Visual Services Division, P. O. Box 4723 4210, Helena, Montana 59601.

3. The reason for this amendment is that it is more appropriate to treat the various forms and their specific use in the Procedural Manual which Visual Services maintains. These forms are often subject to change and it would be cumbersome and time consuming to post notice of a rule each time a form change were initiated.

4. Interested parties may submit their data, views, and arguments concerning the proposed amendment to the Office of Legal Affairs of the Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59601 no later than October 26, 1979.

5. The authority of the agency to make the proposed amendment is based on Section 53-7-102 MCA. The implementing authority is Section 53-7-302 MCA.

Keith P. Allen
Director, Social and Rehabilitation
Services

Certified to the Secretary of State September 18, 1979.

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

In the matter of the amendment of) NOTICE OF PROPOSED
Rule 46-2.10(18)-S11440(1)(i)) AMENDMENT OF RULE 46-
pertaining to services provided,) 2.10(18)-S11440 PERTAINING
amount and duration of medical) TO SERVICES PROVIDED,
assistance.) AMOUNT AND DURATION OF
) MEDICAL ASSISTANCE.
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Interested Persons

1. On October 29, 1979, the Department of Social and Rehabilitation Services proposes to amend Rule 46-2.10(18)-S11440(1)(i) which pertains to medical assistance: services provided, amount, and duration.

2. The rule as proposed to be amended provides as follows: 46-2.10(18)-S11440 MEDICAL ASSISTANCE, SERVICES PROVIDED, AMOUNT, AND DURATION

(i) Home health care services are "visiting nurse services and other home care therapy requested by the physician and provided through a public or private non-profit agency operating in accordance with the policies and standards established by the State Department of Health." Such services may be given in the home of the individual. These services shall be provided in the home on a visit basis to the patient who is under the care of a physician. In those communities where nursing services have not been developed under the above definition, arrangements may be made for the employment of a registered nurse on a part-time basis or an hourly basis in accordance with the policies and standards established by the State Department of Health. These services may be given only to those recipients who live in their own homes. Effective July 1, 1979, Medicaid reimbursement to those home health agencies providing service at a payment below their costs may be increased to a maximum of \$21.00 per R.N. visit, and \$13.00 per nurses aide visit provided said rates do not exceed the lessor of:

(i) medicare rates paid to each individual agency, and
(ii) the individual agency's charges to the private paying public.

3. Home Health Service is a mandatory provision under the Medicaid program and the Department is obligated to see that this service is available to Medicaid recipients through licensed agencies. The rationale for the proposed amendment is that there are currently 17 licensed home health agencies

in Montana. As a result of 46-2.10(18)-S11465 MEDICAL ASSISTANCE, PROHIBITION OF CERTAIN PROVIDER FEE INCREASES, three of the 17 agencies dropped participation in the Medicaid program. This has adversely affected the health and welfare of Medicaid recipients in two localities; Great Falls and Miles City. Nine of the remaining 14 Medicaid participating home health agencies have continued to provide this necessary service to Medicaid recipients for a substantially lower reimbursement rate than their current costs, which is reflected in Medicare payment.

On June 29, 1979, 46-2.10(18)-S11465 was amended as an emergency rule, continuing the prohibition of fee increases to Medicaid providers except when a speciality group demonstrates to the Department that current Medicaid rates are adversely affecting the program.

On July 19, 1979, 52 percent of licensed home health providers in Montana, represented by the Montana Association of Home Health Agencies, demonstrated to the satisfaction of the Department, that current Medicaid rates are adversely affecting home health providers. They further demonstrated to the Department that a continued freeze on their rates would result in more agencies dropping from the Medicaid Program unless there is a rate adjustment for R.N. and home health aide visits retroactive to July 1, 1979.

4. Interested parties may submit their data, views, and arguments concerning the proposed amendment to the Office of Legal Affairs of the Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59601 no later than October 26, 1979.

5. The authority to make these changes in the rule is based upon Section 53-6-113 MCA with the implementing authority being Section 53-6-111 MCA.

Keith P. Celko
Director, Social and Rehabilitation Services

Certified to the Secretary of State September 18, 1979.

BEFORE THE OFFICE OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment) of Rule ARM 48-2.18(34)-S18540) allowing employment of speech) pathology technicians))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE ARM 48-2.18(34)-S18540 PERTAINING TO EMPLOYMENT OF SPEECH PATHOLOGY TECHNICIANS
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TO: All Interested Persons:

1. On October 22, 1979, at 10:00 a.m., a public hearing will be held in the Senate Chambers, Capitol Building, Helena, Montana 59601, to consider the amendment of Rule ARM 48-2.18(34)-S18540 pertaining to employment of speech pathology technicians.

2. The proposed amendment replaces present rule 48-2.18(34)-S18540 found in the Administrative Rules of Montana. The proposed amendment would allow local school districts to employ speech pathology technicians when a licensed speech pathologist is not available.

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

48-2.18(34)-S18540 SPEECH PATHOLOGISTS AND AUDIOLOGISTS.

(1) Except as provided in subsection (2), all public school personnel employed as speech pathologists and audiologists must have their license number on file with the Special Education program in the Office of the Superintendent of Public Instruction. Supervision shall be in accordance with the provisions of the individual's license.

(2) If a licensed speech pathologist is not available, the Superintendent of Public Instruction may approve the employment of school personnel as speech pathology technicians to deliver speech therapy services who have a bachelor's degree in speech pathology verified by official transcripts, and 175 supervised clock hours in speech pathology or equivalent training and experience.

(3) Speech pathology technicians shall be supervised by a licensed speech pathologist and there will be a minimum of four documented supervisory contacts per month between the pathologist and the technician. More contacts may be made as deemed necessary by the speech pathologist. The speech pathologist and the speech pathology technician shall develop the technician's program, and the speech pathologist shall be responsible for the appropriate supervision of the technician's program. The school district which employs the technician shall be responsible for implementing and administering the technician's program.

4. The rule is proposed to be amended because several school districts have been unable to furnish needed speech services to handicapped students due to a shortage of licensed speech pathologists. School districts administering special education programs have vacant speech pathology positions, and

persons who meet the qualifications set out in the proposed amendments are presently available. The Board of Speech Pathologists and Audiologists has endorsed the proposed amendment.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing, or in the alternative, interested persons may submit their data, views or arguments to Shirley Miller, Director of Special Education, Office of Public Instruction, Helena, Montana 59601, no later than October 29, 1979.

6. The Special Education Unit of the Superintendent of Public Instruction, Helena, Montana 59601, 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 20-7-402(1)(e), (2), MCA. The implementing authority is Section 20-3-324(2), MCA.


GEORGIA RICE

Superintendent of Public Instruction

Certified to the Secretary of State Sept 11, 1979, 1979

BEFORE THE OFFICE OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of Rule ARM	)	PROPOSED AMENDMENT OF RULE
48-2.18(18)-S18270 to	)	48-2.18(18)-S18270 PERTAINING
determine the composi-	)	TO THE COMPOSITION OF CHILD
tion of Child Study	)	STUDY TEAMS.
Teams)	

TO: All Interested Persons:

1. On October 22, 1979, at 10:00 A.M., a public hearing will be held in the Senate Chambers, Capitol Building, Helena, Montana 59601, to consider the amendment of Rule ARM 48-2.18 (18)-S18270 pertaining to the composition of Child Study Teams.

2. The proposed amendment replaces present rule 48-2.18 (18)-S18270 found in the Administrative Rules of Montana. The proposed amendment would establish the persons who are to be members and participants of a Child Study Team.

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

~~48-2.18(18)-S18270--COMPOSITION-OF-A-CORE-CHILD-STUDY-TEAM~~
~~(1)--A-Child-Study-Team-shall-consist-of-a-regular-class-~~
~~room-teacher,-principal,-or-designee,-and-the-special-education~~
~~person-who-may-serve-the-child,-Parents-shall-be-afforded-the~~
~~opportunity-to-participate-in-the-child-study-process,-,-Gen-~~
~~erally,-,-school-psychologists-and-speech-pathologists-will-com-~~
~~plement-any-team.~~

~~(2)--In-addition-to-the-required-professional-members-on-a~~
~~particular--Child-Study-Team-utilization-of-other-expertise-is~~
~~recommended--and-required--in-many-intances,-,-The-Child-Study-~~
~~Team--may--determine--what-other-specialities--may-be-needed-to~~
~~complete-an-appropriate-evaluation.~~

~~(3)--Secondary--school--Core--Child-Study-Team-will-require~~
~~other-individuals-at-the-discretion-of-the-parents-or-agency-to~~
~~accommodate--a-particular--student's--needs--(i.e.,--vocational~~
~~rehabilitation-counselor,-,-psychologist,-,-nurse,-,-special-needs~~
~~counselor,-,-etc.,).~~

48-2.18(18)-S18270 COMPOSITION OF A CHILD STUDY TEAM.

(1) The Board of Trustees of the local school district or its designee shall appoint the Child Study Team. The Child Study Team shall consist of:

(a) The school principal, designee or other representative of the school district administration.

(b) The child's regular teacher. If the child has more than one regular teacher, the Board shall appoint one teacher from among the child's regular teachers. If the child does not have a regular teacher, the Board shall appoint a teacher to serve on the Child Study Team who teaches grades or subjects age appropriate for the child.

(c) The child's special education teacher when the child is already receiving special education. If the child is not

receiving special education, the Board shall appoint the special education teacher who will be most likely to serve the child in the event the child is placed in the district special education program.

(d) Other individuals as required by 48-2.18(18)-S18290, ARM.

(2) In addition to the required members of the Child Study Team, the following people shall be permitted to attend and participate on a consultative basis at a Child Study Team meeting:

(a) One or both of the child's parents. "Parent" includes a parent, a guardian, or a surrogate parent appointed under 48-2.18(14)-S18180. If the parents refuse to participate, the local school district shall have a record of its attempt to encourage participation such as:

(i) detailed records of telephone calls made;

(ii) copies of correspondence sent to the parents and any responses received or visits to the parent's home;

(b) the child, where appropriate;

(c) when the child is enrolled in a parochial or other private school, a representative from the parochial or other private school. If the representative cannot attend, the local school district shall use other methods to insure participation by the private school, including individual or conference telephone calls;

(d) other individuals at the discretion of the parents or the Child Study Team who have observed or treated the child in a professional capacity and have knowledge of the child's special education needs.

(3) (a) The Child Study Team may invite participation on a consultative basis by other specialists when such specialists are needed to complete an appropriate evaluation.

(b) The parents at their discretion may invite participation on a consultative basis by individuals who will assist them.

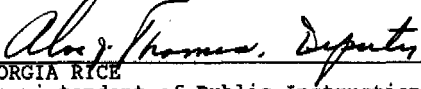
4. The Superintendent of Public Instruction is proposing this amendment to provide that school districts select the proper persons to conduct and participate in Child Study Team meetings.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing, or in the alternative, interested persons may submit their data, views or arguments to Shirley Miller, Director of Special Education, Office of Public Instruction, Helena, Montana 59601 no later than October 29, 1979.

6. The Special Education Unit of the Superintendent of Public Instruction, Helena, Montana 59601 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 20-7-402(1)(c), (2) MCA. The implementing authority is Section 20-7-414(1), MCA.



GEORGIA RICE
Superintendent of Public Instruction

Certified to the Secretary of State Sept. 11, 1979, 1979.

BEFORE THE OFFICE OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment)
of Rule ARM 48-2.18(38)-S18680)
to allow the addition of one-)
half or three-quarter time)
supervisors of special)
education)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT OF RULE
ARM 48-2.18(38)-S18680
PERTAINING TO SUPERVISORS
OF SPECIAL EDUCATION.

TO: All Interested Persons:

1. On October 22, 1979, at 10:00 a.m., a public hearing will be held in the Senate Chambers, Capitol Building, Helena, Montana 59601, to consider the amendment of Rule ARM 48-2.18(38)-S18680 pertaining to supervisors of special education.

2. The proposed amendment replaces present rule 48-2.18(38)-S18680 found in the Administrative Rules of Montana. The proposed amendment would allow additional half-time or three-quarter time supervisors of special education to be added upon request to and approval of the Superintendent of Public Instruction.

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

48-2.18(38)-S18680 SUPERVISOR OF SPECIAL EDUCATION.

(1) Remains the same.

(2) For school districts that have special education personnel in excess of the minimum stated, additional full-time, three-quarter time, or half-time supervisors may be added upon request to and approval of the Superintendent of Public Instruction. For school districts that have fewer education personnel than the minimum stated, three-quarter or half-time supervisors of special education may be added upon request to and approval of the Superintendent of Public Instruction.

4. The Superintendent of Public Instruction is proposing this amendment because school districts in excess of the minimum stated may need a part-time supervisor rather than the addition of another fulltime supervisor. School districts that don't meet the minimum stated may need a part-time rather than a full-time supervisor.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing, or in the alternative, interested persons may submit their data, views or arguments to Shirley Miller, Director of Special Education, Office of Public Instruction, Helena, Montana 59601, no later than October 29, 1979.

6. The Special Education Unit of the Superintendent of Public Instruction, Helena, Montana 59601, 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 20-7-402(1)(e), (2), MCA. The implementation authority is Section 20-3-324(1), (23), MCA.


GEORGIA RACE

Superintendent of Public Instruction

Certified to the Secretary of State Sept 11, 1979, 1979.

BEFORE THE OFFICE OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF PUBLIC HEARING
of rules to establish)	FOR ADOPTION OF RULES
regulations for transporting)	pertaining to the trans-
special education children)	portation of special
)	education children.

TO: All Interested Persons.

1. On October 22, 1979, at 10:00 A.M., a public hearing will be held in the Senate Chambers, Capitol Building, Helena, Montana 59601, to consider the adoption of rules ARM 48-2.18 (50)-S18900 to 48-2.18(50)-S18990 pertaining to the transportation of special education children.

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:

Sub-Chapter 50

Transportation for special education children.

48-2.18(50)-S18900 PURPOSE. Special education children often have unique transportation needs. The regulations provided in this sub-chapter are intended to supplement the Montana Pupil Transportation laws and regulations, to comply with federal special education laws and regulations, and to provide a schedule of funding to meet the unique needs of special education children.

48-2.18(50)-S18910 ELIGIBILITY FOR TRANSPORTATION.

(1) With the approval of the Superintendent of Public Instruction, any special education child shall be eligible for transportation which shall be provided by the resident district when:

(a) The child is enrolled in a special education class or program operated by the district of such child's residence.

(b) The child is enrolled in a special education class or program operated by a Montana district other than the child's resident district.

(c) The child is enrolled under an approved tuition agreement in a special education class or program operated outside of the state of Montana.

(d) The child is enrolled under an approved tuition agreement in a private institution.

(2) Transportation for special education children other than room and board and school bus modification is not an allowable cost in the general fund. Budget authority for transportation of special education children must be established in the transportation fund of the local school district and must follow the budgeting procedures established in the School Finance and Statistics Manual, Topic 13, pages 5 and 23, and in accordance with Section 20-7-441, MCA.

48-2.18(50)-S18920 DETERMINATION OF APPROPRIATE TRANSPORTATION. The Child Study Team shall determine the appropriate transportation from among the types of transportation allowed by state law for each special education child and the appropriate transportation shall be included in the child's Individual Education Program in accordance with the requirements of least restrictive environment.

48-2.18(50)-S18930 METHODS OF ALLOWABLE TRANSPORTATION.

(1) Special education children shall be transported in standard school buses on regular routes whenever the children's handicap does not prohibit such transportation or significantly impede the regular operation of standard school buses.

(2) When transportation in standard school buses on regular routes is not possible, the local school district may operate special education school buses.

(3) The trustees may contract with the parent or guardian of a special education child in the same manner as is described under Title 48, Chapter 30, ARM.

48-2.18(50)-S18940 SPECIAL EDUCATION SCHOOL BUSES. (1) A special education school bus means a bus or other vehicle operated by a school district which is used specifically for transporting special education children.

(2) With the approval of the Superintendent of Public Instruction, the trustees shall determine the school buses which are to be designated special education school buses. A school district operating a special education school bus shall receive full reimbursement of the on-schedule rate; two-thirds from the state and one third from the county.

(3) The Superintendent of Public Instruction may require that smaller or larger special education school buses be used which are more in keeping with the needs and number of special education children being transported.

(4) Special education school buses may be used to transport regular students provided there is available seating.

48-2.18(50)-S18950. SCHOOL BUS MODIFICATIONS. Modifications such as power lifts, ramps, wheelchair fasteners, etc., which are made on regular and special education school buses to facilitate transporting special education children are reimbursable pro rata through the special education budget: 01-01-1165 Remodeling, Special Equipment for School Buses.

48-2.18(50)-S18960 ROOM AND BOARD-OUT OF DISTRICT PLACEMENT. When a special education child is placed out of state for educational purposes room and board payments are reimbursable pro rata through the special education budget; 01-01-0555 Room and Board. Transportation costs may be made with federal funding.

48-2.18(50)-S18970. EXCESS COSTS. (1) Transportation costs for special education children which are in excess of transportation costs allowed by the special education budget and the transportation fund shall be reimbursed to the local school districts with federal funding as permitted by Public Law 94-142, Part B of the "Education of the Handicapped Act." This includes local district Education of the Handicapped Act-B

flow-through entitlement funds and to the extent funds are available, the Office of Public Instruction may reimburse excess transportation cost as budgeted in the Annual Program Plan for Public Law 94-142.

(2) Excess costs shall include, but not be limited to:

(a) Transporting special education children within the three mile limit at the mileage rate determined by state law.

(b) Transporting special education children when the local school district pays room and board as an allowable cost under the transportation fund.

(c) When special education children are transported under an individual contract and the Child Study Team determines that more than one round trip per day is necessary, the extra trips will be reimbursed at the regular rate with federal money.

(d) Transporting a special education child who is enrolled in a private school and attends a special education class or program in the local district.

(e) When a child is placed out of district or out of state, reimbursement shall be out of the transportation fund to the extent allowed by law. Additional reimbursement shall be made from state initiated federal money.

48-2.18(50)-\$18970 NUMBER OF REIMBURSABLE TRIPS ALLOWED FOR SPECIAL EDUCATION CHILDREN PLACED OUT OF DISTRICT. Special education children placed in an out of district residential school shall be provided transportation to and from the school at the beginning and end of the school term and for scheduled school holidays and recesses.

48-2.18(50)-\$18980 SAFETY REQUIREMENTS. School buses which are used to transport special education children shall be appropriately modified as dictated by the specific needs and safety requirements of the special education child. This may include such equipment as power lifts, wheelchair fasteners, special seat belts, harnesses, etc.

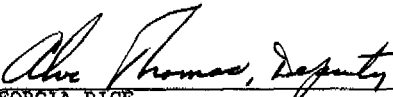
48-2.18(50)-\$18990 OTHER PUPIL TRANSPORTATION LAWS AND REGULATIONS. In addition to the rules in this sub-chapter, Title 20, Chapter 10, Part 1, School Buses and Transportation, MCA and Title 48, Chapter 30, ARM apply to the transportation of special education children.

4. The Office of Public Instruction is proposing these rules to assure the appropriate transportation of special education children and to clarify the procedures for reimbursing local school districts for transporting special education children.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing, or in the alternative, interested persons may submit their data, views or arguments to Shirley Miller, Director of Special Education, Office of Public Instruction, Helena, Montana 59601 no later than October 29, 1979.

6. The Special Education Unit of the Superintendent of Public Instruction, Room 106, Capitol Building, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

(7) The authority of the agency to make the proposed amendments is based on Section 20-7-441, MCA and Section 20-7-442, MCA. The implementing authority is Section 20-7-441, MCA and Section 20-7-442, MCA.



GEORGIA RICE
Superintendent of Public Instruction

Certified to the Secretary of State Sept 11, 1979, 1979.

BEFORE THE OFFICE OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF PUBLIC HEARING FOR
of rules to define the)	ADOPTION OF RULES pertaining
handicapping conditions "Deaf-)	to the definition of "Deaf-
blind" and "Multihandicapped")	Blind" and "Multi handicapped."
which pertain to special)	
education children.)	

TO: All Interested Persons:

1. On October 22, 1979, at 10:00 A.M., a public hearing will be held in the Senate Chambers, Capitol Building, Helena, Montana 59601, to consider the adoption of rules to define the handicapping conditions "Deaf-Blind" and "Multihandicapped" which pertain to special education children.

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:

48-2.18(6)-S18051 DEAF BLIND. "Deaf-blind" means concomitant hearing and visual impairments, the combination of which causes such severe educational problems for the children so impaired that they cannot be accommodated in special education programs designed solely for deaf or blind children.

48 2.18(6)-S18052 MULTIHANDICAPPED. "Multihandicapped" means concomitant impairments (such as mentally retarded-blind, mentally retarded-orthopedically impaired, etc.), the combination of which causes such severe educational problems that the children so impaired cannot be accommodated in special education programs designed solely for one of the impairments. The term does not include deaf-blind children.

4. The Superintendent of Public Instruction is proposing these rules because of the need to correctly and uniformly define the handicapping conditions of special education children.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing, or in the alternative, interested persons may submit their data, views or arguments to Shirley Miller, Director of Special Education, Office of Public Instruction, Helena, Montana 59601, no later than October 29, 1979.

6. The Special Education Unit of the Superintendent of Public Instruction, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rule is based on Section 20-7-402(2), MCA. The implementing authority is Section 20-7-403(5), MCA.


GEORGIA RICE

Superintendent of Public Instruction

Certified to the Secretary of State Sept. 11, 1979, 1979.

18-9/27/79

MAR Notice No. 48-2-18

BEFORE THE OFFICE OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED AMENDMENT OF
amendment of Rules ARM	)	RULES 48-2.18(30)-S18500 and
48-2.18(30)-S18500 and	)	48-2.18(30)-S18510 pertaining to
48-2.18(30)-S18510	)	allowable costs for special
revising the allowable	)	education programs.
cost schedule for special	)	NO PUBLIC HEARING CONTEMPLATED
education programs)	

TO: All Interested Persons

1. On October 29, 1979, the Superintendent of Public Instruction proposes to amend rules 48-2.18(30)-S18500 and 48-2.18(30)-S18510, revising the allowable cost schedules for special education programs.

2. The rules to be amended are as follows:

48-2.18(30)-S18500 DEFINITIONS AND EXPLANATIONS.

(1) through (8)(b) remain the same.

(c) -- "C" -- Calculation -- The amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year. The current general fund budget item divided by the number of regular ANB equals per ANB cost. Per ANB cost times the number of full-time special education students equals total special education amount allowable in the special education budget. In the trustees annual report, the district must report actual expenditures but cannot report an amount in excess of these line items.

(d) -- "D" -- Calculation -- The amount allowed for budget purposes for full-time special pupil may not exceed the amount budgeted for the current year per regular ANB (same as the C calculation) times a 1.75 factor.

(e) -- "E" -- Calculation -- The amount allowed for budgeting purposes is determined by dividing the number of special education classrooms by the total number of classrooms in the school district. If the size of classrooms is substantially diverse, the district must use a ratio to make the classroom size comparable. Classrooms include all instructional space used by the school district. The resulting percentage times the current year's general fund budget line item will determine the maximum amount allowable on the special education budget.

48-2.18(30)-S18510 COMPUTATION AND LIMITATIONS.

(1) -- Administration

(a) -- 01-01-0111 -- Salaries -- Professional -- B -- Calculation

(i) -- Documentation of administration charges against the special education program may be verified by finding the percentage of special education professional staff of the total professional staff of the school district. This percentage is verification of time spent on the special education program. The special education budget amount is determined by multiplying the ensuing administrative budget by the determined percentage figure. No other verification of time in this line

~~item is necessary unless the school claims more than the percentage allowed. In this case, all individuals claimed must then maintain time records to substantiate their claims.~~

~~(ii) If a school district employs a supervisor of special education under 01-01-0215, this line item may not exceed five percent of the amount budgeted on the projected general fund budget 01-01-0111 line item.~~

~~(b) 01-01-0113--Salaries, Clerical--G-Calculation~~

~~(c) 01-01-0150--Supplies, Administrative--G-Calculation~~

~~(2) (1) Supervision and Instruction.~~

~~(a) 01-01-0211--Salaries, Principals--D-Calculation~~

~~(i) Rather than keeping time records, verification of time district-wide up to the maximum allowable, is calculated based on the percentage of special education professional staff to the total professional staff of the district. Whichever is smaller, the percentage times the current year's general fund line item 01-01-0211 or the D-Calculation will be the authorized amount.~~

~~(b) (a) 01-01-0212 Salaries, Teachers (Tutorial):~~

B Calculation

~~(c) 01-01-0213--Salaries, Clerical--D-Calculation~~

~~(i) Verification of time is same as 01-01-0211.~~

~~(d) (b) Remains the same.~~

~~(e) (c) Remains the same.~~

~~(f) (d) (i), (ii) Remains the same.~~

~~(g) 01-01-0232--Supplies, Instruction-Shared--G-Calculation~~

~~(h) (e) (i) Remains the same.~~

~~(i) (f) 01-01-0241 Textbooks--G-Calculation,~~

Special Education Textbooks: B Calculation

~~(j) (g) Remains the same.~~

~~(k) (h) (i), (ii) Remains the same.~~

~~(3) Library Services:~~

~~(a) 01-01-0310--Salaries--G-Calculation~~

~~(b) 01-01-0342--Books and Periodicals--G-Calculation~~

~~(c) 01-01-0350--Other Expenses--G-Calculation~~

~~(4) (2) (a), (b), (c) Remains the same.~~

~~(d) 01-01-0450--Other Expenses--G-Calculation~~

~~(5) (3) Remains the same.~~

~~(6) Operation of Plant:~~

~~(a) 01-01-0600--Operation--E-Calculation~~

~~(7) Maintenance of Plant:~~

~~(a) 01-01-0700--Maintenance--E-Calculation~~

~~(8) School Food Services:~~

~~(a) 01-01-0800--School Food--G-Calculation~~

~~(9) Student Body and Auxiliary Services:~~

~~(a) 01-01-0900--Salaries and Other Expenses--G-Calculation~~

~~(10) (4) Other Charges.~~

~~(a) 01-01-1021--Social Security--A-Calculation~~

~~(b) 01-01-1022--Teacher Retirement Service--A-Calculation~~

~~(c) 01-01-1023 Public Employee Retirement System A Calculation~~

~~(d) 01-01-1024 Unemployment Compensation A Calculation~~

~~(e) 01-01-1056 Rental of Land and Buildings C Calculation~~

~~(f) (See Rule 48-2-10(26)-610400(f)(a) of this manual for an exception to the C Calculation if exception is approved it is an A Calculation)~~

~~(f) (a) Insurance: E Calculation~~

~~(i) Use E Calculation except when insurance is considered an employee benefit (such as workman's compensation or sickness and accident insurance)~~

~~If insurance is considered an employee benefit (such as workman's compensation or sickness and accident insurance) use actual cost A Calculation.~~

~~(g) (b) Remains the same.~~

~~(h) (b) Capitol Outlay.~~

~~(a) 01-01-1163 Remodeling and Improvements, General C Calculation~~

~~(b) (a) 01-01-1164 Equipment, Special Education, Major (\$200 or more): B Calculation.~~

~~(i) Only equipment essential to operation of the special education program is allowable. A school district must submit with its proposed budget an inventory of existing equipment in the special education program as well as a projected equipment needs. The Superintendent of Public Instruction has authority to delete any pieces of equipment from the projects inventory list and disapprove them as an allowable cost. If any equipment is shared, that cost is distributed equally, by use, among the programs using the equipment. General equipment costs should be calculated using the C Calculation.~~

~~(c) (b) 01-01-1165 Remodeling, Special Equipment for School Buses: A Calculation. Other Expenses C Calculation.~~

~~(i) Remodeling for handicapped and special equipment for district owned and/or contracted school buses is an A Calculation. All other expenses are a C Calculation. (Authorization for approval of expenditures under this line item must be pre-approved by the Superintendent of Public Instruction.)~~

~~(12) (6) Remains the same.~~

~~(13) (7) Remains the same.~~

3. The Superintendent of Public Instruction is amending these rules as directed by Chapter Number 661, House Bill Number 116 and Chapter Number 481, House Bill Number 453 Montana Session Laws 1979, the texts of which set forth the reasons for amending the rules. The implementing authority is Section 20-7-431, MCA.


GEORGIA RICE

Superintendent of Public Instruction

Certified to the Secretary of State Sept. 11, 1979, 1979.

BEFORE THE COMMISSIONER OF THE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the Matter of the	)	NOTICE OF THE AMENDMENTS
Amendment of Rule 24-3.14AI	)	OF RULES 24-3.14AI(1)-
(1)-S1400 Minimum Guidelines	)	S1400 and 24-3.14AI(2)-
for Registration of Programs	)	S1410 (APPRENTICESHIP
and Rule 24-3.14AI(2)-S1410	)	STANDARDS)
Registration Policy and)	
Procedures)	

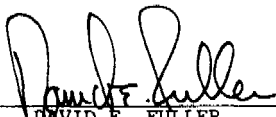
TO: All Interested Persons

1. On August 16, 1979, the Department of Labor and Industry, State of Montana, published notice of proposed amendments to Rule 24-3.14AI(1)-S1400 Minimum Guidelines for Registration of Programs and Rule 24-3.14AI(2)-S1410 Registration Policy and Procedures at pages 833-835 of the 1979 Montana Administrative Register, issue number 15.

2. The authority of the Commissioner to make the amendment to the rules is found in Section 39-6-101(9) MCA (Section 41-1201(b) R.C.M. 1947). The rules implement Section 39-6-106 MCA (Section 41-1204 R.C.M. 1947).

3. The Commissioner has amended the rules as proposed.

4. No comments or testimony on the amendments were received by the Commissioner. The Commissioner has amended the rules to bring the rules in conformity with amendments in Title 39, Chapter 6 of the Montana Codes Annotated and to comply with the provisions of Title 29 Code of Federal Regulations, Part 29, as adopted February 15, 1977.



DAVID E. FULLER
Commissioner

Certified to the Secretary of State September 18, 1979.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF AMENDMENT OF
AMENDMENT OF RULE	)	RULE 42-2.12(1)-S1250
42-2.12(1)-S1250,)	
Liquor Vendor Samples.)	

TO: All Interested Persons:

1. On June 28, 1979, the Department of Revenue published notice of a proposed amendment to rule 42-2.12(1)-S1250, concerning the use of samples by liquor vendors, at pages 643 and 644 of the 1979 Montana Administrative Register, issue number 12.

2. The department has amended the rule with the following changes (added language capitalized and underlined):

42-2.12(1)-S1250 SAMPLES (1) A vendor shall be permitted to use as samples not more than 24 cases of liquor during any calendar year. This allotment includes all brands of liquor manufactured, produced or sold by the vendor.

(2) For purposes of this section a sample is defined as a container of liquor presented by a vendor or agent for inspection or demonstration of the quality of the product and which is purchased by the employer or brokerage of the vendor or agent.

(3) A sample may be of any size so long as the sample size is in conformance with applicable Federal regulations. WILL BE THE SMALLEST SIZE REGULARLY SOLD IN STATE LIQUOR STORES, NOT TO EXCEED A PINT OR ITS METRIC EQUIVALENT.

(4) Not more than 1 pint OR ITS METRIC EQUIVALENT of any brand of distilled spirits and not more than 1 gallon OR ITS METRIC EQUIVALENT of any brand of wine, may be furnished or given as a sample to a retailer, licensed by the department, who has not previously purchased that product. Samples of distilled spirits may be furnished or given to the department of revenue, liquor division under the provisions of Section 16-1-304, MCA.

(5) Such samples of liquor shall be purchased only through the State Liquor Stores at retail price. A separate order for samples shall be placed for each registered agent, and the agent's name shall appear on the order.

(6) The vendor shall file with the Department a statement setting forth the territories and names of all registered agents under his supervision.

(7) Each authorized agent shall keep maintain a permanent stock-ledger-record sample log. of all samples purchased by him and distributed by him to any person as provided in this section together with quantity and brand. Such log must contain exact information as to all sample purchases, including the date NAME and location of each recipient and the date he received the sample.

(8) Samples distributed TO ANY LICENSEE must be reported to the department of revenue investigation division on a monthly basis.

(9) The department may at any reasonable time and place examine the books and records of the registered agent or vendor for THE purpose of determining compliance with the requirements of this regulation. Reasonable time and place shall be construed as normal business hours. Thirty ~~(30)~~ calendar day's notice shall be given for any inspection conducted under this regulation.

3. The department received no written comments or requests for a hearing on this rule. Mr. Michael W. Mathews, a representative of the Montana Liquor Representatives Association, contacted the department by phone concerning subsection 8 of Rule 42-2.12 (1)-S1250. The suggestion was made that the rule follow the language of House Joint Resolution No. 44 and the words "to any licensee" be inserted. The department accepted the suggestion.

The sponsor of the resolution, Representative Joe Tropila, also contacted the department by telephone. He made certain suggestions concerning the definition of a sample. The department drafted language which was forwarded to Mr. Tropila. He responded by phone that the language was acceptable and subsection 3 of 42-2.12(1)-S1250 was amended accordingly.

The amendments that were originally noticed were made as the result of the passage of House Joint Resolution No. 44. The stated purpose of that resolution was to make Montana's rules relating to samples similar to the federal regulations.

Authority for the rule is given by 16-1-303, MCA. The rule implements 16-3-103, MCA, and the amendments implement House Joint Resolution No. 44.

IN THE MATTER OF	)	NOTICE OF AMENDMENT OF
THE AMENDMENT OF RULE	)	RULE 42-2.12(1)-S1260
42-2.12(1)-S1260 on)	
Advertising Specialties.)	

TO: All Interested Persons:

1. On June 28, 1979, the Department of Revenue published notice of a proposed amendment to rule 42-2.12(1)-S1260, concerning advertising specialties, at page 644 of the 1979 Montana Administrative Register, issue number 12.

2. The department has amended the rule as proposed.

3. No comments or testimony were received. The department has amended the rule pursuant to the provisions of House Joint Resolution No. 44. Authority for the rule is given by 16-1-303, MCA. The rule implements 16-3-103, MCA, and the amendments implement House Joint Resolution No. 44.


MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State September 17, 1979

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF THE ADOPTION
of a rule relating to Internal	)	OF 1.2.215 INTERNAL
Catchphrases located in the	)	CATCHPHRASES
Administrative Rules of)	
Montana)	

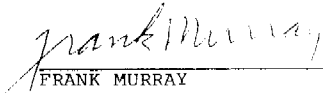
TO: All Interested Persons:

1. On August 16, 1979, the Secretary of State published notice of a proposed new rule 1.2.215 (Rule I), concerning internal catchphrases in new and existing rules in the Administrative Rules of Montana, at page 838 of the 1979 Montana Administrative Register, Issue No. 15.

2. The Secretary of State has adopted the rule as proposed.

3. No comments or testimony were received.

Dated this 18th day of September, 1979



FRANK MURRAY
Secretary of State

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

In the matter of the adoption of) NOTICE OF THE ADOPTION
a rule restricting recipient of) OF RULE 46-2.10(18)-
Medicaid access to certain) S11431
Medicaid providers.)

TO: All Interested Persons

1. On July 12, 1979, the Department of Social and Rehabilitation Services published notice of a proposed adoption of a rule pertaining to restricting recipient of Medicaid access to certain Medicaid providers at page 666 of the 1979 Montana Administrative Register, issue number 13.

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

46-2.10(18)-S11431 RULE I RESTRICTION OF ACCESS TO
MEDICAL SERVICES

(3) "Designated Professional Review Organization" means an organized group or an individual who has contracted with the Department or is designated by law to determine whether medical services are medically appropriate.

~~(3)~~ (a) The designated Professional Review Organization may review the medical services received by individuals eligible for medical assistance. The findings of the designated Professional Review Organization shall be used by the Medical Assistance Bureau in decisions related to overutilization.

(5) Individuals will be notified in writing within ten days of the date ~~at~~ of the intended action that medical services which are to be paid for by the Medicaid Program will be restricted.

(6) The Medical Assistance Bureau will determine the providers that an individual can use, and the restrictions on services. The individual will have an opportunity to state the providers they prefer, and the individual's preference will be accepted unless the Bureau determines that there is good cause for not accepting the individual's preference. The list of designated providers will be in effect until the individual notifies the Bureau in writing that he/she wishes to change providers. The Bureau will have thirty (30) days to take action on the request.

(7) All individuals restricted will be reviewed at one year or at more frequent appropriate intervals by the Medical Assistance Bureau.

3. At the hearing, testimony was received in support of the rule. No adverse comment was received.

Comment: A request was made to include as a definition the term "Designated Professional Review Organization."

Response: The Department has added the definition to the rule.

Kath F. O'Leary

Director, Social and Rehabilitation Services

Certified to the Secretary of State September 18, 1979.

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

In the matter of the amendment of)	NOTICE OF THE
Rule 46-2.10(18)-S11465 pertaining)	AMENDMENT OF RULE 46-
to medical assistance, temporary)	2.10(18)-S11465
prohibition of certain provider)	
fee increases.)	

TO: All Interested Persons

1. On July 26, 1979, the Department of Social and Rehabilitation Services published notice of a proposed amendment to Rule 46-2.10(18)-S11465 pertaining to medical assistance, temporary prohibition of certain provider fee increases at page 796 of the 1979 Montana Administrative Register, issue number 14.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule because fee increases to certain Medicaid providers have been prohibited since October of 1977. The rule as amended will continue the prohibition on provider fee increase until it is demonstrated by a professional organization, ten (10) members or 25% of the medical specialty group affected that a fee increase is needed.

The promulgation of this rule is necessary in order to allow for the development of equitable reimbursement plans for providers covered by the current prohibition. The Medicaid program is governed by federal laws and regulations. These laws and regulations prohibit the department from paying more than that paid by Medicare or from paying more than the amount the provider charges his private pay clients, whichever amount is less. The department is aware that providers have incurred increased costs in energy, supplies, and labor. Also, it is known that providers have increased their fees to the general public. This rule will allow the department to verify that any fee increase will be within federal guidelines and within the department's budget.

If the prohibitions were allowed to expire, provider reimbursement rates would increase inequitably and beyond budgetary guidelines. This would precipitate the need to curtail essential medical services.

Keith P. Cello
Director, Social and Rehabilitation
Services

Certified to the Secretary of State September 18, 1979.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

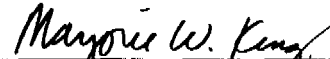
In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rule 48-2.6(2)-S680	)	RULE 48-2.6(2)-S680
referencing the Board of)	
Public Education's Indian)	
studies rules in accredita-)	
tion standards)	

TO: All Interested Persons

1. On May 24, 1979, the Board of Public Education published notice of the proposed amendment to rule 48-2.6(2)-S680 referencing the Board of Public Education's Indian studies rule in accreditation standards on pages 484-485 of the 1979 Montana Administrative Register, issue number 10.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule because HB 219, passed by the 46th Legislature, makes the Indian studies program optional.


MARJORIE W. KING, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY 
ASSISTANT TO THE BOARD

Certified to the Secretary of State September 17, 1979.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA


In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Subchapters 2 through	)	SUBCHAPTERS 2 THROUGH 18 OF
18 of Chapter 26 of Title	)	CHAPTER 26 OF TITLE 48 (RULES
48 (Rules 48-2.26(2)-S2610	)	48-2.26(2)-S2610 THROUGH
through 48-2.26(18)-S26230)	)	48-2.26(18)-S26230)
establishing rules for vo-)	
cational education)	

TO: All Interested Persons

1. On June 14, 1979, the Board of Public Education published notice of the 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) which established rules for vocational education on pages 573-579 of the 1979 Montana Administrative Register, issue number 11.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule because HB 634 (46th Legislature, 1979) and Section 20-2-114, MCA, transferred the governance of vocational education to the Superintendent of Public Instruction.


MARJORIE W. KING, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY 
ASSISTANT TO THE BOARD

Certified to the Secretary of State September 17, 1979.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the repeal)	NOTICE OF THE REPEAL OF
of Subchapter 1 of Chapter 26)	SUBCHAPTER 1 OF CHAPTER 26
of Title 48 (rule 48-2.26(1)-)	OF TITLE 48 (RULE 48-2.26(1)-
S2600) establishing defini-)	S2600)
tions of vocational education)	
terms)	

TO: All Interested Persons

1. On June 14, 1979, the Board of Public Education published notice of proposed repeal of Subchapter 1 of Chapter 26 of Title 48 (rule 48-2.26(1)-S2600) which established definitions of vocational education terms on page 572 of the 1979 Montana Administrative Register, issue number 11.

2. The agency has repealed the rule as proposed.

3. No comments or testimony were received. The agency has repealed the rules because HB 634 (46th Legislature, 1979) and Section 20-2-114, MCA, transferred governance of vocational education to the Superintendent of Public Instruction.



MARJORIE W. KING, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY 

ASSISTANT TO THE BOARD

Certified to the Secretary of State September 17, 1979.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

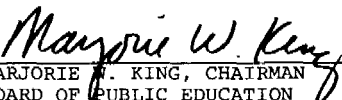
In the matter of the repeal	)	NOTICE OF THE REPEAL OF
of Subchapters 22 through 50	)	SUBCHAPTERS 22 THROUGH 50 OF
of Chapter 26, Title 48	)	CHAPTER 26 OF TITLE 48 (RULES
(Rules 48-2.26(22)-S26300	)	48-2.26(22)-S26300 THROUGH
through 48-2.26(50)-S26810)	)	48-2.26(50)-S26810)
outlining vocational tech-)	
nical center requirements)	

TO: All Interested Persons

1. On June 14, 1979, the Board of Public Education published 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) which outlined vocational-technical center requirements on page 572 of the 1979 Montana Administrative Register, issue number 11.

2. The agency has repealed the rules as proposed.

3. No comments or testimony were received. The agency has repealed the rules because HB 634 (46th Legislature, 1979) and Section 20-2-114, MCA, transferred governance of vocational education to the Superintendent of Public Instruction.


MARJORIE W. KING, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY 
ASSISTANT TO THE BOARD

Certified to the Secretary of State September 17, 1979.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the repeal	)	NOTICE OF THE REPEAL OF CHAP-
of Chapter 54 of Title 48	)	TER 54 OF TITLE 48 (RULES
(Rules 48-2.54(1)-S5400	)	48-2.54(1)-S5400 THROUGH
through 48-2.54(1)-S5460)	)	48-2.54(1)-S5460)
establishing Indian studies)	
training requirements for)	
certified personnel teaching)	
on or near an Indian reser-)	
vation)	

TO: All Interested Persons

1. On May 24, 1979, the Board of Public Education published notice of the proposed repeal of Chapter 54 of Title 48 (rules 48-2.54(1)-S5400 through 48-2.54(1)-S5460) which established Indian studies training requirements for certified personnel teaching on or near an Indian reservation on page 483 of the 1979 Montana Administrative Register, issue number 10.

2. The agency has repealed the rules as proposed.

3. No comments or testimony were received. The agency has repealed the rule because HB 219, passed by the 46th Legislature, makes the Indian studies program optional.


MARJORIE W. KING, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY 
ASSISTANT TO THE BOARD

Certified to the Secretary of State September 17, 1979.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF THE ADOPTION
of rules for the conduct of)	OF RULES
Vocational Education Programs,)	For Vocational Educa-
Particularly in secondary)	tion Programs
schools)	

TO: All interested persons:

1. On March 29, 1979 the Board of Public Education, then the governing agency for Vocational Education in Montana, published notice of its intention to adopt rules for Vocational Education Programs on page 316 of the 1979 Montana Administrative Register, issue number 6. The rules, when printed in the Montana Administrative Register, are to be a new section outlining requirements to be eligible for state and/or federal funding. The March 29 notice set an April 21 date for a public hearing on the proposed rules and also allowed for written input. The hearing was held as scheduled and a number of letters have been received by the Office of Public Instruction. Since the date of original notice, state law has shifted governing responsibility for Vocational Education from the Board of Public Education to the Office of Public Instruction. This has not changed the purpose of the rules nor the need for them, but has changed the agency which will adopt and utilize them.

2. The Office of Public Instruction has adopted the rules with numerous changes, some as a result of public input and others to make the editorial revisions needed as a result of the recent legislation. Copies of the rules in their final form are being printed and will be distributed to all affected parties in the revised booklet, "Guidelines for Vocational Education Programs in Montana". This booklet contains not only program requirements but also additional information to assist those involved in Vocational Education throughout Montana. Printed in the Montana Administrative Register will be only the specific mandatory requirements for Vocational Education Programs. Copies of the booklet and the portion to be printed in the MAR are available from the Office of Public Instruction, Vocational and Occupational Services, State Capitol, Helena, MT 59601.

48-2.26 (11)-S26141. (10.5.2201) GENERAL REQUIREMENTS.

(1) The program's primary objective of developing skills leading to employment as well as advanced vocational training.

(2) Specific objectives must be defined in terms of skills to be developed and related to a specific occupation by U. S. Office of Education course code number.

(3) The program must be based on the vocational education need of students in the area. A needs assessment must be made during initial planning. Program information must be projected for a five-year period.

(4) Programs must be developed and conducted in consulta-

tion with an advisory committee. The committee must include members of both sexes from business, industry and labor. It should represent a cross section of men and women active in the occupation. Minorities residing in the area served by the committee must be appropriately represented.

(5) Instruction must be based on an analysis of the skills and knowledge required in the occupation.

(6) The program must develop leadership and character through activities that accommodate the transition from school to job. Vocational student organizations (Future Farmers of America (FFA) and Distributive Education Clubs of America (DECA)) are required for vocational agriculture and marketing and distributive education. Student organizations in other programs are highly recommended.

(7) Provision must be made for vocational guidance which shall include, but not be limited to, occupational information and career counseling.

(8) Students must be selected for enrollment on the basis of their interest in the occupation and their ability to profit from the instruction. Prerequisite courses are required which provide students with information and experiences to make sound choices of occupations and advanced training.

(9) Instructors must be occupationally competent and certified in the vocation to be taught.

(10) Instructional equipment and facilities are to be comparable to those used in the occupation; adequate for the maintenance of acceptable educational, health and safety standards; and capable of accommodating male, female and handicapped students.

(11) Provisions must be made for job placement, annual follow-up of program completers and program evaluation.

(12) The maximum number of students per class shall be determined by the work being done, equipment being used, ease of supervision, safety factors, space and resources available, and the need for individual student instruction. Class size maximums are given for each program under its specific requirements. Approval for a larger class must be obtained in advance and will be granted only when evidence that adequate provisions have been made to ensure that the larger number will not hinder the success of the program. Deficiencies in some cases may dictate a smaller number of students per class.

(13) Programs must be planned with regard for how they will relate to other employment and training programs conducted in the area.

(14) Provisions must be made to ensure equal access to all programs by female, male and handicapped students; to review, evaluate and replace sex-biased learning materials; to make facilities and equipment available for all students; to provide guidance and counseling especially for students choosing to enter non-traditional occupations; and to seek job placement dependent on the students' abilities, needs and interests

rather than on cultural or sex stereotypes. Applications shall describe procedures in effect or ones that will be put into effect to ensure that these requirements are met.

(15) The school will participate in the Montana Vocational Education Information System by providing information as required.

(16) Each program shall conduct a yearly self-evaluation and submit a copy to the Office of Public Instruction. The program shall cooperate with the Office of Public Instruction in a thorough team evaluation which will be conducted at least every five years.

(17) Local educational agencies must use vocational education funds to supplement (add to, enhance) local funds to improve vocational programs. Funds will not be approved when it has been determined that supplanting (replacing) of local funds will occur. A school must not decrease the amount spent in the vocational programs from one year to the next, figured either on an aggregate or per student basis, unless "unusual circumstances" exist, such as large expenditures in previous years for equipment.

(18) Accounting procedures must use standard school accounting codes. A yearly certified expenditure report will be submitted showing the actual expenditure of funds compared to the last approved budget. Records will be kept locally for audits. These records will include invoices, purchase orders, warrant numbers and other documents. Records for funded programs by six-digit course codes will be separated from non-funded programs.

48-2.26 (11)-S26142.(10.5.2202) AGRICULTURE EDUCATION PROGRAMS.

(1) The United States Office of Education course codes for Agriculture Education programs are:

- (a) 01.0100 Agriculture Production
- (b) 01.0200 Agricultural Supplies and Services
- (c) 01.0300 Agricultural Mechanics
- (d) 01.0400 Agricultural Products
- (e) 01.0500 Ornamental Horticulture
- (f) 01.0600 Agricultural Resources
- (g) 01.0700 Forestry

(2) Specific requirements. All students enrolled in Vocational Agricultural classes 9-12 are required to plan and conduct occupational experience programs under the direct supervision of a vocational agriculture teacher.

(a) Duration of programs: two or more years, four years recommended.

(b) Minutes per week: minimum 270. Longer blocks of time are encouraged at the eleventh- and twelfth-grade level.

(c) Maximum class size per instructor: twenty students. Student-teacher ratio shall not exceed 60 to 1.

(d) Instructors

(i) Instructors shall hold a Montana class 1, 2 or 5 teaching certificate with endorsement in agriculture (61).

(ii) The instructor must have had one year of agricultural occupational experience within the past five years.

(iii) Travel funds must be provided by the district in addition to the instructor's salary in order that the teacher may supervise and coordinate the occupational experience phase of the program.

(iv) Instructors shall be employed for a minimum of ten and one-half months, with at least four weeks at the end of the school year and two weeks before the start of the school year to supervise the students' occupational experience programs.

(3) Future Farmers of America (FFA) must be conducted as part of the program, serving as an activity. The teacher of vocational agriculture shall serve as the advisor to the local FFA chapter. All programs of secondary vocational agriculture/agribusiness must maintain a local FFA chapter in good standing with the state and national FFA organizations.

48-2.26 (11)-S26143.(10.5.2203) BUSINESS AND OFFICE EDUCATION PROGRAMS.

(1) The Office of Education course codes for Business and Office Education programs are:

- (a) 14.0303 Clerical Office Practice
- (b) 14.0702 Secretarial Office Practice
- (c) 14.0704 Simulated/Model Office

(2) Specific requirements. The total business program must include a series of courses from basic to advanced, which begins with such courses as typing, accounting, shorthand, basic business, and possibly business machines or other related courses. This series must lead to the integrated skills courses of clerical office practice, secretarial office practice and simulated/model office.

(a) Minimum minutes per week: 270. A two-hour block of time for the integrated skills course is encouraged.

(b) Instructors:

(i) The instructor must have a bachelor's degree in business and office education and shall have earned a minimum of fifteen quarter credits in the areas of philosophy of vocational education, administration of vocational education, cooperative coordination practices and procedures/methods courses in the area of certification.

(ii) The instructor shall have had at least 2,000 hours of work experience in the occupation or a combination of occupations related to a specific field in which that person is to teach.

48-2.26 (11)-S26144.(10.5.2204) DISTRIBUTIVE EDUCATION PROGRAMS.

(1) The Office of Education course code for Distributive

Education programs is 04.2200 General Marketing. In a few schools, specific programs have developed under other course codes.

(2) Specific requirements: Programs must be designed to prepare students in grades 11 and 12 for careers in marketing and distribution of goods.

(a) Duration of programs: one or two years. The final year must be strictly vocational in that it actually prepares students for their chosen careers in distributive education occupations.

(b) The program must consist of part-time employment and on-the-job training coordinated and supervised by distributive education instruction. Laboratory experience designed to provide a variety of experiences under close supervision a minimum of one hour of coordination time per day for every twenty (20) cooperative vocational education students is required.

(c) A distributive education coordinator shall have at least 2,000 hours recent work experience in the occupation or combination of occupation related to the area of marketing and distribution.

48-2.26 (11)-S26145.(10.5.2205) HEALTH OCCUPATIONS PROGRAMS.

(1) The Office of Education course codes for Health Occupations programs are:

(a) 07.0303 Nursing Assistant (Aide)

(b) 07.9900 Other Health

(2) Specific requirements.

(a) Duration of program. Secondary programs shall provide two consecutive class periods daily for one or two years if specific skill training is involved in the program.

(b) Maximum class size: 25 students for exploratory classes and 20 in classes for specific skill training. Nurse Aide programs involving supervised clinical experiences shall not accommodate more than 15 students per class.

(c) Facilities and resources. Teaching materials shall be constantly updated to reflect the technological advances within health care and education.

(d) Instructors shall hold a Class 4 teaching certificate endorsed in the appropriate health field.

48-2.26 (11)-S26146.(10.5.2206) TRADE AND INDUSTRIAL EDUCATION PROGRAMS.

(1) The Office of Education course codes for Trade and Industrial Education programs are:

(a) 17.0302 Auto Mechanics

(b) 17.1001 Carpentry

(c) 17.1002 Electricity

(d) 17.1500 Electronics

(e) 17.1300 Drafting

(f) 17.1900 Graphic Arts

- (g) 17.2300 Metalworking
- (h) 17.2206 Welding
- (i) 17.3100 Small Engine Repair
- (j) 17.9901 Industrial Cooperative Training
- (k) 17.9903 Related Instruction

(2) Specific requirements. Trade and industrial education in Montana secondary schools must be designed to prepare students in grades 11 and 12 to enter into industrial trade or service. Secondary programs are expected to provide students with approximately one-third and one-half of the preparation needed at the journeyman level.

(a) Duration of program. Secondary programs must be designed as part of an overall industrial education sequence. The trade and industrial portion of the program is offered at grades 11 and 12.

(b) Minutes per week: 270 for laboratory courses. Schools with modular schedules must arrange suitable combinations to provide an equal amount of time.

(c) Maximum class size for specific programs is:

(i)	Appliance Repair	20
(ii)	Auto Body	18
(iii)	Auto Mechanics	18
(iv)	Carpentry	16
(v)	Electricity/Electronics	20
(vi)	Drafting (General and Machine)	22
(vii)	Architectural Drafting	18
(viii)	Graphic Arts	20
(ix)	Metalworking	18
(x)	Welding	18
(xi)	Small Engine Repair	20

(d) Instructors must meet a five-year (10,000 hour) obligation, which should ensure a strong trade background. This may be satisfied by sufficient work experience augmented by educational course work or by a combination of work experience and college preparation. Instructors shall have had recent work experience directly related to the area being taught. The following are minimum considerations for instructor:

(i) A graduate with a teaching degree in trade and industrial education must have one year (2,000 hours) experience and hold a Class 2 certificate endorsed in Trade and Industrial (65) and the appropriate field.

(ii) A non-degree man or woman or one with a degree in another field must have five years (10,000 hours) experience and hold a minimum of a Class 5 teaching certificate.

(iii) Anyone not meeting these requirements may receive credit for other educational and practical experience. Evaluation will be made on an individual basis by the Division of Certification, Office of Public Instruction, in cooperation with the consultant for Trade and Industrial Education. In some cases work experience credit will be allowed for successful completion of an approved trade competency examination or

other background contributing to trade competency.

(iv) A total of 15 quarter credits of vocational education professional course work is required. This may be earned by completing courses in the following subjects or prior-approved alternates:

- (A) Job analysis
- (B) Principles and/or philosophy of vocational education
- (C) Teaching methods in vocational education (specific area being taught)
- (D) Preparation of instructional materials
- (E) Vocational-technical organization and management
- (F) Vocational guidance

48-2.26 (11)-S26147.(10.5.2207) HOME ECONOMICS WAGE EARNING PROGRAMS.

(1) The Office of Education course codes for Home Economics Wage Earning programs are:

- (a) 09.0201 Care and Guidance of Children
- (b) 09.0202 Clothing Management, Production and Service
- (c) 09.0203 Food Management, Production and Service
- (d) 09.0204 Home Furnishings, Equipment and Service
- (e) 09.0205 Institutional and Home Management Service
- (f) 09.0299 Other Home Economics Occupational Preparation (includes HERO)

(2) Specific requirements:

(a) Minutes per week: 270. Depending on the activities integrated into the course, longer time blocks may be desirable.

(b) Maximum class size: 25 students per instructor in wage-earning classes.

(c) Instructors shall have a bachelor's degree in home economics education plus one year of experience in directly-related work.

48-2.26 (11)-S26148.(10.5.2208) VOCATIONAL CONSUMER AND HOMEMAKING EDUCATION PROGRAMS

(1) These programs include a variety of courses usually grouped under Office of Education course code number 09.0101 Comprehensive Homemaking. Within a program, instruction may specifically relate to the following:

- (a) 09.0102 Child Development
- (b) 09.0103 Clothing and Textiles
- (c) 09.0104 Consumer Education
- (d) 09.0106 Family Relations
- (e) 09.0107 Food and Nutrition
- (f) 09.0108 Home Management
- (g) 09.0109 Housing and Home Furnishings
- (h) 09.0199 Other Consumer Homemaking
- (2) Specific requirements
- (a) Duration of program: not less than three years, in grades 9-12. Options for organizing a program are:

(i) A two-year sequential program plus a minimum of two semester courses available to junior and/or seniors. No prerequisite shall be required for enrollment in semester classes. One or both of these semester classes may be wage earning as it relates to home economics.

(ii) A one-year comprehensive course followed by a minimum of four semester courses covering the broad scope of consumer homemaking education. One or two semester classes may be wage earning as it relates to home economics. When a one-year comprehensive course is offered within an accredited junior high school home economics program at the ninth-grade level, a minimum of four semester courses shall be offered for grades 10, 11 and 12.

(iii) A three-year sequential program -- Homemaking I, II and III.

(b) Minutes per week: 270, required for laboratory courses.

(c) Maximum class size. Each laboratory class -- (Foods and Nutrition, Clothing and Textiles, and Child Development) -- should be limited to 20 students per instructor and in no case should exceed 25. The following number of students per lab station is stipulated:

	<u>Ideal</u>	<u>Maximum</u>
(i) Per foods lab unit	3	5
(ii) Per sewing machine	1	2

(d) A minimum of five regularly-scheduled conference periods during the school week shall be provided for work in relation to program planning, contact with parents and work with individual students.

(e) Instructors

(i) The school administrator and home economics instructor shall set up a budget annually for the equipment, operation and maintenance of the consumer and homemaking department.

(ii) Instructor qualifications: a bachelor's degree with major in home economics education from a college or university approved for the training of vocational home economics teachers. Credit requirements for majors are as follows:

(A) Family Life and Consumer Decision-Making. Eighty percent of required courses shall be distributed equally among the following:

- (I) Child development
- (II) Family life
- (III) Resource management
- (IV) Consumer education
- (V) Clothing and textiles
- (VI) Food and nutrition
- (VII) Housing and furnishing and equipment

(B) Professional. Twenty percent of the requirement credits shall be related to the strategies and techniques of teaching home economics. Courses included in this area may be adult education, curriculum, seminars, etc.

48-2.26 (11)-S26149.(10.5.2209) INDUSTRIAL ARTS PROGRAMS.

(1) The Office of Education course codes for Industrial Arts programs are:

- (a) 99.0401 Occupationally-Oriented Industrial Arts
- (b) 99.0402 Prevocational Industrial Arts
- (2) Specific requirements

(a) Occupationally-oriented industrial arts programs.
Level of instruction: grades 9 and 10.

- (i) Maximum class size: 24 students
- (ii) Instructors. Within two years of the start of the program, each instructor shall have completed a course or workshop designed to build competence for teaching in an occupationally-oriented industrial arts program.

(iii) Facilities and resources

(A) A library of resources pertaining to industrial careers shall be established and maintained for student use.

(B) Close contact with the industrial community is vital and must be maintained through maximum use of resource persons, field trips and other activities.

(iv) Each of the four major clusters -- Communications, Construction, Materials and Energy -- as outlined in the Montana Industrial Arts Curriculum Guide, must be included in the course of instruction. This may be organized in a general shop setting or as a rotation among unit shops.

(v) Junior high or middle school courses as well as grade 11 and 12 industrial education programs must correlate with the program being offered.

(vi) Activities to provide students with knowledge of industrial occupations must be part of the program. Instruction relating to a broad range of occupations -- with exploratory hands-on experiences typical of some jobs -- shall be included. Students shall be familiarized with training requisites, working conditions, wages or salaries, employment outlook and other related factors. Program activities might include pertinent observations of work situations (actual or simulated); familiarization with available advanced training opportunities; use of VIEW materials; involvement in mass production and/or enterprise simulations; and high use of resource persons.

(b) Prevocational industrial arts programs. Level of instruction: grades 11 and 12.

(i) Duration of program. Courses shall be scheduled for a minimum of 180 class periods per year, with 360 periods recommended. Block time (double period) is suggested for optimum time use.

(ii) Maximum class size: as stipulated for a trade and industrial program in the same subject field.

(iii) Instructors shall hold proper secondary certificates endorsed in industrial arts, with the necessary course work as outlined in Standards for Accreditation of Montana Schools. Instructors shall complete a preservice or inservice course or workshop designed to increase competency in conduct-

ing a prevocational industrial arts program within two years of the start of the program.

(iv) A library of resources related to the employment aspects of the occupational field shall be established and maintained for student use.

(v) Courses shall be designed to cover a single industrial field or cluster of related areas.

(vi) Close contact with industry must be maintained to provide students with additional insight into the occupations related to the training area.

(vii) Cooperation must be exercised among instructors and guidance personnel to provide occupational counseling to students in the programs.

(viii) Proficiency standards, both for technical skills and for occupational knowledge, shall be established to identify the scope of the instruction and to be used in student evaluation. This will correlate with state-level project planned for fiscal year 1980.

48-2.26 (11)-S26149a.(10.5.2210) COOPERATIVE VOCATIONAL EDUCATION PROGRAMS.

(1) Programs at the secondary level may serve any of the job titles by Office of Education course codes in the following areas:

- (a) Agricultural
- (b) Office
- (c) Distributive
- (d) Health
- (e) Trades and industry
- (f) Wage-earning home economics

(2) Specific requirements. Programs must provide students with on-the-job experience and training along with vocational classroom instruction related to their occupational interests. A cooperative arrangement among the school, the employer and the student is therefore necessary. Students' classroom and on-the-job activities must be planned and supervised by the school and the employer to ensure that both activities contribute to the students' employability and total education.

(a) Student placement for the first year of operation must be a minimum of 50 percent of the students enrolled in a specific (cooperative) program. Placement in successful years of operation should reach a level of 75-80 percent.

(b) Forty cooperative students is the maximum per coordinator.

- (c) Instructors

(i) A qualified teacher-coordinator must be responsible for the program.

(ii) The coordinator must be provided with coordination time over and above his or her regular preparation period(s). A minimum of one hour of coordination time per day

must be allotted for every 20 cooperative students.

(iii) The coordinator shall be employed for an extended contract of at least 10 days while school is not in session to assist students in finding jobs, to develop training stations, etc.

(iv) The coordinator

(A) shall hold a valid Montana teaching certificate endorsed in the applicable vocational area;

(B) shall have had at least one year of occupational experience in a related field.

(v) Budget items that may be considered as additional costs for funding purposes are:

(A) Extended contract salary -- that time prior to and immediately following the school year which is used by the teacher-coordinator to prepare training stations, make home visitations, place students and evaluate the program.

(B) Coordination time during the school day -- that time during the school day which is used by the teacher to coordinate individual trainees' on-the-job activities. For example, if one-third of the teacher-coordinator's time during the day is devoted to on-the-job coordination, then one-third of his or her salary must be considered an official cost item.

(C) Coordinator's travel expenses -- those travel expenses incurred by the teacher in coordinating on-the-job activities of training.

(vi) The student-learner, during the training experience, shall be under the direct supervision of the designated on-the-job trainer, particularly when the work is in occupations classified as hazardous, or with machines or processes that are classified as hazardous.

(d) A signed training agreement must be entered into by the participating employer, educational agency and trainee.

(e) Students placed in cooperative training stations must receive at least the minimum wage.

(f) Sex equity requirements

(i) An employer with whom a contract is made shall be an equal opportunity employer and should interview and place male and female students in work experience dependent on their interests and abilities rather than on cultural sex-stereotypes.

(ii) Female and male student-learners shall be paid on an "equal pay for equal work" basis within the same firm.

3. At the public hearing, written testimony was presented by William Ball, Executive Director of the Montana Advisory Council on Vocational Education. Letters of testimony were received from the following persons:

C. John Kinna, Superintendent of Schools, Fairfield

Robert G. Kinna, Superintendent of Schools, Sand Coulee

J. Jeffrey Dietz, Missoula County High School

Willard Weaver, Great Falls Public Schools

Max L. Amberson, Montana State University

Douglas Bishop, Montana State University
Jacob A. Block, Great Falls Public Schools
Doug Polette, Montana State University
Dick Schmidt, Superintendent of Schools, Park City
Van Shelhamer, Montana State University
Norm Millikin, Montana State University

Issues raised and resulting actions are summarized in the following paragraphs:

(a) Local Advisory Committee Requirement. Mr. Ball pointed out that program requirements in Part III do not contain the federally mandated requirements of a local advisory committee. The response is that Part II contains this and applies to all programs, hence it doesn't need repeating in each individual section.

(b) Mandatory 10½ Month Contract for Vocational Agriculture Teachers. Amberson, Bishop, Shelhamer, and Schmidt argued in favor of this as a minimum and mentioned the need for even longer contracts for the proper supervision of summer work experience programs. Block, Kinna, Kinna, Dietz, and Weaver argued against the requiring of extended contracts. Their main issue is that teacher contracts are the responsibility of local schools and only recommendations should be made by the state. John Kinna also expressed reservations about what is accomplished during the extended contract period.

The argument that this requirement infringes upon local contractual responsibilities is overruled since an extended contract for Vocational Agriculture teachers does not alter the basic nine month contract provisions. It is in addition, and only required if the school desires additional funding through Vocational Education sources. Administratively, it is no different than contracting with a teacher for an extended period for purposes such as new shop setup, curriculum work, and the like.

Based upon the fact that the requirement is designed to increase the quality of Vocational Agriculture programs and the fact that the majority of Vocational Agriculture teachers are already on 10½ month or longer employment, the 10½ month requirement will be retained in the Guidelines.

Kinna's concern over the quality of activities during the summer contract period will be addressed by adding a section to the Vocational Agriculture Criteria that will assist school personnel in administering a good program.

(c) Student Organizations. Weaver and Dietz questioned the wording that pertains to a program's responsibility for conducting activities of the vocational student organizations. Reworking in several paragraphs will clarify that FFA and DECA are required while FHA/HERO, OEA, and VICA are highly encouraged.

(d) Extra Duty Stipends for Teachers Supervising Student Organizations. Robert Kinna argued that the matter of paying stipends to student organization advisors is a local matter.

No changes are necessary since stipends are not mandated.

(e) Need for Guidelines. R. Kinna in particular was concerned about restrictive guidelines for programs. While there is merit to such questions especially where smaller schools cannot meet the guidelines, it must be pointed out that the guidelines are designed to ensure that funds go for the special types of programs that the appropriation is intended for. The Office of Public Instruction cannot be accountable for the use of funds without assurance that programs meet certain minimums. Also, many of the items addressed in the guidelines are federally mandated.

(f) Cooperative Vocational Education Coordinator Requirements. Millikin, Weaver, and Dietz questioned the three years of occupational and/or teaching experience required for Co-op Coordinators. Millikin pointed out that first year teachers could rarely meet this and that studies have shown that one year is sufficient. There is concurrence with this recommendation and that requirement will be changed to one year.

(g) Criteria for Approval of Occupationally Oriented/Pre-vocational Industrial Arts Programs. Weaver and Dietz expressed concern while Polette supported the requirements for industrial arts programs. Scrutiny of the requirements has led to the decision to change item J, page 44 and item K, page 45, to recommend, not require an additional ten working days for industrial arts teachers. Also, the workshop for occupationally oriented industrial arts programs is now required within two years after the start of the program rather than in advance as in item K, page 44.

(h) Student Follow-up. R. Kinna and Dietz addressed this follow-up requirement. Kinna listed it among other program requirements that small schools have problems meeting while Dietz stated that follow-up should be done in a systematized manner at the state level. It is agreed that extra work is involved and that the ideal is a statewide follow-up system. However, until such a system is developed, it will be a local responsibility. The importance of follow-up information for evaluation and planning purposes must be emphasized. To help with the task, a guide for conducting a follow-up study will be formulated and distributed to schools.

(i) Maintenance of Effort. Block questioned the stipulation that districts must not decrease the amount spent in a vocational program from one year to the next. He stated that a declining enrollment may dictate decreases and that a per pupil basis might be more appropriate. The response is that either an aggregate or per pupil basis can be used. Item 17, page 7, contains wording explaining this requirement so no changes are necessary.

(j) Other Questions and Concerns. Paragraphs (a) through (i) address substantive issues raised in the hearing process. Numerous minor questions also surfaced which will result in changes in the text for clarification purposes. However, these

will not change the intent of any affected portion.

4. Since "Guidelines for Vocational Education in Montana" includes much more than program requirements, the entire text is not printed here.

(History: Authority, 20-3-105 and 20-3-106 M.C.A., IMP H.B.634 Forty-sixth Legislative Session, 1979; NEW, Eff. 10/18/79.)

GEORGIA RICE, Superintendent
Office of Public Instruction

By


ALVE THOMAS

Deputy Superintendent
Authorized Representative

Certified to the Secretary of State September 18, 1979.

VOLUME NO. 38

OPINION NO. 41

PUBLIC OFFICERS - Recall elections;
ELECTIONS - Recall, statutory limitations;
ELECTIONS - Recall, authority of Secretary of State to
reject petitions;
MONTANA CODES ANNOTATED - Sections 2-16-603 and 2-16-617.

- HELD: 1. A public officer is not subject to recall based on
allegations that he voted against the wishes or
desires of his constituents.
2. The Secretary of State is empowered to reject a
petition for recall of a public officer if it is
not based on the statutory grounds for recall.

18 September 1979

Mr. Frank Murray
Secretary of State
State Capitol Building
Helena, Montana 59601

Dear Mr. Murray:

You asked for my opinion concerning:

1. Under the provisions of the Montana Recall Act does an allegation that a public officer voted contrary to the wishes and desires of his constituents constitute a sufficient basis for recall.
2. If statements similar to those listed above are insufficient, may the Secretary of State properly reject any petition which has been submitted for review containing those statements but which is otherwise in the form as prescribed by statute?

The "Montana Recall Act" is codified in sections 2-16-601 through 2-16-635, MCA. Section 2-16-603, MCA, provides the statutory basis for recall;

2-16-603. Officers subject to recall -- grounds for recall. (1) Every person holding a public office of the state or any of its political subdivisions, either by election or appointment, is subject to recall from such office.

(2) A public officer holding an elective office may be recalled by the qualified electors entitled to vote for his successor. A public officer holding an appointive office may be recalled by the qualified electors entitled to vote for the successor or successors of the elective officer or officers who have the authority to appoint a person to that position.

(3) Physical or mental lack of fitness, incompetence, violation of his oath of office, official misconduct, or conviction of a felony offense enumerated in Title 45 is the only basis for recall. No person may be recalled for performing a mandatory duty of the office he holds or for not performing any act that, if performed, would subject him to prosecution for official misconduct. (Emphasis supplied.)

The act was amended by the legislature in 1977 and 1979. The 1977 amendment repealed a provision of the original act which allowed recall for "any reason causing the electorate dissatisfaction with a public official ... notwithstanding good faith attempts to perform the duties of his office." [See former section 59-612(3), R.C.M. 1947.]

The house and senate committee reports concerning the 1977 amendment reveal that portions of the Montana Recall Act as passed by the 1976 initiative were ambiguous and so broad as to conflict with existing law. Of major concern was the possibility an organized minority might cause a costly recall election merely to harass an official who was acting in a manner which was contrary to their wishes. The committees feared that public officials would be forced to react to pressures from highly vocal special interests instead of exercising an independent and informed judgment. The minority (10-20%) required to initiate a recall election made it possible for relatively small, well-organized groups to harass public officials and impose great costs upon the governing body. It was estimated that the cost of running a special recall election would be from 1.25 to 1.75 million dollars at the state level, 7,500 to 40,000 dollars at the county level and between 500 and 6,000 dollars at the city

level. See House State Administration Committee Report (1977); Senate State Administrative Committee Report (1977).

Any material change in the language of the original act is presumed to indicate a change in legal rights, that is, a change in substance rather than mere form. 1A Sutherland, Statutory Construction, 4th Ed., §22.30. Montana has long subscribed to the foregoing rule: State ex rel. Federal Land Bank of Spokane v. Hays, 86 Mont. 58, 65-66, 282 P.32 (1929); Nichols v. School District No. 3, Ravalli County, 87 Mont. 181, 186, 287 P.264 (1930); Montana Milk Control Board v. Community Creamery, et al., 139 Mont. 523, 526, 366 P.2d 151 (1961).

It is clear that the legislature intended to limit the grounds for recall. In light of the amendment, it is my opinion that an allegation that an officer voted in a manner contrary to the wishes, will, or desires of his constituents is not a sufficient ground for recall as defined in section 2-16-603, MCA. Under our republican form of government, public officials must have the freedom to make difficult and informed decisions based upon the best information available and be free from the threat of harrassment from a minority of constituents who may not be aware of all the factors that serve as the basis for the decision.

Your second question is whether a petition may be rejected as to form if it fails to allege one of the statutorily prescribed grounds for recall. It is my opinion that such a petition may be rejected as to form. Section 2-16-617, MCA, provides that prior to circulation a recall petition must be submitted for approval as to form, and gives the filing official the authority to reject the petition.

Section 2-16-617

...
(3) Before a petition may be circulated for signatures, a sample circulation sheet must be submitted to the officer with whom the petition must be filed in the form in which it will be circulated. The filing officer shall review the petition for sufficiency as to form and approve or reject the form of the petition, stating his reasons therefor, within a week of receiving the sheet.

(4) The petition form submitted must be accompanied by a written statement containing the reasons for the desired recall as stated on the petition. The truth of the purported facts contained in the statement shall be sworn to by at least one of the petitioners before a person authorized to administer oaths. [Emphasis supplied.]

The section requires that both the petition submitted for approval and the statement attached to the petition explain the basis for the recall. As the grounds for the desired recall specifically constitute part of the form of the petition, the Secretary of State is empowered to reject the petition unless it meets all of the statutory requirements. See, Mahoney v. Murray, 159 Mont. 176, 496 P.2d 1120 (1972).

THEREFORE IT IS MY OPINION:

1. A public officer is not subject to recall based on allegations that he voted against the wishes or desires of his constituents.
2. The Secretary of State is empowered to reject a petition for recall of a public officer if it is not based on the statutory grounds for recall.

Very truly yours,



MIKE GREELY
Attorney General