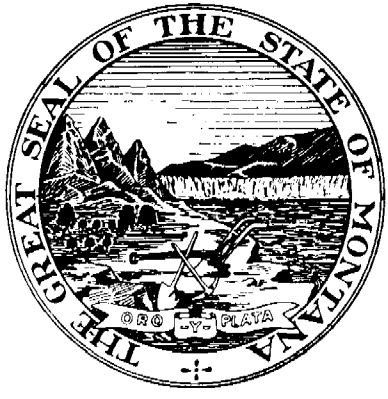
RESERVE

MONTANA ADMINISTRATIVE REGISTER



1980 ISSUE NO. 4
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NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a Joint Resolution directing an agency to adopt, amend, or repeal a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with existing or proposed rules. The address is Room 138, State Capitol, Helena, Montana 59601.

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. 4

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BEFORE THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 12-2.14(6)-S1430 Relating to Nongame Wildlife in Need of Management	))))))	NOTICE OF PROPOSED AMENDMENT OF A RULE RELATING TO NONGAME WILDLIFE IN NEED OF MANAGEMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On March 29, 1980, the Montana Department of Fish, Wildlife, and Parks proposes to amend Rule 12-2.14(6)-S1430 relating to nongame wildlife in need of management.

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

12-2.14(6)-S1430 NONGAME WILDLIFE IN NEED OF MANAGEMENT (1) The following nongame wildlife species are determined by the department to be nongame wildlife in need of management within the meaning of the Nongame and Endangered Species Conservation Act, 87-5-101, et seq., MCA. Management regulations for these species will be issued annually by the department:

~~no species listed.~~
wild bison (Bison bison).

3. The rule is proposed to be amended to provide department management over the bison in those cases where the animals migrating out of Yellowstone Park may have virulent brucellosis and pose a health threat to domestic livestock in the area.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to Robert F. Wambach, Director, Department of Fish, Wildlife, and Parks, 1420 E. 6 Avenue, Helena, Montana 59601. Written comments in order to be considered must be received no later than March 27, 1980.

5. If a person who is directly affected wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request along with any written comments to Dr. Wambach at the above-stated address no later than March 27, 1980.

6. If the department receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be

published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 37,355 based on the number of wildlife conservation licenses purchased in 1979.

7. The authority of the agency to make the proposed amendment is based on Sec. 87-5-105, MCA, and implements Sec. 87-5-105, MCA.

Robert F. Wambach, Director
Dept. of Fish, Wildlife & Parks

Certified to Secretary of State February 19, 1980

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

In the matter of the repeal of rules 16-2.6(1)-S600, eligibility aid, local health services; 16-2.6(1)-S610, confidential information; 16-2.6(1)-S620, implementation of executive reorganization act; and 16-2.6(1)-S630, definitions	NOTICE OF PROPOSED REPEAL OF RULES ARM 16-2.6(1)-S600, ARM 16-2.6(1)-S610, ARM 16-2.6(1)-S620, and ARM 16-2.6(1)-S630 NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On April 4, 1980, the department of health and environmental sciences proposes to repeal rules 16-2.6(1)-S600, entitled eligibility aid, local health services; 16-2.6(1)-S610, entitled confidential information; 16-2.6(1)-S620, entitled implementation of executive reorganization act; and 16-2.6(1)-S630, entitled definitions.

2. The foregoing rules may be found on pages 16-22 through and including 16-27, Administrative Rules of Montana.

3. The department of health and environmental sciences proposes to repeal rule 16-2.6(1)-S600 because the department is proposing by separate notice new rules to replace this rule. The department proposes to repeal rule 16-2.6(1)-S610, confidential information, because the rule was not adopted under correct statutory authority. The department proposes to repeal rule 16-2.6(1)-S620, implementation of executive reorganization act, and rule 16-2.6(1)-S630, definitions, because the rules are no longer necessary.

4. Interested persons may submit their data, views or arguments concerning the proposed repeal of these rules in writing no later than April 1, 1980 to Robert L. Solomon, Presiding Officer, Department of Health and Environmental Sciences, Capitol Station, Helena, Montana, 59601.

5. If a person who is directly affected by the proposed repeal of these rules 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 that request along with any written comments he has to Mr. Solomon at the address given in paragraph 4 no later than April 1, 1980.

6. If Mr. Solomon receives requests for a public hearing on the proposed repeal of these rules from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten

percent of those persons directly affected has been determined to be in excess of 25 based on the number of counties in the state of Montana.

7. The authority of the department to repeal the rules is based on section 2-4-201, MCA.

In the matter of the adoption of rules for distribution of funds for local health services	NOTICE OF PROPOSED ADOPTION OF RULES FOR DISTRIBUTION OF FUNDS FOR LOCAL HEALTH SERVICES NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On April 4, 1980, the department of health and environmental sciences proposes to adopt rules relating to the distribution of funds for local health services.

2. The proposed rules provide:

RULE I POLICY STATEMENT (1) It is the policy of the department of health and environmental sciences to make available for assistance to local public health programs the maximum amount of funds at its disposal from state appropriations and federal grants. It is the opinion of the department of health and environmental sciences that, to secure to the people the optimum health protection, local public health services can be most efficiently and economically rendered through an organized full-time local health department.

(2) Many Montana counties do not have sufficient population to support the personnel necessary in a full-time health department. It is, therefore, the policy of the department of health and environmental sciences to encourage combinations of such counties with adjacent counties in establishing and maintaining a local health department organization; however, it is recognized that prior to the development of these multi-county health departments, the larger counties will need and can justify the establishment and maintenance of a single county health department.

(3) Montana law requires cities of the first or second class to have a board of health. There is provision, however, that these cities can by mutual agreement with their county commissioners establish city-county boards of health. The department of health and environmental sciences encourages the formation of city-county boards of health in the belief

that such boards would more effectively serve their communities than separate city and county boards.

(4) Counties with small populations are encouraged to establish and maintain public health nursing and sanitarian services even if they are unable to have a full-time health officer. Montana statutes enable one local board to contract with another board for all, or part, of local health services. This provision makes it possible for counties which would not be able to afford, or to justify, the services of a full-time public health nurse or sanitarian to contract with some other county for part-time services. The department of health and environmental sciences encourages such arrangements, so that people wherever they live may benefit by public health services.

RULE II DEFINITIONS

(1) "Local board of health" means a city-county, city, county, or district board of health.

(2) "Local funds" for the purposes of these standards shall be interpreted to mean funds of any county, city, school district or other political subdivision of the state and funds of other public or private agencies or individuals appropriated, contributed or otherwise made available for financing local public health activities through a local public health fund.

(3) "Unorganized local public health services" for the purposes of these standards shall be interpreted to be public health nursing and/or sanitarian services in an area with budget provision for only a part-time health officer.

RULE III ALLOCATION PRIORITIES (1) Available funds for assistance to counties for local public health services will be allocated each year to counties establishing eligibility under these standards in the following order of preference:

(a) District boards of health, with a full-time health officer, comprising two or more counties and all first or second class cities contained therein.

(b) County or city-county boards of health with a full-time health officer.

(c) County boards of health making contracts for cost sharing of public health nursing and/or sanitarian services.

(d) County boards of health for public health nursing and/or sanitarian services.

(e) Greater consideration will be given to those boards which are initiating, or expanding, public health services.

(2) The standards and conditions and bases of financial assistance provided herein have been formulated with the objective of sponsoring the operation of the most effective and economical local public health services to the people

of this state and distributing available assistance funds to eligible local jurisdictions in the most equitable and objective manner.

RULE IV CRITERIA FOR ELIGIBILITY FOR FUNDS (1) The program for which the local board of health wishes to be subsidized by grants for local public health services must be described in writing to the department. Priority must be made to ensure that such basic services as public health nursing and sanitarian are provided before any other activity or program will be considered.

(2) The following activities are not acceptable for board financial participation for the purpose of this grant:

(a) Operation of hospitals, nursing homes, or other medical care facilities.

(b) Garbage, refuse and sewage collection and treatment.

(c) Street cleaning.

(d) Building construction inspection.

(e) Plumbing inspection.

(f) Operation of animal pounds.

(g) Maintenance of cemeteries.

(3) The local health officer shall report to the department as prescribed by section 50-2-118, MCA. This includes a weekly communicable disease report and quarterly account of his activities.

(4) In addition, local health departments and public health workers in unorganized units should maintain such records and submit such reports in the manner and at such times as the department of health and environmental sciences may reasonably require.

(5) In applying for a department grant for a fiscal year, the local board of health shall submit a statement indicating the budget for public health services for the preceding year.

RULE V BASIS OF FINANCIAL ASSISTANCE (1) Funds available to a local board of health from the board shall not be used to replace local funds.

(2) The amount of funds which can be distributed to any local board of health will be determined by what is available to the department of health and environmental sciences, but in no case would the amount exceed 50% of the total of the acceptable items in the approved budget of the local board.

(3) In addition to the grants that are described in these standards, it may or may not be possible for the department to provide other grants-in-aid to local boards of health for demonstration projects, or other special public health service.

(4) Personnel of the department may be assigned to local boards of health in lieu of cash.

(5) The amount of funds which are available for distribution to local boards will be estimated each year and a suitable formula will be approved by the department of health and environmental sciences each year to distribute the funds.

(6) The amounts of money left over from those counties which either did not apply for a grant, or were determined to be ineligible, would be available for funding of services such as demonstration projects or other special health services.

(7) Grants to local boards of health will continue to be available in future years depending on the amounts of funds which can be distributed.

RULE VI BUDGET, PLAN AND METHOD OF PAYMENT (1) The local board of health shall submit a detailed, itemized budget each fiscal year covering the proposed expenditure of all public health funds during the year on forms provided by the department. Similarly, submission of a plan of operation of the public health program may be required.

3. The rules are proposed to replace ARM 16-2.6(1)-S600, 16-2.6(1)-S610, 16-2.6(1)-S620, and 16-2.6(1)-S630 and to update the provisions of these rules with current practices of the department.

4. Interested persons may submit their data, views or argument concerning the proposed adoption of these rules in writing no later than April 1, 1980, to Robert L. Solomon, Presiding Officer, Department of Health and Environmental Sciences, Capitol Station, Helena, Montana, 59601.

5. If a person who is directly affected by the proposed adoption of these rules 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 that request along with any written comments he has to Mr. Solomon at the address given in paragraph 4 no later than April 1, 1980.

6. If Mr. Solomon receives requests for a public hearing on the proposed adoption of these rules from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the legislature, from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25 based on the number of counties in the state of Montana.

7. The authority of the department to adopt these rules is based on section 2-4-201, MCA, which is the section implemented by these rules.

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

Certified to the Secretary of State February 19, 1980

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the ADOPTION OF A RULE for the movement of Triple Trailer Vehicle Combinations and other Special Vehicle Combinations	NOTICE OF PROPOSED ADOPTION OF A RULE for the Movement of Triple Trailer Combinations NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On March 29, 1980, the Department of Highways proposes to adopt a rule for the movement of Triple Trailer Vehicle Combinations and other Special Vehicle Combinations.

2. The proposed rule provides as follows:

Rule I. MOVEMENT OF TRIPLE TRAILER VEHICLE COMBINATIONS AND OTHER SPECIAL VEHICLE COMBINATIONS (1) The following multiple trailer combinations may be operated on a trip basis by a Special Permit issued by the Department of Highways:

(a) A truck-tractor and three trailers, the trailers of approximately equal length, having an overall combined length not to exceed 95 feet.

(b) A truck and two trailers, the trailers of approximately equal length, having an overall combined length not to exceed 95 feet.

(c) A truck-tractor and two trailers of approximately equal length, having an overall combined length not to exceed 105 feet.

(d) An auto transporter combination consisting of a truck and two stinger steered semi-trailers not to exceed 105 feet in vehicle length and 110 feet in load length.

(2) Travel is authorized only on the Interstate Highway System, completed and uncompleted, and on adjacent roads to allow for local pick-up and delivery. Local is defined as a distance not to exceed 10 miles one way from point of entrance or exit from an Interstate Highway.

(3) Travel is authorized 24 hours per day, including weekends and holidays, during the period of Daylight Savings Time in each calendar year.

(4) A sign stating "Long Load - Pass with Care" shall be displayed on the rear of each combination. Letters must be a minimum of 6 inches in height and of a reflectorized type material.

(5) Maximum speed may not exceed posted speed limits at any time. Speed or any hazardous moving violation will subject the Permittee to revocation of special permit privileges.

(6) Maximum weight may not exceed that allowed by Section 61-10-107, MCA, which is 20,000 pounds per single

axle, 34,000 pounds per tandem axle, and total gross weight of 105,500 pounds.

(7) The combinations may not be dispatched or operated when hazardous conditions such as those caused by snow, ice, sleet, fog, mist, rain, dust, or smoke adversely affect visibility or traction. When adverse conditions are encountered on the road, speed shall be reduced and if conditions become sufficiently dangerous, the operation of the combination shall be discontinued until safe operation can be resumed. During severe conditions, in the interest of safety for the public and combination, the driver may proceed to the first safe place where the unit may be removed from the highway.

(8) The following regulations shall apply regarding equipment:

(a) All trucks and tractor trucks shall be powered to provide adequate acceleration ability and hill climbing ability under normal operating conditions, and to operate on level grades at speeds compatible with other traffic. The ability to maintain a minimum speed of 20 mph under normal operating conditions on any grade over which the combination is operated is required.

(b) All trucks and tractor trucks shall have adequate traction to maintain a minimum speed of 20 mph under normal operating conditions on any grade over which the combination is operated and to be able to resume a speed of 20 mph after stopping on any such grade and, except in extreme road or weather conditions, to negotiate at any speed all grades encountered.

(c) Conventional 12 ply tires which give a "hard" ride are recommended. The use of so-called low pressure or extra width tires are prohibited unless approved by the Department of Highways.

(d) A heavy duty fifth wheel is required. All fifth wheels must be clean and lubricated with a light duty grease prior to each trip. The fifth wheel must be located in a position which provides adequate stability.

(e) Pick-up plates must be of equal strength to the fifth wheel.

(f) The king pin must be of a solid type and permanently fastened. Screw out or folding type king pins are prohibited.

(g) All hitch connections must be of a no-slack type, preferably air actuated ram. Air actuated hitches which are isolated from the primary air transmission system are recommended.

(h) The drawbar length should be the practical minimum consistent with the clearances required between trailers for turning and backing maneuvers.

(i) Axles must be those designed for the width of the

body.

(j) All braking systems must comply with state and federal requirements. In addition, fast air transmission and release valves must be provided on all trailer, semitrailer and converter dolly axles. A brake force limiting valve, sometimes called a "slippery road" valve may be provided on the steering axle. Indiscriminate use of engine retarder brakes is prohibited.

(k) Anti-sail mud flaps are required.

(l) All multiple trailer combinations must be stable at all times during normal braking and normal operation. A multiple trailer combination when traveling on a level, smooth, paved surface must follow in the path of the towing vehicle without shifting or swerving more than three inches to either side when the towing vehicle is moving in a straight line.

(m) In no case shall any trailer or semitrailer be placed ahead of another trailer or semitrailer which carries an appreciably heavier load. The heaviest trailer or semi-trailer should be placed in front and the lightest at the rear.

(9) The following requirements shall apply to drivers:

(a) A driver must have had at least eight years of experience driving truck trailer combinations, five years of which must have been in driving multiple trailer combinations such as doubles or triples.

(b) The driver may have had no traffic citations during the past three years while driving a truck.

(c) The driver must fully comply with the driver's requirements set forth in the Motor Carrier Safety Regulations of the U. S. Department of Transportation.

(d) The driver must have had special instruction and training in the operation of any multiple trailer combination prior to operating any such combination on a highway.

(e) The driver must be a paid employee of the Company holding the Special Permit and under direct supervision and responsibility of the Company.

(f) The responsibility for strict compliance with the driver requirements shown in this section shall be borne equally by both the Driver and the Company.

(10) Notwithstanding other state and federal requirements for reporting motor vehicle accidents, all reportable accidents involving a multiple trailer combination operated under a special permit must be reported to the Gross Vehicle Weight Division of the Department of Highways within ten days of the date of the accident.

(11) In lieu of Special Permit, G.V.W. Form 32, companies intending to use in excess of five permits per day will be authorized to proceed in the following manner:

(a) Secure a letter from the Department of Highways for the operation of the vehicle combinations.

(b) Place a photo copy of the letter in each power unit

utilized.

(c) Record the number of round trips made each month and forward this information, accompanied by a check equal to $6.00 times the number of trips, to the Gross Vehicle Weight Division within 10 days following the end of each month.

(12) Violations of any rules and regulations may result in the Highway Commission's revocation, cancellation or suspension of permits without refund pursuant to Section 61-10-143, MCA.

3. The rule is proposed to respond to a petition for its adoption filed by the Montana Motor Carrier's Association, 1727 Eleventh Avenue, Helena, Montana 59601. The petition sets forth reasons why the operation of Triples Trailers should be allowed, primarily for conservation of fuel. Copies of the petition are available from the Department of Highways.

4. Interested parties may submit their data, views or arguments concerning the proposed rule adoption in writing to Ronald P. Richards, Director, Department of Highways, 2701 Prospect Avenue, Helena, Montana 59601, no later than March 27, 1980.

5. If a person who is directly affected by the proposed rule adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to Ronald P. Richards, Director, Department of Highways, 2701 Prospect, Helena, Montana 59601, no later than March 27, 1980.

6. If the Agency receives requests for a public hearing on the proposed rule adoption from either 10% or 25, whichever is less of the persons directly affected by the proposed amendment; from the Administrative Code Committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 58,000 persons based on the number of licensed Montana drivers.

7. The authority of the Department to adopt the proposed rule is based on Section 61-10-122, MCA, and the rule implements Section 61-10-121, MCA.

By: Ronald P. Richards
Director of Highways

Certified to the Secretary of State February 19, 1980.

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

IN THE MATTER of the Proposed Amendment of ARM 40-3.102(6)-S10220 concerning applications; proposed adoption of a new rule 40-3.102(6)-S10225 concerning examinations; proposed amendment of 40-3.102(6)-S10230 concerning renewals; proposed adoption of a new rule 40-3.102(6)-S10235 concerning forfeiture of license and restoration for veterinarians;proposed amendment of 40-3.102(6)-S10240 concerning Temporary Permits; proposed new rule 40-3.102(6)-S10245 concerning a fee schedule; proposed amendment of 40-3.102(6)-S10250 subsection (5) concerning inspection and sanitation; proposed amendment of 40-3.102(6)-S10270 concerning continuing education for veterinarians; and proposed repeal of 40-3.102(6)-S10280 concerning continuing education for veterinary technicians	NOTICE OF PROPOSED AMENDMENT OF ARM 40-3.102(6)-S10220 APPLICATIONS; PROPOSED ADOPTION OF 40-3.102(6)-S10225 EXAMINATION FOR LICENSURE AS A VETERINARIAN; 40-3.102(6)-S10230 RENEWAL NOTICE OF CERTIFICATE OF REGISTRATION, PROPOSED ADOPTION OF 40-3.102(6)-S10235 FORFEITURE OF LICENSE AND RESTORATION FOR VETERINARIANS; PROPOSED AMENDMENT OF 40-3.102(6)-S10240 TEMPORARY PERMIT; PROPOSED ADOPTION OF 40-3.102(6)-S10245 FEE SCHEDULE; PROPOSED AMENDMENT OF 40-3.102(6)-S10250 INSPECTION AND SANITATION; PROPOSED AMENDMENT OF 40-3.102(6)-S10270 CONTINUING EDUCATION FOR VETERINARIANS; PROPOSED REPEAL OF 40-3.102(6)-S10280 CONTINUING EDUCATION - VETERINARY TECHNICIAN NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 29, 1980, the Board of Veterinarians proposes to amend 40-3.102(6)-S10220 concerning applications, adopt a new rule 40-3.102(6)-S10225 concerning examinations; amend 40-3.102(6)-S10230 concerning renewals; adopt a new rule 40-3.102(6)-S10235 concerning forfeiture of license and restoration for veterinarians; amend 40-3.102(6)-S10240 concerning temporary permits; adopt a new rule 40-3.102(6)-S10245 concerning a fee schedule; amend 40-3.102(6)-S10250 subsection (5) concerning inspection and sanitation and 40-3.102(6)-S10270 concerning continuing education for veterinarians; and repeal 40-3.102(6)-S10280 concerning continuing education for veterinary technicians.

2. The proposed amendment of 40-3.102(6)-S10220 will read as follows: (new matter underlined, deleted matter interlined)

"40-3.102(6)-S10220 APPLICATION REQUIREMENTS FOR VETERINARIANS (1) The examination application form~~, provided by the board, for admission to the examination for license to practice veterinary medicine,~~ may also be used for the application for ~~exam, for the application for license by examination or for the~~

~~license~~-licensure by reciprocity.

(2) Applicants for licensure by examination shall submit a completed application with the proper fee and supporting documents to the board office no later than 30 days prior to the examination date as set by the board. Supporting documents shall include:

(a) copy of diploma from a school of veterinary medicine showing evidence of graduation in and receiving a degree;

(i) senior veterinary students who have not yet received a diploma when submitting the application, shall submit a letter from the dean of the school of veterinary medicine attended, stating that he/she is a senior student and the expected date to receive the degree of Doctor of Veterinary Medicine or its equivalent. No license shall be issued, however, until such time as the board office receives a photostatic copy of the diploma.

(b) photograph approximately 2" x 2" taken within 2 years of the date of application; and

(c) any other information as the board may deem necessary.

(3) All applicants must have taken the National Board examination prior to the examination date as set by the board and have their scores reported to the board office through the Interstate Reporting Service or its equivalent.

(a) Applicants must have taken the National Board examination within 5 years prior to the date of the next scheduled examination.

(b) It is the responsibility of each applicant to take the National Board wherever and whenever possible. Montana will not administer the National Board examination unless deemed necessary by the board.

(4) Foreign veterinary school graduates must have completed the requirements of the American Veterinary Medical Association's Education Commission for Foreign Veterinary Graduates (E.C.F.V.G.) before an application will be accepted. "

3. The board is proposing the amendment to (1) take out unnecessary wording, (2) places a deadline for filing applications so that time is allowed for setting up the examinations and sets the requirements for applications so that the board may ascertain the qualifications of the applicant. (3) The board has choosen to use the National Board examination, which they are authorized to do under section 37-18-202 (1) MCA, as the examination is prepared by experts in the field of veterinary medicine. The five year restriction is placed so that the board is assured that applicants for examination

are knowledgeable in the current practice of veterinary medicine. Examinations are given to all graduates of the schools of veterinary medicine and therefore, the majority of applicants will have already taken the examination and it would be too costly at the present time to administer the examination to the few applicants who have not taken the national board examination within the five years. (4) The board feels that the qualifications set forth by the AVWA for receiving the E.C.F.V.G. certificate are sufficient to qualify those persons applying for licensure by examination to practice veterinary medicine in Montana.

The authority of the board to make the amendment is based on section 37-18-202 (1) MCA. The rule implements sections 37-18-202, 302, 303 MCA.

4. The proposed new rule 40-3.102(6)-S10225 will read as follows: (new matter underlined)

"40-3.102(6)-S10225 EXAMINATION FOR LICENSURE AS A VETERINARIAN (1) The examination for licensure as a veterinarian shall consist of three parts.

(a) The first part shall consist of the National Board examination pursuant to the requirements set forth in ARM 40-3.102(6)-S10220 (3) and shall score 60% of the total examination.

(b) The second part shall consist of a practical examination as composed and corrected by the board and shall score 20% of the total examination.

(c) The third part shall consist of an oral examination as composed and corrected by the board and shall score 20% of the total examination.

(2) An applicant must achieve an overall average of 70% or better in order to obtain a license to practice veterinary medicine in this state.

(3) Any applicant who has failed the examination may apply to be re-examined at a subsequent examination and shall pay the proper examination fee. The applicant then must retake the practical and oral portion of the examination as given by the board. The applicant may, if he/she so desires, retake the National Board examination to bring the average up, or must retake the National Board examination if the five year allowance period has expired. "

5. The board is proposing this new rule to set forth what the examination will consist of, to set a passing score for the examination and to clarify the law, to set forth the requirements for persons who fail the examination. The authority of the board to adopt the proposed new rule is based on section 37-18-202 (1) MCA. The rule implements section 37-18-303 MCA.

6. The proposed amendment of 40-3.102(6)-S10230 will read as follows: (new matter underlined, deleted matter interlined)

"40-3.102(6)-S10230 NOTICE OF ANNUAL RENEWAL ~~NOTICE~~ OF CERTIFICATE OF REGISTRATION FOR VETERINARIANS (1) ~~-Renewal-n~~Notices for annual renewal of certificate of registration and forms for certifying continuing educational hours shall be mailed annually to each licensed ~~V~~veterinarian at his/her last known address at least 30 days prior to the ~~expiration-date~~ July 1st deadline. Notices will be considered properly mailed when addressed to the last known address on file in the board office.

(2) The proper annual renewal of certificate of registration fee and proof of continuing education are due by July 1st of each year."

7. The board is proposing the amendment to clarify the wording, to indicate that the last known address on file is the one which the notice will be sent so that the board is not responsible for someone not notifying of a change of address and not receiving the notice and to indicate when the renewals are due. The authority of the board to make the proposed amendment is based on section 37-18-202 (1) MCA. The rule implements section 37-18-307 MCA.

8. The proposed new rule 40-3.102(6)-S10235 will read as follows: (new matter underlined)

"40-3.102(6)-S10235 FORFEITURE OF LICENSE AND RESTORATION FOR VETERINARIANS (1) Annual renewal of certificate of registrations postmarked after July 1st of each year constitutes a forfeiture of the license held by the person. In order to make restoration of a license, a person shall fulfill the requirements set forth in section 37-18-307 (2) MCA.

(2) Any person failing to make restoration of a license within one year after the July 1st deadline will be required to submit to examination in order to be re-licensed to practice veterinary medicine in this state."

9. The board is proposing the new rule to set forth the deadline for renewals so that there is no question as to who is required to make restoration of a license and clarifies that persons failing to make restoration of a license within one year must take the examination in order to become licensed again. The authority of the board to propose the adoption is based on section 37-18-202 (1) MCA. The rule implements section 37-18-307 (2) MCA.

10. The amendment of 40-3.102(6)-S10240 will read as follows: (new matter underlined, deleted matter interlined)

"40-3.102(6)-S10240 TEMPORARY PERMIT (1) ~~The individual must file a written request with the board;~~ An applicant for examination requesting a Temporary Permit must make such in writing to the board ~~-The letter must~~ stateing the licensed ~~V~~veterinarian's name and location under whom he will be working.

(2) The licensed Vveterinarian employing the individual requesting the Temporary Permit shall file a written request with the Bboard ~~requesting that a Temporary Permit be granted.~~

(3) Temporary Permits shall only be issued after the applicant has on file, a completed application for examination, ~~and~~ the proper examination fee, and any information as the board may require pursuant to ARM 40-3.102(6)-S10220.

11. The Board is proposing the change to remove unnecessary and redundant wording and set forth that the applicant must have on file a completed application before being issued a Temporary Permit. The authority of the board to make the proposed amendment is based on section 37-18-202 (1) MCA. The rule implements section 37-18-303 (5) MCA.

12. The proposed new rule 40-3.102(6)-S10245 establishes a fee schedule and will read as follows: (new matter underlined)

"40-3.102(6)-S10245 FEE SCHEDULE

(1) Veterinarians	
(a) Annual renewal of certificate of registration	$25.00
(b) Restoration	$25.00
(c) Application for examination	$75.00
(2) Veterinary Technicians	
(a) Annual registration	$10.00
(b) Application for examination	$25.00"

13. The board is proposing the adoption to set forth the fees. The maximum fees allowed for veterinarian's annual certificate of registration fee and restoration fee, and the veterinary technician's annual registration fee are required due to the fact that the board has no fund balance and to meet the current budget appropriation. The board has examined the costs for the examinations and has set the fees accordingly. The authority of the board to propose the adoption is based on section 37-18-202 (1) MCA. The proposed rule implements sections 37-18-302, 303, 307, 401 and 405 MCA.

14. The proposed amendment of 40-3.102(6)-S10250 amends subsection (5) only and will read as follows: (new matter underlined, deleted matter interlined)

"40-3.102(6)-S10250 INSPECTION AND SANITATION (1)...

(5) If, in the opinion of the Bboard, the licensee has not made satisfactory progress or if the explanation is unsatisfactory, it shall issue a letter of warning to the licensed veterinarian to immediately start placing his premises in a clean and sanitary condition. Failure to do so ~~shall~~ may ~~place his license in jeopardy, under 66-2210 R.C.M. 1947~~ serve as cause for initiating suspension or revocation of license provided under

section 37-18-311 MCA."

15. The reason the board is proposing the change is to provide that the explanation for unsanitary conditions must be satisfactory to the board and also give the board discretion in initiating a suspension or revocation notice. The proposed amendment also changes the section number of the statute in accordance with recodification. The authority of the board to make the proposed change is based on section 37-18-202(1) MCA. The rule implements section 37-18-411 (1) (i) MCA.

16. The proposed amendment to 40-3.102(6)-S10270 will read as follows: (new matter underlined, deleted matter interlined)

"40-3.102(6)-S10270 CONTINUING EDUCATION FOR VETERINARIANS (1) Each ~~V~~veterinarian licensed ~~by the Montana Board of Veterinarians~~ shall be required to obtain a minimum of 10 credit hours of ~~a~~ Ccontinuing Eeducation ~~program~~ approved by the board each fiscal year before becoming eligible for ~~license renewal on July 1~~ the annual renewal of certificate of registration. The fiscal year of the board is July 1 to June 30 each year.

(a) A Vveterinarian may be granted a grace period to include a month prior to July 1st of the year preceding the application for renewal and three months after the following July 1st deadline in which to fulfill the continuing educational requirements. This grace period shall be granted only upon written request to the Bboard and upon Bboard approval. This grace period, however, will not allow a veterinarian to use the same continuing educational program for two separate annual renewal of certificate of registrations.

~~(2) The Continuing Education Program shall consist of a minimum of ten (10) hours and not to exceed fifty (50) hours. This requirement shall be set by the Board annually.~~

~~(3)~~ (2) Credit hours ~~may~~ shall be earned by ~~one (1)~~ hour credit for each hour of attendance at in-depth meetings approved by the Bboard. Board approved programs include those sponsored by the American Veterinary Medical Association, American Animal Hospital Association, Western States Veterinary Conferences, Vveterinary Ccollege Cconferences, and Sstate Aassociation Mmeetings, and any other affiliated association, society, etc, related to veterinary medicine that have specific seminars for veterinarians ~~specific seminars are examples of Board approved programs~~. Local Vveterinary MMeetings with SScientific Pprograms, shall be equal to only ~~one (1)~~ credit hour unless otherwise approved for more credit hours by the board.

~~(4)~~ (3) Programs shall be of a professional veterinary nature to qualify. Business, management or other associated subjects will not qualify.

~~(5)--Each-year-each-Veterinarian-will-be-required-to certify-the-number-of-credit-hours-earned-on-a-form provided-by-the-Board.--These-forms-will-be-mailed-to each-veterinarian-with-the-annual-renewal-notice.~~

(4) Pursuant to section 37-18-307 MCA, those persons exempt under the above provisions are:

(a) new licensees who secured a license by examination during the 6 months preceeding the July 1st renewal date, and

(b) persons on active duty by a branch of the armed services of the United States."

17. The board is proposing the above changes to (1) take out unnecessary wording and to clarify the requirements and the fiscal year of the board and to change the wording to conform with the statutes; deleted (2) in its entirety as the rule does not indicate exactly how many hours are required and this has been done in the proposed change to subsection (1). The sections have been renumbered. (3) has been reworded for clarification and to allow local veterinary meetings that have specific programs for continuing education to apply for more than one hour of credit. (5) has been deleted in its entirety as this has been provided for in the proposed amendment of ARM 40-3.102(6)-S10230. (4) sets out who is exempt from the continuing educational requirements as set forth by statute. The authority of the board to make the proposed amendment is based on section 37-18-202 (1) MCA. The rule implements section 37-18-307 MCA.

18. The proposed repeal of 40-3.102(6)-S10280 Continuing Education - Veterinary Technician deletes the rule in its entirety. The rule is located at page 30-399.4 Administrative Rules of Montana.

19. The board is proposing the repeal of this section as there is no provision in the statutes to set the requirement. The costs and time involved to the technician does not justify the end result and there is an inavailability of continuing education programs for technicians. The authority of the board to propose the repeal is based on section 37-18-202 (1) MCA.

20. Interested parties may submit their data, views or arguments concerning the proposed amendments, adoptions and repeal in writing to the Board of Veterinarians, Lalonde Building, Helena, Montana no later than March 27, 1980.

21. If a person who is directly affected by the proposed amendments, adoptions, and repeal 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 comments he has to the Board of Veterinarians, Lalonde Building, Helena, Montana no later than March 27, 1980.

22. If the board receives requests for a public hearing on the proposed amendments, adoptions, and repeal from 10% or 25, whichever is less, of the persons directly affected by the proposed amendments, adoptions and repeal; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 66 based on the 664 licensees.

23. The authority and implementing sections are listed after each proposed amendment, adoption and repeal.

BOARD OF VETERINARIANS
DONALD L. BUELKE, D.V.M.,
PRESIDENT

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

Certified to the Secretary of State, February 19, 1980.

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

In the matter of the amendment of 46-2.10(18)-S11440(1)(o) and the adoption of six rules pertaining to medical assistance, services provided, amount, duration--transportation and per diem	)))))	NOTICE OF THE PROPOSED AMENDMENT OF RULE 46-2.10 (18)-S11440(1)(o) AND THE ADOPTION OF SIX RULES PERTAINING TO MEDICAL ASSISTANCE. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On March 31, 1980, the Department of Social and Rehabilitation Services proposes to amend 46-2.10(18)-S11440 (1)(o) and adopt six new rules all pertaining to medical assistance, services provided, amount, duration--transportation and per diem.

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

46-2.10(18)-S11440 MEDICAL ASSISTANCE, SERVICES PROVIDED, AMOUNT, DURATION (1) Remains the same except for subsection (o) which is as follows:

(o) Transportation by ambulance may be authorized upon the recommendation of the attending physician. Ambulance services providing the transportation must be certified by the department of health before payment can be made for such services.

(i) Delete in its entirety.
(ii) Delete in its entirety.
(iii) Delete in its entirety.

No other changes in the remainder of the rule.

3. The rules to be adopted are as follows:

RULE I TRANSPORTATION AND PER DIEM (1) Transportation and per diem are those services necessary to secure medically necessary examinations and treatment covered by the Medicaid Program. They do not include ambulance service or specialized transportation service for the handicapped. Transportation and per diem are available for a recipient and a necessary attendant. When the medical service involves a donor, transportation and per diem for the donor may also be covered under the recipient's eligibility.

(a) Transportation may be provided by a common carrier or by a private vehicle.

(b) Per diem includes meals and lodging.

RULE II ADDITIONAL REQUIREMENTS (1) Transportation and per diem shall be allowed when medically necessary for a

recipient to obtain nonemergency services which are not reasonably available locally.

(2) In-state transportation and per diem shall be prior authorized by the local county welfare director.

(3) Out-of-state transportation and per diem shall be prior authorized by the Medical Assistance Bureau and is not allowed if the needed services are reasonably available in the State.

(4) Recipient shall not be directly reimbursed for transportation and/or per diem.

(5) Transportation shall be by the least expensive available means suitable to the recipient's medical needs.

(6) Transportation and/or per diem are available only to get individuals to acceptable Medicaid providers of their choice who are generally available and commonly used by other residents of the community.

(7) Payments shall be made for transportation and per diem for an attendant when it is demonstrated that the recipient's condition or age requires the care of an attendant.

(8) Reimbursement for transportation and per diem to secure medical services not included under the Medicaid program shall not be allowed.

(9) When a recipient requires attendant care to obtain and return from hospitalization outside his own community, attendant per diem will be allowed during the hospitalization up to the maximum amount of one return round trip.

(10) When a recipient dies enroute to or during treatment outside of his community, the cost of the recipient's transportation to the medical service is allowed. The cost of returning a deceased recipient is not allowed.

RULE III TRANSPORTATION AND PER DIEM, REIMBURSEMENT

(1) Reimbursement for common carrier will be paid on the basis of usual and customary charges.

(2) Reimbursement for transportation by private vehicle will be at the current state rate for state employees.

(3) Reimbursement for per diem shall be actual expenses incurred up to a maximum of $17.00 per day for each person.

RULE IV SPECIALIZED NONEMERGENCY TRANSPORTATION

(1) Specialized nonemergency transportation means transportation service by a provider with a class B Public Service Commission license allowing the provider to transport physically handicapped individuals.

RULE V ADDITIONAL REQUIREMENTS FOR SPECIALIZED NONEMERGENCY TRANSPORTATION (1) The service shall be available

under the Medicaid Program only when it is necessary to obtain medical services covered by the Medicaid Program.

(a) Individuals receiving this service must have a handicap or physical limitation that precludes their use of usual forms of transportation in order to obtain medical services.

(b) The service may not be used for emergency medical transportation.

(c) All services must be prior authorized by the local county director.

RULE VI SPECIALIZED NONEMERGENCY MEDICAL TRANSPORTATION, REIMBURSEMENT (1) Reimbursement for specialized nonemergency medical transportation shall be the lowest of the provider's rates as approved by the Public Service Commission or the rates allowed by the Specialized Nonemergency Medical Transportation Fee Schedule.

(2) Specialized Nonemergency Medical Transportation Fee Schedule

(a) Transportation under sixteen (16) miles.....	$ 8.00 one way $14.00 round trip
Transportation over sixteen (16) miles.....	$ .50 per mile
Waiting time for transportation over sixteen (16) miles.....	$ 4.00 per hour Computed in 15 minute increments or fraction thereof
Waiting time for under sixteen (16) miles.....	No payment
When one way transportation is over sixteen (16) miles and the unloaded miles exceeds ten percent (10%) of the loaded miles, the miles from the departure point to the pick-up point plus the miles from the delivery point to the departure point shall be paid for at the rate of.....	$ .25 per mile

(b) There shall be no charge for usual passenger baggage which is not cargo.

(c) Children under six years of age accompanied by an adult paying passenger shall be carried free.

4. In view of the very rapidly rising costs of gasoline and other energy resources, the Department finds that it must take immediate steps to assure that Medicaid recipients are provided with necessary transportation to and from providers of medical services. Organization and individuals who previously took Medicaid recipients to nonemergency medical appointments are unable or refuse to provide this transportation. The Department's present rule only provides $13.50 for per diem and $ .09 a mile for travel. The Department finds that there is an imminent peril to public health, safety or welfare due to the inability of some Medicaid recipients to receive proper medical care. The Department is in the process of drafting permanent rules governing transportation and per diem. However, this process will take a minimum of two months which could leave some Medicaid recipients without proper medical care. This emergency rule takes precedent over ARM 46-2.10(18)-S11440(1)(o). The remainder of 46-2.10(18)-S11440 will remain the same. It should be noted that due to the ongoing recodification of the Administrative Rules of Montana and other amendments being made to this rule the numbering system of the subsections will be incomplete.

5. Interested parties may submit their data, views or arguments concerning the proposed amendment and adoption in writing to the Office of Legal Affairs of the the Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, MT 59601, no later than March 27, 1980.

6. If a person who is directly affected by the proposed amendment and adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit its request along with any written comments he has to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601, no later than March 27, 1980.

7. If the agency receives requests for a public hearing on the proposed amendment and adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment and adoption; or from an association having not less than 25 members who will be directly affected,

a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 1,118 persons based on a department budget analysis that shows a total of 11,184.

8. The authority of the agency to make the proposed amendment and adoption is based on Section 53-6-113 MCA and the rule implements Sections 53-6-101 and 53-6-141 MCA.

Keith F. Hill
Director, Social and Rehabilitation Services

Certified to the Secretary of State February 19, 1980.

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

In the matter of the repeal of 46-2.10(18)-S11390 and 46-2.10 (18)-S11400 pertaining to medical assistance program and the adoption of two new rules pertaining to medical assistance, purpose and definitions	) NOTICE OF PROPOSED) REPEAL OF RULE 46-2.10) (18)-S11390 AND 46-2.10) (18)-S11400 AND THE) ADOPTION OF TWO NEW) RULES ALL PERTAINING TO) MEDICAL ASSISTANCE. NO) PUBLIC HEARING) CONTEMPLATED

TO: All Interested Persons

1. On March 31, 1980, the Department of Social and Rehabilitation Services proposes to repeal Rules 46-2.10(18)-S11390 and 46-2.10(18)-S11400 and adopt two new rules pertaining to medical assistance.

2. The rules proposed to be repealed are found on page 46-87 of the Administrative Rules of Montana.

3. The rules as proposed to be adopted provide as follows:

RULE I MEDICAL ASSISTANCE, PURPOSE The medical assistance program pays for necessary medical services for persons who are unable to pay for such care for themselves. The covered groups include recipients of AFDC, supplemental security income, and persons considered medically needy. The program is commonly referred to as the "medicaid program". It is partially funded by federal funds and must be administered in accordance with all federal statutes and regulations including but not limited to, Title XIX of the Social Security Act, as amended, 42 CFR, Parts 430-456 and 460, which are applicable to the medical assistance program and incorporated by reference.

RULE II MEDICAL ASSISTANCE, DEFINITIONS (1) Department means the Montana department of social and rehabilitation services.

(2) Medically necessary service means a service which is reasonably calculated to prevent, diagnose, correct, cure, alleviate, or prevent the worsening of conditions in a patient which:

(a) endanger life, or
(b) cause suffering or pain, or
(c) result in illness or infirmity, or
(d) threaten to cause or aggravate a handicap, or
(e) cause physical deformity or malfunction and, there is no other equally effective, more conservative, or substan-

tially less costly course of treatment more suitable for the recipient requesting the service.

(1) or, when appropriate, no treatment at all. Services which are considered by the medical profession as experimental or which are generally regarded by the medical profession as unacceptable treatment will not be considered medically necessary for the purpose of the medical assistance program.

(3) Montana medicaid program means the Montana medical assistance program authorized by sections 53-6-101 through 53-6-144, 53-6-201 and 53-6-202 et seq. MCA and 42 USC 1396 et seq.

(4) Provider means a natural person, firm, corporation, association or institution which is providing and has been approved to provide medical assistance to a recipient pursuant to the state medical assistance program.

(5) Third party means an individual, institution, corporation, or a public or private agency which may be or is liable to pay all or part of the medical cost of injury, disease, or disability of an applicant for or a recipient of services provided by the Montana medicaid program.

(6) Usual and customary charges which are reasonable means those charges which fall within the 75th percentile of all charges for similar service in the statewide area during the last calendar year elapsing prior to the start of the fiscal year in which the bill is submitted.

(7) Valid and proper claim means a claim which has been signed and submitted on a department approved billing form with all the requested information supplied, and for which no further written information or substantiation is required for payment.

(8) Designated review organization means an organized group or an individual who has contracted with the department or is designated by law to determine whether services are medically necessary.

(9) Affiliates means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

(10) Provider agreement means an agreement that continues for a specific period of time not to exceed twelve months and which must be renewed in order for the provider to continue to participate in the medicaid program.

(11) Fiscal agent means an organization which processes and pays provider claims on behalf of the department.

(12) Suspension of payments means the withholding of all payments due a provider pending the resolution of the matter in dispute between the provider and the department.

(13) Suspension of participation means an exclusion from participation in the medicaid program for a specified period of time.

(14) Termination from participation means an exclusion from participation in the medicaid program.

(15) Withholding of payments means a reduction or adjustment of the amounts paid to a provider on pending and subsequently submitted bills for purposes of offsetting overpayments previously made to the provider.

(16) Grounds for sanctions are fraudulent, abusive, or improper activities engaged in by providers of medical assistance services.

(17) Intern means a medical practitioner involved in a period of on-the-job training as part of a larger educational program.

(18) Resident means a medical practitioner involved in a prolonged period of on-the-job training which may either be part of a formal educational program or be undertaken separately after completion of a formal program, sometimes in fulfillment of a requirement for credentialing.

(19) License means permission granted to an individual or organization by competent authority to engage in a practice, occupation or activity which would otherwise be unlawful. It is granted in the state where the practice, occupation or activity is carried out.

(20) Certification means the process by which a governmental or non-governmental agency or association evaluates and recognizes an individual, institution or educational program as meeting predetermined standards.

4. The repeals and adoptions are proposed to make more explicit the Department's current medical assistance program and to update all Medicaid rules to comply with current Medicaid practice. Rule I has been adopted from Rule 46-2.10(18)-S11390 and has been edited for clarity. Rule II has been developed to give consistency to terms that will promote a correct and uniform interpretation of the Department's Medicaid rules.

5. Interested parties may submit their data, views or arguments concerning the proposed repeal and adoption in writing to the Office of Legal Affairs of the Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, MT 59601, no later than March 27, 1980.

6. If a person who is directly affected by the proposed repeal and adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit its request along with any written comments he has to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601, no later than March 27, 1980.

7. If the agency receives requests for a public hearing on the proposed repeal and adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal and adoption; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 1,118 persons based on a department budget analysis that shows a total of 11,184 Medicaid recipients.

8. The authority of the agency to make the proposed repeal and adoptions is based on Section 53-6-113 MCA, and the rule implements Section 53-6-101 and Section 53-6-141 MCA.

Keith L. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State February 19, 1980.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of a rule relating to regulation of travel expenses	NOTICE OF THE ADOPTION OF RULE 2-2.4(1)-S4180

TO: All Interested Persons

1. On January 17, 1980, the Department of Administration published a notice of proposed adoption of a rule concerning the utilization of state aircraft at pages 1 and 2 of the 1980 Montana Administrative Register, issue number 1.

2. The agency has adopted Rule 1 (2-2.4(1)-S4180 STATE AIRCRAFT)

3. No comments or testimony were received.

In the matter of the amendment of rules pertaining to the regulation of travel expenses	NOTICE OF THE AMENDMENT OF ARM 2-2.4(1)-S400, 2-2.4(1)-S410, 2-2.4(1)-S450, 2-2.4(1)-S460, 2-2.4(1)-S470, 2-2.4(1)-S490, 2-2.4(1)-S4000, 2-2.4(1)-S4050, 2-2.4(1)-S4090, and 2-2.4(1)-S4120

TO: All Interested Persons

1. On January 17, 1980, the Department of Administration published a notice of proposed amendments to the above rules concerning the reimbursement of, and accounting for travel expenses at pages 3 through 10 of the 1980 Montana Administrative Register, issue number 1.

2. The agency has amended the rules as proposed.

3. No comments or testimony were received.

In the matter of the repeal of rules relating to regulations of travel expense	NOTICE OF THE REPEAL OF ARM 2-2.4(1)-S480, 2-2.4(1)-S4010, 2-2.4(1)-S4100, 2-2.4(1)-S4130, 2-2.4(1)-S4150, 2-2.4(1)-S4160, and 2-2.4(1)-S4170

TO: All Interested Persons

1. On January 17, 1980, the Department of Administration published a notice of proposed repeal of the above rules concerning the reimbursement of, and accounting for travel expenses at pages 11 and 12 of the 1980 Montana Administrative Register, issue number 1.

2. The agency has repealed the rules as proposed.
3. No comments or testimony were received.

David M. Lewis

David M. Lewis, Director
Department of Administration

Certified to the Secretary of State February 19, 1980.

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

In the matter of the repeal of ARM 16-2.14(2)-S14230, Standards for Meat	)))	NOTICE OF REPEAL OF RULE ARM 16-2.14(2)-S14230 (Standards for Meat)

TO: All Interested Persons

1. On January 17, 1980, the Department of Health and Environmental Sciences published notice of the proposed repeal of rule ARM 16-2.14(2)-S14230, concerning standards for meat at pages 13-14 of the 1980 Montana Administrative Register, issue number 1.

2. The Department has repealed the rule as proposed.

3. No comments or testimony were received.

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

Certified to the Secretary of State February 19, 1980

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL of Rule 18-2.10(18)-S10200 regarding custom combine operations.	))))	NOTICE OF THE REPEAL OF RULE 18-2.10(18)-S10200, CUSTOM COMBINE OPERATION (SWATHERS).

TO: All Interested Persons

1. On January 17, 1980, the Department of Highways published notice of a proposed repeal of Rule 18-2.10(18)-S10200 regarding custom combine operations at page 41 of the 1980 Montana Administrative Register, issue number 1.

2. The agency has repealed the rule as proposed.

3. No comments or testimony were received.

By: Ronald P. Richards
Director of Highways

CERTIFIED TO THE SECRETARY OF STATE, February 19, 1980.

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of Rule 18-2.10(18)-S10210 regarding general reciprocity information.	))))	NOTICE OF THE AMENDMENT OF RULE 18-2.10 (18)-S10210, GENERAL RECIPROCITY INFORMATION.

TO: All Interested Persons

1. On January 17, 1980, the Department of Highways published notice of a proposed amendment of Rule 18-2.10 (18)-S10210 concerning general reciprocity information at pages 42 - 44 of the 1980 Montana Administrative Register, issue number 1.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

By: _____
Ronald P. Richards
Director of Highways

CERTIFIED TO THE SECRETARY OF STATE, February 19, 1980.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
DIVISION OF WORKERS' COMPENSATION
OF THE STATE OF MONTANA

In the matter of the repeal of rule 24-3.18(10)-S1890, Notice of Award, concerning specified injuries.	))))	NOTICE OF PROPOSED REPEAL OF RULE 24-3.18(10)-S1890

TO: All Interested Persons.

1. On January 17, 1980, the division of workers' compensation published a notice of a proposed repeal of rule 24-3.18(10)-S1890, NOTICE OF AWARD, concerning specified injuries, at page 46 of the 1980 Montana Administrative Register, issue number 1.

2. The division has repealed rule 24-3.18(10)-S1890, found on page 24-245 of the Administrative Rules of Montana.

3. No comments or testimony were received.

DAVID E. FULLER, Commissioner
Department of Labor and Industry

Certified to the Secretary of State February 19, 1980

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

IN THE MATTER of the Adoption of New Rules for Termination of Gas and Electric Service.	NOTICE OF ADOPTION OF NEW RULES REGARDING THE TERMINATION OF GAS AND ELECTRIC SERVICE

TO: All Interested Persons

1. On January 17, 1980, the Montana Public Service Commission published notice of proposed adoption of new rules for termination of gas and electric service at page 54 of the 1980 Montana Administrative Register, issue number 1.

2. The Commission has adopted the rules with the following changes:

Rule I. (38-2.14(26)-S14980) DEFINITIONS (1) For purposes of this rule:

(a) "Appliances essential for maintenance of health" means any electric or gas energy-using device which is certified by a licensed physician as being essential to prevent or to provide relief from serious illness or to sustain the life of a member of the household and for which there is no reasonable alternative.

~~(a)~~(b) "Customer" means any purchaser of gas or electric service supplied by a utility for residential purposes.

~~(b)~~(c) "Delinquent Account" means an account for residential service which remains unpaid for at least ~~45~~ 30 days after ~~receipt of a bill~~ the bill is rendered. The exact due date shall be printed on the face of the bill.

(d) "Elderly" means any residential electric or gas consumer aged 62 or older, who resides at the service address.

(e) "Handicapped" means any residential electric or gas consumer who resides at the service address and has any physicial or mental impairment which substantially limits one or more of such person's life activities, and such person:

(i) is certified as being physicially disabled by a licensed physician, or

(ii) is certified as being mentally disabled by a licensed psychiatrist or registered psychologist, Veterans Administration, Social Security Administration, or local board of health.

~~(c)~~ (f) "Landlord Customer" means one or more individuals or an organization listed on a gas or electric utility's records as the party responsible for payment of the gas or electric service provided to one or more residential units of a building, ~~of~~ which ~~building said person is not an occupant or is not the sole occupant~~ is occupied by a tenant.

(g) "Person unable to pay or to pay only in installments" means any purchaser of electric or gas service for residential purposes, who is a recipient of public assistance and/or has an income at or below Federal poverty guidelines.

~~(d)~~(h) "Residential Building" means a building containing one or more dwelling units occupied by one or more tenants, but excluding ~~nursing homes,~~ hotels and motels not used

primarily for residential purposes.

~~(e)~~(i) "Tenant" means any person or group of persons whose dwelling unit in a residential building is provided natural gas or electricity, pursuant to a rental agreement, but who is not the customer of the utility which supplies said gas or electricity.

~~(f)~~(j) "Termination of Service" means a cessation of service ~~caused~~ effectuated by the utility and not voluntarily requested by a customer.

COMMENT: A large number of comments recommended definitions for the terms "handicapped," "elderly," "appliances essential for maintenance of health" and "person unable to pay or to pay only in installments." The definitions adopted are recommended by federal procedures for termination of electric and gas service. An alternative definition for "handicapped" suggested by commentors was rejected as being too vague and subjective. The definition of elderly was chosen over suggestions that the definitions include individuals 60 years or older on a determination that 62 is the early Social Security retirement age and is a reasonable compromise between the proposed definition of 65 and any lower age. The definition of "persons unable to pay or to pay only in installments" was one of several suggested and was accepted as being the most comprehensive, objective and fair definition of those offered. Suggestions that the definition of "customer" be "tightened" to cover only service at residential rates was rejected because one utility does not have a designated residential rate.

(c): Comments advocated both larger and shorter periods for determination of the time at which an account becomes delinquent. The Commission accepted the suggested shorter period as being reasonable in view of the time delays required by the notice provisions of the rules. In view of the shortened time and the importance of the time at which an account becomes delinquent, the Commission added a requirement that the date be printed on the face of the customer's bills. The date was changed from "date received" to "date rendered" since it is impossible to determine receipt date without special mailing procedures.

The Commission accepted a comment that the deleted phrase in (1)(f) is unnecessary and confusing, and clarified the definition with the substitute language.

The Commission modified the exclusions in (1)(f) in response to a comment that many persons which the rules seek to protect (the elderly and the low income) reside in these buildings. The rule was altered to exclude only buildings which are not used as residences.

Rule II. (38-2.14(26)-S14990) GROUNDS FOR TERMINATION OF SERVICE (1) Subject to the requirements of these rules, a utility may terminate service to a customer for any of the following reasons:

(a) Nonpayment of a delinquent account; ~~amounting to $50 or more~~

(b) Misrepresentation of identity for the purpose of obtaining utility service;

(c) Unauthorized interference, diversion or use of the utility's service situated or delivered on or about the customers premises;

(d) Failure to comply with the terms and conditions of a deferred payment agreement made in accordance with these rules;

(e) Refusal to grant a duly authorized representative of a utility access to equipment upon the premises of the customer at reasonable times for the purpose of inspection, maintenance or replacement when the utility has given the customer reasonable notice of the need for such access and the time of visitation;

(f) Violation of other rules of the Commission or utility which adversely affects the safety of the customers or other persons, or the integrity of the utility's delivery system;

~~(g) Failure to pay proper charges and installation costs.~~

COMMENT: The $50 provision in (1)(a) was criticized as being arbitrary, and too low by both utility and low-income representatives. Several commentors suggested that it be raised to $150 and two suggested that it be eliminated altogether. The latter suggestion was accepted in recognition that any dollar amount would be arbitrary and could become outdated.

One commentor suggested that (1)(b) be amended to include "other misrepresentation." The Commission rejected this suggestion because it is unacceptably vague and because (1)(b) and (1)(c) adequately cover dishonest acts which should be grounds for termination.

The Commission rejected a suggestion that (a) be deleted and replaced with "when delinquent account exceeds amount of deposit" because not all customers are required to make a deposit.

Several commentors suggested that (1)(d) be deleted entirely because a deferred payment plan indicates delinquency which is independent grounds for termination. The Commission disagrees that there is no rationale for this provision, as asserted by one commentor. The Commission wishes to encourage deferred payment plans and believes that (1)(d) will serve to give weight to such arrangements. The Commission believes that the customer is adequately protected by the amendments to Rule V(2).

The Commission accepted a suggested amendment to (1)(e) as being reasonable.

A suggestion that (1)(f) be amended to include failure to pay a security deposit was rejected. If a customer agreed to pay a security deposit over a several month period, he or she is liable for that amount and would be subject to (1)(a) if it was not paid. In the alternative, if it was not paid, but the customer paid for service rendered in a timely manner, he or she should not be subject to termination.

The Commission accepted recommendations that (1)(g) be

deleted because it is vague and unnecessary in view of (1)(a).

Rule III. (38-2.14(26)-S140000) PROHIBITED GROUNDS FOR TERMINATION OF SERVICE (1) Neither of the following shall constitute grounds for a utility to ~~discontinue~~ terminate service:

(a) The failure of any person, other than the customer against whom ~~discontinuance~~ termination is sought, to pay any charges due to the utility;

(b) The failure of a customer to pay for merchandise, appliances or other services not contained in tariffs approved by the Public Service Commission. ~~as an integral part of the utility service provided by a utility;~~

COMMENTS: Comments criticized (1)(b) as being unclear. The Commission rejected the suggested amendment and substituted clarifying language providing that utilities cannot terminate service if a customer does not pay for services not contained in approved tariffs.

Rule IV. (38-2.14(26)-S140010) STATEMENT OF TERMINATION POLICY (1) A current general statement of the utility's termination policy shall be ~~provided~~ posted in all local business offices of the utility, shall be made available upon request to all existing customers and shall be provided to all new customers when they initiate service. This statement must be written in clear and understandable language and must include the following information:

~~(a) The general starting and ending dates of the payment period;~~

~~(b)~~(a) The time allowed to pay outstanding bills;

~~(c)~~(b) ~~The time allowed to make~~ A statement that arrangements for ~~payments and the nature of available arrange-ments;~~ installment payment of delinquent bills can be made at any time prior to termination of service;

~~(d)~~(c) The ~~name~~ title and telephone number of the utility employee to which inquiries and ~~complaints~~ disputes may be directed;

~~(e)~~(d) The time allowed to initiate a ~~complaint~~ dispute;

~~(f)~~(e) Instructions for designating a third party to receive a copy of a termination notices;

~~(g)~~(f) Instructions for designating elderly or handicapped status or a medical emergency;

~~(h)~~(g) Instructions for designating the presence of special appliances essential for maintenance of health or safety.

(h) Details of the method of termination as described in [Rule XIII].

(i) Availability of a copy of the Commission's rules on termination of service.

COMMENT: The Commission accepted criticisms that requiring a utility to send its statement of termination policy to all customers would create an unnecessary expense in view of the

fact that only a very small percentage of the customers will have a need to know about these policies, and in view of the requirement that the policy statement must accompany all termination notices. The Commission retained the requirement that the policy must be given to new customers, since this provision involves only a modest cost.

In accepting these changes, the Commission rejected suggestions that the utilities be required to send the statement out once a year to all customers and that they be required to advertise the policy in the news media. These suggestions were rejected on the grounds of expense to the utility and in part to the ratepayer which was not justified under the circumstances.

(1)(a) was deleted in response to several comments that this requirement would cause very substantial expense and in response to the criticism that it was not necessary in view of notice requirements for designation of the time involved in the delinquency for service rendered.

A suggested amendment to (1)(c) was accepted as improving the intent of the section that customers be fully apprised of the availability of installment payments.

(1)(d) was amended in response to comments that the rule as written would require the statement to be updated at considerable expense whenever there was a change in the employee responsible for the task.

Both comments on the rule and federal guidelines suggest that methods of termination be explained in the termination policy statement. This suggestion was incorporated by adding (1)(h).

(1)(i) was added so that customers will be aware that termination policies are regulated by the Commission and so that they are aware that their rights and remedies are spelled out in detail in government rules.

One commentor suggested that the statement be sent to customers in a wide variety of circumstances, and suggested specific language regarding appeal to the Commission which must be included. These suggestions were rejected because the Commission believes the rules, as amended, adequately cover the areas of availability of the statement and notice required regarding appeals to the Commission.

Rule V. (38-2.14(26)-S140020) NOTICE PRIOR TO AND AT THE TIME OF TERMINATION (1) A utility may not terminate service to any residential, firm, commercial, industrial or other customer unless written notice is sent by first class mail. If no response to the first notice is received within ten days of mailing, the utility must send a second notice by first class or certified mail (return receipt requested). The second notice must be ~~received by the customer~~ sent by the utility or personally served on the customer at least ten days prior to the date of the proposed termination. Prior to termination of service the utility must make a diligent attempt to contact the customer, either in person or by telephone, to apprise him of

the proposed action. ~~Actual termination may not take place until a minimum of 24 hours after the utility's diligent attempt to notify has been completed.~~ If telephone or personal contact is not made, the utility employee shall leave notice in a place conspicuous to the customer that service will be terminated on the next business day unless the delinquent charges have been paid.

~~(2) The ten days' written notice requirement shall not apply in those cases where a customer fails to satisfy a payment agreement as described in these rules. In such cases, the utility must make a diligent attempt to contact the customer, either in person or by telephone to apprise him of the proposed action. Actual termination may not take place until a minimum of 24 hours after the attempt to notify is completed.~~

(2) The provisions of (1) shall govern notice of termination to landlord customers, except that the first notice must be sent at least 30 days prior to the date of the proposed termination.

(3) the utility shall give written notice of the proposed termination for nonpayment to each residential unit reasonably likely to be occupied by an affected tenant of a landlord customer subject to termination. Such notice shall not be rendered earlier than five business days following initial notification to the landlord customer. However, if the landlord customer disputes the amount owing, such notice shall not be rendered until the dispute has been resolved. In no event shall such notice be served upon the tenants less than 15 days prior to the termination of service to the landlord customer on account of nonpayment. Upon affidavit, the Commission may, for good cause shown by the utility, reduce the minimum time between notification of the landlord customer and notification of the tenants.

(4) When service is terminated, the utility employee terminating service shall leave notice upon the premises in a place conspicuous to the customer that service has been terminated which gives the address and telephone number of the utility where the customer may arrange to have service restored. The utility shall have personnel available after the time of termination and during normal business hours authorized to reconnect service if the conditions cited as grounds for termination are corrected to the utility's satisfaction and upon payment of any reconnection charge specified in the utility's filed tariffs.

COMMENT: Rule V was substantially amended in response to comments that noticing provisions of the rules were repetitive. The amendments consolidate all the notice provisions of the proposed rules formerly listed in Rules XIII, XVII and XVIII.

Amendments in the first sentence of (1) address suggestions of federal guidelines on termination. The last sentence of (1) was placed in Rule XIII, since it addresses method of termination rather than notice of termination.

The Commission rejected a suggestion that termination could take place only if the utility filed an affidavit with the Commission swearing that it had sufficient grounds and attesting to diligent attempts to notify the customer, and then only if one or more Commissioners found reasonable cause for the termination. The Commission believes the rules as amended provide full reasonable protection to a customer subject to termination and, therefore, that these cumbersome requirements, as proposed, are unnecessary.

Comments regarding the noticing requirements indicated the following: Certified mail is expensive and often less effective than first class mail; personal contact should be an absolute requirement unless it becomes clear that the customer does not intend to pay; only one written notice should be required; first written notice should be sent no earlier than ten days following the delinquency date; that a specific date be set between the first and second mailing. The flat requirement for personal contact was rejected because of the situations where the residence has become vacant or where the customer deliberately frustrates attempts at personal contact. The Commission does not believe that one mailed notice is sufficient, especially in view of the amendment dropping the requirement for certified mail.

In response to several comments (2) was deleted on the grounds that a customer who has failed to satisfy a payment agreement should receive the same notices as other customers whose accounts are delinquent.

The Commission rejected a suggestion by the Department of Social and Rehabilitation Services that, in the case of proposed termination of elderly persons, the utility notify the appropriate Area Agency on Aging. Such notification could invade the privacy of the customer, who is free to designate such an agency for third party notification under these rules. For the same reasons, the Commission rejected a similar provision of the federal guidelines relating to termination of utility service.

Concern was expressed that the rule's posting provision may violate confidentiality provisions of federal credit laws. Although the commentor declined to provide the Commission with substantive information regarding this concern, the Commission believes that utilities can avoid any violations by using reasonable measures in carrying out the posting requirements.

Rule VI. (38-2.14(26)-S140030) CONTENTS OF WRITTEN NOTICE (1) The written notices required by these rules must contain:

(a) The utility's statement of termination policy;

(b) An identification of the customer and service account affected by the proposed termination;

(c) A statement of reasons for termination;

(d) The date of proposed termination;

(e) The amount of the reconnection fee, if any;

(f) A ~~notice~~ summary of rights and remedies, including

procedures to dispute the termination notice, provisions relating to elderly and handicapped ~~customers~~ consumers and those suffering a medical emergency, provisions for ~~consumers~~ customers who are unable to pay their bills and steps necessary to make a claim of inability to pay, ~~alternative~~ availability of installment payment arrangements and sources of financial assistance.

~~(g) Dates of meter readings for the period of unpaid service;~~

~~(h)~~(g) Designation of the bill in question as actual or estimated;

~~(i)~~(h) Except for notification of tenants, Aamount owed and time period over which amount was incurred~~;~~;

(i) Instructions on how service can be restored;

(j) In the case of a landlord customer, the date on or after which the utility will notify tenants of the proposed termination.

(k) In the case of notification of tenants:

(i) The amount of an average monthly bill for utility service to the premises and the largest bill for utility service to the premises in the previous 12 months;

(ii) A statement that Commission procedures and the Laws of Montana may give the tenant certain rights with respect to which the tenant may wish to consult an attorney or Montana Legal Services.

COMMENT: Amendments consolidate all the written notice provisions of the proposed rules.

(1)(f) was criticized for being unnecessary in view of requirements for including the statement of termination policy in notices. The rule was amended to address this criticism. The Commission does not believe that the section should be eliminated because mention of rights and remedies in the personal notice will help draw the customer's attention to them.

The Commission in deleting (1)(g) accepted criticisms that the information was already required in (1)(h).

Rule VII. (38-2.14(26)-S140040) GROUNDS FOR TERMINATION OF SERVICE WITHOUT WRITTEN NOTICE (1) A utility may terminate service without prior notice only:

(a) If a condition immediately dangerous or hazardous to life, physicial safety or property exists;

(b) Upon order by any court, the Commission or any other duly authorized public authority;

(c) If such service is obtained fraudulently or without authorization of the utility.

COMMENT: (b) was criticized as being a "catch-all," vague and susceptible to abuse. Although the Commission agrees the provision is a "catch-all" it does not agree that it is susceptible to abuse as presently worded, and that it should be retained to cover these situations which cannot be anticipated by the rules.

Rule VIII. (38-2.14(26)-S140050) CUSTOMER'S RIGHT TO DISPUTE A TERMINATION NOTICE (1) Utilities must provide a

reasonable procedure for customers to dispute the termination of service. If the utility decides such a dispute against the customer, it must do so in writing and must advise the customer that he or she may appeal the decision to the Public Service Commission. If the Commission is not able to resolve the complaint informally, formal complaint proceedings under Section 38-2.2(26)-P2220, ARM , may be instituted by the customer.

(2) In its investigation of the proposed termination or during any hearing regarding the proposed termination, the Commission may make inquiry of the parties as to the following matters, among others:

(a) The extent to which the customer has control over their source of money for payments, including such matters as the lateness of public assistance checks;

(b) Weather conditions;

(c) The existence of illness of residents in the affected residences;

(d) The ages of the persons residing in the affected units;

(e) The existence of, or potential for, termination of service by other companies.

(3) The Commission may consider and give due weight to the above matters in any decision rendered on the appeal.

COMMENT: (1) was criticized for failure to provide for the possibility that a customer would dispute a bill merely to postpone termination. Suggested amendments included that the customer be required to give written notice of the dispute, that appeal to the Commission must be taken within 30 days, and that the disputed amount be placed in a separate account. The Commission did not adopt these suggestions because it believes that the amendment to Rule IX addresses the problem as well as the offered amendments, without placing a burden on the customer.

The Commission has not adopted suggestions that time deadlines be placed on utility and Commission resolutions of disputes because the wide variety of disputes possible may require varying time periods for resolution.

The Commission also rejected a recommendation that customers who successfully dispute a bill be reimbursed for costs of the dispute because the Commission doubts that it has the authority to require such reimbursement.

The Commission rejected the suggestion that (2) and (3) are unnecessary and invade the customer's privacy. The Commission believes these provisions give notice that investigations into disputes may involve inquiry into personal matters. Personal privacy can be protected by a customer's invocation of the exceptions to the open meeting laws.

Rule IX. (38-2.14(26)-S140060) TERMINATION NOTICE FOR NONPAYMENT-WHEN PROHIBITED (1) A notice of termination of service may not be issued for nonpayment of a delinquent account if the entire amount is disputed by the customer and the customer is currently negotiating the dispute with the

utility or has filed a complaint with the Commission. A utility may, however, issue a notice of termination of service with respect to that portion of any delinquent account which is not disputed by the customer.

COMMENT: Rule IX was amended to address the concerns raised by some comments that this provision would be abused by customers who invoked it at the time of termination or at the time a termination notice was first received, without having a real dispute. With the amendment, termination is postponed because of a termination only if the customer has notified the utility or the Commission of a dispute prior to the time of the first notice of termination.

Specific comments regarding Rule IX suggested the dollar amount of $150 be added, and that the dispute be put in writing. Placing a dollar amount on a delinquent account was rejected for reasons set out following Rule II. The requirement of the customer reducing a dispute to writing was considered too cumbersome, and unnecessary, in view of the fact that both the utilities and the Commission keep records of disputes registered with them.

Rule X. (38-2.14(26)-S140070) TERMINATION OF SERVICE DURING WINTER MONTHS (1) During the period of November 1st to April 1st And on any day when the reported ambient air temperature at 8:00 a.m. is at or below freezing or if the U.S. Weather Service forecasts a snowstorm or freezing temperatures for the succeeding 24-hour period, no termination of residential service may take place if the customer establishes that he or she is unable to pay, or able to pay only in installments, that he or she or a member of the household is at least ~~65~~ 62 years old or that he or she or a member of the household is handicapped.

(2) No termination of service may take place during the period of November 1st to April 1st except with specific prior approval of the Commission.

COMMENT: The Comments suggesting that the period November 1st to April 1st be extended to October 1st to May 1st were rejected. Although the Commission agrees that Montana experiences cold weather in October, it accepts comments that customers are billed for service rendered in October when they receive the November bill and are therefore, protected by the Rule as proposed. The Commission substituted a test based on actual weather conditions for the month of May and other months not covered by the cold weather termination ban as being better suited to Montana's climatological conditions. The Commission realizes that freezing temperatures may occur in virtually every month of the year in Montana. However, in balancing the interests of utilities and customers, the Commission believes that a flat prohibition should be limited to those months when weather is usually most severe. The Commission believes that the amendment basing terminations on weather conditions adequately protects customers while giving the utilities the option of terminating service when weather is not severe.

The suggestion that time of termination be based solely on temperature, was rejected as being overly cumbersome and expensive for the utilities to administer and in recognition of the fact that the time period set out in the rule is generally one of severe winter weather.

The suggestion that the term "or in ill health" be added to (1)(a) was rejected as unnecessary, since, in such situations, terminations are prohibited at any time under Rule XI.

"Member of the household" was added in recognition of the fact that the rules are intended to protect individuals, not just customers.

A flat prohibition of termination during the months listed was rejected. While the Commission realizes that such termination would provide absolute protection to the customer, it would not allow the Commission to respond responsibly to situations such as vacancy or abuses by customers in situations where there is no health hazard.

Rule XI. (38-2.14(26)-S140080) MEDICAL EMERGENCIES

(1) ~~No utility may terminate s~~Service may not be terminated to a residence where a physician or local board of health certifies to the utility that the absence of service will aggravate an existing medical emergency of any permanent resident. ~~A certification by a physician or the local board of health of serious illness is sufficient if initially made by telephone. If certification is made by telephone, the utility must inform the customer, and the certifying physician or local board of health that a written certificate setting forth the required information must be forwarded to the utility within seven days.~~ All certifications must be in writing. The certificate must provide the name and address of the person with a medical emergency that would be aggravated by a termination of service and the office address and telephone number of the certifying physician or local board of health. All written certification must be signed by a physician or by a person with knowledge of the facts at the local board of health. A medical emergency certificate expires in 30 days, but may be renewed ~~for one additional 30 day period~~ on a monthly basis.

(2) To avoid the burden of substantial arrearage at the end of the medical emergency, the utility and the customer, or a representative of the customer, shall negotiate an equitable payment plan that is reasonable and consistent with the customer's ability to pay. If the parties cannot reach a satisfactory agreement, either party may seek such an agreement through the Commission.

COMMENT: Comments suggested amending the rule to include a situation where termination could "seriously threaten to aggravate" a medical emergency "or other serious medical conditions." This suggestion was not adopted on the grounds that such a situation can be adequately considered by a physician or board of health.

The Commission accepted an amendment that all certifications be in writing to avoid the possibility of abuse of an

individual fraudulently representing himself as a doctor on the phone.

A suggestion that "local board of health" be deleted from the rule was not accepted because the Commission was not certain that a doctor would always be available and because an individual might not be able to afford the physician's services. No reason was offered for deleting provisions regarding local boards of health, and in the absence of good reasons in deleting the provision, the Commission believes that the flexibility afforded by the provision should be retained.

The Commission accepted the suggestions that no arbitrary time limit be placed on the allowable period during which a medical emergency exists, but retained the requirement for periodic renewal of the certificate.

One person suggested that the rule be amended to protect residents, both permanent and "otherwise." This suggestion was not adopted on the grounds that the intent of the rule is to protect those who have no alternate living arrangement readily available. It is not intended to protect individuals who are mere visitors to the residence, and who, presumably reside elsewhere.

The Commission did not accept a suggestion that all language except the first sentence should be deleted from (1) because it is cumbersome and unnecessary. Since the Rule initiates a new procedure, the Commission believes that the utility, the customer and the physician or local board of health should have objective guidelines to follow.

Several parties suggested that (2) should be amended to specifically require payments during the medical emergency. The Commission believes that this rule as drafted is sufficient, in that it requires good faith negotiation while allowing for the situation where the customer is simply unable to make payments.

The rule, as amended, takes into account changes suggested in the federal guidelines relating to termination of service.

The Commission did not accept a recommendation that utilities develop procedures to identify customers requiring special consideration on the grounds of expense, difficulty in meeting such a requirement and possible invasion of privacy.

Rule XII. (38-2.14(26)-S140090) TIME OF TERMINATION

(1) Service shall not be discontinued on a day, or a day immediately preceding a day, when the services of the utility are not available to the general public for the purpose of reconnecting terminated service. Service may be terminated only between the hours of 8:00 a.m. and 12:00 noon.

COMMENT: One commentor suggested that (1) be simplified by banning terminations on Friday, Saturday, Sunday and all days immediately preceding state and federal holidays. The Commission did not accept these changes because the intent of the rule is to assure the utility's availability to reconnect service. The utility may or may not be available on the days suggested by the comment.

The Commission accepted comments that termination should be allowed only in the morning, so that the customers had the opportunity to have service reconnected on the same day of the termination. In doing so, it rejected the suggestion that terminations should be allowed between 8:00 a.m. and 5:00 p.m.

Rule XIII. (38-2.14(26)-S140100) METHOD OF TERMINATION (1) Actual termination may not take place until one day after personal or telephone notice or, in the alternative, one business day after notice has been posted in a place conspicuous to the customer when the customer was not contacted personally or by phone.

~~(1)~~(2) ~~Upon arriving at a residence where service is to be discontinued for nonpayment, t~~The utility's representative (employee) shall attempt to inform the occupant of the affected residence that service is to be discontinued. The employee shall present the occupant with a statement of charges due and shall request verification that the delinquent charges have not been paid or are not ~~currently in dispute~~ subject to a dispute previously registered with the utility or the Commission. Upon the presentation of evidence which reasonably indicates that the charge has been paid or is ~~currently in dispute~~ subject to a dispute previously registered with the utility or the Commission, service shall not be ~~discontinued~~ terminated.

~~(2)~~(3) The employee shall be authorized to accept payment. If payment in full of all delinquent charges is tendered, service shall not be terminated.

~~(3)~~(4) Payment may be tendered in any reasonable manner including personal check. Payment by personal check is not reasonable if the customer has paid the utility with checks returned for insufficient funds twice or more within the previous two years.

~~(4) If prior telephone or personal contact has not been made and the customer or other responsible person is not in or upon the premises, the employee shall leave notice in a place conspicuous to the customer that service will be terminated on the next business day unless the delinquent charges have been paid. If the customer or other responsible person has been contacted by telephone, service may be discontinued immediately.~~

~~(5) When service is discontinued, the employee shall leave notice upon the premises in a place conspicuous to the customer that service has been discontinued and giving the address and telephone number of the utility where the customer may arrange to have service restored. The utility shall have personnel available after the time of termination authorized to reconnect service if the conditions cited as grounds for termination are corrected to the utility's satisfaction and upon payment of any reconnection charge specified in the utility's filed tariffs.~~

COMMENT: (1) was taken from Rule V, with an amendment clarifying that, even with personal contact, the customer is given one business day to make arrangements to avoid

termination.

Amendments in (2) were made to conform to previous changes designed to assure that the customer who has no genuine dispute is not able to invoke the dispute provisions to avoid termination. The suggestion that the presentation of a statement in (2) and the requirement for two visits be deleted because of expense, was rejected on the grounds that the expense was minimal compared to the consequences.

(4) and (5) were transferred to Rule V which sets out notice requirements.

The Commission rejected a recommendation that (1) be eliminated as unnecessary in view of prior notices of termination required. The Commission does not believe that, especially in view of the amendment dropping the requirement for notice by certified mail that the requirements of (1) are unduly burdensome. They do, however, give the customer every reasonable opportunity to avoid termination.

Rule XIV. (38-2.14(26)-S14010) THIRD-PARTY NOTIFICATION

(1) If a customer ~~desires, the utility shall provide~~ designates a third person ~~designated by such~~ to receive customer notifications of ~~all past due bills, notices of discontinuance~~ termination of service, ~~and notices of right to appeal to the Commission~~ the utility shall forward a duplicate of such notices to the designated third party. The third party so notified will not be liable for the account of the customer, unless he or she has agreed to be a guarantor for the customer.

(2) Each utility shall promptly, and in no event later than 90 days after the effective date of these rules, devise procedures reasonably designed to provide a voluntary system of third party notification for all customers. Such procedures shall be submitted by each company in writing to the Commission. The Commission may require, by a written notification, such modifications of a utility's procedures as it considers reasonably necessary to carry out the purposes of this rule.

COMMENT: One commentor suggested that (2) be deleted as redundant, in view of the requirement of Rule IV(1)(f). The Commission does not agree. Rule IV(1)(f) simply requires that utilities inform customers of third party notification procedures. Rule XIV(2) requires that the utilities devise objective procedures which are subject to Commission approval. Because this is a new procedure, and because it affords customers important added protection, the Commission believes (2) is necessary.

Rule XV. (38-2.14(26)-S14120) PAYMENT ARRANGEMENTS

(1) When a customer cannot pay a bill in full, the utility may continue to serve the customer if the customer and the utility can agree on a reasonable portion of the outstanding bill to be paid immediately, and the manner in which the balance of the outstanding bill shall be paid.

(2) In deciding on the reasonableness of a particular agreement, the utility shall take into account the customer's ability to pay, the size of the unpaid balance, the customer's

payment history, and the amount of time and reasons why the debt is outstanding.

(3) If a customer fails to make the payment agreed upon by the date that it is due, the utility may, but is not obligated to, enter into a second such agreement.

(4) No such agreement or settlement shall be binding upon a customer if it requires the customer to forego any right provided for in these rules.

Rule XVI. (38-2.14(26)-S140130) IDENTIFICATION OF LANDLORD CUSTOMERS (1) ~~Each utility shall promptly, and in no event later than six months after the effective date of these Regulations, devise procedures reasonably designed to identify, before discontinuance of service for nonpayment, landlord customers paying for service to a residential building. Such procedures shall be submitted by each company in writing to the Public Service Commission. The Commission may require, by written notification, such modifications of a utility's procedures as it considers reasonably necessary to carry out the purposes of this rule.~~ Utilities shall determine, prior to termination, whether the residence subject to termination is occupied by a tenant.

COMMENT: (1) was amended in response to a suggestion that identification of landlord customers is important only when termination is threatened. The change was also made in response to comments that the proposed procedure would be extremely cumbersome, expensive and perhaps impossible. The Commission decided that utilities should be free to devise whatever procedures will accomplish the intent of the rule that service to tenants not be terminated before they are given notice and an opportunity to assume responsibility for the service. In accepting this suggestion, the Commission, for the reasons cited, rejected the request that it provide more specific guidance for carrying out the provisions of the rule as proposed.

~~Rule XVII. NOTICE TO LANDLORD CUSTOMERS (1) Prior to the discontinuance of service to any landlord customer for nonpayment, the utility shall give the landlord customer prior written notice of discontinuance. Such notice shall contain the following information:~~

~~(a) The amount owed the company by the landlord customer for each affected account;~~

~~(b) The date on or after which service will be terminated, such date not to be less than 30 days after the date on which notice is first given to the landlord customer;~~

~~(c) The date on or after which the utility will notify tenants of the proposed termination;~~

~~(d) A statement that the landlord customer may avoid a termination of services by paying the company the full amount due for the accounts in question prior to the intended date of termination or by paying a portion of the amount due and making an equitable arrangement with the utility to pay the balance;~~

~~(e) The right of landlord customer to dispute the amount~~

~~owing.~~

COMMENT: The Commission accepted the suggestion that this section was unnecessary in view of Rules V and VI.

In Rule V as amended to incorporate these provisions, the Commission did not accept the suggestion that notice to landlord customers should be standardized to conform to notice of other customers. The requirement that the first notice to landlord customers must be delivered 30 days prior to the date of proposed termination is designed to give the utility time to provide tenants notices required by these rules.

The Commission also rejected the suggestion that it should require that landlords are liable for utility bills to their residential buildings. The Commission believes that this is a matter of contract and other statutory provisions which it does not have the authority to alter.

~~Rule XVIII. NOTICE TO TENANTS (1) The utility shall give written notice of the proposed termination for nonpayment to each residential unit reasonably likely to be occupied by an affected tenant. Such notice shall not be rendered earlier than five business days following initial notification to the landlord customer. However, if the landlord customer disputes the amount owing, such notice shall not be rendered until the dispute has been resolved. In no event shall such notice be served upon the tenants less than 15 days prior to the termination of service to the landlord customer on account of nonpayment. Upon affidavit, the Commission may, for good cause shown by the utility, reduce the minimum time between notification of the landlord customer and notification of the tenants.~~

~~(2) The notice may be mailed or otherwise delivered to the address of each affected tenant, and shall contain the following information:~~

~~(a) The date on which the notice is rendered;~~

~~(b) The date on or after which service will be terminated;~~

~~(c) The amount presently owing;~~

~~(d) The rights of a tenant:~~

~~(i) to deduct the amount of any direct payment to the utility from any rent payments then or thereafter due as provided for by Montana law;~~

~~(ii) to be protected against any retaliation by the landlord for exercising such rights as provided for by Montana law.~~

~~(e) A telephone number at the utility which a tenant may call for an explanation of his or her rights and remedies.~~

COMMENT: The Commission accepted the suggestion that this section was unnecessary in view of Rules V and VI. Rule VI was amended to address several concerns raised in response to this proposed rule. One comment suggested that divulging to tenants the amount owed by the landlord customer could constitute a violation of privacy. The rule was amended to require that tenants be informed of the average amount and the highest amount, so that they could realistically consider the possibi-

lity of assuming responsibility for service.

Rule VI was also amended to address the concern that, as written, Rule XVIII might require the utility to indulge in the unauthorized practice of law. As amended, the rule requires the utility to inform tenants that Commission rules and Montana law may be of assistance to them; it does not require the utility to advise tenants as to these rights.

Rule ~~XIX~~ XVII. (38-2.14(26)-S140140) ~~RIGHTS OF TENANTS TO CONTINUE SERVICE~~ ~~(1) At any time before or after service is terminated on account of nonpayment by the landlord customer, tenants may apply to the utility to have service continued or resumed. The utility shall not terminate service or shall resume service previously terminated if the tenants agree to become customers of the utility.~~

~~(2) Thereafter, the utility shall notify each tenant of the total amount of the bill for each billing period. If the tenants fail to make payment of any bill, the utility may commence termination procedures, provided that no such termination may occur until 20 days after each tenant has received written notice of the proposed termination. Such notice shall contain:~~

~~(a) The date on or after which service will be discontinued;~~

~~(b) The amount due, which shall include the arrearage on any earlier projected bill due from tenants; and~~

~~(c) A telephone number at the utility which a tenant may call for an explanation of his rights.~~

NOTICE TO COMMISSION OF TERMINATIONS AFFECTING TENANTS

~~(3)~~(1) Notwithstanding anything contained elsewhere in these Rules, prior to any termination for nonpayment which would affect tenants, the utility shall notify the Commission ~~by telephone~~ in writing of the proposed termination. Upon notice and investigation of such proposed termination, or during any hearing pursuant to the complaint procedures provided for in Section 38-2.2(26)-P2220 et seq., A.R.M., the Commission may make inquiry of the parties as to the following matters, among others:

(a) The amount the tenants have paid to the utility in relation to the amount equal to one month's ~~projected~~ bill, and the arrearage on any earlier bill due from tenants;

(b) The number of vacant units in the building;

(c) The extent to which the tenants have control over their source of money for rent payments, including such matters as the lateness of public assistance checks, direct rent payments by the Welfare Department to the tenants' landlord, or participation by tenants in a leased housing or rental assistance program;

(d) Whether the tenants are engaged in rent withholding against their landlord;

(e) The amount of payments recently received by the utility from the landlord and the size of the past due bill of the landlord;

(f) Whether the utility has pursued collection remedies, other than threatened termination of service, against the landlord;

(g) Weather conditions;

(h) The existence of illness of ~~tenants~~ persons residing in the affected units;

(i) The ages of the persons residing in the affected units;

(j) The availability of other housing to the tenants; and

(k) The existence of, or potential for, termination of service by other companies.

(4) The Commission may consider and give due weight to the above matters in any decision rendered on the complaint.

COMMENT: Comments included the suggestion that tenants should not have to assume responsibility for service to the entire residential building, that one tenant should be responsible for service to the entire building, and that the Commission should not get involved in the area covered by the rule. After ext**ensive** consideration of the comments and the legal and practical problems raised by them, the Commission has concluded that the situation contemplated by the rule be handled on a case by case basis, with primary reliance on statutory remedies. The Commission has retained its oversight function as contemplated by the proposed rule, to assure that tenants are adequately protected from unreasonable terminations.

Rule ~~XX~~ XVIII. (38-?.14(26)-S140150) EXEMPTIONS (1) If hardships result from the application of any of these termination rules, or if unusual difficulty is involved in ~~immediately~~ complying with any of these rules, application may be made by any utility to the commission for permanent or temporary exemption from its provision, but such application shall be supported by full and complete justification for such action.

COMMENT: The amendment clarifies the Commission's intent to consider both temporary and permanent exemptions from the rules, especially for small utilities. The Commission is aware that the rules place new obligations on the utilities which may be overly burdensome, as suggested by numerous comments.

GENERAL COMMENTS:

-- The Town of Saco, on behalf of its municipal gas utility, requested a blanket exemption from the rules as proposed. The Commission does not believe that grant of such an exemption is appropriate at this time. The Town is free to request specific exemptions from the rule. Such a request should explain how the utility is presently providing the protection offered by rules.

-- One utility suggested that the rules should provide for late charges, higher deposits, and other financial provisions designed to protect the utilities from unreasonably large bad debts. The Commission believes that such matters are outside the scope of the rule as proposed and are better addressed either in individual rate cases or in a petition to amend existing rules governing deposits.

-- One commentor proposed that the Commission adopt a rule requiring reconnection of service under circumstances other than satisfaction of the delinquent account. The Commission rejected this suggestion on the grounds that it expands the coverage of the rules, perhaps beyond the scope of the proposed rules as noticed.

-- One commentor stated that present practices were sufficient and that, in any case, adoption of the rules is outside the Commission's scope of authority. The Commission finds the first statement to be unsupported and self serving and the second to be without adequate citation to legal authority.

-- The voluntary federal guidelines regarding termination of service recommended that rules provide that combination gas and electric utilities should not terminate both services when a consumer's payment is only sufficient to cover the bill for one service. The Commission did not accept this suggestion because it raises practical billing and safety problems which cannot be addressed without substantially more information than the Commission presently has on the subject.

-- The Commission did not adopt a suggestion that a rule be added providing that it could order reconnection of service pending resolution of a dispute since such power is a matter of statutory authority and is not appropriate for a rule regulating utilities.

-- One commentor suggested that there should be a rule allowing utilities to refuse service to an individual previously terminated or one who brought an "unreasonable" dispute. This suggestion was rejected because it goes beyond the scope of the rules as noticed, because it would violate the spirit and perhaps the letter of the legal requirement that a utility provide service in its designated area, and because it is blatantly punitive and unreasonable.

-- The Commission rejected a suggestion that the rules declare that they do not constitute an administrative remedy which must be exhausted before a utility may have recourse in the courts. Such a declaration would be inappropriate, since it constitutes a judicial issue. Further, the rules have no effect on a utility's recourse to the courts for collection of delinquent accounts.

-- Several persons commented that the rules (especially Rule X) are a step toward socialism, are outside the scope of the Commission's authority, are a subsidy, and are contrary to the concept of a private utility. The Commission interprets these comments as recommendations that the rules not be adopted. The Commission does not agree with these philosophical and legal arguments and therefore, has not amended the proposed rules in response to them.

3. The authority of the Commission to adopt these rules is based on Section 69-3-103, MCA, IMP, Section 69-3-102, MCA.

GORDON E. BOLLINGER
Chairman

CERTIFIED TO THE SECRETARY OF STATE February 19, 1980.

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

In the matter of the Amendment of ARM 40-3.54(14)-S54050 subsection (8) concerning acupuncture records; and the repeal of 40-3.54(6)-S5446 concerning declaration of intent and 40-3.54(14)-S54060 concerning temporary acupuncture certificates	NOTICE OF AMENDMENT OF ARM 40-3.54(14)-S54050 ACUPUNCTURE; and REPEAL OF 40-3.54(6)-S5446 DECLARATION OF INTENT AND 40-3.54(14)-S54060 TEMPORARY ACUPUNCTURE CERTIFICATE

TO: All Interested Persons:

1. On January 17, 1980, the Montana State Board of Medical Examiners published a notice of proposed amendment of ARM 40-3.54(14)-S54050 subsection (8) concerning acupuncture records; and the repeal of 40-3.54(6)-S5446 concerning declaration of intent and 40-3.54(14)-S54060 concerning temporary acupuncture certificates at pages 63 through 65, 1980 Montana Administrative Register, issue number 1.

2. The board has amended and repealed the rules exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF OSTEOPATHIC PHYSICIANS

In the Matter of the Amendment of ARM 40-3.74(6)-S7460 concerning applications	NOTICE OF AMENDMENT OF ARM 40-3.74(6)-S7460 APPLICATIONS

TO: All Interested Persons:

1. On January 17, 1980, the Board of Osteopathic Physicians published a notice of proposed amendment of ARM 40-3.74(6)-S7460 at pages 67 and 68, 1980 Montana Administrative Register, issue number 1.

2. The board has amended the rule exactly as proposed.

3. No comments or testimony were received.

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

Certified to the Secretary of State February 19, 1980.

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

In the matter of the proposed Adoption of a new rule defining the practice of the profession of a sanitarian and amendments of ARM 40-3.100(6)-S10070 concerning applications; 40-3.100(6)-S10080 concerning registration and 40-3.100(6)-S10090 concerning suspension and revocation	NOTICE OF AMENDMENTS OF ARM 40-3.100(6)-S10070 APPLICATIONS; 40-3.100(6)-S10080 CERTIFICATE OF REGISTRATION and 40-3.100(6)-S10090 SUSPENSION AND REVOCATION

TO: All Interested Persons:

1. On January 17, 1980 the Board of Sanitarians published a notice of proposed adoption of a new rule defining the practice of the profession of a sanitarian and amendments to ARM 40-3.100(6)-S10070 concerning applications; 40-3.100(6)-S10080 concerning registration and 40-3.100(6)-S10090 concerning suspension and revocation at pages 69 through 73, 1980 Montana Administrative Register, issue number 1.

2. The Board has amended the rules as proposed. However, the rule which was noticed for adoption has been renoticed at pages 483 and 484, 1980 Montana Administrative Register, issue number 3. The proposed adoption contained several errors when originally noticed. The Administrative Code Committee also called requesting the new rule be broken down into two rules, which has been done on the new notice.

3. No other comments or testimony were received.

BOARD OF SANITARIANS
KENNETH B. READ, CHAIRMAN

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

Certified to the Secretary of State, February 19, 1980.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 48-2.10(2)-S10020, concerning experience verification for teacher certification	NOTICE OF THE AMENDMENT OF RULE 48-2.10(2)-S10020

TO: All Interested Persons

1. On January 17, 1980, the Board of Public Education published notice of a proposed amendment to rule 48-2.10(2)-S10020 concerning experience verification for teacher certification at pages 78 and 79 of the 1980 Montana Administrative Register, issue number 1.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

Marjorie W. King

MARJORIE W. KING, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: Dick Reese
ASSISTANT TO THE BOARD

BEFORE THE MONTANA TEACHERS' RETIREMENT BOARD
OF THE STATE OF MONTANA

IN THE MATTER OF THE CLAIMS OF FRANK H. KELLY AND VARIOUS OTHER MEMBERS OF THE MONTANA FEDERATION OF TEACHERS, AND ALL OTHER PERSONS SIMILARLY SITUATED.	)))))	DECLARATORY RULING

This is in response to a petition for a declaratory ruling by Mr. Frank H. Kelly, and other unnamed members of the Montana Federation of Teachers, requesting that creditable service be granted in the Montana Teachers' Retirement System for service performed at private educational institutions prior to July 1, 1971. This request is made pursuant to former section 75-2705 (9), Revised Codes of Montana, 1947, repealed. In the alternative, petitioners' request that former section 75-2705(9), supra, which grants only out-of-state private school teaching service as creditable service, be declared unconstitutional as applied to the petitioners on the grounds that the statute denies due process and equal protection of the laws in violation of the Constitution of the United States and the Montana Constitution, 1972.

The general rule regarding pension benefits granted by a public employer is that they are strictly governed by the terms of the statutes conferring such benefits. This principle was set forth by the Utah Supreme Court in Driggs v. Utah State Teachers' Retirement Board, 105 Utah 417, 142 P.2d 637 (1943) wherein it was held:

> "As indicated in numerous of the above-mentioned cases, it is fundamental that the nature of the rights of the pensioner rest largely upon the language of the particular statute. The Supreme Court of the United States so stated in State of Indiana ex rel. Anderson v. Brand, 303 U.S. 95, 58 S.Ct. 443, 82 L.Ed. 685, 113 A.L.R. 1482, which involved rights under an Indiana Teachers' Retirement statute."

In Montana, the retirement statutes governing the Teachers' Retirement System are a matter of contract right and become part of a teacher's contract at the time the teacher enters the retirement system. [Sullivan v. State of Montana, 34 St.Rep. 1328 (1977)] Therefore, for teachers who became members between 1949 and 1971, former section 75-2705(9), supra, governs their eligibility for creditable teaching service. For those teachers who became members of the Teachers' Retirement System subsequent to July 1, 1971, creditable service is governed by the provisions of section 75-6213, R.C.M. 1947, now codified as 19-4-402, MCA. These sections provide respectively:

"(9) Any teacher who has become employed as a teacher in Montana subsequent to September first Nineteen hundred and thirty-seven may receive credit for service for out-of-state teaching employment provided (a) that he contributes to the retirement fund five per cent (5%) of the salary for each year claimed based on the first year's salary earned in Montana; and (b) that the maximum number of such years shall not exceed ten (10) and that a year out-of-state employment shall be equivalent to one year membership service in Montana, and (c) that payment of such contribution shall be made in a lump sum or in installments as agreed between such teacher and the retirement board. * * *" (Emphasis supplied) [75-2705, R.C.M. 1947]

"A person applying for membership may also apply for creditable service in the retirement system for out-of-state employment service that would have been acceptable under the provisions of this chapter if such service had been performed in the state of Montana. The person shall be awarded creditable service, conditional upon his completing 5 years of active membership in Montana, for the number of years, not exceeding 5, that the retirement board determines to be creditable service, if he contributes to the retirement system an amount equal to the combined employer and employee contribution for his first full year's teaching salary earned in Montana after his out-of-state service for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon the completion of 5 years of membership service in Montana. The contribution rate shall be that rate in effect at the time he is eligible for such service. The contributions may be made in a lump-sum payment or in installments as agreed between the person and the retirement board." (Emphasis supplied) [19-4-402, MCA]

Nothing in the above-quoted language of either statute authorizes credit for in-state teaching service. Indeed, credit for such service is specifically prohibited as was found by the Supreme Court in Sullivan, supra, wherein the Court noted:

"* * * Out-of-state teachers entering the state public school system did not have this opportunity to purchase retirement credit for their out-of-state teaching service until the legislature amended the teachers' retirement act in 1949 with the addition of section 75-2705(9). Whether by oversight or by design, the act was not further amended to provide Montana private school teachers with a similar opportunity to purchase retirement credit

> when they entered the state public school system. It is irrelevant what value judgment we place on the equities of the resultant distinction between opportunities for private in-state and private out-of-state teachers to purchase retirement credit for their private school teaching service when they enter the Montana Teachers' Retirement System." [34 St.Rep. 1328, 1332]

Therefore, the petitioner's request to purchase creditable service for teaching experience performed prior to July 1, 1971, at private, educational institutions within Montana must be denied.

The petitioners further request, in the alternative, that the Board declare former section 75-2705(9), supra, unconstitutional as applied to the petitioners and others similarly situated. Only courts can declare legislation unconstitutional, and this Board is without legal authority to grant the petitioners' claim for relief. With respect to this argument, the unquestioned rule is found in 16 American Jurisprudence 2d, Constitutional Law, §101, as follows:

> "Although the doctrine was not established without dispute, it is now a settled principle of the American system of constitutional law that the courts have inherent authority to determine whether statutes enacted by the legislature transcend the limits imposed by the federal and state constitutions and to determine whether such laws are or are not constitutional. The determination of the constitutionality of a statute is within the especial province and duty of the courts, and no express constitutional authority for such action is necessary."

In accord, see Marbury v. Madison, 1 Cranch 137, 2 L.Ed. 60; United States v. Butler, 297 U.S. 1, 80 L.Ed. 477, 56 S.Ct. 312.

The generally accepted corollary to the above rule is that state officers who are members of the executive branch of government cannot, except in limited cases of personal liability, challenge the constitutionality of a statute or fail to enforce a law they personally believe to be constitutionally defective. See: 16 American Jurisprudence 2d, Constitutional Law, §104 and §128; State ex rel. Lockwood v. Tyler, 64 Mont. 124, 208 Pac. 1081.

Therefore, the petitioners' alternative request that 75-2705(9), supra, be declared unconstitutional must also be denied.

DATED this 3rd day of January, 1980.

Chairman

Board Member

Board Member

Board Member

Board Member

Board Member

TEACHERS' RETIREMENT BOARD

VOLUME NO. 38 OPINION NO. 66

LAND - Divisions of land, description in deeds;
DEEDS - Descriptions of land, divisions of land;
SUBDIVISIONS - Deeds, divisions of land, descriptions in deeds;
MONTANA CODES ANNOTATED - Section 76-3-103.

HELD: A segregation of one or more parcels of land from a larger tract held in single or undivided ownership constitutes a division of land under 76-3-103(3), MCA, regardless of how the larger tract is described in relation to aliquoit parts of a United States government survey.

31 January 1980

Douglas G. Harkin, Esq.
Ravalli County Attorney
Ravalli County Courthouse
Hamilton, Montana 59840

Dear Mr. Harkin:

You have requested my opinion on the following question:

> When a recorded deed describes the land conveyed in several aliquoit parts of the United States government survey section, is there a "division of land" under 76-3-103(3), MCA, if one of those aliquoit parts is sold?

Your question arises because of the fact that two tracts of land of identical acreage may be described differently based upon their location within the United States government survey lines. Similarly, a buyer and seller for whatever reason may decide to describe a tract of land as a number of smaller parcels, rather than as a contiguous whole. For example the $N\frac{1}{2}NE\frac{1}{4}$ of a section of land contains the same acreage as a parcel which contains both the $S\frac{1}{2}S\frac{1}{2}NE\frac{1}{4}$ and the $N\frac{1}{2}N\frac{1}{2}SE\frac{1}{4}$ of a section. The contention is being made that in the latter case the purchaser actually obtained two separate tracts of land, either one of which can be sold without constituting a "division of land" as defined in 76-3-103(3), MCA. This is important because regulated subdivision activity results only when there has first been a "division of land." See 76-3-103(15), MCA.

Section 76-3-103(3), MCA, provides:

> "Division of Land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of the tract of property filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter.

A division of land is a "subdivision" if it creates one or more parcels containing less than 20 acres (see 76-3-103 (15), MCA).

Section 76-3-103(3) includes within its coverage segregation of a parcel or parcels of land "from a larger tract held in single or undivided ownership...." Thus, as long as there is an identifiable "larger tract" of land held in "single or undivided ownership," segregation of a parcel of that larger tract constitutes a division of land. The crucial factor is single or undivided ownership of a larger tract, not the description in the deed by which the owner obtained the tract. Otherwise, there could be adjoining and identical 40-acre tracts each purchased in a single transaction in which subdivision consequences would attach depending solely upon where the tract sat within the United States government survey. No such exemption is made or contemplated by the Subdivision and Platting Act.

THEREFORE, IT IS MY OPINION:

> A segregation of one or more parcels of land from a larger tract held in single or undivided ownership constitutes a division of land under 76-3-103(3), MCA, regardless of how the larger tract is described in relation to aliquoit parts of a United States government survey.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 38 OPINION NO. 67

DEPARTMENT OF REVENUE - Distribution of proceeds from Distributor's Gasoline License Tax Act;
TAXATION AND REVENUE - Distribution of proceeds from Distributor's Gasoline License Tax Act;
MONTANA CODE ANNOTATED - Section 60-3-201.

HELD: The percentages of the distributor's gasoline license tax to be deposited in the state park account and in the snowmobile account should be derived from the gross taxes collected by the Department of Revenue under the license tax.

6 February 1980

Morris L. Brusett, C.P.A.
Legislative Auditor
Office of the Legislative Auditor
State Capitol
Helena, Montana 59601

Dear Mr. Brusett:

You have requested my opinion concerning whether the distribution of gasoline dealers license tax receipts should be based on gross receipts, or on net receipts after refunds have been determined for off-highway use.

Section 60-3-201, MCA, provides in pertinent part:

> (1) All money received in payment of license taxes under the Distributor's Gasoline License Tax Act, except those amounts paid out of the department of revenue's suspense account for gasoline tax refund, shall be used and expended as provided in this section. So much of that money on hand at any time as may be needed to pay highway bonds and interest thereon when due and to accumulate and maintain a reserve therefor, as provided in laws and in resolutions of the state board of examiners authorizing such bonds, shall be deposited in the highway bond account in the sinking fund established by 17-2-102. Subject to that provision, 9/10 of 1% of all money shall be deposited in the

state park account and ½ of 1% of all money shall be deposited in a snowmobile account in the earmarked revenue fund. The remainder of the money shall be used by the department of highways on the federal-aid highways in this state selected and designated under Title 23, U.S.C., and on highways leading from each county seat in the state to the federal highway system of federal-aid roads where the county seat is not on the system and on the other roads which have been or may be authorized by the laws of Montana and for collection of the license taxes and the enforcement of the Montana highway code under Article VIII, section 6, of the constitution of this state.

***

(4) Money credited to the state park account in the earmarked revenue fund shall be used only for the creation, improvement, and maintenance of state parks where motorboating is allowed, except for the payment of refunds under 15-70-221 through 15-70-226. The legislature finds that of all the fuel sold in the state for consumption in internal combustion engines, not less than 9/10 of 1% is used for propelling boats on waterways of this state.

(5) Money credited to the snowmobile account may be used only to develop and maintain facilities open to the general public at no admission cost and to promote snowmobile safety. For the 2 years following July 1, 1977, 15% of the amount deposited in the snowmobile fund each year shall be used to promote snowmobile safety. Thereafter, 10% of the amount deposited in the snowmobile fund shall be used to promote snowmobile safety. The legislature finds that of all fuels sold in this state for consumption in internal combustion engines, not less than ⅓ of 1% is used for propelling snowmobiles on public lands of this state.

(Emphasis added.)

The ambiguity of this statute arises because it is not clear whether the term "all money" in the third sentence of the

first paragraph means "all money received in payment of license taxes" or "all money received in payment of license taxes..., except those amounts paid ... for gasoline tax refund."

The first sentence in subsection (4) of the statute favors the latter interpretation of the statutory language.

> Money credited to the state park account in the earmarked revenue fund shall be used only for the creation, improvement, and maintenance of state parks where motorboating is allowed, except for the payment of refunds under 15-70-221 through 15-70-226.

(Emphasis added.)

However, the concluding sentence of that subsection, as well as the concluding sentence of subsection (5) favor the former interpretation of the statute.

> The legislature finds that of all the fuel sold in the state for consumption in internal combustion engines, not less than 9/10 of 1% is used for propelling boats on waterways of this state.

(Emphasis added.)

and,

> The legislature finds that of all fuels sold in this state for consumption in internal combustion engines, not less than ½ of 1% is used for propelling snowmobiles on public lands of this state.

(Emphasis added.)

The figures mentioned in these two sentences correspond to those found in the third sentence of subparagraph (1), the sentence wherein the ambiguity originates.

The ambiguity cannot be resolved by simply applying well-settled rules of statutory interpretation. It is an ambiguity which should be presented to the Legislature for resolution at the next opportunity. In the interim "great deference must be shown to the interpretation given the

statute by the officers or agency charged with its administration." Udall v. Tallman, 380 U.S. 1, 16 (1965), Dept. of Revenue v. Puget Sound Power and Light, ___ Mont. ___, 587 P2d 1282, 1286 (1978).

Here, the Department of Revenue has interpreted the statute to mean that the term "all money" as used in the third sentence of subparagraph (1) is not to be adjusted by first subtracting the gasoline tax refund. In other words, the percentages found in the third sentence should be applied to the gross amount of money paid under the Distributor's Gasoline License Tax Act. At least two previous audits have approved this interpretation. This is a reasonable construction of the statute in question, especially in light of the fact that the incorporated legislative "findings" speak in terms of "all the fuel sold in the state for consumption in internal combustion engines" rather than in terms of all the fuel sold subject to the Distributor's Gasoline License Tax Act.

Concurring in the opinion of the Department of Revenue, it is my opinion that the distribution of gasoline dealers license tax receipts should be based on gross receipts. Furthermore, I suggest that this problem be presented to the legislature as soon as possible for a more definite resolution.

THEREFORE, IT IS MY OPINION:

The percentages of the distributor's gasoline license tax to be deposited in the state park account and in the snowmobile account should be derived from the gross taxes collected by the Department of Revenue under the license tax.

Very truly yours,

MIKE GREELY
Attorney General