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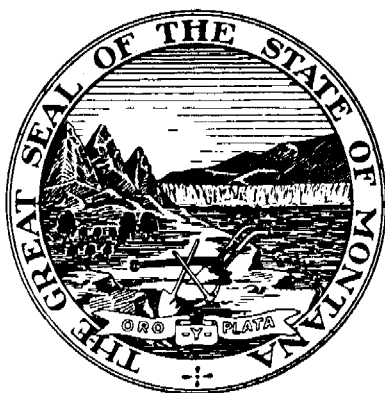
**MONTANA
ADMINISTRATIVE
REGISTER**

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APR 14 1980

OF MONTANA

1980 ISSUE NO. 7
PAGES 1123-1193



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APR 14 1980

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. 7

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Stores. 1192-1193

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF PROPOSED AMEND-
of ARM 2-2.4(1)-S4110 relating)	MENT OF ARM 2-2.4(1)-S4110
to the regulation of travel)	(REGULATION OF TRAVEL EX-
expenses)	PENSES) NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Interested Persons

1. On May 29, 1980, the Department of Administration proposes to amend ARM 2-2.4(1)-S4110, Frequency of Filing.

2. The rule as proposed to be amended provides as follows:
2-2.4(1)-S4110 Frequency of Filing (1) Travel Expense
Vouchers are to be filed by a given employee no more than twice monthly unless unusual circumstances clearly justify a departure from this rule.

(2) An employee who does not file for reimbursement of travel costs within 3 months after incurring the expense waives his right to reimbursement.

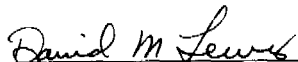
3. The department proposes to amend this rule in order to enhance the regulation of travel expenses.

4. Interested parties may in writing submit their data, views, or arguments concerning the proposed amendment to David Lewis, Director, Department of Administration, Mitchell Building, Helena, Montana 59601, no later than May 15, 1980.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to David Lewis no later than May 15, 1980.

6. If the agency receives requests for a public hearing on the proposed amendment 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 1,000 persons based on the 10,000 state employees in Montana.

7. The authority of the department to amend the proposed rule is based on sections 2-18-501, 2-18-502, and 2-18-503 MCA, and the rule implements sections 2-18-501 through 2-18-503 MCA.


David Lewis, Director
Department of Administration

Certified to the Secretary of State April 1, 1980.

MAR Notice No. 2-2-45

7-4/10/80

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the ADOPTION OF A)	NOTICE OF PUBLIC
RULE for the movement of Triple)	HEARING FOR PROPOSED
Trailer Vehicle Combinations and)	ADOPTION OF A RULE for
other Special Vehicle Combinations)	the Movement of Triple
)	Trailer Combinations

TO: All Interested Persons

The notice of proposed agency action published in the Montana Administrative Register on February 28, 1980, is amended as follows because the required number of persons directly affected by the proposed adoption have requested a public hearing and because the proposed length of truck-tractor and three trailer combinations has been increased from 95 feet to 105 feet and several suggestions relating to approved local pickup and delivery routes and driver qualifications have been included in the proposed rule.

1. On May 1, 1980 at 9:00 A.M., a public hearing will be held in the highway auditorium of the Department of Highways building, to consider the adoption of a rule for the movement of Triple Trailer Vehicle Combinations and other Special Vehicle Combinations.

2. The rule as presently proposed provides as follows:

Rule 1. 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 95 105 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 subject to approval by the Department of Highways 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.

7-4/10/80

MAR NOTICE NO. 18-32

(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 semitrailer 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 moving traffic ~~citations~~ convictions 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.

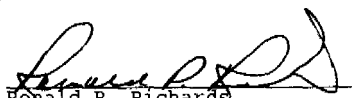
3. The rule is proposed to respond to a petition for its adoption filed by the Montana Motor Carrier's Association, 1727 Eleventh Avenue, Helena, Montana 59601. The petition sets forth reasons why the operation of Triples Trailers should be allowed, primarily for conservation of fuel. Copies of the petition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

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing or may submit the data, views or arguments in writing to Ronald P. Richards, Director, Department of Highways, 2701 Prospect Avenue, Helena, Montana 59601, not later than May 9, 1980.

5. Jack A. Holstrom, Department of Highways, 2701 Prospect Avenue, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

6. 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 March 28, 1980.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER of the Proposed)	NOTICE OF PUBLIC HEARING ON
Adoption of a Rule regarding)	the Proposed Adoption of a
the Adoption of EEOC Affirma-)	Rule regarding the Adoption of
tive Action Guidelines by the)	EEOC Affirmative Action Guide-
Montana Human Rights Commis-)	lines by the Montana Human
sion)	Rights Commission

To: All Interested Persons:

1. On May 12, 1980, at 7:30 p.m., a public hearing will be held in Suite 300 of the Steamboat Block Building, Helena, Montana, to consider the Adoption of the following Rule:

ADOPTION OF EEOC AFFIRMATIVE ACTION GUIDELINES. The Human Rights Commission hereby affirms its adoption of the Affirmative Action Guidelines promulgated by the United States Equal Employment Opportunity Commission, as last codified January 19, 1979. The Guidelines are codified and published in the Federal Register as Title 29 CFR, Chapter XIV, Part 1608, 44 Federal Register No. 14. A copy of the Guidelines is on file with the Secretary of State's office or may be obtained from the Montana Human Rights Commission.


2. The Commission is considering the adoption of the above Rule in order to bring its interpretation of proper affirmative action into conformance with that of the Federal Equal Employment Opportunity Commission. Said Guidelines allow an employer to use an affirmative action plan which may be race, color, sex, or ethnic "conscious". The Guidelines address the issue of "reverse discrimination" which was decided as to Title VII of the Federal Civil Rights Act by the U.S. Supreme Court in Weber v. Kaiser Aluminum Corp., 61 L.Ed 2d 480 (1979).

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

4. Karen Townsend, Suite 300, Steamboat Block Building, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

5. The authority of the Commission to make the proposed Adoption is based on MCA 49-2-204(64-315 RCM 1947). IMP same

HUMAN RIGHTS COMMISSION
KAREN TOWNSEND, CHAIR



Certified to the Secretary of State, April 1, 1980.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER of the Proposed) NOTICE OF PUBLIC HEARING ON
Adoption of a Rule regarding) a Proposed Rule regarding the
the time at which a decision) time at which a decision of a
of a hearing examiner may be) hearing examiner may be reviewed
reviewed by the Commission) by the Commission

To: All Interested Persons

1. On May 14, 1980, at 9:00 a.m., a public hearing will be held in Suite 300 of the Steamboat Block Building, Helena, Montana, to consider the Adoption of the following Rule:

Rule I TIME FOR REVIEW OF HEARING EXAMINER DECISIONS. Often the Commission will appoint a hearing examiner to a case as per ARM 24-3.9(2)-P9116, Rule 20. The hearing examiner is not a member of the Commission's staff.

From the time of appointment of the hearing examiner until he presents to the Commission his proposal for a decision, the hearing examiner will hear and decide all motions made in connection with the case. None of the prior decisions of the hearing examiner are reviewable by the Commission until his proposal for a decision is presented, except a refusal to allow an action to proceed as a class action, or the denial of a motion to disqualify the hearing examiner, unless manifest injustice would result.

2. The Commission is proposing the Adoption of the above Rule in order to expedite the hearing process by preventing multiple appeals of intermediate hearing examiner decisions before the hearing examiner issues his proposal for a decision.

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

4. Karen Townsend, Suite 300, Steamboat Block Building, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

5. The authority of the Commission to make the proposed Adoption is based on MCA 49-2-204(64-315 RCM 1947). **IMP same**

HUMAN RIGHTS COMMISSION
KAREN TOWNSEND, CHAIR

Karen S. Townsend

Certified to the Secretary of State, April 1, 1980.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER of the Proposed)	NOTICE OF PUBLIC HEARING ON
Amendment of ARM 24-3.9(2)-)	Proposed Amendment of ARM 24-
P9076, relating to the admin-)	3.9(2)-P9076, relating to the
istrative closure of a)	administrative closure of a
complaint)	complaint

To: All Interested Persons

1. On May 14, 1980, at 9:00 a.m., a public hearing will be held in Suite 300 of the Steamboat Block Building, Helena, Montana, to consider the Amendment of ARM 24-3.9(2)-P9076.

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

"24-3.9(2)-P9076 ~~INVESTIGATION; FAILURE OF CHARGING PARTY OR AGGRIEVED PERSON TO COOPERATE WITH DIVISION INVESTIGATION, OR FAILURE TO PROCEED TO HEARING.~~ (1) Whenever any Charging Party or (in the case of a complaint filed on behalf of anyone) any person alleged to be aggrieved shall refuse to comply with a request by the Division for information or evidence reasonably necessary for the investigation, conciliation or litigation of the complaint, the Division Administrator may administratively close the case for failure of the Charging Party (or aggrieved person) to cooperate with the Division, or may dismiss so much of the complaint as relates to that Charging Party or aggrieved person.

If reasonable cause is found and conciliation efforts have been unsuccessful as set forth in Section 24-3.9(2)-P9116, Rule 13A, but the Charging Party is unwilling to proceed to a hearing before the Commission, the Division Administrator shall also administratively close the case, or so much of the complaint as relates to that Charging Party or aggrieved person."


3. The Commission is proposing Amendment of the above Rule in order to make clear that a charge may be administratively closed if the Charging Party or aggrieved person is unwilling to take it to hearing before the Commission after informal efforts to resolve the complaint have proven unsuccessful.

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

5. Karen Townsend, Suite 300, Steamboat Block Building, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

6. The authority of the Commission to make the proposed Amendment is based on MCA 49-2-204(64-315 RCM 1947). Imp: same

HUMAN RIGHTS COMMISSION
KAREN TOWNSEND, CHAIR



Certified to the Secretary of State, April 1, 1980.

7-4/10/80

MAR Notice No. 24-2-9-9

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER of the Proposed)	NOTICE OF PUBLIC HEARING ON
Amendment of ARM 24-3.9(2)-)	Proposed Amendment of ARM
P9114, relating to pre-hear-)	24-3.9(2)-P9114, relating to
ing and conciliation proce-)	pre-hearing and conciliation
dures before the Montana Human) procedures before the Montana	
Rights Commission)	Human Rights Commission

To: All Interested Persons:

1. On May 14, 1980, at 9:00 a.m., a public hearing will be held in Suite 300 of the Steamboat Block Building, Helena, Montana, to consider the Amendment of ARM 24-3.9(2)-P9114.

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

"24-3.9(2)-P9114 PRE-HEARING; CONCILIATION...

(7) ...If no request to re-open conciliation is made or if the Administrator determines that the conciliation period should not be re-opened, the Administrator shall certify the case to the Commission for hearing if the Charging Party is willing to proceed to a hearing before the Commission at that time. Certification of a case for hearing does not prohibit the parties and the Division from continuing to attempt to conciliate the case..."

3. The Commission is proposing Amendment of the above Rule to conform it with the Amendments proposed in this issue of the Register to ARM 24-3.9(2)-P9076 and 24-3.9(2)-P9116, Rule 13A, which make explicit the fact that a charge can be administratively closed if a Charging Party is not willing to take it to hearing when conciliation is unsuccessful.

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

5. Karen Townsend, Suite 300, Steamboat Block Building, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

6. The authority of the Commission to make the proposed Amendment is based on MCA 49-2-204(64-315 RCM 1947). IMP same

HUMAN RIGHTS COMMISSION
KAREN TOWNSEND, CHAIR

Karen S. Townsend

Certified to the Secretary of State, April 1, 1980.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER of the Proposed)	NOTICE OF PUBLIC HEARING ON
Amendment of ARM 24-3.9(2)-)	Proposed Amendment of ARM
P9115, relating to discovery)	24-3.9(2)-P9115, relating
procedures before the Montana)	to discovery procedures before
Human Rights Commission)	the Montana Human Rights Com-
)	mission

To: All Interested Persons:

1. On May 14, 1980, at 9:00 a.m., a public hearing will be held in Suite 300 of the Steamboat Block Building, Helena, Montana, to consider the Amendment of ARM 24-3.9(2)-P9115.

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

"24-3.9(2)-P9115 DISCOVERY. (1) When the Division Administrator has determined that ~~reasonable cause exists to believe that the respondent has engaged in discriminatory practices prohibited by the act, and has served a copy of the finding on each party,~~ certified a case for hearing before the Commission as set forth in ARM 24-3.9(2)-P9116, Rules 13 and 13A, or whenever the Commission issues notice of a public hearing on a petition for declaratory judgment or on a no cause finding, every party shall enjoy the same rights of discovery as are provided for in Rules 26 through 37 of the Montana Rules of Civil Procedure. The provision of the Montana Rules of Civil Procedure governing discovery shall be applicable to discovery under this rule except to the extent that the Rules of Civil Procedure by their nature would be inapplicable and except as provided otherwise in these rules. All requests for discovery shall be served on the Division as well as on the party from whom discovery is sought....

(5) The discovery procedures authorized by this Rule may be initiated at any time ~~up to ninety (90) days after a party receives notice of a reasonable cause finding or~~ up to thirty (30) days after a party receives notice that a case has been certified to the Commission for hearing, ~~whichever period is longer.~~ The Commission or hearing examiner in its discretion may extend the period for discovery ~~on the request of a party...."~~

3. The Commission is proposing Amendment of the above Rule in order to make formal discovery procedures available to the parties only when a case becomes contested within the meaning of the Administrative Procedure Act and MCA 49-2-505. When the parties institute formal discovery procedures prior to that time, then informal efforts to conciliate the case as per MCA 49-2-504 can be hindered.

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

5. Karen Townsend, Suite 300, Steamboat Block Building, Helena, Montana 59601 has been designated to preside over and conduct the hearing.

7-4/10/80

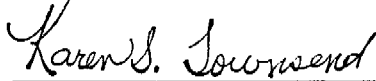
MAR Notice No. 24-2-9-11

-1133-

6. The authority of the Commission to make the proposed Amendment is based on MCA 49-2-204(64-315 RCM 1947).

IMP same.

HUMAN RIGHTS COMMISSION
KAREN TOWNSEND, CHAIR



Certified to the Secretary of State, April 1, 1980.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER of the Proposed)	NOTICE OF PUBLIC HEARING ON
Amendment of ARM 24-3.9(2)-)	PROPOSED AMENDMENT OF RULE 24-
P9116, Rules 13A, 17 and 25,)	3.9(2)-P9116, Rules 13A, 17,
Dealing with Certification)	and 25, Dealing with Certifi-
for Hearing, Pre-hearing Pro-) cation for Hearing, Pre-Hear-	
cedure, and the Appeal of a) ing Procedure, and the Appeal	
Hearing Examiner's Proposed) of a Hearing Examiner's Pro-	
Order to the Montana Human) posed Order to the Montana	
Rights Commission)	Human Rights Commission

To: All Interested Persons:

1. On May 14, 1980, at 9:00 a.m., a public hearing will be held in Room 300 of the Steamboat Block, Helena, Montana, to consider the Amendment of ARM 24-3.9(2)-P9116.

2. The proposed Amendments will be to Rules 13A, 17, and 25 of the above - stated Rule. (The present form of Rules 17 and 25 is found in the 1979 Montana Administrative Register issue No. 17, pp. 1069-1070.) The Amendments will read as follows: (new matter underlined, deleted matter interlined)

"Rule 13A. Certification of Case to Commission for Hearing. Whenever the Division Administrator has determined that reasonable cause exists to believe that a Respondent has engaged in a discriminatory practice in violation of the act and that conciliation efforts have been unsuccessful, the Administrator shall notify the Commission that the case should be set for hearing, providing that the charging party is willing to proceed to a hearing before the Commission at that time. Notice to the Commission shall include certification by the Administrator that a finding of reasonable cause has been made and that Division efforts to conciliate the case have been unsuccessful.

If the charging party is unwilling to proceed to a hearing before the Commission at that time, the case shall be administratively closed as per Section 24-3.9(2)-P9076 of these Rules.

Rule 17. Contested Cases, Informal Disposition, Pre-hearing Conference. In any contested case a formal proceeding may be waived pursuant to MCA 2-4-603.

In any contested case, an informal pre-hearing conference may be used to consider motions, define issues, determine witnesses, agree upon stipulations, or any other valid purpose reasonably intended to prepare a case for hearing. The Commission, or hearing examiner if one has been appointed, may require the parties to take part in a pre-hearing conference and/or to assist in preparing a Pre-hearing Order. The pre-hearing conference will be held when the Commission or hearing examiner decides, and may be held by phone. If a Pre-hearing Order is issued,

it shall control the subsequent course of the action, unless modified to prevent manifest injustice.

If a party willfully refuses to attend a pre-hearing conference, or to assist in preparing a Pre-hearing Order, said Pre-hearing Order may limit that party's claims, defenses, witnesses or evidence which may be presented at the hearing.

Rule 25. Contested Cases, Proposed Orders. If a hearing examiner conducted the hearing and a majority of the Commission members have not read the record, a written proposed order, including findings of fact and conclusions of law, shall be served upon each of the parties, or their attorneys, if they are represented by private counsel, and on the Division. If dissatisfied with the hearing examiner's proposal, a party or the Division may file exceptions within twenty (20) days of the date of the proposed order, or ten (10) days after the filing of exceptions by the other party or the Division, whichever period is longer.

If a party is the first to file exceptions to any of the hearing examiner's findings of fact, or conclusions of law as not having been based upon the evidence, that party shall at the time of filing said exceptions request a written transcript as provided by Rule 22, ARM 24-3.9(2)-P9116, or else indicate that such a written transcript shall be filed within forty (40) days after the date of the hearing examiner's proposed order, unless otherwise ordered by the Commission.

Briefs in support thereof may be filed with any exceptions; however, when exceptions include exceptions to findings of fact, a brief in support thereof need not be filed until twenty (20) days after the filing of the written transcript. Responsive briefs may be filed within ten (10) days after initial briefs, and reply briefs may be filed within ten (10) days after that.

For the purposes of this Rule, all filing shall be at the Commission's office in Helena and shall be deemed complete when the original is either personally served or placed in the mail and copies are served or mailed to all adverse parties.

The Commission must give the opportunity for oral argument to all parties adversely affected and to the Division, ~~only when there is no written transcript made of the proceedings before the hearing examiner. If a majority of the Commission has read the record, then oral arguments will be heard only upon request of the Commission.~~ Requests for oral argument shall be filed when exceptions are filed. MCA 2-4-621 (RCM 82-4212)."

Other than the above Amendments, the remainder of ARM 24-3.9 (2)-P9116 remains the same.

3. The Commission is proposing Amendment of the above Rule to more clearly define pre-hearing procedures before the Commission and to make certain that parties always have an

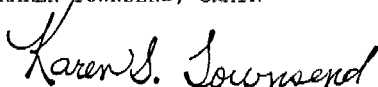
opportunity to orally argue exceptions to a hearing examiner's proposed decision.

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

5. Karen Townsend, Suite 300, Steamboat Block Building, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

6. The authority of the Commission to make the proposed Amendment is based on MCA 49-2-204(64-315 RCM 1947). **IMP same**

HUMAN RIGHTS COMMISSION
KAREN TOWNSEND, CHAIR



Certified to the Secretary of State, April 1, 1980.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER of the Proposed) NOTICE OF PUBLIC HEARING ON
Amendment of ARM 24-3.9(14)-) Proposed Amendment of ARM
S9330, relating to guidelines) ARM 24-3.9(14)-S9330, relat-
on employee selection proce-) ing to guidelines on employ-
dures) ee selection procedures

To: All Interested Persons

1. On May 12, 1980, at 7:30 p.m., a public hearing will be held in Suite 300 of the Steamboat Block Building, Helena, Montana, to consider the Amendment of ARM 24-3.9(14)-S9330.

3. The proposed Amendment will read as follows: (new matter underlined, deleted matter intelined)

~~"24-3.9(14)-S9330 ADOPTION OF EEOC GUIDELINES ON TESTING AND SELECTING EMPLOYEES---(1)-The Human Rights Commission hereby affirms its adoption of the Guidelines on Testing and Selecting Employees promulgated by the United States Equal Employment Opportunity Commission, as last codified July 21, 1970, effective August 17, 1970. The guidelines are codified and published in the Federal Register as Title 29 CFR, Chapter XIV, Part 1607, Sections 1607.1 through 1607.14. A copy of the Guidelines is on file with the Secretary of State's office or may be obtained from the Montana Human Rights Commission."~~

ADOPTION OF EEOC UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES. The Human Rights Commission hereby affirms its Adoption of the Uniform Guidelines on Employee Selection Procedures, including their appendix "Policy statement on affirmative action" promulgated by the United States Equal Employment Opportunity Commission, as last codified and published in the Federal Register as Title 29 CFR, Chapter XIV, Part 1607, Volume 43 Federal Register No. 166. A copy of the Guidelines is on file with the Secretary of State's office or may be obtained from the Montana Human Rights Commission amendment.

3. The Commission is proposing admission of the Rule in order to bring its adoption of EEOC Guidelines up-to-date. The EEOC Guidelines in the former Rule have been replaced by the Guidelines in the amended Rule. The Commission is considering adopting the appendix "Policy statement on affirmative action" of the current EEOC Guidelines in order to conform with the proposed Adoption, as set forth in this issue of the Montana Administrative Register, of a new Rule adopting the Equal Employment Opportunity Commission's Affirmative Action Guidelines.

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

5. Karen Townsend, Suite 300, Steamboat Block Building, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

6. The authority of the Commission to make the proposed Amendment is based on MCA 49-2-204(64-315 RCM 1947). **IMP same**

HUMAN RIGHTS COMMISSION
KAREN TOWNSEND, CHAIR



Certified to the Secretary of State, April 1, 1980.

7-4/10/80

MAR Notice No. 24-2-9-13

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

In the Matter of the amend-) NOTICE OF PROPOSED AMENDMENT
ment of ARM 32-2.6B(2)-S610) OF RULE 32-2.6B(2)-S610
relative to pasteurization)
plant code numbers.) (Pasteurization Plant Code
) Numbers)
) NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On or after May 11, 1980 the Board of Livestock proposes to amend rule 32-2.6B(2)-S610 PASTEURIZATION PLANT CODE NUMBERS RELATING TO CODING ON MILK CONTAINERS.
2. The rule as proposed to be amended reads:

"32-2.6B(2)-S610 PASTEURIZATION PLANT CODE NUMBERS (1) Montana Department of Livestock regulations require all bottles, cans, packages and other containers enclosing milk or any milk products defined in Chapters 6B and 6BI to be plainly labeled or marked with the identity of the plant at which the contents were pasteurized.

(2) The identity of the plant is maintained by plainly labeling the container with the name of the milk plant, the name of the city or town and the state in which the plant is located.

(3) Chapters 6B and 6BI further provide that the identity of the plant where the milk or milk products were pasteurized may be shown by a code device approved by the Board of Livestock on the label of the container.

(4) The National Conference on Interstate Milk Shipments and its membership have adopted the Federal Information Processing Standards (FIPS) Numeral Code for States to identify plants processing fluid milk, fresh milk products and frozen desserts for respective states. The numeral code to identify milk plants in Montana is 30. The National Conference on Interstate Milk Shipments recommends that the FIPS Numeral Code for States be followed by a hyphen and an official code number identifying the milk plants in the State.

(5) ~~In view of these recommendations and in order to have milk and milk products labeling acceptable in interstate commerce, it is ordered that the following code numbers shall identify milk plants in Montana:~~

<u>Code No.</u>	<u>Name</u>	<u>City and State</u>
30-1	Ayrshire Dairy Vita Rich	Great Falls, Montana
30-2	Beatrice Foods Co.	Billings, Montana
30-3		
30-4	Montana State Prison	Deer Lodge, Montana
30-5	Montana Pine Hills School	Miles City, Montana
30-6	Carbon County Creamery	Red Lodge, Montana

30-7	Phillips-Cloverleaf-Dairy	Helena,-Montana
30-8	Boylan's-Dairy-Bar	Bozeman,-Montana
30-9		
30-10	Meadow-Gold-Dairy	Missoula,-Montana
30-11	Dairyland-Wholesale,-Inc.	Helena,-Montana
30-12		
30-13	Peerless-Dairy	Great-Falls,-Montana
30-14	Dufner's-Dairy	Glendive,-Montana
30-15	Egin-Dairy	Butte,-Montana
30-16	Equity-Supply-Company	Kalispeil,-Montana
30-17	Falls-Maid-Creamery	Great-Falls,-Montana
30-18	Barigold-Farms	Bozeman,-Montana
30-19	Gate-City-Dairy	Glendive,-Montana
30-20	Barigold-Farms	Great-Falls,-Montana
30-21		
30-22	Glacier-Mountain-Chees-Co.	Gallatin-Gateway,-Montana
30-23	Hansen's-Ice-Cream	Missoula,-Montana
30-24	Meadow-Valley-Creamery	Matta,-Montana
30-25	Barigold-Farms	Missoula,-Montana
30-26	Laurel-Worden-Creamery	Laurel,-Montana
30-27		
30-28		
30-29	Revalti-County-Creamery	Hamilton,-Montana
30-30	Jersey-Creamery	Billings,-Montana
30-31	Sanders-County-Dairy-Co-op	Plains,-Montana
30-32	Beatrice-Foods-Co.	Great-Falls,-Montana
30-33	King's-Dairy	Missoula,-Montana
30-34		
30-35		
30-36		
30-37		
30-38	Safeway-Stores	Butte,-Montana-
30-39		
30-40	Skyline-Dairy	Kalispeil,-Montana
30-41		
30-42		
30-43	Sweet-Grass-Dairy	Big-Timber,-Montana
30-44		
30-45		
30-46	Wilcoxson's-Inc.	Livingston,-Montana
30-47	Vita-Rich-Dairy	Havre,-Montana
30-48		
30-49		
30-50	Montana-State-University	Bozeman,-Montana
30-51		
30-52		
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Consolidated-Dairies

Reber, -Montana

Any numbers not followed by a plant name are presently unassigned.

The department has assigned official plant code numbers to each licensed pasteurization plant in the state. Copies of the plant code assignments may be obtained by writing the milk and egg bureau, department of livestock, Helena, MT 59601.

(6) It is further ordered that all All bottles, cans, packages and other containers enclosing milk or any milk product define in Chapters 6B and 6BI shall be plainly labeled with the name of the milk plant in which the milk or milk product was pasteurized, the name of the city or town and state in which the milk plant is located and/or the code number hereon assigned by the department.

(7) Newly licensed plants will be assigned code numbers by the department at the time of licensing."

3. The rule is proposed to be amended because the numbers of plants processing milk in Montana is constantly shifting and theres no significant value to having the plant name and number set forth in the rule. The rule as proposed to be amended will provide access to plant code information for anyone desiring that, by merely calling the Department of Livestock.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to Everett Tudor, Chief, Milk & Egg Bureau, Department of Livestock, Capitol Station, Helena, Montana no later than May 11, 1980.


5. If a person is directly affected by the proposed amendment and wishes to express his data, views, and arguments orally or in writing at a public hearing he must make written request for a hearing and submit this request along with any written comments he has to Mr. Tudor by May 11, 1980.

6. Since the department believes that the number of directly affected persons includes everyone consuming milk that has been processed and packaged pursuant to department rules, the number of persons affected greatly exceeds 250. Therefore, in the event that the department receives request for public hearing from 25 or more persons directly affected, from the Administrative Committee of the Legislature, from a governmental sub-division or agency, or from an association having not less than 25 directly affected members, a hearing will be held at a

later date. Notice of the hearing will be published in the Montana Administrative Registrar.

7. The authority of the agency to make the proposed 81-2-102 MCA. The same section is implemented.


ROBERT G. BARTHELMESS
Chairman, Board of Livestock

By: 
JAMES W. GLOSSER, D.V.M.
Administrator & State Veterinarian

Certified to the Secretary of State April 1, 1980.

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

In the matter of the repeal of)	NOTICE OF PUBLIC HEARING
rules 32-2.6BI(1)-S600 through)	ON THE PROPOSED REPEAL
S6070 and the adoption of new)	OF RULES 32-2.6BI(1)-
rules relating to Grade A)	S600 through S6070 AND
milk production and processing)	THE ADOPTION OF NEW RULES
)	(Grade "A" Milk Production
)	And Processing)

TO: All Interested Persons.

1. On May 1, 1980 at 10:00 a.m. in the auditorium of the Scott Hart Building, Capitol Complex, Helena, MT, a public hearing will be held to consider the repeal of rules 32-2.6BI(1)-S600 through S6070 and the adoption of new rules all related to the production of Grade A milk and milk products.

2. The rules proposed for repeal constitute the sub-chapter entitled "Dairies, Milk Plants, Milk and Milk Products" in its entirety and are found beginning on page 32-119 of ARM.

3. The Board proposes to adopt the following new rules in lieu of those proposed for repeal.

Rule I. ADOPTION OF GRADE A PASTEURIZED MILK ORDINANCE AND ASSOCIATED DOCUMENTS (1) The department of livestock hereby adopts and incorporates by reference as rules of the department the following as they are now described and as they may from time to time be amended:

(a) "Grade A Pasteurized Milk Ordinance, 1978 Recommendations of the United States Public Health Service/Food and Drug Administration" (PMO) together with attached recommended administrative procedures, appendicies, and index, except sections 9,15,16, and 17.

(b) "Methods of Making Sanitation Ratings of Milk Supplies, 1978 Edition" issued by the U.S. public health service/food and drug administration" (MMSR).

(c) "Fabrication of Single-Service Containers for Milk and Milk Products, Sanitary Standards, 1978 Edition" issued by the U.S. public health service/food and drug administration; (SSCC).

(d) "Evaluation of Milk Laboratories, 1978 Edition" (EML).

(e) "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey, 1978 Recommended Sanitation Ordinance for Condensed and Dry Milk Products and Condensed and Dry Whey used in Grade A Pasteurized Milk Products" (DMO).

(2) These model codes and associated documents prescribe allowable methods of producing and processing Grade A milk and milk products and the methods by which compliance with the standards set forth are to be evaluated.

(3). Copies of the above are on file with the department and are carried by each sanitarian employed by the department. In addition, copies of each document are available from the superintendent of documents, U.S. government printing office, Washington, D.C. 20402, for a fee by requesting the appropriate stock number as follows:

- a) PMO: 017-001-00419-7
- b) MMSR: 017-001-00421-9
- c) SSCC: 017-001-00413-8
- d) EML: 017-001-00412-0
- e) DMO: 017-001-00420-1

Rule II. CIRCUMSTANCES UNDER WHICH RAW MILK MAY BE SOLD FOR HUMAN CONSUMPTION. (1) Notwithstanding any prohibition against the sale of raw milk for human consumption contained in the Pasteurized Milk Ordinance, grade A raw milk may be sold for such use provided the dairies and personnel involved in the production of raw milk for human consumption meet every standard contained in the pasteurized milk ordinance, are subject to the inspections required by the ordinance, and meet the following additional requirements:

(a) All milk produced in retail raw dairies must be from animals and herds which have been tested negative to tuberculosis and blood tested negative to brucellosis at least once each year or more often as the department may direct;

(b) Milk and milk products sold raw, except milk products produced in compliance with chapter 9 of this title, must be bottled on the farm where produced. Bottling and capping must be done in a sanitary manner by means of approved equipment and these operations must be integral in one machine. Caps or cap stock must be purchased in sanitary containers and be kept therein in a clean, dry place until used. Hand capping is prohibited. The cap or cover must protect the pouring lip to at least its widest diameter.

Rule III. MILK AND MILK PRODUCTS WHICH MAY BE SOLD. (1) The only milk and milk products which may be sold to the final consumer, to restaurants, soda fountains, grocery stores or similar establishments are:

(a) Grade A pasteurized milk and milk products produced and processed according to the terms of the Pasteurized Milk Ordinance.

(b) Grade A raw milk produced and processed according to the terms of rule II except that raw milk or milk products may not be sold in those counties or communities which have by ordinance prohibited the sale of such items.

(c) Milk products produced and processed in compliance with the terms of chapter 9 of this title.

(d) In an emergency the sale of pasteurized milk and milk products which have not been graded or the grade of which is unknown may be made when authorized by the department. Milk and milk products sold under this sub-section must be labeled "ungraded".

3. These proposals are being made to update the department's rules in the area of Grade A milk and milk products. The rules proposed for repeal are based on the 1965 Pasteurized Milk Ordinance (PMO) which has now been replaced by the somewhat changed 1978 edition. Because the standards of milk able to be shipped in interstate commerce are governed by the P.M.O., without these changes milk produced or processed in Montana would be ineligible for interstate movement. In addition, the Pasteurized Milk Ordinance has proven very effective in the control of milk borne diseases since its inception in 1924. The changes between the 1965 and 1978 versions of the PMO are based in large part upon new technologies of milk processing and will have little extra impact upon either the cost or day to day operation of dairies or milk plants. Several of the changes in fact relax requirements found in the 1965 P.M.O. Section 9 of the PMO is not adopted because it prohibits raw milk or non Grade A pasteurized milk products. Sections 15, 16, & 17 are not adopted because Montana statutes provide for penalties and enforcement. If these proposals are adopted it is intended that they become effective July 1, 1980.


4. The P.M.O. and associated documents are proposed for adoption by reference because of their length, and the fact that their direct impact is felt only by the relatively few Grade A dairy producers and dairy plants in Montana, many of whom already have obtained their own copies of the 1978 version. For those wishing copies, they can be obtained as set forth in rule I.

5. Interested person may present their data, views, or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Everett Tudor, Chief, Milk and Egg Bureau, Department of Livestock, Helena, MT 59601 no later than May 9, 1980.

6. Everett Tudor has been designated to preside over and conduct the hearing.

7. The authority of the department to act in this matter is based on section 81-2-102 MCA. The same section is being implemented.


ROBERT G. BARTHELMESS
Chairman, Board of Livestock

By: 
JAMES W. GLOSSER, D.V.M.
Administrator and State
Veterinarian

Certified to the Secretary of State April 1, 1980.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING

IN THE MATTER of the Repeal) NOTICE OF PROPOSED REPEAL OF
of ARM 40-2.3(6)-S30070) ARM 40-2.3(6)-S30070 LICENSE
License - Surety Bond) - SURETY BOND

TO: All Interested Persons:


1. On May 10, 1980, the Department of Professional and Occupational Licensing will repeal ARM 40-2.3(6)-S30070 concerning the requirement of a surety bond for Private Investigators and Patrolmen.

2. The rule to be repealed is located at pages 40-52.9 and 40.52.10 of the Administrative Rules of Montana. The rule is entitled 40-2.3(6)-S30070 LICENSE - SURETY BOND.

3. The department is repealing the rule as Chapter 541, 1977 Session Laws, removed the requirement of a bond for licensure.

4. The authority of the department to make the repeal is based on section 37-60-202 MCA.

BY:


ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, April 1, 1980.

7-4/10/80

MAR Notice No. 40-2-8

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

IN THE MATTER of the Proposed)	NOTICE OF PROPOSED ADOPTION
Adoption of a new rule 40-)	OF A NEW RULE ARM 40-3.94(2)-
3.94(2)-P9415 relating to)	P9415 PUBLIC PARTICIPATION
public participation in board)	RULES
decision making functions.)	

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 10, 1980, the Board of Public Accountants proposes to adopt a new rule ARM 40-3.94(2)-P9415 relating to public participation in board decision making functions.

2. The rule as proposed will incorporate as rules of the board the rules of the Department of Professional and Occupational Licensing as listed in Title 40, Chapter 2, Sub-Chapter 14, of the Administrative Rules of Montana.

3. The board is proposing the adoption because such action is mandated by section 2-3-103 MCA. That section requires all agencies to adopt rules which specify the means by which the public may participate in decision making functions. Rather than adopt its own set of rules and for the sake of expediency, the board has reviewed and approved the department rules and by this notice seeks to incorporate them as their own.

4. Interested parties may submit their data, views or arguments concerning the proposed new rule in writing to the Board of Public Accountants, Lalonde Building, Helena, Montana 59601 no later than May 8, 1980.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Public Accountants, Lalonde Building, Helena, Montana 59601 no later than May 8, 1980.

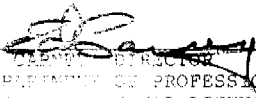
6. If the board receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an 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.

7. The authority of the board to make the proposed adoption is based on section 37-50-201 MCA and implements section 2-3-103 MCA.

BOARD OF PUBLIC ACCOUNTANTS
SHERMAN VELTKAMP, CPA
CHAIRMAN

-1148-

BY:


EDWARD J. BRYCE
DIRECTOR
DEPARTMENT OF PROFESSIONAL
REGULATION
GENERAL LICENSING

Certified to the Secretary of State April 1, 1980.

7-4/10/80

MAR Notice No. 40-94-12

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF RADIOLOGIC TECHNOLOGISTS

IN THE MATTER OF the Proposed) NOTICE OF PROPOSED AMENDMENT
Amendment of ARM 40-3.96(6)-) OF ARM 40-3.96(6)-S9675
S9675 concerning permits) PERMITS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 10, 1980, the Board of Radiologic Technologists proposes to amend ARM 40-3.96(6)-S9675.

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

"40-3.96(6)-S9675 PERMITS (1) Applicants for permit to perform x-ray procedures must meet the following requirements for approval to take the examination for permit:

(a) must show proof of employment from physician or administrator;

(b) must have completed a minimum of 24 hours of formal classroom x-ray training under the direction of a radiologic technologist or radiologists, and

(c) must have proof of ~~formal experience or~~ a minimum of 6 months practical experience.

(2) After failing the examination 3 times, an applicant must complete a minimum of 24 hours of additional formal classroom x-ray training under the direction of a radiologic technologist or radiologists; before being allowed admission to subsequent sit-for-the-examinations."

3. The board is proposing the amendment to replace wording which was inadvertently taken out in the notice published on December 13, 1979 and adopted on February 1, 1980 [wording placed in subsection (b)]. The change to subsection (2) is to further clarify this portion of the rule.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Radiologic Technologists, Lalonde Building, Helena, Montana 59601, no later than May 8, 1980.


5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Radiologic Technologists, Lalonde Building, Helena, Montana 59601, no later than May 8, 1980.

6. If the board receives requests for a public hearing on the proposed amendment from 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 form 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 60 based on the 600 licensees in the state.

7. The authority of the board to give the proposed amendment is based on Section 37-14-203 MCA and the proposed amendment 37-14-306 MCA.

BOARD OF PROFESSIONAL ENGINEERS
REYNOLDS COUNTY, IDAHO
CLATAMA

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

Certified to the Secretary of State, April 1, 1980.

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

IN THE MATTER of the Proposed) NOTICE OF PROPOSED AMENDMENT
Amendment of ARM 40-3.101(6)-) OF ARM 40-3.101(6)-S101000
S101000 concerning fees) FEES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 10, 1980, the Board of Speech Pathologists and Audiologists proposes to amend ARM 40-3.101(6)-S101000 concerning fees.

2. The proposed amendment will add a new subsection (10) to the current rule and will read as follows:

"40-3.101(6)-S101000 FEES....."

(10) Renewal fees will be \$25.00"

3. The board is proposing the amendment to clarify the exact amount of the renewal fee referred to in section 37-15-308 MCA, which sets a minimum and maximum fee allowable. The board has reviewed its administrative costs and determined the \$25.00 fee adequate to cover the costs of renewal.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Speech Pathologists and Audiologists, Lalonde Building, Helena, Montana 59601 no later than May 8, 1980.


5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Speech Pathologists and Audiologists, Lalonde Building, Helena, Montana 59601 no later than May 8, 1980.

6. If the board receives requests for a public hearing on the proposed amendment from 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 35 based on the 350 licensees.

7. The authority of the board to make the proposed amendment is based on section 37-15-202 MCA and implements sections 37-15-307 and 308 MCA.

BOARD OF SPEECH PATHOLOGISTS
SHIRLEY DEVOE, CHAIRMAN

BY:


ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, April 1, 1980.

MAR NOTICE NO. 40-101-4

7-4/10/80

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

In the matter of the amendment of)	NOTICE OF PROPOSED
Rule 46-2.10(18)-S11440(1)(m) and)	AMENDMENT OF RULE 46-
the adoption of five rules pertain-) 2.10(18)-S11440 AND	
ing to medical assistance program,)	THE ADOPTION OF RULES
optometric services)	PERTAINING TO THE MEDICAL
)	ASSISTANCE PROGRAM,
)	OPTOMETRIC SERVICES.
)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Interested Persons

1. On May 20, 1980, the Department of Social and Rehabilitation Services proposes to amend Rule 46-2.10(18)-S11440 (1)(m) and adopt five rules all pertaining to the medical assistance program, optometric services.

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

{m} Eye care will be provided by a physician skilled in the diseases of the eye licensed by the State Board of Medical Examiners or by an optometrist licensed by the State Optometric Examiners whichever the individual may select. Each eligible recipient is allowed one eye examination and one pair of glasses per fiscal year. Any replacement of frame or lenses would also be covered with or without an examination but not in addition to new glasses.

{i} More than one pair of glasses may be provided under the following circumstances: After cataract surgery two sets of lenses may be needed or when a person is unable to wear bifocals and needs two sets or in an emergency situation when glasses are lost, stolen, broken or there is a prescription change.

{ii} Contact lenses may be provided under the medical assistance program if they are needed for medical reasons and not for cosmetic purposes. No prior authorization is required but a statement should be given on the claim why they were prescribed.

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

RULE I OPTOMETRIC SERVICES, DEFINITION Optometric services are those services provided by an optometrist who is licensed and which are within the scope of his practice as defined by law. Optometric services include visual training.

(1) Visual training is the therapeutic approach to altering the relationship between the pointing system and the focusing

system by means other than conventional glasses.

RULE II OPTOMETRIC SERVICES, REQUIREMENTS

(1) Optometric services shall be provided only when they are medically necessary and shall be subject to review by the designated professional review organization.

(2) Each medicaid recipient shall be allowed one eye examination for visual acuity per fiscal year unless one of the following circumstances exist:

(a) Following cataract surgery there may be more than one examination per fiscal year.

(b) The provider determines by screening that a loss of one line acuity has occurred with present glasses.

(3) Visual training - limitations:

(a) Visual training must be prior authorized by the designated professional review organization.

(b) Visual training shall be limited to two (2) one-hour sessions per week up to a maximum of twenty-four (24) sessions per fiscal year.

RULE III EYEGLASSES, DEFINITION Eyeglasses are lens and/or frames when prescribed by a physician skilled in the diseases of the eye or by an optometrist, whichever the patient may select, to aid and improve vision.

RULE IV EYEGLASSES, REQUIREMENTS (1) Each recipient 21 years old or younger is limited to one pair of eyeglasses per fiscal year and each recipient over 21 years old is limited to one pair of eyeglasses every two fiscal years unless one of the following circumstances exists:

(a) A recipient has had cataract surgery.

(b) When there is:

(i) a .50 diopter change in correction in can sphere, cylinder, vertical prism or near heading power; or

(ii) a minimum of a 5 degree change in any cylinder axis of .50 diopters or more; or

(iii) any 1 degree or more prism change in lateral prism.

(c) A recipient is unable to wear bifocals due to medical necessity.

(2) Contact lenses may be provided only when they are medically necessary. They shall not be allowed for cosmetic reasons. Claims for contact lenses must be accompanied by a statement explaining the medical reason for them.

(3) A recipient shall be allowed repairs on a pair of glasses during the fiscal year not to exceed the amount of an additional pair of glasses.

4. The amendment 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. Due to the deletion of subsection (m) in Rule 46-2.10(18)-S11440, the numbering sequence will not follow true. Many amendments have and will be made to this rule making it too difficult to renumber each time an amendment is made. Through recodification the sequence will be corrected.

5. Interested parties may submit their data, views or arguments concerning the proposed amendment and adoptions 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 May 12, 1980.

6. If a person who is directly affected by the proposed amendment and adoptions wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than May 12, 1980.

7. If the agency receives requests for a public hearing on the proposed amendment and adoptions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment and adoptions; 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 amendment and adoptions is based on Section 53-6-113 MCA, and the rule implements Sections 53-6-101 and 53-6-141 MCA.

Keith P. Call
Director, Social and Rehabilitation Services

Certified to the Secretary of State April 1, 1980.

7-4/10/80

MAR Notice No. 46-2-226

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING
46-2.10(18)-S11460(1)(a) and the) FOR THE AMENDMENT OF 46-
adoption of new rules pertaining) 2.10(18)-S11460 AND THE
to medical assistance program,) ADOPTION OF RULES PER-
reimbursement rates for eyeglasses) TAINING TO MEDICAL
and optometric services) ASSISTANCE PROGRAM,
) REIMBURSEMENT RATES FOR
) EYEGLASSES AND
) OPTOMETRIC SERVICES

TO: All Interested Persons

1. On May 1, 1980, at 9:00 a.m. a public hearing will be held in the auditorium of the Social and Rehabilitation Services building, 111 Sanders, Helena, Montana 59601, to consider the amendment of 46-2.10(18)-S11460(1)(a) and the adoption of new rules pertaining to the medical assistance program, reimbursement rates for eyeglasses and optometric services.

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

{a} Methods to be used in establishing payment rates for each item of care services included in the medical assistance program are:

{i} Optometry, based on unit value fee schedule developed by optometric association- {1967}

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

RULE 1 EYEGLASSES, REIMBURSEMENT Reimbursement for eyeglasses shall be the lowest of usual and customary charges which are reasonable, the amount payable by medicare, or the amount reflected in the following fee schedule.

(1) Lab costs for eyeglasses - optometrist

	<u>Per Pair</u>
Hardened lenses-single vision	\$19.80
Hardened lenses-bifocals	30.80
Hardened lenses-trifocals	36.30
Plastic lenses	
Add to single lenses	2.20
Add to bifocal/trifocal	6.60
Tinting, add to lense	3.30
Frames	21.00
Contact lenses	35.00
Cataract lense	61.60 per lense
Balance lense	22.00 per lense

(2) Costs for eyeglasses - opticians and ophthalmologist

	<u>Per Pair</u>
Single vision	\$30.00
Bifocal	43.00
Trifocal	55.00
Plastic lenses	
Add to single lenses	4.00
Add to bifocal/trifocal	11.00
Tint (soft light 1, 2, and 3)	3.30
Frame	26.00
Metal Frame	30.00
Cataract lense	61.60 per lense
Balance lense	22.00 per lense
4 drop cataract	
Single vision	165.00
Bifocal	190.00
Balance lense	67.50
Frame (for 4 drop cataract)	30.00

RULE II OPTOMETRIC SERVICES, REIMBURSEMENT

(1) Payments for optometric services shall be the lowest of usual and customary charges which are reasonable or the amount payable by medicare or the maximum amount calculated by applying the conversion factor of .155 to the Montana optometric association relative value fee schedule, which is hereby incorporated and made a part of these rules. This reference shall include the appendix to the optometric service relative value fee schedule dated January, 1980.

(2) Visual training shall be reimbursed at the lowest of usual and customary charges, which are reasonable, the amount payable by medicare or eighteen dollars (\$18) per hour.

4. The amendment and adoption of the above-mentioned rules are proposed to raise reimbursement rates within limits established by the legislature. The new rates include a ten percent increase in services and hardware except for hardware for opticians and ophthalmologists which have recently been increased. Rule 46-2.10(18)-S11460(1)(a)(ii) has already been removed and may be referred to in the Register, MAR Notice No. 46-2-223, issue number 5.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than May 12, 1980.

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

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

Karla P. Cady
Director, Social and Rehabilitation Services

Certified to the Secretary of State April 1, 1980.

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

In the matter of the adoption of	)	NOTICE OF PROPOSED
a rule listing excluded services	)	ADOPTION OF A RULE
under the medicaid program	)	LISTING EXCLUDED SERVICES
	)	UNDER THE MEDICAID
	)	PROGRAM. NO PUBLIC
	)	HEARING CONTEMPLATED

TO: All Interested Persons

1. On May 20, 1980, the Department of Social and Rehabilitation Services proposes to adopt a rule listing excluded services under the Medicaid program.

2. The proposed rule provides as follows:

RULE I SERVICES NOT PROVIDED BY THE MEDICAID PROGRAM

(1) Items or medical services not specifically included within defined benefits of the medicaid program are not reimbursable under the medicaid program.

(2) The following medical and nonmedical services are explicitly excluded from the Montana medicaid program:

- (a) chiropractic services;
- (b) acupuncture services;
- (c) naturopathic services;
- (d) inhalation or respiratory therapy service;
- (e) dietician service;
- (f) nurse practitioner service;
- (g) psychiatric social work service;
- (h) mid-wifery;
- (i) social work service;
- (j) physical therapy aid service;
- (k) physician assistant service;
- (l) nonphysician surgical assistance service;
- (m) nutritional service;
- (n) masseur or masseuse services;
- (o) dietary supplements;
- (p) homemaker service;
- (q) telephone service, remodeling of home, plumbing service, car repair, and/or modification of automobile.

3. The rule is proposed to inform providers, recipients and other interested parties of what services are not included or reimbursable under the Medicaid program. The intent of this rule is to prevent unnecessary inquiries and misunderstandings.

4. Interested parties may submit their data, views or arguments concerning the proposed 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 May 12, 1980.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than May 12, 1980.

6. If the agency receives requests for a public hearing on the proposed adoption 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 1,118 persons based on a department budget analysis that shows a total of 11,184 Medicaid recipients.

7. The authority of the agency to make the proposed adoption is based on Section 53-6-113 MCA, and the rule implements Section 53-6-103 MCA.

Keith P. Coles
Director, Social and Rehabilitation Services

Certified to the Secretary of State April 1, 1980.

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

In the matter of the adoption of	)	NOTICE OF PROPOSED
rules describing the organization	)	ADOPTION OF RULES
and purpose of the Economic	)	DESCRIBING THE ORGANIZA-
Assistance Division	)	TION AND PURPOSE OF THE
	)	ECONOMIC ASSISTANCE DIVI-
	)	SION. NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On May 20, 1980, the Department of Social and Rehabilitation Services proposes to adopt rules describing the organization and purpose of the Economic Assistance Division.

2. The proposed rules provide as follows:

RULE I DESCRIPTION (1) The economic assistance division is comprised of the following bureaus:

- (a) assistance payments bureau;
- (b) medical assistance bureau; and
- (c) food and nutritional services bureau.

RULE II PURPOSE (1) This division seeks to provide a standard of living commensurate with decency and health for needy people through the following programs:

- (a) aid to families with dependent children (AFDC);
- (b) medical assistance;
- (c) food stamps; and
- (d) food commodities.

3. The rules are proposed to define how the Economic Assistance Division is organized and to explain its purpose to satisfy recodification objectives.

4. Interested parties may submit their data, views or arguments concerning the proposed 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 May 12, 1980.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than May 12, 1980.

6. If the agency receives requests for a public hearing on the proposed adoption 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 1,118 persons based on a department budget analysis that shows a total of 11,184 recipients.

7. The authority of the agency to make the proposed adoption is based on Section 53-2-201 MCA, and the rules implement Section 53-2-201 MCA.

Keith F. Cobb
Director, Social and Rehabilitation Services

Certified to the Secretary of State April 1, 1980.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of adopting	)	NOTICE OF PROPOSED ADOPTION
model procedural rules pre-	)	OF RULES
pared by the Attorney General	)	Model Procedural Rules
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All interested persons

1. On May 31, 1980, the superintendent of public instruction proposes to adopt a rule for rulemaking under the provisions of Section 2-4-306, MCA.

2. The proposed rule provides that the superintendent adopts the attorney general's model procedural rules, 1.3.101 through 1.3.211 and incorporates herein those rules by reference.

3. The rule is proposed to implement the provisions of the Administrative Procedures Act, Section 2-4-202, MCA.

4. Any person may submit data, views or arguments concerning the proposed rule in writing to Phillip Ward, Jr., Department of Administrative Services, Office of Public Instruction, State Capitol, Helena, Montana, no later than May 16, 1980.

5. If the agency receives requests for a public hearing on the proposed rule from more than 10 percent or 25 or more persons who are directly affected by the proposed amendments, or from the Administrative Code Committee of the legislature, a hearing will be held at a later date. Notice of hearing will be published in the Montana Administrative Register.

6. The authority for the superintendent to make the proposed rules is based on Section 20-3-106, MCA.

Georgia Ruth Rice

GEORGIA RUTH RICE
SUPERINTENDENT OF PUBLIC INSTRUCTION

Chas. Thomas, Deputy
Certified to the Secretary of State on April 1, 1980.

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

In the matter of the adoption) NOTICE OF THE ADOPTION
of rules for licensing of) OF RULES 16-2.26(3)-S2630
laboratories performing) THROUGH 16-2.26(3)-S2697
analyses of public water supplies.)

TO: All Interested Persons:

1. On January 17, 1980, the Board of Health and Environmental Sciences published notice of proposed adoption of rules establishing requirements and procedure for licensure of laboratories performing analyses of public water supplies at page 15 of the 1980 Montana Administrative Register, issue number 1.

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

Rule-I: 16-2.26(3)-S2630 DEFINITIONS For the purposes of these rules:

(1) same as proposed rule

(2) "Department" means the Montana Department of Health and Environmental Sciences established by 2-15-2101, MCA.

(3) "Laboratory evaluation officer" means a person designated by the department to evaluate laboratories for compliance with the ~~criteria-established-in~~ provisions of this sub-chapter, ~~and who is experienced in quality assurance, holds a graduate degree or has equivalent experience in microbiology, chemistry or radiological chemistry.~~

Rule-II: 16-2.26(3)-S2640 APPOINTMENT OF LABORATORY EVALUATION OFFICER

(1) The director of the department ~~shall~~ must appoint a laboratory evaluation officer ~~or-officers~~ from the laboratory of the department, located in Helena, Montana. The officer~~s~~ shall have the responsibility of evaluating the technical competence of personnel and the adequacy of equipment and facilities of any laboratory requesting a license to perform analyses of public water supplies, and ~~shall~~ must advise the department whether such a ~~laboratories have~~ laboratory ~~has~~ the technical expertise and resources necessary to carry out public water supply testing and analysis in accordance with the ~~standards-set-out-in~~ provisions of this sub-chapter.

Rule-III: 16-2.26(3)-S2650 PROCEDURE FOR LICENSURE

(1) Any laboratory desiring a license to perform analyses of public water supplies shall submit a written application on a form available from the Water Quality Bureau, 555 Fuller Avenue, Helena, Montana 59601 (phone: 449-2406). A laboratory may be licensed to conduct analyses for one, several, or all of the ~~analyses~~ parameters included in ARM 16-2.14(10)-S14381,

Public-Water-Supplies. An application for a license ~~shall~~ must state the ~~types-of-analyses-or-tests-the-applicant-wants-to-conduct~~ parameters for which the applicant wants to conduct analyses.

(2) The laboratory evaluation officer ~~shall~~ must contact the applicant within 30 days after receipt by the department of a written application and arrange a date and time for an evaluation of the applicant laboratory, on-site, which is mutually agreeable to both the department and the applicant. The laboratory evaluation officer ~~shall~~ must specify prior to that date what staff, equipment and supplies need to be on hand during the evaluation and what tests will need to be run in order to determine whether the laboratory can meet the licensing standards requirements set out in this sub-chapter. The laboratory ~~shall~~ must ensure that all items so specified as needed for a complete evaluation are available at the date and time agreed upon.

(3) During the on-site visit, the laboratory evaluation officer ~~shall~~ must:

(a) evaluate the procedures and equipment used for those specific public water supply analyses for which the laboratory has requested licensure, to determine if they meet the standards-set-out-in requirements of this sub-chapter;

(b)-(d) same as proposed rule

(4) The department shall send written notification to the laboratory within 30 days after the on-site visit of the decision whether it will be ~~fully~~ fully unconditionally licensed, provisionally licensed, or denied licensure, based on the on-site evaluation and the internal laboratory quality control program. If the licensure is to be provisional, the notice shall include the deficiencies noted by the department and the date by which they must be eliminated. If licensure is denied, the grounds therefore ~~shall~~ must be specifically included in the notice.

Rule-IV: 16-2.26(3)-S2660 ACTIVITIES COVERED BY LICENSE
~~duration-of-license;-temporary-and-provisional-licenses;-rect-~~
~~procity~~

(1) A license granted by the department ~~shall~~ constitutes permission to perform only those analyses for which a license is requested, and which the department finds the laboratory is capable of performing in accordance with the standards-in provisions of this sub-chapter.

(2) Each license shall list on its face the parameters for which the licensee is permitted to perform analyses.

~~42~~ 16-2.26(3)-S2670 DURATION OF LICENSE A license granted to any laboratory meeting the standards-set-out-in requirements of this sub-chapter for the specific parameters

for which licensure is requested shall be for a 3-year period.

~~(3)~~ 16-2.26(3)-S2680 PROVISIONAL LICENSES A provisional license may be granted to a laboratory which does not comply with all of the ~~standards-in~~ requirements of this sub-chapter, but whose deficiencies ~~are-minor-and~~ do not affect the capability of the laboratory to perform valid analyses. A provisional license may be granted for any period up to one year, after which the deficiencies must be corrected or further licensure denied.

~~(4)~~ 16-2.26(3)-S2690 TEMPORARY LICENSES After submission of a completed application, a temporary license will be granted by the department to any ~~laboratories~~ laboratory already approved or certified by EPA to do analysis of public water supplies until the department makes the decision whether to grant a 3-year or provisional license after an on-site visit and evaluation of the laboratory by the laboratory evaluation officer. The temporary license will cover only analyses for those parameters for which EPA approval has been received. Any ~~laboratory~~ laboratory not currently approved or certified by the state or EPA shall be granted a license only after an on-site review and successful evaluation.

~~(5)~~ 16-2.26(3)-S 2691 RECIPROCITY The department may issue a license by reciprocity to an out-of-state ~~laboratories~~ laboratory which ~~apply~~ applies, provided:

~~(a)~~ (1) the laboratory is currently approved or certified by EPA or the state in which the laboratory is located if that state has a certification program approved by EPA; and

~~(b)~~ (2) the laboratory performs ~~satisfactory~~ analyses of water samples furnished either by the department or by EPA which are within accuracy limits acceptable to the department.

Rule-V- 16-2.26(3)-S 2692 SUSPENSION OF LICENSE TO PERFORM MICROBIOLOGICAL ANALYSES A license to perform microbiological analyses is conditioned upon approval of the qualifications of the individual performing the analyses, based on a history of ~~their~~ his ability to perform valid testing. If there is a change in ~~such~~ personnel so that the laboratory no longer has an analyst who has passed an examination by the laboratory evaluation officer, the laboratory must immediately inform the department and schedule an evaluation of ~~the-new~~ ~~staff-member~~ any replacement analyst by the department. Until the new ~~staff-member~~ analyst has been tested by the laboratory evaluation officer and found capable of performing valid tests, the license to perform microbiological analyses of public water supplies shall be suspended.

Rule-VI- 16-2.26(3)-S 2693 REVOCATION OF LICENSE

(1) The department may revoke a license if it determines, after investigation, that the laboratory has failed to follow

proper analytical procedures, released erroneous results, acted unethically, or otherwise violated the standards in provisions of this sub-chapter.

(2) and (3) - same as proposed rule

Rule-VIII--Records-and-reports

(1)--All-chemical-data-shall-be-kept-for-at-least-one year, or for any longer period required by ARM 16-2.14(10)-SI4381-Public-Water-Supplies.--All-microbiological-data shall-be-kept-for-at-least-three-years-

(2)--All-analyses-of-samples-not-meeting-the-standards set-out-in-ARM-16-2.14(10)-SI4381-shall-be-promptly-reported by-telephone-to-the-Water-Quality-Bureau-of-the-department (phone-449-2406)-and-records-of-these-analyses-shall-be kept-for-at-least-three-years-

(3)--Written-reports-of-contaminated-microbiological samples-shall-be-sent-to-the-department-within-48-hours-of the-test.--Reports-of-all-other-microbiological-analyses-of samples-from-public-water-supplies-shall-be-sent-to-the department-within-48-days-after-the-tests-are-completed-

16-2.26(3)-S 2694 RECORDS

(1) Record-keeping requirements for laboratories performing chemical analyses are as follows:

(a) All chemical data must be kept for at least one year or for any longer period required by ARM 16-2.14(10)-SI4381.

(B) The following data must be kept:

(i) All raw data and calculations.

(ii) All quality control data.

(iii) Date, place, and time of sampling and name of sampler.

(iv) Identification of sample as to whether it is a routine distribution system sample, check sample, raw or process water sample, or other special purpose sample.

(v) Date of receipt of sample and date(s) of analysis.

(vi) Laboratory and persons responsible for performing analysis.

(vii) Analytical technique/method used.

(viii) Results of analyses.

(2) Record-keeping requirements for laboratories performing microbiological analyses are as follows:

(a) All microbiological data must be kept for at least 3 years, including records of analytical quality control tests and quality control checks on media, materials, and equipment.

(b) The laboratory shall complete a sample report form immediately after each sample is received. The information on the form shall include sample identification number, sample collector's name, time and date of collection, time and date of arrival in the laboratory, direct count, MF

verified count, MPN completed count, analyst's name, and other relevant special information.

(3) Records of microbiological or chemical analyses of a sample which does not meet the requirements of ARM 16-2.14(10)-S14381 must be kept by any laboratory performing the analyses for at least 3 years.

16-2.26(3)-S2695 REPORTS

(1) All analyses of samples not meeting the requirements of ARM 16-2.14(10)-S14381 shall be promptly reported by telephone to the Water Quality Bureau of the Department (phone: 449-2406).

(2) Reporting requirements for laboratories performing chemical analyses of water from public water supplies are as follows:

(a) When a maximum contaminant level set out in ARM 16-2.14(10)-S14381 is found to be exceeded in any sample, the laboratory shall notify the water supplier within 24 hours of the analysis and request resampling from the same sampling point according to the requirements of ARM 16-2.14(10)-S14381.

(3) Reporting requirements for laboratories performing microbiological analyses of water from public water supplies are as follows:

(a) Written reports of contaminated microbiological samples must be sent to the department within 48 hours of the test.

(b) Written reports of all microbiological samples other than those which are contaminated must be sent to the department within 40 days after the tests are completed.

(c) When a maximum contaminant level is found to be exceeded, the laboratory must notify the water supplier within 24 hours of the analysis and request resampling from the sampling point according to the requirements of ARM 16-2.14(10)-S14381. If the membrane filter method shows contamination of the sample, the laboratory must notify the supplier immediately without waiting for MF verification. After MF verification, the adjusted counts must be reported to the supplier.

(4) The department must retain copies of sample report forms submitted pursuant to (3)(a) of this rule for at least 3 years. If the results are entered into a computer storage system, a printout of the data must be returned to the laboratory submitting it for verification with bench sheets.

~~Rule-VIII-~~ 16-2.26(3)-S2696 REQUIREMENTS FOR A LABORATORY DOING CHEMICAL ANALYSES OF PUBLIC WATER SUPPLIES
A laboratory, in order to be licensed to perform chemical analyses of public water supplies, shall meet the following requirements:

(1) ~~laboratory facilities-~~ A laboratory facilities facility shall contain the following:

(a) A sink with hot and cold running water.
(b) ~~An adequate and~~ A properly grounded source of electricity, of sufficient amperage to run all of the laboratory's equipment without overloading circuits.

(c) A source of distilled and/or deionized water (depending on parameters measured).

(d) An exhaust hood or equivalent for analysis of organic chemicals and trace metals.

(2) ~~Laboratory equipment and instrument specifications. A laboratory doing all of the analyses required by ARM 16-2-14(10)-S143817, Public Water Supplies, shall have, or have access to, all of the following equipment with the minimum specifications cited. If a laboratory is licensed to do only some analyses required by ARM 16-2-14(10)-S143817, only those instruments shall be required that are needed to analyze for the substances for which the laboratory is licensed, but only those instruments shall meet the following specifications. The instruments necessary to perform the analyses for which a laboratory is licensed must meet the following specifications:~~

(a) ~~Analytical balance~~: An analytical balance must provide sensitivity of at least 0.1 mg.

(b) ~~Photometer~~: A photometer must meet the following specifications (see Table 1 below for instrumentation for individual methods):

(i) ~~Spectrophotometer~~: A spectrophotometer must have a usable wave-length range, 400 to 700 nm. ~~Maximum, a maximum spectral band-width, of no more than 20 nm. Wave-length, and a wave-length accuracy, of ± 2.5 nm. Photometer shall~~ The photometer must be capable of using several sizes and shapes of absorption cells providing a sample path length varying from approximately 1 cm to 5 cm.

(ii) ~~Filter~~ A filter photometer (abridged spectrophotometer): must be capable of measuring radiant energy in range of 400 to 700 nm, and of isolating ~~relatively~~ relatively broad bands (10 to 75 nm) of this radiant energy ~~are isolated~~ by use of filters at or near the maximum absorption of the colorimetric methods. ~~Photometer shall~~ The photometer must be capable of using several sizes and shapes of absorption cells providing a sample path length varying from approximately 1 cm to 5 cm.

(c) ~~Magnetic stirrer~~: A magnetic stirrer must be variable speed, 120 V, with Teflon-coated stirring bar.

(d) ~~pH-Meter~~: ~~accuracy~~ A pH meter must be accurate to ± 0.05 units, and ~~Scale~~ scale readability must be ± 0.1 units. ~~Laboratories~~ A laboratory purchasing a new pH meter ~~are~~ is strongly advised to purchase one capable of functioning with specific ion electrodes (see specific ion meter below). ~~Unit~~ The unit may be a line/bench or battery/portable operated.

(e) ~~Specific~~ A specific ion meter: must be readable and accurate to ± 5 mV. ~~Unit~~ The unit may be line/bench or battery/portable operated.

(f) ~~Atomic~~ An atomic absorption spectrophotometer: must be a single-channel, single-or double-beam instrument having a grating monochromator, photomultiplier detector, adjustable slits, a ~~wavelength~~ wave-length range of 190 to 800 nm, and provisions for interfacing with a strip chart recorder.

(g) ~~Recorder~~ A recorder for atomic absorption: must be a strip chart recorder having a chart width of 10 in. or 25 cm, a full scale response time of 0.5 s or less, 10- or 100-mV input to match the instrument, and variable chart speeds of 5 to 50 cm/min. or equivalent.

(h) ~~Gas~~ A gas chromatograph (equipped with an electron-capture detector): must be a commercial or custom-designed gas chromatograph with a column oven capable of isothermal temperature control to at least $210^{\circ} \pm 0.2^{\circ}\text{C}$. ~~System-shall~~ The system must be equipped with accurate needle-valve gas-flow controls, and accept 1/4-inch glass columns with the option of direct on-column injection. System ~~The system~~ must be demonstrated to be suitable for chlorinated hydrocarbon pesticides, with a minimum of decomposition and loss of compounds of interest.

(i) ~~Record~~ A recorder for gas chromatograph: must be a strip chart recorder having a chart width of 10 in. or 25 cm, a full scale response time of 1 s or less, 1 mV (-0.05 to 1.05) signal to match the instrument, and variable chart speeds of 5 to 50 cm/min. or equivalent.

(j) ~~Conductivity-meter:~~ A conductivity meter must be suitable for checking distilled water quality, shall ~~shall~~ be readable in ohms or mhos, have a range of 2 to 2.5 million ohms or equivalent micromhos ± 1 percent, and have a sensitivity of 0.33 percent or better. ~~Unit~~ The unit may be line/bench or battery/portable operated.

(k) ~~Drying-oven:~~ A drying oven must be a gravity or mechanical convection units with selectable temperature control from room temperature to 170°C or higher.

(l) ~~Desiccator:~~ A desiccator must be a glass or plastic model, depending on particular application.

(m) ~~Hot-plate:~~ A hot plate may be a large or small units, with, and must have selectable temperature controls for safe heating of laboratory reagents.

(n) ~~Refrigerator:~~ --a standard Standard kitchen-type domestic refrigerator may be used for storage of aqueous reagents and samples--For, but for storing organics and flammable materials, an "explosion-proof" type of refrigerator shall must be used. When refrigeration is not required, an explosion-proof cabinet may be used.

(o) ~~Glassware:~~ shall must be of Pyrex or Kimax type glass, which is more resistant than regular soft glass to damage by heat, chemicals, and abuse. All volumetric

glassware shall must be Class A.

(p) Stirred A stirred boiling water bath, must be capable of a temperature range from ambient temperature to 100°C (with gable lid).

(3) General-laboratory-practices: The following general laboratory practices are acceptable:

(a) Prepackaged-kit-methods: All kit procedures, other than the DPD Colorimetric Test Kit, are considered alternative analytical techniques, and procedures described in 40 CFR §141.27 of the National Interim Primary Drinking Water Regulations ~~are to~~ must be followed. A copy of the regulation may be obtained from the Water Quality Bureau.

(b) Calibration-intervals-for-color-wheels, sealed ampules, and other visual standards:--laboratories A laboratory utilizing a visual comparison device shall must calibrate the standards incorporated into such a device at least every 6 months. These calibrations shall must be documented. Directions for preparing temporary and permanent type visual standards can be found in the appropriate sections of "Standard Methods for the Examination of Water and Wastewater," 14th Ed., published in 1975 (or the latest edition published) by the American Public Health Association. A copy of the above document may be obtained from the Water Quality Bureau. By comparing standards and plotting such a comparison on graph paper, a correction factor must be derived and applied to all future results obtained on the calibrated apparatus.

(c) Glassware-preparation: All glassware shall must be washed in a warm detergent solution and thoroughly rinsed first in tap water and then in distilled water. This cleaning procedure is sufficient for most analytical needs, but the individual analytical procedures ~~shall be referred to and followed when more elaborate precautions are to be taken against~~ for nitrates and trace metals contained in the EPA's "Methods for Chemical Analysis of Water and Wastes," 1979, must be followed to prevent contamination of glassware. ~~A~~ In the case of nitrate and trace metal procedures, a separate set of glassware ~~(suitably prepared)~~, prepared according to the procedures noted above, must be maintained ~~for the nitrate and trace metal procedures~~ due to the potential for contamination from the laboratory environment. All glassware used in organic chemical analyses shall must have a final rinse with nanograde acetone or its equivalent and shall must then be air dried in an area free of organic contamination.

(d) Distilled/deionized-water: Water having resistivity values between 0.5 to 2.0 megohms (2.0 to 0.5 micromhos/cm) at 25°C shall must be available.

$$\frac{1}{\text{megohms}} = \text{micromhos} \quad \frac{1}{\text{micromhos}} = \text{megohms}$$

High quality water meeting such specifications may be purchased from commercial suppliers; ~~laboratories shall~~ a laboratory must request a list of quality specifications for any water so purchased. Quality of distilled/deionized water is best maintained by sealing from the atmosphere. Quality checks ~~shall~~ must be made at weekly intervals and documented. If water is produced by the batch, quality checks must also be run on each batch.

(e) ~~Chemicals/reagents~~ "Analytical reagent grade" (AR) chemicals ~~shall~~ must be used for most analyses required of water treatment laboratories. Consult "Standard Methods for the Examination of Water and Wastewater," 14th Ed., Part 102, pages 5-8, or the latest edition of this reference, published by the American Public Health Association, for more detailed information on reagent grades. Any special reagent requirements for individual analytical procedures which are stated in the above document and EPA's "Methods for Chemical Analysis of Water and Wastes" ~~shall~~ must be used. Both documents are available from the Water Quality Bureau.

(4) ~~Methodology and required equipment for individual parameters~~ Table 1 below shows minimum equipment requirements, methodology, and references for individual parameters. Equivalent equipment as noted in subsection (2) above of this rule may be used. ~~All~~ A procedures other than those listed in Table 1 ~~are~~ is considered an alternative analytical ~~techniques~~ method and may be used only if application for ~~their~~ its use, including acceptable comparability data, is made to the department and ~~approved~~ found by the department to produce results of equal accuracy to those in Table 1. Such an application must be accompanied either by comparability data or by documentation that EPA has approved the analytical method in question as equivalent to its counterpart in Table 1.

Table 1: same as proposed.

(5) ~~Sample-collecting, handling, and preservation.~~
Requirements for the container type, preservatives, and holding times for each individual parameter are shown in Table 2 below:

Parameter	Preservative ²	TABLE 2 ¹	Container ³	Maximum holding time ⁴
Arsenic	Conc HNO ₃ to pH<2		P or G	6 months
Barium	Conc HNO ₃ to pH<2		P or G	6 months
Cadmium	Conc HNO ₃ to pH<2		P or G	6 months
Chromium	Conc HNO ₃ to pH<2		P or G	6 months
Lead	Conc HNO ₃ to pH<2		P or G	6 months
Mercury	Conc HNO ₃ to pH<2		G P	10 days 14 days
Nitrate	Conc H ₂ SO ₄ to pH<2		P or G	14 days
Selenium	Conc HNO ₃ to pH<2		P or G	6 months
Silver	Conc HNO ₃ to pH<2		P or G	6 months
Fluoride	None		P or G	1 month
Chlorinated hydrocarbons	Refrigerate at 4°C as soon as possible after collection		G with foil or Teflon-lined cap	14 days ⁵
Chlorophenoxys	Refrigerate at 4°C as soon as possible after collection		G with foil Teflon-lined cap	7 days ⁵
Calcium	Refrigerate at 4°C as soon as possible after collection		P or G	7 days
Magnesium	Refrigerate at 4°C as soon as possible after collection		P or G	7 days
Sodium	None		P or G	7 days
Potassium	None		P or G	7 days
Alkalinity (Total and Phenolphthalein)	Refrigerate at 4°C as soon as possible after collection		P or G	24 hours
Chloride	None		P or G	7 days
Sulfate	Refrigerate at 4°C as soon as possible after collection		P or G	7 days
pH Value	Refrigerate at 4°C as soon as possible after collection		P or G	6 hours ⁶
Dissolved solids	Refrigerate at 4°C as soon as possible after collection		P or G	7 days

TABLE 2 (continued)

Parameter	Preservative ²	Container ³	Maximum Holding Time ⁴
Total Hardness	Refrigerate at 4°C as soon as possible after collection	P or G	7 days
Iron	Conc HNO ₃ to pH<2	P or G	6 months
Manganese	Conc HNO ₃ to pH<2	P or G	6 months

- ¹ If a laboratory has no control over these factors, the laboratory director must reject any samples not meeting these criteria requirements and so notify the authority requesting the analyses.
- ² If HNO₃ cannot be used because of shipping restrictions, sample may be initially preserved by icing and immediately shipping it to the laboratory. Upon receipt in the laboratory, the sample must be acidified with conc HNO₃ to pH 2. At time of analysis, sample container should be thoroughly rinsed with 1:1 HNO₃; washings should be added to sample.
- ³ P=Plastic, hard or soft; G=Glass, hard or soft.
- ⁴ In all cases, samples should be analyzed as soon after collection as possible.
- ⁵ Well-stoppered and refrigerated extracts can be held up to 30 days.
- ⁶ pH preferably should be determined on site. If a samples cannot be returned to the laboratory in six hours and holding time exceeds this limit, the final reported data should indicate the actual holding time.

(6) ~~Quality-control:~~ The following requirements must be met in order to ensure quality control:

- (a) All quality control data must be available for inspection by the department.
- (b) The laboratory must analyze an unknown performance sample once annually for parameters measured. Results must be within the control limits established by the department for each analysis for which the laboratory is licensed. If problems arise, appropriate technical assistance will be provided, and a followup performance sample ~~shall~~ must be analyzed.
- (c) A current service contract with yearly routine maintenance must be in effect on all balances.
- (d) Glass weights must be available to make weekly checks on balances. These checks must be documented.
- (e) A thermometer certified by the National Bureau of Standards (or one of equivalent accuracy) must be available to check any thermometers in an ovens, etc. These checks must be made monthly and documented.

(f) Color standards or their equivalent must be available to verify wave-length settings on a spectrophotometers. The verification must be documented.

(g) Chemicals must be dated upon receipt of shipment and replaced as needed or before shelf life has been exceeded.

(h) The laboratory ~~shall perform on~~ must analyze a known reference sample (when available) once per quarter for the parameters measured. The measured value ~~shall~~ must be within the control limits established by the department for each analysis for which the laboratory wishes to be ~~certified~~ licensed.

(i) Standard deviation ~~shall~~ must be calculated and documented for all measurements being conducted.

(j) Quality control charts or a tabulation of mean and standard deviation ~~shall~~ must be used to document validity of data on a daily basis.

(k) Minimum The laboratory must meet the following minimum daily quality control requirements:

(i) After a standard reagent curve composed of a minimum of a reagent blank and three standards has been prepared, subsequent standard curves must be verified by use of at least a reagent blank and one standard at or near the MCL. Daily checks must be within ± 10 percent of original curve.

(ii) If 20 or more samples per day are analyzed, the working standard curve must be verified by running an additional standard at or near the MCL every 20 samples. Checks must be within ± 10 percent of original curve.

(iii) At least one duplicate sample ~~shall~~ must be run every 10 samples, or with each set of samples, to verify precision of the method. Checks ~~should~~ must be within the control limits established by the department for each analysis for which the laboratory is licensed.

(iv) At least one spiked sample ~~shall~~ must be run every 10 samples or with each set of samples for each parameter to verify accuracy of the method, with the exception of pH, alkalinity, and dissolved solids. Checks ~~shall~~ must be within control limits established by the department for each analysis for which the laboratory is licensed.

(l) A written procedure must be available to analysts to correct deficiencies discovered by daily quality control.

~~{7}--Data-handling-~~

~~{a}--Records-of-chemical-analyses-shall-be-kept-by-the-laboratory-for-at-least-one-year--Data-on-any-sample-which-shows-contamination-shall-be-kept-for-at-least-three-years-~~

~~{b}--The-following-data-must-be-kept-~~

~~{i}--All-raw-data-and-calculations-~~

~~{ii}--All-quality-control-data-~~

(iii)--Date, place, and time of sampling, and name of sampler.

(iv)--Identification of sample as to whether it is a routine distribution system sample, check sample, raw or process water sample, or other special purpose sample.

(v)--Date of receipt of sample and date(s) of analysis.

(vi)--Laboratory and persons responsible for performing analysis.

(vii)--Analytical technique/method used.

(viii)--Results of analyses.

(8)--Personnel: (7) The employees described below must meet the following training requirements and be supervised as follows:

(a) Routine A routine test analyst must have:

(i) ~~Academic training~~: A minimum of a high school diploma or its equivalent.

(ii) ~~Experience~~: A minimum of 2 years experience in inorganic measurements, including 6 months of on-the-job training, under direct supervision of a qualified analyst, in measurements being considered for certification licensure; or, if no experience, 2 years of on-the-job training, under direct supervision of a qualified analyst, in measurements being considered for certification licensure. One year of college-level training in related scientific fields or demonstrated equivalency shall be considered equal to one year of work experience. Such a substitution may be made for only one year of the required 2 years of work experience.

(b) ~~Organic~~ An organic chemicals analyst must have:

(i) ~~Academic training~~: A minimum of a high school diploma or its equivalent.

(ii) ~~Experience~~: A minimum of 6 months of experience in measurement of chlorinated hydrocarbons and chlorophenoxys and 2 years of experience in gas chromatography. Each year of college-level training in related scientific fields or demonstrated equivalency shall be considered equal to one year of work experience. Such a substitution shall not exceed one-half of the required experience.

(iii) ~~Supervision~~--supervision by an analyst (also eligible to analyze for organic chemicals) who has a professional degree or its equivalent, with one year of course work in organic chemistry, and two years of experience in measurement of organic chemicals by gas chromatography.

(9)--Action when contamination is found.--When a maximum contaminant level is found to be exceeded, the laboratory shall notify the water supplier within 24 hours of the analysis and request resampling from the same sampling point according to the requirements of ARM-16-2-14(10)-S14381.

~~Rule IX--Requirements for laboratories doing microbiological analyses of public water supplies~~ 16-2.26(3)-S 2627
REQUIREMENTS FOR A LABORATORY DOING MICROBIOLOGICAL ANALYSES OF PUBLIC WATER SUPPLIES A laboratory, in order to be licensed to perform microbiological analyses of public water supplies, ~~shall~~ must meet the following requirements:

(1) ~~Personnel~~: An analyst employed by the laboratory to perform microbiological analyses must have the level of training, and supervision, and expertise specified below:

(a) ~~Academic training~~: A minimum of a high school diploma in academic or laboratory-oriented vocational courses or equivalent experience in microbiological testing.

(b) ~~Job training~~: A minimum of 30 days on-the-job training plus one week of supplementary training acceptable to the department. Personnel should take advantage of courses available to EPA or the department.

(c) ~~Supervision--supervisor~~ Supervision by an experienced professional scientist. ~~In the small water plant any small~~ laboratory consisting of a single analyst, the department shall provide supervision.

(d) A successful evaluation by the laboratory evaluation officer indicating that he comprehends the requirements of these rules and is capable of performing valid tests.

(2) ~~Laboratory facilities~~: Laboratory space must be adequate (200 square feet and six linear feet of bench space per analyst) to accommodate periods of peak work load. Working space requirements ~~shall~~ must include storage space for media, glassware, and portable equipment items; floor space for stationary equipment (incubators, waterbaths, refrigerators, etc.); and associated area for cleaning glassware and sterilizing materials. Facilities ~~shall~~ must be clean, air-conditioned, and with adequate lighting at bench top (100 ft.-candles).

(3) ~~laboratory equipment, supplies, and materials~~: The laboratory must have available or access to the items required for the total coliform membrane filter or most probable number procedures ~~as which are~~ listed below, and which meet the specifications noted:

(a) A pH meter: accuracy must be ± 0.1 units.

(b) ~~Balances~~--- A balance, top loader or pan+balance must be clean, not corroded, and be provided with appropriate weights of good quality. ~~Balance~~ The balance must tare out and detect 50-mg weight accurately; this sensitivity is required for use in general media preparation of 2g or larger quantities.

(c) Temperature-monitoring devices: must meet the following requirements:

(i) Glass or metal thermometers must be graduated in 0.5°C increments.

(ii) Continuous temperature recording devices must be sensitive to within 0.5°C.

(iii) ~~Liquid~~ The liquid column of glass thermometers must have no separation.

(iv) A certified thermometer or one of equivalent accuracy must be available.

(d) ~~Air~~ An air for water jacketed incubator/~~incubator rooms, waterbaths/~~ or aluminum block incubators* must meet the following requirements:

(i) ~~Unit~~ The unit must maintain an internal temperature of 35.0° ± 0.5°C in area of use at maximum loading.

(ii) When aluminum block incubators are used, culture dishes and tubes must be snug-fitting in the block.

(e) ~~Autoclave~~ An autoclave must:

(i) ~~must-be~~ Be in good operating condition when observed during operational cycle or when time-temperature charts are read. Vertical autoclaves are not recommended. For most efficient ~~operation~~ operation, a double-walled autoclave constructed of stainless steel is suggested.

(ii) ~~must-have~~ Have pressure and temperature gauges on the exhaust side and an operating safety valve.

(iii) ~~must-reach~~ Reach sterilization temperature (121°C) and maintain it during sterilization cycle; no more than 45 minutes is required for a complete cycle.

(iv) ~~Depressurization-must-not-produce~~ Produce no air bubbles in fermentation media during depressurization.

(f) ~~Hot-air-oven~~ A hot-air oven must be constructed to ensure a stable sterilization temperature. Its use is for sterilization of glass pipets, bottles, flasks, culture dishes, etc.

(g) ~~Refrigerator~~ A refrigerator must hold temperature at 1° to 4.4°C (34° to 40°F).

(h) Optical/~~counting/~~ and lighting equipment* must have a low power magnification device (binocular microscope with 10 to 15x) with fluorescent light source must-be available for counting MF colonies. A mechanical hand tally should be used for counting colonies.

(i) ~~Inoculation-equipment--loop~~ Loop diameter of inoculation equipment must be at least 3 mm and of 22 to 24 gauge Nichrome, chromel, or platinum-iridium wire. Single-service metal loops, disposable dry heat-sterilized hardwood applicator sticks, pre-sterilized plastic, or metal loops may be used.

(j) Membrane filtration equipment* must be made of stainless steel, glass, or autoclavable plastic, must not leak, and must be uncorroded. Field equipment is acceptable for coliform detection only when standard laboratory MF procedures are followed.

~~(i)--Units must be made of stainless steel, glass, or autoclavable plastic--Equipment must not leak and must be uncorroded.~~

~~(ii)--Field equipment is acceptable for coliform detection only when standard laboratory MF procedures are followed.~~

(k) Membrane filters and pads must meet the following requirements:

(i) Membrane filters must be manufactured from cellulose ester materials, white, grid-marked, 47-mm diameter, 0.45 um pore size. Another pore size may be used if the manufacturer gives performance data equal to or better than the 0.45-um membrane filter.

(ii) Membranes filters and pads must be autoclavable or pre-sterilized.

(l) Laboratory glassware, plastic ware, and metal utensils must meet the following requirements:

(i) Except for disposable plastic ware, items must be resistant to effects of corrosion, high temperature, and vigorous cleaning operations. Metal utensils made of stainless steel are preferred.

(ii) ~~Flasks~~ Any flask, beakers, pipets, dilution bottles, culture dishes, culture tubes, and or other glassware must be of borosilicate glass and free of chips, cracks, or excessive etching. Volumetric glassware ~~shall~~ must be Class A, denoting that it meets federal specifications and need not be calibrated before use.

(iii) ~~Plastic~~ Any plastic items must be of a clear, inert, nontoxic material and must retain accurate calibration marks after repeated autoclaving.

(m) ~~Culture dishes~~ Any culture dish must meet the following requirements:

(i) ~~Sterile~~ A sterile tight or loose-lid plastic or glass culture dishes ~~or loose-lid-glass-culture-dishes~~ must be used.

(ii) For a loose-lid culture dishes, relative humidity in the incubator must be at least 90 percent.

(iii) ~~Culture~~ A culture dish containers must be aluminum or stainless steel; or ~~dishes may be~~ wrapped in heavy aluminum foil or char-resistant paper.

(iv) ~~Open packs~~ An open pack of disposable sterile culture dishes must be resealed between uses.

(n) Culture tubes and closures must be made of borosilicate glass or other corrosion resistant glass and be of a sufficient size to contain the culture medium, as well as the sample portions employed, without being more than 3/4 full. It is desirable that the fermentation vial extend above the medium. Caps must be snug-fitting stainless steel or plastic; loose-fitting aluminum caps or screw caps are also acceptable.

~~(i) Culture tubes must be made of borosilicate glass or other corrosion-resistant glass and must be of a sufficient size to contain the culture medium, as well as the sample portions employed, without being more than 3/4 full. It is desirable that the fermentation vial extend above the medium.~~
~~(ii) Caps must be snug-fitting stainless steel or plastic; loose-fitting aluminum caps or screw caps are also acceptable.~~

(o) Measuring equipment must meet the following requirements:

(i) Sterile A sterile, glass, or plastic pipets must be used for measuring 10 ml or less.

(ii) Pipets A pipet must deliver the required volume quickly and accurately within a 3.5 percent tolerance.

(iii) Pipets A pipet must not be badly etched; a mouthpiece or delivery tips must not be chipped; graduation marks must be legible.

(iv) Open packs An open pack of disposable sterile pipets must be resealed between uses.

(v) Pipet containers A pipet container must be aluminum or stainless steel.

(vi) Graduate cylinders A graduate cylinder must be used for a samples larger than 10 ml; calibrated membrane filter funnel markings are permissible provided accuracy is within a 2.5 percent tolerance.

(4) General laboratory practices. The following sterilization procedures are required:

~~(a) Sterilization procedures-~~

~~(i) The following times and temperatures must be used for autoclaving materials:~~

~~(a) The following times and temperatures must be used for autoclaving materials: (same as proposed rule)~~

~~(i) (b) same as proposed rule~~

~~(ii) (c) same as proposed rule.~~

~~(b) Laboratory pure water (distilled, deionized, or other processed waters):~~

~~(i) An analyst must test the quality of the laboratory pure water or have it tested by the department laboratory or by a department approved laboratory.~~

~~(ii) Only water determined as laboratory pure water (see quality control section) can be used for performing bacteriological analyses.~~

(5) Only water determined to be laboratory pure water [see subsection (12) of this rule] may be used for performing bacteriological analyses. The quality of laboratory pure water (distilled, deionized, or other processed waters) must be tested by an analyst meeting the requirements of subsection (1) of this rule.

~~(c)---Rinse-and-dilution-water-~~

~~(i)---Stock~~ (6) Any stock buffer solution must be prepared according to "Standard Methods of Examination of Water and Waste Water," 13th Ed., published by the American Public Health Association, using laboratory pure water adjusted to pH 7.2. Stock buffer must be autoclaved or filter-sterilized, labeled, dated, and stored at 1° to 4.4°C. The stored buffer solution must be free of turbidity. A copy of the above manual may be obtained from the Water Quality Bureau.

~~(iii)~~ (7) Rinse and dilution water must be prepared by adding 1.25 ml of stock buffer solution per liter of laboratory pure water. Final pH must be 7.2 ±0.01.

~~(d)---Media-preparation-and-storage-~~ (8) The following are minimum requirements for storing and preparing media:

~~(i)~~ (a) same as proposed rule

~~(iii)~~ (b) Lauryl tryptose and brilliant green lactose bile broths must be prepared according to the standards in the manual cited in ~~(c)~~~~(i)~~ (6) above; lactose broth is not permitted.

~~(iii)~~ (c) same as proposed rule

~~(iv)~~ (d) same as proposed rule

~~(v)~~ (e) same as proposed rule

~~(vi)~~ (f) same as proposed rule

~~(vii)~~ (g) same as proposed rule

~~(viii)~~ (h) same as proposed rule

~~(5)---Methodology-~~ (9) Testing methodology shall meet the following requirements:

(a) Test procedures ~~shall~~ must be those described in the 13th edition of "Standard Methods for the Examination of Water and Waste Water," published by the American Public Health Association. ~~(copies-are-available-from-the-Water-Quality-Bureau)---They-are-~~ Those procedures are the standard coliform MPN tests (pp. 664-668), single step, or the enrichment standard total coliform membrane filter procedure (pp. 679-683).

~~(i)---standard-coliform-MPN-tests-(pp-664-668),-single step,-or~~

~~(ii)---enrichment-standard-total-coliform-membrane-filter procedure-(pp-679-683)-~~

(b) same as proposed rule

(c) The following rules ~~for-reporting~~ must be observed whenever any of the following problems with membrane filters results exists:

(i) Confluent Whenever confluent growth -- growth ~~(with or without discrete sheen colonies)~~ covering the entire filtration area of the membrane--~~Results-are occurs,~~ results must be reported to the supplier as "confluent growth per 100 ml, with ~~(or without)~~ coliforms," and a new sample requested from it.

(ii) ~~TNFC-(too-numerous-to-count):~~ Whenever the total number of bacterial colonies on the membrane is too great (usually greater than 200 total colonies), not sufficiently distinct, or both, and an accurate count cannot be made: Results are, results must be reported to the supplier as "TNTC per 100 ml, with {or without} coliform," and a new sample requested from it.

(iii) Confluent growth and TNTC: A new sample must be requested from the supplier, and the sample volumes filtered must be adjusted to apply the MF procedure; otherwise the MPN procedure must be used.

~~(iv)-Confirmed-MPN-test-on-problem-supplies:~~ (d) If the laboratory has elected to use the MPN test on water supplies that have a continued history of confluent growth or TNTC with the MF procedure, all presumptive tubes with heavy growth without gas production ~~should~~ must be submitted to the confirmed MPN test to check for the suppression of coliforms. A The count is must be adjusted based upon confirmation and a new sample requested from the supplier. This procedure ~~should~~ must be carried out on one sample from each problem water supply once every three months.

~~(6)--Sample-collection,-handling,-and-preservation.~~

~~(a)--There-must-be-strict-adherence-to-correct-sampling procedures,-complete-identification-of-the-sample,-and prompt-transfer-of-the-sample-to-the-laboratory-as-described in-"Standard-Methods-of-Examination-of-Water-and-Waste Water,"-13th-Edition,-Section-450,-pp.-657-660,-published by-the-American-Public-Health-Association-(copies-available from-the-Water-Quality-Bureau)-.~~

~~(b)--The-sample-must-be-representative-of-the-potable water-system.-The-sampling-program-must-include-examination of-the-finished-water-at-selected-sites-that-systematically cover-the-distribution-network.~~

~~(c)--Minimum-sample-frequency-must-be-that-specified in-ARM-16-214(10)-SI4381,-Public-Water-Supplies.~~

~~(d)--The-collector-must-be-trained-in-sampling procedures-and-approved-by-the-department-or-its-delegated representative.~~

~~(e)--The-water-tap-must-be-sampled-after-maintaining a-steady-flow-for-two-or-three-minutes-to-clear-the-service line.-The-tap-must-be-free-of-aerator-strainer,-hose attachment,-or-water-purification-devices.~~

~~(f)--The-sample-volume-must-be-a-minimum-of-100-ml. The-sample-bottle-must-be-filled-only-to-the-shoulder-to provide-space-for-mixing.~~

~~(g)--The-sample-report-form-must-be-completed-immediately after-collection-with-location,-date,-and-time-of-collection; chlorine-residual,-collector's-name,-and-remarks.~~

~~(h)~~ (10) Sample bottles supplied to sample collectors must be of at least 120 ml-capacity, sterile plastic or hard glass, wide-mouthed with stopper or plastic screw cap, and capable of withstanding repeated sterilization. Sodium thiosulfate (100 mg/l) ~~shall~~ must be added to all sample bottles during preparation. As an example, 0.1 ml of a 10 percent solution is required in a 4-oz. (120-ml) bottle.

~~(i) -- Date and time of sample arrival must be added to the sample report form when sample is received in the laboratory.~~

(11) The following time limits apply to analyses of samples:

~~(j)~~ (a) Samples delivered by collectors to the laboratory must be analyzed on the day of collection receipt.

~~(k) -- Where it is necessary to send water samples by mail, bus, United Parcel Service, courier service, or private shipping, holding/transit time between sampling and analyses must not exceed 30 hours. -- When possible, samples are refrigerated during transit and during storage in the laboratory.~~

~~(l) -- If the laboratory is required by ARM-16-2-14(10)-S14381 to examine samples after 30 hours and up to 48 hours, the laboratory must indicate that the data may be invalid because of excessive delay before sample processing. (b)~~ A sample arriving after 48 hours shall be refused without exception and a new sample requested.

~~(7) -- Quality~~ (12) The laboratory must maintain the following quality control program:

(a) A written description of the current laboratory quality control program must be available for review by the department. Each analyst ~~shall~~ must have a copy of the quality control program and a detailed guide of his own portion. ~~Records of analytical quality control tests and quality control checks on media, materials, and equipment must be retained for three years.~~

(b) ~~Analytical quality control tests for general laboratory practices and methodology.~~ Minimum requirements for analytical quality control tests for general practices and methodology are:

(i) ~~At least five sheen or borderline sheen colonies must be verified from each membrane containing five or more such colonies.~~ Each positive plate containing sheen or borderline sheen colonies must be verified, with the following exceptions:

(A) At least 5 sheen or borderline sheen colonies must be verified from each membrane containing 5 or more such colonies, but no more than 5 need be verified per membrane.

(B) If the laboratory is performing tests on samples from an area which is flooded, it must verify at least 10 percent of the positive plates containing sheen or borderline sheen colonies during the period of flooding, as determined by the department.

(C) If the laboratory provides the department with one year's data showing positive presumptive plates and their verifications correlate at least 75 percent of the time, the laboratory may receive written approval from the department to verify at least 50 percent, rather than 100 percent, of all positive plates containing sheen or borderline sheen colonies.

(ii) Counts must be adjusted based on verification. The verification procedure must be conducted by transferring growth from colonies into lauryl tryptose broth (LTB) tubes and then transferring growth from gas-positive LTB cultures to brilliant green lactose bile (BGLB) tubes. Colonies must not be transferred exclusively to BGLB because of the lower recovery of stressed coliforms in this more selective medium. However, colonies may be transferred to LTB and BGLB simultaneously. Negative LTB tubes must be reincubated a second day and confirmed if gas is produced. ~~It is desirable to verify all sheen and borderline sheen colonies.~~

~~(iii)~~ (iii) same as proposed rule.

~~(iii)~~ (iv) same as proposed rule.

~~(iv)~~ (v) Laboratory pure water must be analyzed annually by the test for bactericidal properties for distilled water contained in "Standard Methods of Examination of Water and Waste Water," 13th Edition, ~~cited in (6) (a) above~~, at page 646. Only satisfactorily tested water is permissible in preparing media, reagents, rinse, and dilution water. If the tests ~~do~~ show the water does not meet the requirements of "Standard Methods," cited above, corrective action must be taken and the water retested.

~~(v)~~ (vi) Laboratory pure water must be analyzed monthly for conductance, pH, chlorine residual, and standard plate count, using the test for each specified in "Standard Methods," cited in (v) above, page 908. If a test shows the water does not meet the requirements of "Standard Methods" for any of those elements, corrective action must be taken and the water retested.

~~(vi)~~ (vii) Laboratory pure water must not be in contact with heavy metals. It must be analyzed initially and annually thereafter for trace metals (especially Pb, Cd, Cr, CU, NI, and Zn), using the test for metals set out in "Standard Methods," cited in (v) above, page 143. If the test does not meet the requirements of "Standard Methods," on page 143 for trace metals, corrective action must be taken and the water retested.

~~(vii)~~ (viii) Standard plate count procedure must be performed as described in "Standard Methods of Examination of Water and Waste Water," cited in ~~(6)(a)~~ (v) above, on pages 660-662. Plates must be incubated at $35^{\circ} \pm 0.5^{\circ}\text{C}$ for 48 hours.

~~(viii)~~ (ix) Requirements for laboratory pure water are as follows:

pH	5.5 - 7.5
Conductivity	Greater than 0.2 megohm as resistivity or less than 5.0 micromhos/cm at 25°C

Trace metals:

a single metal	Not greater than 0.05 mg/l
total metals	Equal to or less than 1.0 mg/l

Test for bactericidal

properties of distilled water ["Standard Methods," cited in ~~(6)(a)~~ (v) above, page 646]

0.8 - 3.0

Free chlorine

residual 0.0

Standard plate count Less than 10,000/ml

(x) A culture of *Bacillus stearothermophilus* must be run quarterly in the autoclave in order to ensure it is sterilizing properly.

~~(ix)~~--~~laboratory~~ (xi) A laboratory must analyze one quality control sample per year (when available) for each parameter~~(s)~~ measured.

~~(x)~~--~~laboratory~~ (xii) A laboratory must satisfactorily analyze one unknown performance sample per year for each parameter~~(s)~~ measured.

~~(xii)~~ (xiii) same as proposed rule

~~(xiii)~~--~~Water-plant-laboratories~~ (xiv) A municipal water plant laboratory must examine a minimum of one polluted water source per month in addition to the required number of distribution samples.

~~(xiii)~~ (xv) If there is more than one analyst in a laboratory, at least once per month each analyst ~~shall~~ must count the sheen colonies on a membrane from a polluted water source. Colonies on the membrane shall be verified and the analysts' counts compared to the verified count.

(c) Quality Minimum requirements for quality control checks of laboratory media, equipment, and supplies--~~Minimum requirements~~ are:

(i) The pH meter must be clean and calibrated each use period with pH 7.0 standard buffer. Buffer aliquot must be used only once. Commercial buffer solutions must be dated on initial use.

- (ii) Balances A balance, (top loader or pan), must be calibrated annually.
- (iii) Glass A glass thermometers or continuous recording devices for an incubators must be checked yearly and a metal thermometers quarterly against a certified thermometer or one of equivalent accuracy.
- (iv) Temperature The temperature in an air, (or water jacketed) incubatory, ~~incubator-room~~, water baths, or aluminum block incubators must be recorded continuously or recorded daily from an in-place thermometer(s) immersed in liquid and placed on shelves in use.
- (v) same as proposed rule
- (vi) Hot A hot oven must be equipped with a thermometer calibrated in the range of 170°C or with a temperature recording device. Records A record must be maintained showing date, time, and temperature of each sterilization cycle. It is desirable to place the temperature bulb in sand and to avoid overcrowding.
- (vii) Membrane Any membrane filters used must be those recommended by the manufacturer for water analysis. The recommendation must be based on data relating to ink toxicity, recovery, retention, and absence of growth-promoting substances.
- (viii) Washing-processes The washing process must provide clean glassware with no stains or spotting. With initial use of a detergent or washing product and whenever a different washing product is used, the rinsing process must demonstrate that it provides glassware free of toxic material by the inhibitory residue test set out on page 643 of "Standard Methods," cited in (6)(a) (12)(b)(v) above.
- (ix) same as proposed rule.
- (x) Service A service contracts or approved internal protocols must be maintained on any balances, autoclave, water still, etc., and the service records entered in a log book.
- (xi) Records A record must be available for inspection on any batches of sterilized media showing lot numbers, date, sterilization time-temperature, final pH, and technician's name.
- (xii) same as proposed rule
- (xiii) Media ~~shall~~ must be ordered on a basis of 12-month needs. Bottles ~~shall~~ must be dated on receipt and when opened initially. Except for large volume uses, media should be purchased in 1/4 lb. bottles. Bottles A bottle of media should be used within ~~six~~ 6 months after opening; however, in no case ~~should~~ may opened media be used after one year. Shelf life of unopened bottles is two years.
- (xiv) same as proposed rule
- (xv) Heat sensitive tapes and spore strips or ampoules

shall be used during sterilization. Maximum A maximum registering thermometer is recommended.

~~(8)--Data-reporting-~~

~~(a)--The-laboratory-shall-complete-a-sample-report-form immediately-after-each-sample-is-taken.--The-information-on the-form-shall-include-sample-identification-number,-sample collector's-name,-time-and-date-of-collection,-arrival-time and-date-in-the-laboratory,-direct-count,-MF-verified-count,- MPN-completed-count,-analyst's-name,-and-other-relevant special-information-~~

~~(b)--If-the-membrane-filter-method-shows-contamination of-the-sample,-the-supplier-shall-be-notified-immediately without-waiting-for-MF-verification.--After-MF-verification, the-adjusted-counts-shall-be-reported-to-the-supplier;~~

~~(c)--A-copy-of-the-sample-report-form-of-a-contaminatd sample-shall-be-retained-both-by-the-laboratory-and-the department-for-three-years,-at-a-minimum.--If-results-are- entered-into-a-computer-storage-system,-a-printout-of-the data-must-be-retained-to-the-laboratory-for-verification with-bench-sheets-~~

~~(9)--Action-when-contamination-found.--When-a-maximum contaminant-level-is-found-to-be-exceeded,-the-laboratory shall-notify-the-water-supplier-within-24-hours-of-the analysis-and-request-resampling-from-the-same-sampling-point according-to-the-requirements-of-ARM-16-2-14(10)-SI4381,- Public-Water-Supplies-~~

3. A written statement from Montana Environmental Laboratory, Kalispell, Montana, protested the requirement of Rule IX that every positive presumptive plate should be verified, instead of 10 percent of those positive presumptives, because additional incubators would have to be purchased to handle the verification tubes necessary during periods producing extraordinary numbers of apparently contaminated samples, such as during floods or spring runoff.

Since it has been the experience of the Laboratory of the Department of Health and Environmental Sciences that a substantial number of samples indicating contamination actually turn out to be negative, and since ARM 16-2.14(10)-SI4381 places a considerable burden upon a supplier when a public water sample is supposedly contaminated, the requirement of verification of 100 percent of the tests showing apparently contamination was retained. However, as a compromise, provisions were added allowing 10 percent verification during floods, and a reduction of the requirement to 50 percent verification for any laboratory which can provide one year's data showing the results of initial tests indicating contamination and their verifications correlate at least 75 percent of the time.

Written comments were also received from Envirotech Operating Services, Great Falls, Montana, suggesting several changes.

First, Envirotech thought Rule V should allow a laboratory to continue doing microbiological analyses if at least one analyst approved by the department to do such analyses is employed there. Since that was the intent of the rule, language was added clarifying that intent.

Envirotech felt that Rule VIII(8)(ii) should allow some degree of substitution of college training for the required work experience of a routine test analyst. Since the EPA guidelines for laboratory licensing allow such substitution and a parallel provision appears to have been omitted by accident, language allowing substitution of specified college-level training for part of the required experience was added.

Envirotech also pointed out that the personnel provisions of Rule VIII explicitly required supervision of an organic chemicals analyst, but not a routine test analyst, and if the intent was to require the same level of supervision for the latter as the former, the level of expertise required of the supervisor was higher than necessary for a routine analyst. Since, in addition, some organic chemicals analysts in Montana work alone and have no supervisor, and supervision is not considered a necessity, the requirement was eliminated entirely.

Fourth, Envirotech was concerned that Rule IX(3)(k) meant that pads were required. Since the intent of the subsection is not to require pads but only to ensure that pads have the qualities stated if used, no change was made.

Fifth, Rule IX(4)(c) was criticized for using the 13th Edition rather than the latest edition of "Standard Methods" as a reference. Since the 13th Edition was that required by EPA's guidelines for licensing of laboratories, it was retained.

Envirotech also suggested that guidelines for air-conditioning be developed. That was suggested as a possibility for future addition to the licensing rules. It also felt the record-keeping requirements conflicted with those of ARM 16-2.14(10)-S14381, Public Water Supplies, which was not the case, so no change was necessary.

John F. McGregor, Chairman

By:

Rita Ann Steeby

Certified to the Secretary of State April 1, 1980.

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

In the matter of the Amendments)	NOTICE OF AMENDMENT OF ARM
of ARM 40-3.34(6)-S3430 con-	) 40-3.34(6)-S3430 EXAMINATIONS;
cerning examinations for den-	) 40-3.34(10)-S3470 ALLOWABLE
tists; ARM 40-3.34(10)-S3470	) FUNCTIONS FOR DENTAL
Allowable Functions for dental	) AUXILIARIES; and 40-3.34(10)-
Auxiliaries; and ARM 40-	) S34000 EXAMINATIONS
3.34(10)-S34000 concerning)
examinations for dental)
hygienists.)


To: All Interested Persons:

1. On February 14, 1980 the Board of Dentistry published a notice of proposed amendment of ARM 40-3.34(6)-S3430 concerning examinations for dentists; 40-3.34(10)-S3470 subsections (5), (5)(a) and (b) concerning allowable function for dental auxiliaries; and 40-3.34(10)-S34000 concerning examinations for dental hygienists, at pages 475-479, Montana Administrative Register, issue number 3.

2. The board has amended the rules as proposed with the exception of subsections (f) and (g) of (8) under 40-3.34(6)-S3430 and subsections (f) and (g) of (7) under 40-3.34(10)-S34000 on the recommendation of the Administrative Code Committee in that they felt the board was exceeding its statutory authorization in the addition of these subsections to the rules.

3. The board received a letter from Judy Harbrecht, R.D.H., President of the Montana Dental Hygienists Association. Mrs. Harbrecht asked for information concerning the details of how the examination for dental assistants will be organized. At such time as the board finalizes and adopts the agreement, said information will be made available to the extent that examination security will allow. Finally she offered the assistance of the Montana Dental Hygienists Association in developing the examination. No other comments or testimony were received. The board has amended the rules for those reasons stated in the rules.

BOARD OF DENTISTRY
DOUGLAS WOOD, D.D.S., PRESIDENT

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

Certified to the Secretary of State, April 1, 1980.

7-4/10/80

Montana Administrative Register

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

In the matter of the Amendment) NOTICE OF AMENDMENT OF ARM
of ARM 40-3.102(6)-S10220 con-) 40-3.102(6)-S10220 APPLICATION
cerning applications; adoption) REQUIREMENTS FOR VETERINARIANS;
of a new rule 40-3.102(6)-S) ADOPTION OF 40-3.102(6)-S10225
10225 concerning examinations;) EXAMINATION FOR LICENSURE AS A
amendment of 40-3.102(6)-S10230) VETERINARIAN; AMENDMENT OF 40-3
concerning renewals; adoption) .102(6)-S10230 NOTICE OF ANNUAL
of a new rule 40-3.102(6)-) RENEWAL OF CERTIFICATE OF REGIS-
S10235 concerning forfeiture of) TRATION FOR VETERINARIANS; ADOP-
license and restoration for vet-) TION OF 40-3.102(6)-S10235 FOR-
inarians; amendment of 40-) FEITURE OF LICENSE AND RESTORA-
3.102(6)-S10245 concerning tem-) TION FOR VETERINARIANS; AMENDMENT
porary permits; adoption of a) OF 40-3.102(6)-S10240 TEMPORARY
new rule 40-3.102(6)-S10245) PERMIT; ADOPTION OF 40-3.102(6)-
concerning a fee schedule;) S10245 FEE SCHEDULE; AMENDMENT
amendment of 40-3.102(6)-S10250) OF 40-3.102(6)-S10250 INSPECTION
subsection (5) concerning in-) AND SANITATION; AMENDMENT OF
spection and sanitation; amend-) 40-3.102(6)-S10270 CONTINUING
ment of 40-3.102(6)-S10270 con-) EDUCATION FOR VETERINARIANS; and
cerning continuing education) REPEAL OF 40-3.102(6)-S10280 CON-
for veterinarians; and repeal) TINUING EDUCATION - VETERINARY
of 40-3.102(6)-S10280 concern-) TECHNICIAN
ing continuing education for)
veterinary technicians.)

To: All Interested Persons:


1. On February 28, 1980, the Board of Veterinarians published a notice of proposed amendments, adoptions and repeal in the above entitled matter at pages 618 through 625, Administrative Rules of Montana, issue number 4.

2. The board has amended, adopted, and repealed the rules as proposed with the exception of subsection (c) of (2) under ARM 40-3.102(6)-S10220 Application Requirements for Veterinarians. The Board is not taking action on this subsection at this time in response to a call from the Administrative Code Committee questioning the authority of the Board on this subsection.

3. No other comments or testimony were received. The board is adopting, amending and repealing the rules for the reasons as stated in the notice.

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

BY:


ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, April 1, 1980.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT OF
46-2.10(18)-S11440(1)(o) and the	)	RULE 46-2.10(18)-S11440
adoption of Rules 46-2.10(18)-	)	AND THE ADOPTION OF RULES
S11510, 46-2.10(18)-S11511, 46-	)	46-2.10(18)-S11510, 46-
2.10(18)-S11512, 46-2.10(18)-	)	2.10(18)-S11511, 46-2.10
S11513, 46-2.10(18)-S11514, and	)	(18)-S11512, 46-2.10(18)-
46-2.10(18)-S11515 pertaining to	)	S11513, 46-2.10(18)-S11514
medical assistance, services	)	AND 46-2.10(18)-S11515
provided, amount, duration--trans-	)	PERTAINING TO MEDICAL
portation and per diem	)	ASSISTANCE

TO: All Interested Persons

1. On February 28, 1980, the Department of Social and Rehabilitation Services published notice of a proposed amendment to Rule 46-2.10(18)-S11440(1)(o) and the adoption of Rules 46-2.10(18)-S11510 TRANSPORTATION AND PER DIEM, 46-2.10(18)-S11511 ADDITIONAL REQUIREMENTS, 46-2.10(18)-S11512 TRANSPORTATION AND PER DIEM, REIMBURSEMENT, 46-2.10(18)-S11513 SPECIALIZED NONEMERGENCY TRANSPORTATION, 46-2.10(18)-S11514 ADDITIONAL REQUIREMENTS FOR SPECIALIZED NONEMERGENCY TRANSPORTATION, and 46-2.10(18)-S11515 SPECIALIZED NONEMERGENCY MEDICAL TRANSPORTATION pertaining to medical assistance, services provided, amount, duration--transportation and per diem at page 626 of the 1980 Montana Administrative Register, issue number 4.

2. The agency has amended and adopted the rules as proposed.

3. No comments or testimony were received.

In the matter of the repeal of	)	NOTICE OF REPEAL OF RULES
46-2.10(18)-S11390 and 46-2.10	)	46-2.10(18)-S11390 AND
(18)-S11400 pertaining to medical	)	46-2.10(18)-S11400 AND THE
assistance program and the adoption	)	ADOPTION OF RULES 46-2.10
of rules 46-2.10(18)-S11516 and	)	(18)-S11516 AND 46-2.10
46-2.10(18)-S11517 pertaining to	)	(18)-S11517 PERTAINING TO
medical assistance, purpose and	)	MEDICAL ASSISTANCE, PUR-
definitions	)	POSE AND DEFINITIONS

TO: All Interested Persons

1. On February 28, 1980, the Department of Social and Rehabilitation Services published notice of a proposed repeal of Rules 46-2.10(18)-S11390 and 46-2.10(18)-S11400 and the proposed adoption of Rules 46-2.10(18)-S11516 MEDICAL ASSISTANCE, PURPOSE and 46-2.10(18)-S11517 MEDICAL ASSISTANCE, DEFINITIONS pertaining to the medical assistance program, purpose and definitions at page 631 of the 1980 Montana Administrative Register, issue number 4.

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

Keith P. Olsen
Director, Social and Rehabilitation Services

Certified to the Secretary of State April 1, 1980.

BEFORE THE MILK CONTROL DIVISION
DEPARTMENT OF BUSINESS REGULATION
STATE OF MONTANA

In The Matter of the Petition)	
For Declaratory Ruling of Western)		DECLARATORY
General Dairies/Associated Food	)	RULING
Stores.)	

Western General Dairies and Associated Food Stores approached the Milk Control Board on January 2, 1980, with a proposal requesting this Declaratory Ruling. The complete proposal is not attached because of length, but is available at the offices of the Division. However, to summarize the request, Western General Dairies (hereinafter called "Western") is apparently a Utah cooperative qualified to do business in the state of Montana and possesses a Milk Distributor's License issued by this agency pursuant to the Montana Milk Control Act. Associated Food Stores (hereinafter called "Associated") is stated to be a Montana Cooperative Association doing business in the state of Montana. (Note: We cannot verify Associated's cooperative status from the records of the Montana Secretary of State's office, however its status doesn't seem to be determinative.) The members of Associated are various retail food stores.

The proposed activity consists of Associated purchasing processed dairy products from Western's facilities in Idaho, transporting them to Montana and distributing them to member stores for retail sale. Any profits which accrue from such purchase and redistribution are apparently distributed back to member stores in "patronage dividends", in proportion to the amount of business done with the cooperative.

A "sale" is defined under the Uniform Commercial Code as follows:

"A 'sale' consists in the passing of title from the seller to the buyer for a price (30-2-401)." See 30-2-106, MCA.

The facts as set forth in the above-mentioned proposal and for purposes of this ruling, assumed to be true, establish that there is a "sale" from Western to Associated. This sale takes place in the passing of title from Western to Associated for an assumed price. This is not a sale which would bring Associated within the exclusion which would allow it to function without a distributor's license under Section 81-23-101, MCA. The sale between Western and Associated is clearly not a sale from a licensed dealer for the purpose of resale over the counter at retail. Rather, the purpose for which Associated consummates this sale is for resale to its member stores. They in turn are making that purchase for the purpose of resale over the counter at retail.

The proposal attempts to consolidate these two distinct sales as being only one by referring to Associated as an "alter ego" and by having "no real existence or identity". Such is not the case. Assuming Associated is a cooperative, still a cooperative is a distinct business entity, created as such under the Montana law. A cooperative has its own separate legal existence with consequent legal rights and liabilities, separate and apart from the rights and liabilities of its cooperative members. The Montana Milk Control Act itself defines "person" under that act to be: "'Person' means an individual, firm, partnership, corporation, cooperative, or other business unit or trade device." (81-22-101(33), MCA.)

From the above discussion, the distinction is abundantly clear. Albertson's has been held to be not a distributor because it purchased milk for the purpose of resale at retail. (This was so held by the Montana Supreme Court in Albertson's v. Department of Business Regulation, 36 St. Rep. 1793.) under the definition contained in 81-23-101(H) which provides:

"Distributor means a person purchasing milk from any source, either in bulk or in packages, and distributing it for consumption in this state. The term includes what are commonly known as jobbers and independent contractors. The term, however, excludes a person purchasing milk from a dealer licensed under this chapter, for resale over the counter at retail or for consumption on the premises."

Associated does not fall within this exclusion because it is purchasing milk for resale to others, and they will be the purchasers for resale over the counter at retail.

Accordingly, the Department declares that the proposed business activities of Associated Food Stores do not fall within the applicability of the rule of law set forth in Albertson's v. Department of Business Regulation, 36 St. Rep. 1793.



KENT KLEINKOPF, Director
Department of Business Regulation

Certified to the Secretary of State this 20th day of March, 1980.