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RESERVE

MONTANA ADMINISTRATIVE REGISTER

1981 ISSUE NO. 10
PAGES 480-534



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, 59620.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA
AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a loose-leaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statute and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|-------------------------------|---|
| Known Subject Matter | 1. Consult General Index, Montana Code Annotated to determine department or board associated with subject matter or statute number. |
| Department | 2. Refer to Chapter Table of Contents, Title 1 through 46, page i, Volume 1, ARM, to determine title number of department's or board's rules. |
| | 3. Locate volume and title. |
| Subject Matter and Title | 4. Refer to topical index, end of title, to locate rule number and catchphrase. |
| Title Number and Department | 5. Refer to table of contents, page 1 of title. Locate page number of chapter. |
| Title Number and Chapter | 6. Go to table of contents of chapter, locate rule number by reading catchphrase (short phrase describing rule.) |
| Statute Number and Department | 7. Go to cross reference table at end of each title which lists each MCA section number and corresponding rules. |
| Rule in ARM | 8. Go to rule. Update by checking the accumulative table and the table of contents for the last register issued. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1981. With the exception of this issue of the Montana Administrative Register (MAR), this accumulative table includes all rulemaking action published in each register since March 31, 1981.

To be current on rulemaking, it is necessary to check the ARM updated through March 31, 1981, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule number in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published.

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NOTICE: The July 1977 through June 1980 Montana Administrative Registers have been placed on microfiche. For information, please contact Jim Waltermire, Secretary of State, Room 202, Capitol Building, Helena, Montana, 59620.

BEFORE THE TEACHERS' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
amendment of Rule ARM	)	AMENDMENT OF RULE ARM
2.44.504, specifying the date	)	2.44.504, concerning
of first eligibility	)	date of eligibility for
for disability retirement	)	disability retirement
benefits under the Teachers'	)	benefits under the
Retirement System	)	Teachers' Retirement System
)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons.

1. On July 31, 1981, the Teachers' Retirement Board proposes to amend rule ARM 2.44.504, which specifies the date of first eligibility for disability retirement benefits under the Teachers' Retirement System.

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

2.44.504 ELIGIBILITY FOR DISABILITY BENEFITS (1) A member will be first eligible for disability benefits on the first day of the month following the month in which the ~~disability-occurred member terminates membership service.~~

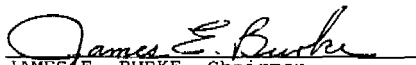
3. The rule is proposed to be amended in order to avoid the possibility of a member drawing sick leave benefits from his or her employer and at the same time drawing a monthly benefit check.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to F. Robert Johnson, Executive Secretary, The Teachers' Retirement System, 1500 Sixth Avenue, Helena, Montana 59601, no later than June 30, 1981.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to F. Robert Johnson, Executive Secretary, The Teachers' Retirement System, 1500 Sixth Avenue, Helena, Montana 59601, no later than June 30, 1981.

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 who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 1,540 persons based on the approximate 15,400 teachers in Montana.

7. The authority of the agency to make the proposed amendment is based on section 19-4-201, MCA, and the rule implements section 19-4-901, MCA.


JAMES E. BURKE, Chairman
Teachers' Retirement Board

Certified to the Secretary of State, May 14, 1981.

BEFORE THE MONTANA HISTORICAL SOCIETY
OF THE STATE OF MONTANA

In the matter of the adoption)
of Model Procedural Rules)

NOTICE OF PROPOSED
ADOPTION OF RULE
Model Procedural Rules

NO PUBLIC HEARING
CONTEMPLATED

TO: All Interested Persons:

1. On June 27, 1981, the Montana Historical Society proposes to adopt model procedural rules.
2. The proposed rule provides as follows:

RULE I - MODEL PROCEDURAL RULES (1) The montana historical society adopts the attorney general's model procedural rules one through 28 and all subsequent amendments to the model procedural rules, and incorporates herein those rules by reference.

AUTH: 22-3-107, MCA IMP: 22-3-107, MCA

3. The rule is proposed in compliance with the Montana Administrative Procedures Act and Sec. 22-3-107 MCA which allows the board of trustees of the montana historical society to adopt procedural rules.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Dr. Robert Archibald, Director, Montana Historical Society, 225 N. Roberts, Helena, Montana, 59620, no later than June 25, 1981.

5. The authority and implementing sections to make the proposed rules are listed at the end of the proposed rule.

By: 

ERIC MYHRE, Chairman
Board of Trustees

Certified to the Secretary of State May 18, 1981.

BEFORE THE MONTANA HISTORICAL SOCIETY
OF THE STATE OF MONTANA

In the matter of the)
ADOPTION OF RULES)
specifying cultural and)
aesthetic project grants)
conditions.)

NOTICE OF PROPOSED
ADOPTION OF RULES
Cultural and Aesthetic
Project Grants

NO PUBLIC HEARING
CONTEMPLATED

TO: All Interested persons:

1. On June 27, 1981, the Montana Historical Society proposes to adopt rules specifying cultural and aesthetic project grants conditions.

2. The proposed rules provide as follows:

RULE I - GRANT PROPOSALS (1) Any department, agency, board, commission, or other division of the state government or any local government unit is eligible to submit a grant for a cultural and aesthetic project, utilizing funds created by section 15-35-108(h)(i), MCA.

(2) Grant proposals utilizing these funds must be submitted to the board of trustees of the Montana Historical Society by December 1 of the year preceding the convening of a legislative session.

(3) Grant proposals shall contain a detailed description of project goals, scope, purpose, activities, budget by line item, and duration of the grant period.

AUTH: C.H. 871, L. of 1981 IMP: 15-35-101, MCA

RULE II - SUBMISSION OF PROPOSALS TO THE LEGISLATURE

(1) The board of trustees of the society shall present to the legislature by the 15th day of any legislative session all grant proposals received accompanied by evaluations and recommendations for funding.

(2) A selection committee consisting of three private citizen professional members chosen from varying cultural fields shall review, evaluate and recommend proposals for funding based on the following evaluation criteria:

(a) Will the project serve a large number of people?

(b) Will the project result in a definite product?

(c) Will the project add to a balanced geographical coverage of the state?

(d) Is the total cost of the project in proportion to its benefits?

AUTH: C.H. 871, L. of 1981 IMP: 15-35-101, MCA

RULE III - GRANT CONDITIONS (1) No grants shall be is-

sued if the grantee fails to accept the conditions of the grant or fails to sign a contract stipulating the conditions of the grant.

(2) The grantee must agree that the funds granted shall be expended solely for the activities described in the approved proposal. Should the grant award not prove adequate for the administration of the project as originally submitted the grantee shall submit prior to the grant period modifications to the proposal and an operational budget supporting these modifications. Any funds granted must be committed within the grant period.

(3) The grantee shall maintain accounts, records, and other evidence pertaining to the costs incurred under this grant. The system of accounting employed by the grantee shall be in accordance with generally accepted accounting principles and will be applied in a consistent manner so that the project expenditures can be clearly identified. Records must be maintained for three years from the official termination date of the grant period or until an approved audit has been completed and any questions arising from it have been resolved, whichever is the less period.

(4) Grantees will submit semi-annual reports of expenditures during the course of the project, and such other financial reports and descriptive reports as the society may require. In all cases the grantee is required to submit, within 30 days after completion of the project a final financial report and a narrative report stating what was accomplished with the grant. Five percent of the total grant award will be held pending receipt of final reports by the society.

(5) During the time set out in the above paragraph the grantee agrees that the state government shall have access to and the right to examine any directly pertinent books, documents, papers and records of the grantee involving transactions related to this grant at the principal place of business of grantee during regular business hours.

(6) The grantee must agree that it is the official and sole agency for the administration of the projects described in this contract.

AUTH: C.H. 871, L. of 1981 IMP: 15-35-101, MCA

RULE IV - DISBURSEMENT OF GRANT FUNDS (1) Funds available for expenditure on cultural and aesthetic projects are variable in amount and frequency of collections, therefore, allocation and disbursement of funds shall be discretionary with the society based upon availability of funds and the following criteria:

(a) Those projects of an on-going nature during the course of the full grant period shall receive the first priority for allocation of funds. No project will receive more than 25% of the total grant award during a six month period.

An on-going project is defined as a project designed to operate throughout the grant period with full-time staff and other obligations to be met on a monthly basis.

(b) All other projects will be allocated the remaining monies on a percentage basis. That percentage will be determined for each project by dividing the amount awarded each project by the total appropriation for cultural and aesthetic projects.

(c) If actual revenues fall short of the amount appropriated for cultural and aesthetic project grants the shortfall shall be shared equally among all projects on the same percentage basis.

AUTH: C.H. 871, L. of 1981 IMP: 15-35101, MCA

3. The rules are proposed in compliance with the Montana Administrative Procedures Act, House Bill 871 L. of 1981 and its intent because of the uncertainty of the amount of available funds and the frequency of collections, the Montana Historical Society adopt rules to equitably distribute these funds for cultural projects.

4. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to Dr. Robert Archibald, Director, Montana Historical Society, 225 N. Roberts, Helena, Montana, 59620, no later than June 25, 1981.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Dr. Robert Archibald, Director, Montana Historical Society, 225 North Roberts, Helena, Montana, 59620, no later than June 25, 1981.

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 who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 2 persons based on 16 grant recipients in 1981.

7. The authority and implementing sections to make the proposed rules are listed at the end of each proposed rule.

By: 

ERIC MYHRE, Chairman
Board of Trustees

Certified to the Secretary of State May 18, 1981.

BEFORE THE MONTANA HISTORICAL SOCIETY
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
ADOPTION OF RULES	)	ADOPTION OF RULES
specifying acquisitions	)	Acquisitions Policy
policy.)	
		NO PUBLIC HEARING
		CONTEMPLATED

TO: All Interested persons:

1. On June 27, 1981, the Montana Historical Society proposes to adopt rules specifying acquisitions policy.
2. The proposed rules provide as follows:

RULE I - GENERAL GUIDELINES (1) The acquisition of materials shall be the responsibility of the board of trustees and staff of the montana historical society. The collection shall be systematically expanded and shall interpret the heritage of the Montana region for the benefit of the citizens of Montana and visitors to the state.

(2) Sole and final decision on the acquisition of materials shall be made by the director in conjunction with the supervisor of the department where the acquisition is made. A list and detailed explanation of major acquisitions shall be submitted to the board of trustees quarterly or as required.

(3) If the origin, ownership or authenticity of an item should be in question, the director shall consult widely within the montana historical society with available legal counsel and the board of trustees. If the item is deemed unacceptable, the director shall immediately contact the donor and proper authorities and remove the item from the collections.

(4) It shall be policy to acquire material of high and exceptional quality and reject the temptation to acquire items of secondary or tertiary significance. Items acquired shall not be limited to what is necessary for exhibit and display, they may also be acquired for study and conservation purposes.

(5) Items that may duplicate existing collections, or items of secondary importance or items unrelated to the heritage of Montana may be accepted provided that the donor fully understands and accepts in writing that the items may be disposed of to the best advantage of the society.

(6) All unrestricted monetary donations to the montana historical society shall be restricted in use to the education program and for special projects approved by the board of trustees.

(7) An accession statement (deed of gift) outlining all details on the material acquired shall be signed by the donor and by the director and/or department head.

(8) Donations may be tax deductible; however, the montana historical society assumes no responsibility for providing an evaluation or appraisal of the material. All appraisals of the materials for donation to the society should be conducted by a disinterested third party expert in the field. The donor shall bear all costs incurred in seeking appraisals. Potential donors are advised to consult their attorney or tax accountant for a determination to claim a deduction.

(9) The documentary value of a museum, library and archival collection is the principal criteria of excellence. Accession records shall be of the highest order of accuracy and completeness. Items in the collections shall have a provenance as completely documented as possible. Said provenance shall be a matter of public record.

(10) A permanent donor's register is maintained and available for public inspection.

AUTH: 22-3-107, MCA IMP: 22-3-107, MCA

RULE II - MUSEUM AND GALLERIES ACQUISITIONS (1) All donations to the museum and galleries department are outright and unconditional gifts.

(2) All items acquired shall be entered into inventory immediately by qualified staff under the supervision of the department head and such records made available to the director and the public.

(3) No loans shall be accepted from individuals, corporations or other groups unless the item is of special and unique value to a particular exhibit or study.

(4) Should any item be accepted for loan the lender shall sign a temporary loan agreement specifying the period of the loan, insured value and other pertinent information relative to the use and care of the item. The montana historical society may insure loaned items but shall assume no liability in excess of the insured agreement. No loan shall exceed one year unless renewed in writing by both parties.

(5) Examples of the deed of gift and record of acquisition forms follow:

MONTANA HISTORICAL SOCIETY
225 North Roberts Street
Helena, Montana

Log # _____

Master # _____

Helena, Montana

Date _____

RECORD OF ACQUISITION

Name of Donor _____

Street, Avenue or Box Number _____

City _____ State _____ Zip Code _____

(XX) PERMANENT GIFT - The donor relinquishes all rights to the article(s) and the disposition of the article(s) remains with the Society.

DESCRIPTION OF ARTICLE(S):

DISPOSITION OF ARTICLE(S): (Department and/or person to whom delivered)

Received by _____

Title _____

I, the undersigned, fully understand the terms of this receipt and conditions of acceptance stated.

Signature of Donor

Date _____

Number _____

DEED OF GIFT

Received from _____
(donor)

of _____,
(street or box no.) (city)

(state) (zip)

the donation described by the Montana Historical Society as an unrestricted gift (unless specifically stated herein) and subject to conditions outlined by the Society's Collection Policy on the reverse of this deed of gift.

DESCRIPTION OF GIFT MATERIAL AS FOLLOWS:

Donor's signature

Accepted by: Montana Historical Society

Archivist's signature

RULE III - LIBRARY ACQUISITIONS (1) The library department acquires materials by gift, exchange and purchase. The highest priorities are to secure all significant printed materials related to the history of Montana

and to the history of the surrounding geographical region insofar as that impacts on Montana.

(2) Donations should be unconditional whenever possible, permitting the society to retain, exchange, discard or sell an item as it sees fit. For donations which are substantial in amount of material or of significant monetary value, or are accepted despite restrictions by the donor, a deed of gift will be transacted.

(3) No materials will be accepted on loan except for copying or microfilming for the length of time required for such copying, or for a temporary display or exhibit.

AUTH: 22-3-107, MCA IMP: 22-3-107, MCA

RULE IV - ARCHIVES ACQUISITIONS (1) Acquisitions by donation is the major method of building the archival collections of the society. Purchase shall be used only as a last expedient to assure the acquisition and preservation of particularly significant materials. No loans of materials except for copying purposes shall be accepted. Acquisitions include materials reflecting the history of Montana and of contiguous states and canadian provinces where they are direct or indirect links to Montana.

(2) All donations of a major nature shall cause the issuance of a deed of gift for the signature of the donor and director/department head.

(3) Restrictions on collections, while not encouraged, may be placed on the materials as a condition of donation. These may take several forms, including: a period of years; during the lifetime of the donor; no publication from materials without authorization from the donor; or during the lifetime of key individuals mentioned in the manuscripts. Unreasonable restrictions on entire collections shall be rejected. Where restrictions have been agreed upon in writing they shall be honored by the staff and patrons.

AUTH: 22-3-107, MCA IMP: 22-3-107, MCA

3. The rules are proposed in compliance with the Montana Administrative Procedures Act and Sec. 22-3-107 MCA which allows the board of trustees of the montana historical society to adopt rules reflecting the acquisitions policy conditions, forms and regulations under which donations are accepted.

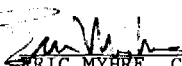
4. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to Dr. Robert Archibald, Director, Montana Historical Society, 225 N. Roberts, Helena, Montana, 59620, no later than June 25, 1981.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Dr. Robert Archibald, Director, Montana Historical Society, 225 North Roberts, Helena, Montana. 59620, no later than June 25, 1981.

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 who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 31 persons based on 310 donors in 1980.

7. The authority and implementing sections to make the proposed rules are listed at the end of each proposed rule.

By:


ERIC MYHRE, Chairman
Board of Trustees

Certified to the Secretary of State May 18, 1981.

BEFORE THE MONTANA HISTORICAL SOCIETY
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
ADOPTION OF RULES	)	ADOPTION OF RULES
specifying collections	)	Collections Loan Policy
loan policy.)	
		NO PUBLIC HEARING
		CONTEMPLATED

TO: All Interested persons:

1. On June 27, 1981, the Montana Historical Society proposes to adopt rules specifying collections loan policy.
2. The proposed rules provide as follows:

RULE 1 - MUSEUM AND GALLERIES LOANS (1) Request for loans of inventoried items will be considered only when made by qualified organizations and institutions and only when the society has a clear deed of gift to the requested item. No loan will be considered where the donor has otherwise stipulated. Items on loan to the society shall not be available for loan. It shall be the policy of the society to carefully control, limit and restrict the loan of gifted items, subject to the following exceptions:

(a) C. M. Russell original art works. There shall be no loan or exchange of the above to any person, corporation, museum, gallery or state department within or without the State of Montana except as approved by a two-thirds majority of the board of trustees.

(b) Inventoried items other than those of C. M. Russell. Subject to compliance with regulations concerning formal requests, transportation, insurance, display, security and return of items, said inventoried items may be loaned to recognized museums, galleries, historical societies and bona fide organizations and corporations. Subject to the approval of a majority of the board of trustees or a majority of its executive committee.

(2) The conditions of loan of any inventoried item shall be intended to protect the item and provide for its safe return. Such conditions shall include but not be restricted to the following information and terms:

(a) Complete information concerning the person, corporation, or department requesting the loan, specify the beginning and end of the loan period, describing the method of transportation, security precaution, place of display, occasion of display, expenses of transportation to and from the society, the title and authority of the person making the request and a complete description of the item(s) loaned including catalog number.

(b) The item(s) loaned must be identified as being

loaned through the courtesy of the montana historical society.

(c) Loan periods may not exceed one year. Extension of any loan period must be duly authorized and approved. Loaned items may be subject to recall by the society and may not be loaned to any other person, organization or agency.

(d) Provision shall be made and agreed to by both parties that an officer or employee of the society may retrieve an unreturned item at the expense of the agency delaying the return.

(e) The loan agreement shall be made in duplicate, be numbered, dated and duly signed and authorized, the original copy will be kept in the society files.

(3) No work of art may be loaned to offices within the state capitol complex without the approval of a majority of the board of trustees. Loans of works of art will be confined to the following locations:

(a) Governor's Office

(b) Governor's Mansion

(c) Lieutenant Governor's Office

(d) Office of the Speaker of the House when the legislature is in session.

(e) Office of the President of the Senate when the legislature is in session.

The following conditions shall apply to works of art loaned to the above offices:

(a) Pieces may be chosen from our loan collection as established by the museum curator.

(b) A maximum of five pieces may be borrowed.

(c) Works may be borrowed for only one year and may be recalled at anytime. Extensions beyond one year may be granted upon examination, curatorial recommendations and board approval.

(d) All fluorescent fixtures illuminating the artwork must have an ultraviolet shield over the tubes. Cost and installation of shields to be paid for by the borrower.

(e) If oil paintings are loaned, smoking will not be allowed in areas where they are hung.

(f) All insurance premiums must be paid by the borrower on values established by the society. The society must receive a copy of the letter verifying coverage from the insurance and legal division, department of administration.

(4) An example of the loan agreement follows:

(To be made out in duplicate)

L _____

Date _____

TEMPORARY LOAN AGREEMENT BETWEEN
MONTANA HISTORICAL SOCIETY
AND

Name of Lender _____

Address _____

City _____ State _____ Zip Code _____

ON LOAN ONLY The donor may have the return of the article(s) at any time upon presentation of this agreement or within the period of loan stated below. Items on loan will not be loaned to other individuals or institutions without the written consent of the lender. The article(s) listed below will be insured while on loan to the Society.

PERIOD OF LOAN (not to exceed one year): from _____
to _____

INSURED VALUE (determined by lender) \$ _____

DESCRIPTION OF ARTICLE(S):

DISPOSITION OF ARTICLE(S): _____

Received by _____

Title _____

I, the undersigned, fully understand the terms of this agreement and accept the conditions stated above.

Signature of Lender

AUTH: 22-3-107, MCA IMP: 22-3-107, MCA

RULE II - LIBRARY LOANS (1) The library's collections are non-circulating, with the exception of non-Montana-related federal documents which may be borrowed through the montana state library.

(2) Some materials will be made available to patrons who cannot conveniently visit the library through interlibrary loan. Items which are deemed by the librarian to be rare, fragile, difficult to replace, or of high use in the library will not be loaned. Positive microfilms will be loaned if a security negative is available or readily obtainable. Negative microfilms will not be loaned. Loans will be for a two week period, non-renewable, and for use in the borrowing library only. Not more than two reels of microfilm or two volumes will be loaned to a patron at any one time. Mailing both ways must be insured at the rate indicated by the society's library.

(3) All loans must be approved by the head librarian or, in his/her absence, by one of the professional library staff.

AUTH: 22-3-107, MCA IMP: 22-3-107, MCA

RULE III - ARCHIVES LOANS (1) In no circumstances shall loans of archival materials, including original photographs be made to institutions or individuals other than members of the state records network.

(2) Inter-library loans of archival materials to other units of the state records network are subject to the following conditions:

(a) Materials shall be hand-delivered to the institution requesting the loan and shall be returned in the same manner.

(b) A professional staff member at the borrowing institution shall be directly responsible for care of the materials.

(c) The materials shall be used only in the library of the borrowing institution.

(d) All other restrictions on the materials as detailed by society policy, where applicable, shall be enforced by the borrower.

(3) State archives materials are not subject to loan except to the agency depositing the records. Such agencies shall have the right of removal for necessary office use.

(4) Original photographs shall not be loaned from the society's collections. Patrons shall be required to purchase a copy print for their purposes. Exceptions to this may be made in the case of donors or depositors.

AUTH: 22-3-107, MCA IMP: 22-3-107, MCA

3. The rules are proposed in compliance with the Montana Administrative Procedures Act and Sec. 22-3-107 MCA which

allows the board of trustees of the montana historical society to adopt rules reflecting the collections loan policy conditions, forms and regulations under which collections are loaned.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Dr. Robert Archibald, Director, Montana Historical Society, 225 N. Roberts, Helena, Montana, 59620, no later than June 25, 1981.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Dr. Robert Archibald, Director, Montana Historical Society, 225 North Roberts, Helena, Montana, 59620, no later than June 25, 1981.

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 who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 31 persons based on 310 donors in 1980.

7. The authority and implementing sections to make the proposed rules are listed at the end of each proposed rule.

By: 

ERIC MYHRE, Chairman
Board of Trustees

Certified to the Secretary of State May 18, 1981.

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

In the matter of the ADOPTION)	NOTICE OF PROPOSED ADOPTION
OF RULES relating to)	OF RULES relating to
conditions on state oil and)	conditions on state
gas leases)	oil and gas leases
)	
)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Interested Persons.

1. On July 20, 1981, the board of land commissioners and department of state lands propose to adopt rules which specify certain minimum restrictions on activities conducted pursuant to a state oil and gas lease and clarify the authority to place additional restrictions on activities when necessary to protect the land and its resources.

2. The proposed rules provide as follows:

Rule I MINIMUM RESTRICTIONS ON SURFACE ACTIVITY

(1) The lessee shall not conduct any surface activity within 300 feet of any water source including but not limited to wells, springs, streams, lakes or reservoirs unless permission is received in writing from the commissioner.

(2) The lessee shall not conduct any drilling or blasting activity within 660 feet (1/8 mile) of any building or similar structure, water well, spring or reservoir dam unless permission is received in writing from the commissioner.

(3) The lessee shall not be allowed to occupy, utilize or conduct any activity on the surface of any river or lake bed or island unless permission is received in writing from the commissioner.

(4) The written permission specified in this rule shall not be unreasonably withheld; however, the commissioner shall not grant such permission unless he determines that the proposed activity will not cause significant adverse environmental effects.

AUTH: 77-3-402, MCA IMP: 77-3-401, MCA

Rule II ADDITIONAL RESTRICTIONS - STIPULATIONS

(1) The department may place stipulations on leases, at the time of issuance when necessary to protect the land and its resources. Notice of all proposed stipulations shall be given prior to sale of the lease.

(2) The department may restrict surface activity on any lease at any time when adverse or unusual weather conditions require such restrictions to prevent accelerated

erosion, fires or disruption of seasonal wildlife use.

(3) The department may restrict surface activity on any lease at any time that historical or archaeological resources of significance, as determined by the state historical preservation office, are discovered on the land under lease.

(4) If restrictions pursuant to (2) or (3) of this rule prevent the lessee from complying with drilling or production requirements the lease shall be extended to allow a reasonable time to comply with such requirements.

AUTH: 77-3-402, MCA

IMP: 77-3-401, MCA

Rule III COMPLIANCE WITH LEASE STIPULATIONS AND RESTRICTIONS

The lessee shall comply with all restrictions and stipulations placed upon the lease by the board or the department. If a violation of a restriction, stipulation or other resource conservation requirement contained in these rules is discovered, the lessee will be notified and given an opportunity to correct the violation and repair any damage. If the damage is not repairable the lessee shall mitigate the damage to the greatest extent possible. If the violation is not corrected, repaired or mitigated within the time specified by the department, the lease shall be canceled as provided in rule 26.3.214.

AUTH: 77-3-402, MCA

IMP: 77-3-401, MCA

3. These rules are proposed to clarify restrictions and stipulations currently being placed on state leases and standardize such restrictions and stipulations to prevent unnecessary repetition in each lease.

4. Interested parties may submit their data, views or arguments concerning the proposed rules to Gareth C. Moon, commissioner, department of state lands, capitol station, Helena, Montana 59620 no later than July 1, 1981.

5. If a person who is directly affected, an association having members who are directly affected or a governmental subdivision or agency wishes to express its data, views and arguments orally or in writing at a public hearing he or it must make written request for a hearing and submit this request to Gareth C. Moon, commissioner, department of state lands, capitol station, Helena, Montana 59620 no later than July 1, 1981.

6. If the department receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected, 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 more than 25 persons based upon approximately 500 oil and gas lessees.

7. Authority and implementing sections are given following each rule.


Gareth C. Moon, Commissioner
Department of State Lands

CERTIFIED TO THE SECRETARY OF STATE this 18th day of May, 1981.

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

IN THE MATTER of the Proposed)	NOTICE OF PROPOSED AMENDMENT OF
Amendments of ARM 40.14.602)	ARM 40.14.602 ALLOWABLE FUNC-
concerning allowable functions))	TIONS FOR DENTAL AUXILIARIES
for dental auxiliaries and ARM))	and ARM 40.14.605 EXAMINATION
40.14.605 concerning examina-)	
tions.)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 27, 1981, the Board of Dentistry proposes to amend ARM 40.14.602 concerning allowable functions for dental auxiliaries and ARM 40.14.605 concerning examinations.

2. The proposed amendment to ARM 40.14.602 will read as follows: (new matter underlined, deleted matter interlined)

"40.14.602 ALLOWABLE FUNCTIONS FOR DENTAL AUXILIARIES

(1) Section 37-4-401, MCA requires and authorizes the board of dentistry to define by rule what shall constitute allowable functions in the practice of dental hygiene.

Likewise Section 37-4-408, MCA so authorizes the board regarding allowable functions in the practice of the dental assistant. The following subsections delineate those functions which the board will permit for the hygienist and for the assistant.

(2) Allowable functions for the dental hygienist practicing under the direct supervision of a licensed dentist shall include all reversible dental procedures in which the hygienist was instructed and qualified to perform in an accredited school of dental hygiene, except placing and carving restorations.

(3) The hygienist will not be allowed to perform any non-reversible dental procedures except;

(a) making radiograph exposures, and

(b) root planing and soft tissue curettage, and

(c) monitoring a patient who has been prescribed and administered nitrous oxide by a licensed dentist.

(4) Allowable functions permitted for dental assistants practicing under the direct supervision of a licensed dentist without expanded duty training shall be the traditional duties allowed by custom and practice, including, but not limited to;

(a) taking impressions for study casts,

(b) removing sutures and dressings,

(c) applying topical anesthetic agents,

(d) providing oral health instructions,

(e) applying topical fluoride agents,

(f) removing excess cement from coronal surfaces of teeth,

(g) placing and removing rubber dams,

(h) placing and removing matrices,

- (i) collecting patient data,
- (j) polishing amalgam restorations, and
- (k) placing and removing temporary restorations with hand instruments only; and
- (l) monitoring a patient who has been prescribed and administered nitrous oxide by a licensed dentist.

(5) To qualify to perform the expanded duty function of making radiograph exposures, the assistant shall sit for and successfully complete a written and practical examination administered by the Montana dental association under agreement with the board. No certification or licensure will be issued by the board. The association, however, will provide the board with a list of all assistants who have qualified. No dentist shall knowingly allow an assistant in his employ to perform the expanded duty function of making radiograph exposures without having first determined that said assistant has qualified as above specified.

(6) The requirements for expanded duty certification shall be as follows:

(a) the applicant shall have successfully completed a training program for dental assistants approved by the Commission on Accreditation of the American Dental Association or shall have completed the Colorado dental assistants training program;

(b) the applicant shall sit for and successfully pass a written and practical examination administered by the Montana dental association under agreement with the board.

(7) The assignment of tasks or procedures to a dental auxiliary shall not relieve the dentist from personal liability for all treatment rendered the patient.

(8) No dentist may employ, supervise, or use more dental auxiliary personnel than he can reasonably supervise consistent with his ethical and professional responsibilities for the protection of the public health, safety, and welfare.

(9) It is the responsibility of the employing dentist to see that the auxiliary's personal qualifications and certification are on record with the Montana state board of dentistry.

(10) Prophylaxis is defined as the removal of accumulated matter, deposits, accretions or stains from the natural and restored surfaces of exposed teeth which may include root planing and soft tissue curettage if ordered by the dentist.

(11) Section 37-4-405, MCA exempts the function of dental hygiene instruction from the supervision requirements where such instruction is given in a public or private institution or under a board of health or in a public clinic authorized by the board. Inherent in the board's authorization under this section is the expectation

that while the customary supervisory relationship is not required, the dentists who may be responsible to the institution and the hygienist performing the instruction shall meet, confer and review as they may determine the need dictates. Further inherent in the authorization is the obligation of the hygienist to comply with any instructions from the dentists as may be derived from any such consultations. "

3. The proposed amendment will allow dental auxiliaries to legally monitor nitrous oxide. The authority of the board to make the proposed amendment is based on section 37-4-301, MCA and implements the same.

4. The proposed amendment to ARM 40.14.605 will include an emergency amendment to subsection (1) which was made effective on May 18, 1981 and an amendment to subsection (7) and will read as follows: (new matter underlined, deleted matter interlined)

"40.14.605 EXAMINATION (1) Applicants may be required to write a short essay and answer questions posed to them by one or more members of the board and demonstrate satisfactorily the clinical capabilities required by the board.

(2) Notice of cancellation of examination by examinees must be postmarked at least 20 days prior to examination before the examination fee, minus \$10.00 administrative costs, will be refunded.

(3) Applications for the oral interview and jurisprudence examinations must be submitted to the office of the board at least 20 days prior to the examination date.

(4) Examinees must furnish their own dental supplies for the examination.

(5) The grading will be done by the board members. A final grade of at least 75% is required for passing the examination.

(6) The board accepts, in satisfaction of the practical part, successful completion of an examination administered by the Western Regional Examining Board, after June 1979. The examination results of the Western Regional Examining Board shall be valid for a period of 3 years from the date of successful completion of the examination.

(7) Applicants for licensure shall submit an application, which shall be furnished by the board; and which shall include:

(a) certificate of successful completion of the Western Regional Examining Board clinical examination, within the last 3 years;

(b) two affidavits of good moral character;

(c) certificate of graduation from a board approved dental school;

- (d) an examination fee of \$60.00;
- (e) a recent photograph of the applicant; and
- (f) upon successful completion of the examination, a licensure fee of \$15.00."

5. The board is proposing the change to subsection (1) to accommodate the wishes of the Dental Hygiene Dept., Carroll College, that teaches dental hygiene, that their graduates be able to take both portions of the (oral and written) of the dental hygiene examination at one setting, rather than having to travel twice. A majority of the board cannot always attend the scheduled written examinations, which are administered by a regional testing service. The change would clarify that less than a majority of the board could administer the oral examination. In view of the energy crisis and high cost of gas, it would be better if the two portions were administered at the same time. The proposed amendment was noticed as an emergency amendment to be effective for the May examination.

The amendment to subsection (7) is being proposed so the subsection will read clearly and correctly. The authority of the board to make the proposed amendments is based on section 37-4-402, MCA and implements the same.

6. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Dentistry, Lalonde Building, Helena, Montana 59620, no later than June 25, 1981.

7. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Dentistry, Lalonde Building, Helena, Montana 59620, no later than June 25, 1981.

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

9. The authority and implementing sections are listed after each proposed change.

BOARD OF DENTISTRY
WILLIAM G. THOMAS, D.D.S.
PRESIDENT

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

Certified to the Secretary of State, May 18, 1981.

10-5/28/81

MAR Notice No. 40-14-16

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

IN THE MATTER of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of ARM 40.52.416) OF ARM 40.52.416 RECIPROCITY -
concerning reciprocity - other) OTHER NATIONS
nations)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 27, 1981, the Board of Public Accountants proposes to amend ARM 40.52.416 concerning reciprocity - other nations.

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

"40.52.416 RECIPROCITY - OTHER NATIONS COUNTRIES

~~(1) -An applicant for registration in Montana who is a holder of a certificate, license or degree in a foreign country constituting a recognized qualification for the practice of public accounting in such country may be registered by the board only if: The AICPA has no program or facilities to evaluate the education of a foreign applicant so that the education can be proven comparable to that required under section 37-50-305, MCA or for evaluating the licensing examinations of foreign countries or to compare them to the Uniform CPA Examination. Therefore, reciprocity with holders of certificates or licenses from foreign countries will not be recognized.~~

~~(a) -- evaluation of the education of the applicant is -- undertaken and proven comparable to that required under section 37-50-305, MCA by the American Institute of Certified Public Accountants;~~

~~(b) -- the examination of the applicant is evaluated for equivalency to the uniform certified public accountants examination by the American Institute of Certified Public Accountants."~~

3. The board is proposing the rule amendment as AICPA has advised the board that the current rule was inoperable for the reason which is clearly stated in the amendment itself.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Public Accountants, Lalonde Building, Helena, Montana 59620 no later than June 25, 1981.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Public Accountants, Lalonde Building, Helena, Montana 59620 no later than June 25, 1981.

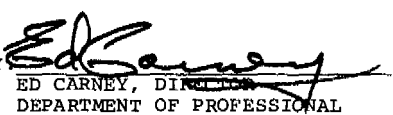
6. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed

amendment; from the Administrative Code Committee of the legislature; from a governmental agency or subdivision; 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 amendment is based on section 37-50-203 (1), MCA and implements sections 37-50-311, and 312, MCA.

BOARD OF PUBLIC ACCOUNTANTS
SHERMAN VELTKAMP, CHAIRMAN

BY


ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, May 18, 1981.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF PROPOSED ADOPTION OF
ADOPTION OF A RULE DESCRIBING)		A RULE ON THE USE OF CENSUS
THE APPLICATION OF CENSUS	)	DATA UNDER THE QUOTA SYSTEM.
DATA TO THE DETERMINATION OF)		
THE NUMBER OF ALCOHOLIC	)	NO PUBLIC HEARING CONTEMPLATED
BEVERAGE LICENSES UNDER THE)	
QUOTA SYSTEM.)	

TO: All Interested Persons:

1. On June 29, 1981, the Department of Revenue proposes to adopt a rule describing the application of census data to the determination of the number of alcoholic beverage licenses under the quota system.

2. The proposed rule provides as follows:

Rule I. USE OF CENSUS DATA (1) Upon receipt of the most recent census taken under the direction of congress or the most recent population estimates published by the bureau of the census, United States department of commerce, the department of revenue will determine the availability of any alcoholic beverage licenses subject to a quota system.

(2) In determining the availability of such licenses, the department will utilize only those boundaries that are recognized by the bureau of the census.

3. The proposed rule is in response to Senate Joint Resolution 35 and House Bill 21, passed by the 47th Legislature. Copies of the resolution or bill can be obtained from the Department, the Legislative Council, or the Secretary of State. Because the number of licenses available under the quota system depends upon population and municipal boundaries, it is necessary to have a rule specifying the means of utilizing census data and population estimates published by the bureau of the census.

4. Interested parties may submit their data, views, or arguments concerning the proposed adoption in writing no later than June 29, 1981, to:

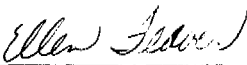
Laurence Weinberg
Legal Division
Department of Revenue
Mitchell Building
Helena, Montana 59620

5. If a person who is directly affected by the proposed rule wishes to express his data, views, or arguments orally or in writing at a public hearing, he must make written request for

a hearing and submit that request along with any written comments he has to Laurence Weinberg at the address given in Paragraph 4 above no later than June 29, 1981.

6. If the Department receives requests for a public hearing on the proposed rule from either 10% or 25, whichever is less, of the persons directly affected; from the Revenue Oversight 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 who will be directly affected has been estimated to be at least 25, based on the number of licensees under the all-beverage code.

7. Authority of the Department to adopt the proposed rule is given by Section 16-1-303, MCA. The rule implements 16-4-105, 16-4-106, 16-4-201, 16-4-204, and 16-4-502, MCA.



ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 5/18/81.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption)
of rules on advisory opinions)
from the Secretary of State.)

NOTICE OF PUBLIC HEARING ON
PROPOSED ADOPTION OF RULES:
Advisory Opinions, Introduc-
tion; Requirements of Request;
Content of Request; Public
Availability; Comments on Re-
quests; Issuance; Effects

TO: All Interested Persons:

1. On June 17, 1981, at 10:00 a.m., a public hearing will be held in Room 104, of the Capitol Building, Helena, Montana, to consider the adoption of rules relating to advisory opinions.

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

3. The proposed rules provide as follows:

RULE I - ADVISORY OPINIONS, INTRODUCTION (1) A person taking or wishing to take a particular action may be unsure whether Part 1, Chapter 2 of Title 2, MCA, or any rule of an agency interpreting that statute, applies to that action. Section 2-2-132 (1), MCA, provides that a person may request an advisory opinion from the secretary of state as to the applicability of that statute or rule to his activity or proposed activity.

(2) Any person may request an advisory opinion concerning the application of Part 1, Chapter 2 of Title 2, MCA, or any rule prescribed by the secretary of state according to that part, to any action which that person is currently involved in or is contemplating in the immediate future.

(3) An authorized agent of the requesting person may submit the advisory opinion request in order to protect the identity of the requesting person, but the agent shall disclose the identity of his or her principal in a separate written disclosure addressed to the confidence of the secretary of state. Such separate writing shall specify, in addition to the identity of the principal, the authority by which the agent acts on behalf of the principal and such additional or confidential facts as may be necessary to demonstrate that the principal in fact has a qualified request and that disclosure of such facts in the request itself would reveal the identity of the requesting person.

AUTH: 2-2-132 (3), MCA IMP: 2-2-132 (1) (2), MCA

RULE II - ADVISORY OPINIONS, REQUIREMENTS OF REQUEST

(1) An advisory opinion request must set forth a specific transaction or activity that the requesting person plans to undertake or is presently undertaking and intends to undertake in the future. Requests presenting a general question of interpretation, or posing a hypothetical situation, or regarding the

activities of third parties do not qualify as advisory opinion requests.

(2) The secretary of state shall review all requests for advisory opinions submitted under Section 2-2-132(1), MCA. If the secretary of state determines that a request for advisory opinion is incomplete or otherwise not qualified under Rule II(1), he shall, within 10 calendar days of receipt of such request, notify the requesting person and specify the deficiencies in the request.

AUTH: 2-2-132 (3), MCA IMP: 2-2-132 (1) (2), MCA

RULE III - ADVISORY OPINIONS, CONTENT OF REQUEST (1) A request for an advisory opinion must be typewritten or printed.

(2) Advisory opinion requests should be sent or delivered in person to the secretary of state, state capitol, Helena, Montana 59620.

(3) The advisory opinion request must include:

(a) the name and address of the requesting person or agent for the requesting person;

(b) a detailed statement of the facts upon which the requesting person requests the secretary of state to base his advisory opinion;

(c) sufficient facts to show that the requesting person will be affected by the requested advisory opinion;

(d) the rule or statute for which the requesting person seeks an advisory opinion;

(e) the questions presented;

(f) positions of law asserted by the requesting person;

(g) the specific relief requested, if any.

AUTH: 2-2-132 (3), MCA IMP: 2-2-132 (1) (2), MCA

RULE IV - ADVISORY OPINIONS, PUBLIC AVAILABILITY (1) Advisory opinion requests which qualify under Rule II (1) shall be made available to the public at the office of the secretary of state promptly upon their receipt and following a determination that they have qualified.

(2) A copy of the original request and any supplements thereto together with any comments submitted thereon according to Rule V, shall be available for public inspection at the office of the secretary of state, state capitol, room 202, Helena, Montana.

(3) Upon receipt by the secretary of state, each request which qualifies as an advisory opinion request (AOR) under Rule II (1), shall be assigned an AOR number for reference purposes.

(4) Disclosures by an agent of the identity of his or her principal, which are made by separate writing and addressed to the confidence of the secretary of state, shall be kept in confidence by the secretary of state and not made available to the public.

AUTH: 2-2-132 (3), MCA IMP: 2-2-132 (1) (2), MCA

10-5/28/81

MAR Notice No. 44-2-20

RULE V - ADVISORY OPINIONS, COMMENTS ON REQUESTS (1) Any interested person may submit written comments concerning advisory opinion requests made public at the office of the secretary of state.

(2) The written comments shall be submitted within 10 calendar days following the date the request is made public at the office of the secretary of state. However, if the 10th calendar day falls on a Saturday, Sunday or state holiday, the 10 day period ends at the close of the business day next following the weekend or holiday. Additional time for submission of written comments may be granted upon written request for an extension by the person who wishes to submit comments or may be granted by the secretary of state without an extension request.

(3) Comments on advisory opinion requests should refer to the AOR number of the request.

(4) Written comments and requests for additional time to comment shall be sent to the secretary of state, state capitol, room 202, Helena, Montana 59620.

(5) Before issuing an advisory opinion, the secretary of state shall accept and consider all written comments submitted within the 10 day comment period or any extension thereof.

AUTH: 2-2-132 (3), MCA IMP: 2-2-132 (1) (2), MCA

RULE VI - ADVISORY OPINIONS, ISSUANCE (1) Within 60 days after receiving an advisory opinion request that qualifies under Rule II (1), the secretary of state shall issue to the requesting person a written advisory opinion.

(2) The 60 calendar day period of Rule VI (1) is reduced to 20 calendar days for an advisory opinion request qualified under Rule II (1) provided the request:

(a) is submitted by a candidate, including any authorized committee of the candidate or agent of either within the 60 calendar days immediately preceding the date of any election for state office in which the candidate is seeking nomination or election;

(b) presents a specific transaction or activity directly relating to the upcoming election of sufficient importance to the candidate as may invoke the 20 day period if the connection is explained in the request.

(3) The 60 day and 20 day periods referred to in (1) and (2) above, apply only when the secretary of state has received a qualified and complete advisory opinion request under Rule II (1). When the 60th or 20th day occurs on a Saturday, Sunday or state holiday, the respective period ends at the close of the business day next following the weekend or holiday.

(4) The secretary of state may issue advisory opinions pertaining only to Part 1, Chapter 2, of Title 2, MCA, or the rules duly prescribed under those statutes.

(5) No opinion of an advisory nature may be issued by the secretary of state or any of his employees except in accordance with these rules.

MAR Notice No. 44-2-20

10-5/28/81

(6) When issued by the secretary of state, each advisory opinion or other response under Section 2-2-132, MCA, shall be available to the public at the office of the secretary of state as well as sent by mail, or personally delivered, to the person who requested the opinion.

AUTH: 2-2-132 (3), MCA IMP: 2-2-132 (1) (2), MCA

RULE VII - ADVISORY OPINIONS, EFFECTS (1) An advisory opinion shall be binding as between the secretary of state, to the extent that it affects the conduct of his affairs, and the requesting party concerning the set of facts presented in the request.

AUTH: 2-2-132 (3), MCA IMP: 2-2-132 (1) (2), MCA


4. The rules are proposed to establish a mechanism for the request and issuance of advisory opinions under Section 2-2-132, MCA.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Larry Akey, Office of the Secretary of State, Room 202, Capitol Building, Helena, Montana 59620, no later than June 25, 1981.

6. Larry Akey, Office of the Secretary of State, has been designated to preside over and conduct the hearing.

7. The authority and implementing sections to make the proposed rules are listed at the end of each proposed rule.

Dated this 18th day of May 1981.


JIM WALTERMIRE
Secretary of State

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

In the matter of the amendment of	)	NOTICE OF PUBLIC
Rule 46.12.550 Pertaining to home	)	HEARING ON PROPOSED
health services, definition	)	AMENDMENT OF RULE
	)	46.12.550 PERTAINING
	)	TO HOME HEALTH SERVICES

To: All Interested Persons:

1. On June 18, 1981, 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, to consider the amendment of Rule 46.12.550 pertaining to home health services, definition.

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

46.12.550 HOME HEALTH SERVICES, DEFINITION (1) Home health services are the following services provided by a licensed home health care agency on a part-time or intermittent basis to a recipient in his place of residence, which does not include a hospital, skilled nursing facility or intermediate care facility except for home health services in an intermediate care facility that are not required to be provided by the facility:

- (a) nursing services;
- (b) home health aide services;
- (c) physical therapy;
- (d) occupational therapy;
- (e) speech therapy;
- (f) medical supplies and equipment suitable for use in the home.

(2) The above services, when provided to residents of skilled nursing or intermediate care facilities, are considered institutional services and, as such, the department's rules for those specific services will be applicable.

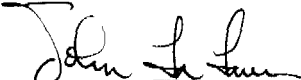
~~(2)~~ (3) Nursing service may be provided by a licensed registered nurse in geographic areas not covered by a licensed home health agency.

3. The Department is amending this rule in order to define a recipient's place of residence for purposes of receiving home health services in accordance with 42 CFR 440.70(c), and to clarify Medicaid reimbursement methods and procedures for services provided by a home health agency to Medicaid eligible skilled nursing or intermediate care facility residents.

4. 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, Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, Montana 59604, no later than June 26, 1981.

5. The Office of Legal Affairs, Department of Social and Rehabilitation Services has been designated to preside over and conduct the hearing.

6. The authority of the agency to amend the rule is based on Section 53-6-113, MCA, and the rule implements Sections 53-6-101 and 53-6-141, MCA.



Director, Social and Rehabilitation Services

Certified to the Secretary of State May 18, 1981.

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF THE ADOPTION
of a rule concerning data) OF RULE 2.32.524
plates for factory-built)
single-family dwellings.)

TO: All Interested Persons:

1. On January 29, 1981, the Department of Administration published a notice of proposed adoption of a rule concerning data plates for factory-built single-family dwellings at pages 50 and 51 of the 1981 Montana Administrative Register, issue number 2.

2. The agency has adopted Rule I (2.32.524 REQUIREMENTS FOR DATA PLATE).

3. No comments or testimony were received.

In the matter of the adoption) NOTICE OF THE ADOPTION
of a rule concerning mobile) OF RULE 2.32.505
homes and recreational vehicles)
used for commercial or business)
occupancy.)

TO: All Interested Persons:

1. On January 29, 1981, the Department of Administration published a notice of proposed adoption of a rule concerning mobile homes and recreational vehicles used for commercial or business occupancy at pages 52 and 53 of the 1981 Montana Administrative Register, issue number 2.

2. The agency has adopted Rule I (2.32.505 USE OF MOBILE HOMES AND RECREATIONAL VEHICLES FOR COMMERCIAL OR BUSINESS OCCUPANCY PROHIBITED -- EXCEPTION).

3. No comments or testimony were received.

In the matter of the adoption) NOTICE OF THE ADOPTION
of a rule that would adopt by) OF RULE 2.32.107
reference the Uniform Mitiga-)
tion Plan.)

TO: All Interested Persons:

1. On January 29, 1981, the Department of Administration published a notice of proposed adoption of a rule concerning the Uniform Mitigation Plan by reference at pages 54 and 55 of the 1981 Montana Administrative Register, issue number 2.

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2. The agency has adopted Rule I (2.32.107 INCORPORATION BY REFERENCE OF UNIFORM MITIGATION PLAN).
3. No comments or testimony were received.

In the matter of the adoption) NOTICE OF THE ADOPTION
of a rule that would adopt by) OF RULE 2.32.106
reference the Recommended)
Requirements to Code Officials)
for Solar Heating, Cooling and)
Hot Water Systems.)

TO: All Interested Persons:

1. On January 29, 1981, the Department of Administration published a notice of proposed adoption of a rule concerning the Recommended Requirements to Code Officials for Solar Heating, Cooling and Hot Water Systems by reference at pages 43 and 44 of the 1981 Montana Administrative Register, issue number 2.

2. The agency has adopted Rule I (2.32.106 INCORPORATION BY REFERENCE OF RECOMMENDED REQUIREMENTS TO CODE OFFICIALS FOR SOLAR HEATING, COOLING, AND HOT WATER SYSTEMS).

3. No comments or testimony were received.

In the matter of the amendment) NOTICE OF THE AMENDMENT
of rule ARM 2.32.303 concerning) OF ARM 2.32.303
the minimum required plumbing)
fixtures.)

TO: All Interested Persons:

1. On January 29, 1981, the Department of Administration published a notice of proposed amendment to the above rule concerning the minimum required plumbing fixtures at pages 61, 62 and 63 of the 1981 Montana Administrative Register, issue number 2.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

In the matter of the amendment) NOTICE OF THE AMENDMENT
of rule ARM 2.32.105 concerning) OF ARM 2.32.105
the Adoption of the Uniform)
Mechanical Code by reference.)

TO: All Interested Persons:

1. On January 29, 1981, the Department of Administration published a notice of proposed amendment to the above rule concerning the Adoption of the Uniform Mechanical Code by reference at pages 48 and 49 of the 1981 Montana Administrative Register, issue number 2.
2. The agency has amended the rule as proposed.
3. No comments or testimony were received.

In the matter of the amendment) NOTICE OF THE AMENDMENT
of rule ARM 2.32.101 concerning) OF ARM 2.32.101
the adoption by reference of)
the Uniform Building Code.)

TO: All Interested Persons:

1. On January 29, 1981, the Department of Administration published a notice of proposed amendment to the above rule concerning the adoption by reference of the Uniform Building Code at pages 45, 46, and 47 of the 1981 Montana Administrative Register, issue number 2.
2. The agency has amended the rule as proposed.
3. No comments or testimony were received.

In the matter of the adoption) NOTICE OF THE ADOPTION
of a rule and the amendment of) OF RULE 2.32.213 AND
rules ARM 2.32.211 and ARM) AMENDMENT OF ARM 2.32.211
2.32.212 concerning enforcement) and 2.32.212
of the State Building Code by)
county and municipal govern-)
ments.)

TO: All Interested Persons:

1. On January 29, 1981, the Department of Administration published a notice of proposed adoption of a rule and amendment to rules ARM 2.32.211 and 2.32.212 concerning enforcement of the State Building Code by county and municipal governments at pages 56 through 61 of the 1981 Montana Administrative Register, issue number 2.

2. The agency has amended rule ARM 2.32.212 as proposed. The agency has adopted Rule I (2.32.213 ASSUMPTION OF CODE ENFORCEMENT BY THE STATE) and amended rule ARM 2.32.211 with the following changes:

2.32.213 ASSUMPTION OF CODE ENFORCEMENT BY THE STATE

(1) If a county or municipality is decertified for purposes of enforcing the state building code, whether voluntarily at the request of the county or municipality or involuntarily as the result of revocation of certification under rule ARM 2.32.212, the state of Montana, through the department of administration, building codes division, will assume enforcement of the state building code in the county's or municipality's code enforcing jurisdictional area as provided by 50-60-102 and 50-60-205, MCA; except that, whenever the municipality had an extended jurisdictional area approved under 50-60-101, MCA, and rule ARM 2.32.211, the state will assume code enforcing jurisdiction in the area that was once the municipality's extended jurisdictional area only as provided in rule ARM 2.32.211.

(2) If the state assumes state building code enforcing jurisdiction under this rule, such jurisdiction will remain with the state for a minimum period of 1 year before the county or municipality will be allowed to reapply for certification to enforce the state building code, or parts thereof.

(3) State assumption of state building code jurisdiction under this rule will be prospective only. If the state assumes state building code enforcing jurisdiction under this rule, the county or municipality will nonetheless retain state building code enforcing jurisdiction over all construction projects within their jurisdictional area commenced prior to the effective date of state assumption, including (in the case of a municipality) construction projects within any extended state building code enforcing jurisdictional area, any provision in rule ARM 2.32.211 to the contrary notwithstanding.

(4) If the state assumes state building code enforcing jurisdiction under this rule, the building codes division will publish a notice of state assumption in a newspaper having general circulation in the county or municipality. The notice will specify the effective date of state assumption, the reasons for state assumption, and the effect of state assumption (for example, the effect on the types of buildings that will be covered under the state building code, the effect in cases where the affected municipality will lose its extended code enforcing jurisdictional area, and the effect on existing construction projects), and it will also direct persons to apply to the building codes division for building permits.

2.32.211 EXTENSION OF MUNICIPAL JURISDICTIONAL AREA

(1) Section 50-60-101, MCA, provides that municipalities may extend their inspection jurisdiction up to $4\frac{1}{2}$ miles from their corporate limits upon written request and upon approval by the division. The written request must include a statement as to how the additional work-load will be handled. Once the city is granted authority to inspect within the $4\frac{1}{2}$ mile jurisdictional area, the county may not inspect in that area unless the city relinquishes its right or as otherwise provided in subsection (4) of this rule.

(2) Upon receipt of the written request from the city to extend the jurisdictional area, the division will use the following procedure in considering the extension:

(a) The division will publish a notice in a newspaper of general circulation in the area to be affected.

(b) The notice will also be posted in the county courthouse and in the city hall.

(c) The notice will provide the opportunity for the public to submit written and verbal comments to the division regarding the extension.

(i) Thirty days will be allowed for submittal of comments.

(ii) Twenty days will be allowed for the affected public to request a hearing on the extension. If 25 or more persons request a hearing or if the county or municipality requests a hearing, one will be held in the municipality by the division.

(d) The final decision of the division regarding the extension will be published in the newspaper of general circulation.

(3) In order to keep any extended jurisdictional area approved under 50-60-101, MCA, and this rule, the municipality must maintain its certification for purposes of enforcing the state building code, or parts thereof, as required and provided by 50-60-302, MCA, and the rules contained in ARM Title 2, chapter 32, sub-chapter 2. Whenever a municipality is decertified for purposes of enforcing the state building code, whether voluntarily at the request of the municipality or involuntarily as the result of revocation of certification under rule ARM 2.32.212, approval of an extended jurisdictional area for the municipality given under 50-60-101, MCA, and this rule is automatically revoked and the municipality will lose such extended jurisdictional area.

(4) If a municipality loses its extended jurisdictional area under subsection (3) of this rule, the area that was once the extended jurisdictional area of the municipality will revert back to the jurisdiction of the county for purposes of enforcing the state building code if the county is certified under 50-60-302, MCA, and the rules contained in ARM Title 2, chapter 32, sub-chapter 2. If the county is not

certified, the state of Montana, through the department of administration, building codes division, will enforce the state building code in the area that was once the municipality's extended jurisdictional area (as well as in the incorporated limits of the municipality itself) as provided by 50-60-102 and 50-60-205, MCA. ~~In either case, the state building code would again only apply to public places, as defined by 50-60-101, MCA, in the area that was once the municipality's extended jurisdictional area.~~

3. No comments or testimony were received. However, the department made minor changes to proposed Rule I (ARM 2.32.213) and amended rule ARM 2.32.211, as indicated in paragraph No. 2 above, in order to make them more compatible with the provisions of Chapter 555, Laws of 1981 (House Bill 202, 47th Legislature), which took effect on April 29, 1981.

In the matter of the amendment)	NOTICE OF THE AMENDMENT
of rules ARM 2.32.401, 2.32.)	OF RULES ARM 2.32.401,
404, 2.32.405, 2.32.406, 2.32.)	2.32.404, 2.32.405,
407, and 2.32.408 concerning)	2.32.406, and 2.32.408
the State Electrical Code.)	

TO: All Interested Persons:

1. On January 29, 1981, the Department of Administration published a notice of proposed amendment of rules ARM 2.32.401, 2.32.404, 2.32.405, 2.32.406, 2.32.407, and 2.32.408 concerning the State Electrical Code at pages 37 through 42 of the 1981 Montana Administrative Register, issue number 2.

2. The agency has amended rules ARM 2.32.401, 2.32.404, 2.32.405, 2.32.406, and 2.32.408 as proposed.

3. No adverse comments or testimony were received in regard to the proposed amendment of the rules listed in paragraph number 2 above. However, as indicated in paragraph number 1 above, the agency also proposed to amend rule ARM 2.32.407 ELECTRICAL INSPECTION FEES. At the hearing held on February 27, 1981, the agency received a great deal of adverse comments and testimony pertaining to the proposed fee increases, and no comments or testimony favorable to the proposed amendments to rule ARM 2.32.407 were received. Accordingly, the agency has not adopted the proposed amendments to rule ARM 2.32.407. Instead, the agency is scheduling informal conferences pursuant to section 2-4-304, MCA, in order to obtain the viewpoints of electricians and electrical

contractors on the amount of electrical permit fee increases. New proposed amendments to rule ARM 2.32.407 will be published in the Montana Administrative Register at a later date.

Morris L. Brusett
Morris L. Brusett, Director
Department of Administration

Certified to the Secretary of State 5/18, 1981.

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

EMERGENCY RULE TO AMEND

The Board of Dentistry is amending by emergency procedures ARM 40.14.605 Examinations as the board would like to accommodate the wishes of the Dental Hygiene Dept., Carroll College, that teaches dental hygiene, that their graduates be able to take both portions (written and oral) of the dental hygiene examination at one setting, rather than having to travel twice. However, a majority of the board cannot attend the presently scheduled written examination and the rule seems to infer that "the board", meaning the majority or a quorum must attend. This rule change would clarify that less than a majority may administer the oral exam. The examination is scheduled for the last week in May so the normal rule making process would provide a rule change which would not be in time for the scheduled examination. The written test is administered by a regional testing organization and it is impossible to reschedule. It would be July before the board could administer the oral portion of the examination. In view of the energy crisis, it would be better to administer both at the same time, saving the examinees' time and money. Therefore the board is proposing the amendment by emergency as follows: (new matter underlined, deleted matter interlined)

40.14.605 EXAMINATION (1) Applicants may be required to write a short essay and answer questions posed to them by one or more members of the board and demonstrate satisfactorily the clinical capabilities required by the board.

(2) Notice of cancellation of examination by examinees must be postmarked at least 20 days prior to examination before the examination fee, minus \$10.00 administrative costs, will be refunded.

(3) Applications for the oral interview and jurisprudence examinations must be submitted to the office of the board at least 20 days prior to the examination date.

(4) Examinees must furnish their own dental supplies for the examination.

(5) The grading will be done by the board members. A final grade of at least 75% is required for passing the examination.

(6) The board accepts, in satisfaction of the practical part, successful completion of an examination administered by the Western Regional Examining Board, after June 1979. The examination results of the Western Regional Examining Board shall be valid for a period of 3 years from the date of successful completion of the examination.

(7) Applicants for licensure shall submit an application, which shall be furnished by the board;

(a) certificate of successful completion of the Western Regional Examining Board clinical examination, within the last

3 years;

- (b) two affidavits of good moral character;
- (c) certificate of graduation from a board approved dental hygiene school;
- (d) an examination fee of \$60.00;
- (e) a recent photograph of the applicant; and
- (f) upon successful completion of the examination, a licensure fee of \$15.00. (History: Sec. 37-4-402, MCA; IMP, Sec. 37-4-402, MCA; Eff. 12/31/72; AMD, Eff. 10/4/76; AMD 1980 MAR p. 1188, Eff. 4/11/80.)

The emergency rule amendment is effective on May 18, 1981.

BOARD OF DENTISTRY
WILLIAM G. THOMAS, D.D.S.,
PRESIDENT

BY: 

ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, May 18, 1981.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

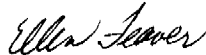
IN THE MATTER OF THE	)	NOTICE OF AMENDMENT OF RULE
PROPOSED AMENDMENT OF RULE	)	42.21.122, relating to valu-
42.21.122, relating to the	)	ation of livestock.
valuation of livestock.)	

TO: All Interested Persons:

1. On April 16, 1981, the Department of Revenue published notice of the proposed amendment of Rule 42.21.122, relating to the valuation of livestock, at pages 348 through 350 of the 1981 Montana Administrative Register, issue no. 7.

2. The Department has amended the rule as proposed.

3. One letter, in support of the proposed amendments, was received from the Montana Stockgrowers Association.



ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 5/18/81

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE)
AMENDMENT OF RULE 42.21.134,)
relating to the valuation of)
commercial furniture and)
fixtures.)
NOTICE OF AMENDMENT OF RULE
42.21.134, relating to valu-
ation of commercial furniture
and fixtures.

TO: All Interested Persons:

1. On January 15, 1981, the Department of Revenue published notice of a public hearing on proposed amendments to Rule 42.21.134, relating to the valuation of commercial furniture and fixtures, at pages 14 through 19 of the 1981 Montana Administrative Register, issue no. 1. On February 11, 1981, the public hearing was held.

2. The Department has amended the rule with the following changes (deletions interlined and additions capitalized and underlined):

42.21.134 FURNITURE AND FIXTURES USED IN COMMERCIAL ESTABLISHMENTS (1)(a) ~~The average market value of commercial furniture and fixtures shall be determined using trended depreciation tables established by the department of revenue. The average life of these properties necessitates the use of two tables. A 5-year table to be used for those designated properties which research indicates depreciate rapidly and a 10-year table which is to be used for all commercial furniture and fixtures which has a longer life. The kinds of fixtures that the 5-year depreciation table has been designed for and our instruction specifies for are: electronic machines, computer system, data processing equipment, cash registers and all coin-operated equipment. All other property will use the 10-year table.~~

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

TABLE 1 - 5 YEARS

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

5-yr. old ----- 17% ----- 1.289 ----- 22%
and older

TABLE 2 -- 10 YEARS

YEAR	R-3 % GOOD	*TREND FACTOR	TRENDED & GOOD OR MARKET VALUE
1 yr. old	91%	1.000	91%
2 yr. old	82%	1.057	89%
3 yr. old	73%	1.133	85%
4 yr. old	64%	1.179	77%
5 yr. old	55%	1.289	73%
6 yr. old	47%	1.573	74%
7 yr. old	39%	1.635	64%
8 yr. old	31%	1.662	52%
9 yr. old	24%	1.716	41%
10 yr. old	19%	1.891	35%
11 yr. old and older	14%	1.891	26%

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

Table 2 -- Furniture and Fixtures, Signs, Billboards, Specialized
Medical and Dental Equipment, Radio and T.V. Trans-
mitting and Antenna Equipment, Shop Equipment and
Tools, Service Station Pumps and Equipment.

(c) The provisions of subsection (1) of this rule apply to
the calendar year commencing January 1, 1979.

(2)(a) The average market value of commercial furniture and
fixtures is determined by using trended depreciation tables es-
tablished by the department. The average life of these types of
properties necessitates the use of three tables. A 3-year table
is to be used for electronic equipment that is subject to rapid
depreciation due to technological obsolescence. A 5-year table
is to be used for those properties that research indicates de-
preciate rapidly but which do not qualify for the 3-year table.
A 10-year table is to be used for those furniture and fixtures
not subject to the 3-year or 5-year tables. Examples of proper-
ties subject to the various tables are given in subsection
(2)(c) of this rule.

(b) The following tables are the depreciation schedules
referred to in subsection (2)(a) of this rule. The tables were
compiled using a straight-line depreciation schedule with a
residual value of 10% followed by multiplication by a trend

factor.

TABLE 1 : 3 YEARS

<u>AGE</u>	<u>PERCENTAGE DEPRECIATION</u>	<u>TREND FACTOR</u>	<u>PERCENTAGE TRENDED DEPRECIATION</u>
1 year old	70%	1.000	70%
2 years old	40%	1.101	44%
3 years old and older	10%	1.194	12%

TABLE 2 : 5 YEARS

<u>AGE</u>	<u>PERCENTAGE DEPRECIATION</u>	<u>TREND FACTOR</u>	<u>PERCENTAGE TRENDED DEPRECIATION</u>
1 year old	82%	1.000	82%
2 years old	64%	1.101	70%
3 years old	46%	1.194	55%
4 years old	28%	1.331	37%
5 years old and older	10%	1.456	15%

TABLE 3 : 10 YEARS

<u>AGE</u>	<u>PERCENTAGE DEPRECIATION</u>	<u>TREND FACTOR</u>	<u>PERCENTAGE TRENDED DEPRECIATION</u>
1 year old	91%	1.000	91%
2 years old	82%	1.101	90%
3 years old	73%	1.194	87%
4 years old	64%	1.331	85%
5 years old	55%	1.456	80%
6 years old	46%	1.777	82%
7 years old	37%	1.846	68%
8 years old	28%	1.877	53%
9 years old	19%	1.938	37%
10 years old and older	10%	2.055	21%

(c)(i) The following types of property are subject to the 3-year table: - computer systems, data processing equipment, electronic cash registers, and other associated electronic equipment.

(ii) The following types of property are subject to the 5-year table: - vending machines, nonelectronic cash registers, coin-operated equipment, radio and television broadcasting and transmitting equipment, and hotel and motel furniture and fixtures.

(iii) The following types of property are subject to the

~~10-year table: specialized medical and dental equipment, repair shop tools and equipment, citizen's band radios, mobile phones, and PBX type systems.~~

~~(iv) The lists in subsections (2)(c)(i), (ii), and (iii) above are not meant to be exhaustive, but are intended to be illustrative of the types of property subject to each table.~~

~~(d) The provisions of subsection (2) of this rule apply to the calendar year commencing January 1, 1980.~~

~~(3) The trend factor used in determining the trended depreciation percentage will be revised each year to reflect the current cost of living index.~~

(1) The market value of commercial furniture and fixtures is determined using trended depreciation tables established by the department. The tables are found in subsection (2), and the trend factors were compiled using comparative cost multipliers based on data published by the Marshall and Swift Publication Company.

(2) The following tables are the trended depreciation schedules used to determine market value of commercial furniture and fixtures:

TABLE 1: 3 YEARS

ELECTRONIC CASH REGISTERS, COMPUTER SYSTEMS, AND DATA PROCESSING EQUIPMENT.

<u>AGE</u>	<u>PERCENTAGE DEPRECIATION</u>	<u>TREND FACTOR</u>	<u>PERCENTAGE TRENDED DEPRECIATION</u>
1 YEAR OLD	70%	1.000	70%
2 YEARS OLD	40%	1.037	40%
3 YEARS OLD	10%	1.138	11%
AND OLDER			

TABLE 2: 5 YEARS

Vending Machines, Cash Registers, Coin Operated Equipment, Radio and T.V. Broadcasting and Transmitting Equipment, Hotel and Motel Furniture and Fixtures, Office Copiers, Computer Systems, Data Processing Equipment, Electronic Cash Registers, Other Associated Electronic Equipment, Calculators, and Typewriters. CALCULATORS, SPECIALIZED MEDICAL AND DENTAL EQUIPMENT (INCLUDING MEDICAL AND DENTAL HAND TOOLS AND DRILLS, BUT NOT INCLUDING MEDICAL AND DENTAL CHAIRS AND TABLES)

<u>AGE</u>	<u>PERCENTAGE DEPRECIATION</u>	<u>TREND FACTOR</u>	<u>PERCENTAGE TRENDED DEPRECIATION</u>
1 Year Old	85%	1.000	85%
2 Years Old	69%	1.037	72%
3 Years Old	52%	1.138	59%
4 Years Old	34%	1.218	41%
5 Years Old and Older	20%	1.284	26%

TABLE 23: 10 YEARS

Specialized Medical and Dental Equipment, Repair Shop Tools, Citizenband Radio, Mobile Phones, PBX Typesystem, Show Cases, Restaurant and Van Fixtures, MEDICAL AND DENTAL CHAIRS AND TABLES and All Other Commercial Furniture, Fixtures and Equipment.

<u>AGE</u>	<u>PERCENTAGE DEPRECIATION</u>	<u>TREND FACTOR</u>	<u>PERCENTAGE TRENDED DEPRECIATION</u>
1 Year Old	92%	1.000	92%
2 Years Old	84%	1.037	87%
3 Years Old	76%	1.138	86%
4 Years Old	67%	1.218	82%
5 Years Old	58%	1.284	74%
6 Years Old	49%	1.359	67%
7 Years Old	39%	1.418	55%
8 Years Old	30%	1.695	51%
9 Years Old	24%	1.783	43%
10 Years Old and Older	20%	1.851	37%

(3) The lists of furniture and fixtures provided with the tables in subsection (2) are not meant to be exhaustive, but are intended to be illustrative of the types of property subject to the respective tables.

(4) This rule applies to tax years beginning on or after January 1, 1981.

3. Several parties appeared at the hearing and numerous persons submitted written testimony.

Members of the medical and dental profession objected to the use of a 10-year depreciation table for specialized medical and dental equipment. After reviewing the submitted letters and documents, the Department agrees with the objection and has

transferred the specialized equipment from the 10-year table to the 5-year table.


Several parties commented that the 5-year table was not adequate for certain electronic equipment, such as computers; equipment that is subject to rapid technological obsolescence. After reviewing this point, the Department has established a 3-year table to more accurately reflect the market value of such equipment. The Department will continue to study market conditions for this type of property for valuation purposes in future years.

Persons appearing at the hearing urged the use of the taxpayers income tax depreciation schedules. The Department has rejected this position in the past and continues to do so. Income tax depreciation schedules do not reflect market value. Market value is the standard mandated by the Legislature by statute. The Legislature is the proper body to address this argument to, and the Legislature can by statute make the change if it desires.

As in the past, objections were raised to the use of trend factors. The Department believes the use of trend factors is consistent with and pursuant to the statutes mandating the use of market value.

The hearing examiner maintains that the Department should value each item, at the taxpayer's option, by individual inspection and assessment. Lacking the resources to carry out such a program the Department believes that the use of the tables is proper and in compliance with law. A taxpayer disputing the valuation on a particular item of property may appeal to the county tax appeal board.

4. Authority to make the additional amendments is given by Section 15-1-201, MCA.


ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 5/18/81

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

In the matter of the amendment of Rule 46.12.303 pertaining to provider requirements; billing, reimbursement, claims processing, payment	}	NOTICE OF THE AMENDMENT OF RULE 46.12.303 PERTAINING TO PROVIDER REQUIREMENTS
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TO: All Interested Persons

1. On April 16, 1981, the Department of Social and Rehabilitation Services published notice of a proposed amendment of Rule 46.12.303 pertaining to provider requirements; billing, reimbursement, claims processing, and payment at page 355 of the Montana Administrative Register, issue number 7.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

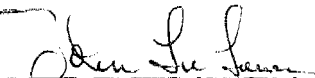
In the matter of the amendment of Rules 46.12.1202, 46.12.1204, 46.12.1205, and 46.12.1206 per- taining to the reimbursement for skilled nursing and intermediate care services	}	NOTICE OF THE AMENDMENT OF RULES 46.12.1202, 46.12.1204, 46.12.1205 AND 46.12.1206 PERTAIN- ING TO REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES
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TO: All Interested Persons

1. On April 16, 1981, the Department of Social and Rehabilitation Services published notice of a proposed amendment of Rules 46.12.1202, 46.12.1204, 46.12.1205 and 46.12.1206 pertaining to the reimbursement for skilled nursing and intermediate care services at page 351 of the Montana Administrative Register, issue number 7.

2. The agency has amended the rules as proposed.

3. No comments or testimony were received.



Director, Social and Rehabilitation
Services

Certified to the Secretary of State May 18, 1981.

VOLUME NO. 39

OPINION NO. 15

EMPLOYEES, PUBLIC - Rate of expenditure of accrued leave credits when changing from eight-hour to ten-hour working day.

SICK LEAVE - Rate of expenditure of accrued leave credits when changing from eight-hour to ten-hour working day.

VACATIONS - Rate of expenditure of accrued leave credits when changing from eight-hour to ten-hour working day.

MONTANA CODE ANNOTATED - Sections 2-18-604, 2-18-612, 2-18-618

ADMINISTRATIVE REGISTER OF MONTANA - Sections 2.21.122(b), 2.21.143, 2.21.135, 2.21.216(7), 2.21.233, 2.21.288.

HELD: Accrued employee leave time is calculated on a hourly basis for the purpose of determining the amount of leave time credited to employees who change from an eight-hour work day to a ten-hour work day.

12 May 1981

John N. Radonich
Anaconda-Deer Lodge County Attorney
108 East Park Avenue
Anaconda, Montana 59711

Dear Mr. Radonich:

You have requested my opinion on the following question:

When an employee has accrued days of vacation and sick leave on a schedule of eight hour working days is the accrued leave expended on a daily basis or an hourly basis when the employee changes to a schedule of four ten hour working days per week?

A review of the facts of your situation and the pertinent statutes is necessary to fully understand your question. Section 2-18-612, MCA, provides that an employee earns vacation leave credits at the rate of fifteen working days per year for the first ten years of service, eighteen days

per year for the next five years, twenty-one days per year for the next following five years, and twenty-four days per year for each year after twenty years of service. Section 2-18-618(1), MCA, provides that sick leave credits are earned at the rate of twelve working days per year. Your letter informs me that police employees of Anaconda-Deer Lodge County worked a schedule of six consecutive eight hour days, followed by three days off, and accrued vacation and sick leave in units of eight hour working days until July 1, 1980. On that date, a new collective bargaining agreement became effective, which provided for a work week consisting of four consecutive ten hour days. The employees now contend that each working day of vacation and sick leave credit accrued at the rate of eight hours per working day entitles the employee to a ten-hour vacation or sick leave day off. The county contends that the accrued vacation and sick leave credits must be converted into hours by multiplying the working days of credit accrued by eight. This product is then divided by ten, according to the county, to determine how many new ten-hour days of vacation or sick leave are credited to each employee.

The employees have asserted that the plain language of the above-quoted statute controls--a working day of leave accrued should entitle the employee to entire working day of leave expended, even though the working day for accrual purposes is shorter than the working day for expenditure purposes. I am not persuaded that this analysis is correct. Sections 2-18-612 and 2-18-618, MCA, govern the rate at which leave accrues; they do not speak to the rate at which accrued leave is expended. No provision of Title 2, chapter 18 defines the rate at which leave is expended. Thus, the pertinent statutes simply do not answer the question presented.

Title 2, chapter 18, MCA, is a comprehensive statutory enactment governing the administration of the state and county employee pay and benefit system. In construing such statutes, the interpretation of the administrative body charged with the responsibility of executing the legislative plan is entitled to substantial weight. Montana Power Co. v. Cremer, Mont., 596 P.2d 483 (1979). In this regard, the pertinent administrative regulations can be said to express the interpretation of the agency. Department of Revenue v. Puget Sound Power & Light Co., Mont., 587 P.2d 1282 (1978). Section 2-18-604, MCA, empowers the state Department of Administration and the affected local governments to adopt regulations governing administration of

employee leave. While the Anaconda-Deer Lodge government has not acted to adopt regulations, the Department of Administration has created a comprehensive set of rules interpreting the leave provisions of state law. These rules explicitly recognize that vacation and sick leave credits are accrued and recorded on an hourly basis at a rate equal to a certain number of working days per year. Section 2.21.122(6), ARM, defines "sick leave credits" as an "earned number of sick leave hours." Section 2.21.134, ARM, provides for calculation of sick leave credits in hours, and section 2.21.138, ARM, provides for recording of sick leave credits in units of hours or fractions of hours. The rules contain similar provisions governing vacation leave. Sections 2.21.216(7), 2.21.223, and 2.21.228, ARM. Thus, the Department of Administration has interpreted the pertinent statutes to favor the view put forth by the county--that a day of leave accrued on the basis of an eight hour work day entitles the employee to only eight hours of leave, regardless of whether the employee's current work day is eight or ten hours.

This view accords with common sense. To hold otherwise would grant employees a windfall, giving them hours of leave time in excess of those granted to their colleagues who do not have the good fortune to have changed to a four-ten-hour day work week. Such a holding would also require the amending of the above-cited regulations, which were duly adopted after a notice and comment period during which the affected employees had every opportunity to make known their views. See section 2-4-302, MCA.

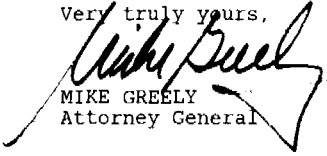
I conclude that the reasoning of the rule is sound. Under the rule, the employees in question here are entitled to leave equal to the total number of hours accrued prior to July 1, 1980, plus whatever leave accrues thereafter. The leave accrued prior to July 1, 1980, must be converted from days into hours and divided by ten to determine the number of ten hour working days of leave each employee has accrued.

Contrary to the assertion of the employees, such a result does not implicate the wage and hour provisions of section 39-3-405, MCA, by requiring leave credits to accrue for overtime work. Sections 2-18-611 and 2-18-618, MCA, explicitly provide that for purposes of calculating leave credits 2,080 hours (i.e., 40 hours x 52 weeks) equals one year. Thus, hours worked in excess of 2,080 in a year by a permanent employee--i.e., overtime hours--do not enter into the computation of the employees' leave credits.

THEREFORE, IT IS MY OPINION:

Accrued employee leave time is calculated on an hourly basis for the purpose of determining the amount of leave time credited to employees who change from an eight-hour work day to a ten-hour work day.

Very truly yours,



MIKE GREELY
Attorney General