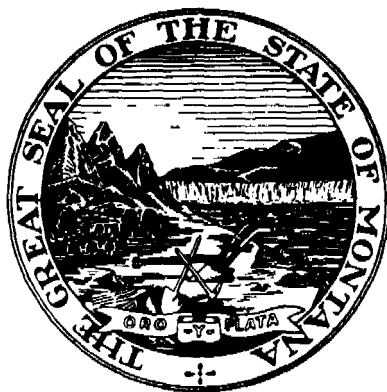


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MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 17

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OF MONTANA

The Montana Administrative Register (MAR), a twice-monthly publication, has three sections. The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted. The rule section indicates that the proposed rule action is adopted and lists any changes made since the proposed stage. The interpretation section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are inserted at the back of each register.

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of
rules 2.21.301 through 2.21.304
and the adoption of new rules
relating to the administration
of disaster and emergency leave

) NOTICE OF PROPOSED REPEAL OF
) RULES 2.21.301 THROUGH
) 2.21.304 AND THE ADOPTION OF
) NEW RULES RELATING TO
) DISASTER AND EMERGENCY LEAVE

)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Interested Persons.

1. On October 17, 1982, the Department of Administration proposes to repeal rules ARM 2.21.301 through 2.21.304 pertaining to disaster and emergency leave and adopt new rules.

2. The rules proposed to be repealed are on pages 2-625 and 2-626 of the Administrative Rules of Montana.

3. The proposed rules provide as follows:

RULE I SHORT TITLE (1) This sub-chapter may be cited as the disaster and emergency leave policy. AUTH AND IMP: 2-18-102, MCA

RULE II POLICY AND OBJECTIVES (1) It the policy of the state of Montana to:

(a) provide paid leave of absence not charged to an employee's accrued leave or compensatory time for an employee affected by a disaster or emergency as declared by the governor under the authority in 10-3-302 and 303, MCA;

(b) allow employees to take accrued annual vacation leave, compensatory time, or leave of absence without pay to deal with personal emergencies or to provide volunteer service during a disaster or emergency which does not personally affect the employee.

(2) It is the objective of this policy to administer leave for state employees during a disaster or emergency in compliance with Title 10, chapter 3, parts 1-4, MCA, and rules relating to annual vacation leave, sick leave, leave of absence without pay and compensatory time.

AUTH AND IMP: 2-18-102, MCA

RULE III DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "Affected employee" means an employee of the state of Montana whose life, the lives of members of his immediate household or whose property is endangered during a declared disaster or emergency.

(2) "Disaster" means, as defined in 10-3-103, MCA, "the occurrence or imminent threat of widespread damage, injury, or loss of life or property resulting from any natural or man-made cause, including tornadoes, windstorms, snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic action, fires, explosions, or air or water contamination requiring emergency action to avert danger or damage, blight, droughts, infestations, riots, sabotage,

hostile military or paramilitary action, or accidents involving radiation by-products or other hazardous materials."

(3) "Emergency" means as defined in 10-3-103, MCA, "the imminent threat of a disaster causing immediate peril to life or property which timely action can avert or minimize."

(4) "Personal emergency" means circumstances affecting a state employee which are the same or similar to those covered by the definitions of disaster or emergency, but which are not covered by a declaration of disaster or emergency by the governor.

(5) "Volunteer service" means participation in local volunteer emergency services, including, but not limited to, volunteer fire fighting, search and rescue, or civil defense.

AUTH AND IMP: 2-18-102, MCA

RULE IV DECLARED DISASTER OR EMERGENCY (1) When the governor of the state of Montana, pursuant to 10-3-302 and 303, MCA, declares a disaster or emergency, an affected employee of the state shall receive paid leave of absence which is not charged to any accrued leave or compensatory time.

(2) An agency head or designee shall determine on a case-by-case basis:

(a) whether or not an employee of the agency is affected by a declared disaster or emergency, and

(b) the period of time for which the employee should receive paid leave under this section.

(3) When the governor's declaration does not define affected employees, employees wanting paid leave under this policy shall make a request through their supervisor stating the reasons they were affected.

(4) An employee who reports for work and performs regular duties and responsibilities during a declared disaster or emergency shall be paid the normal salary. No additional leave shall be granted.

(5) If an employee is requested to return to work to perform essential services during a declared disaster or emergency which requires the general closure of state offices, that employee will be authorized compensatory time in addition to his normal salary. This provision applies to all exempt employees and to non-exempt employees who have not worked in excess of 40 hours during the work week.

AUTH AND IMP: 2-18-102, MCA

RULE V PERSONAL DISASTER OR EMERGENCY OR VOLUNTEER SERVICE (1) An employee who is affected by a personal disaster, emergency, or who wishes to provide volunteer service is eligible to apply to take annual vacation leave, accrued compensatory time or leave of absence without pay. The employee may not take sick leave except for reasons outlined in the sick leave policy.

(2) Application for and approval of use of such leave or compensatory time shall be in compliance with rules on annual vacation leave, leave of absence without pay and/or compensatory time.

(3) An employee must provide written verification of participation in the emergency if requested by the agency.

AUTH AND IMP: 2-18-102, MCA

RULE VI CLOSING This policy shall be used unless it conflicts with negotiated labor contracts which shall take precedence to the extent applicable. AUTH AND IMP: 2-18-102, MCA

4. These rules are proposed to be repealed and adopted to reestablish minimum standards for the administration of disaster and emergency leave for state agencies.

5. Interested parties may submit their data, views or arguments concerning the proposed repeal and adoption in writing to:


Dennis M. Taylor, Administrator
Personnel Division
Department of Administration
Room 130, Mitchell Building
Helena, Montana 59620

no later than October 15, 1982.

6. If a person who is directly affected by the proposed repeal and adoption of rules wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to: Dennis M. Taylor, Administrator, Personnel Division, Department of Administration, Room 130, Mitchell Building, Helena, Montana 59620, no later than October 15, 1982.

7. If the agency receives requests for a public hearing on the proposed repeal and adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental sub-division 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 at least 25 persons.

8. The authority of the agency to make the proposed repeal and adoption is based on Section 2-18-102, MCA, and the rules implement Section 2-18-102, MCA.


Morris L. Brusett, Director
Department of Administration

Certified to the Secretary of State September 3, 1982

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF PROPOSED ADOPTION
of rules relating to leave of	)	OF RULES RELATING TO LEAVE
absence without pay	)	OF ABSENCE WITHOUT PAY
)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

T0: All Interested Persons.

1. On October 17, 1982, the Department of Administration proposes to adopt rules which pertain to leave of absence without pay.

2. The proposed rules provide as follows:

RULE I SHORT TITLE (1) The sub-chapter may be cited as the leave of absence without pay policy.

AUTH AND IMP: 2-18-102, MCA

RULE II POLICY AND OBJECTIVES (1) It is the policy of the state of Montana that:

(a) employees of the state are eligible to apply for a leave of absence without pay;

(b) the granting and extent of a leave of absence without pay is at the agency's discretion.

(2) It is the objective of this policy to:

(a) provide managers with criteria with which to assess requests for leave of absence without pay based on an analysis of costs and benefits to the agency;

(b) comply with sections 2-18-611 and 2-18-618 MCA, relating to accrual of annual and sick leave while in a leave of absence without pay status;

(c) comply with section 2-18-620 MCA, relating to leave of absence without pay for service in a public office;

(d) comply with sections 2-18-604, 10-2-211, 211-222 and 225-226 MCA, relating to extended military service.

AUTH AND IMP: 2-18-102, MCA

RULE III DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "Leave of absence without pay" means a period of unpaid absence from employment with a state agency requested by an employee and approved at the agency's discretion which does not result in a break in service. (An employee may be placed in a disciplinary suspension without pay. See the Discipline Handling policy.)

(2) "Short-term leave" means a leave of absence without pay of up to 15 consecutive working days.

(3) "Long-term leave" means a leave of absence without pay of more than 15 consecutive working days.

AUTH AND IMP: 2-18-102, MCA

RULE IV APPROVAL OF LEAVE (1) At the agency's discretion, an employee may be placed on leave of absence without pay.

(2) An agency may require an employee to use all appropriate accrued leave or compensatory time before approving a leave of absence without pay request, unless the employee is requesting leave to serve in a public office or for extended military service.

(3) An agency shall establish procedures for considering requests by employees for long-term leave of absence without pay. The procedures shall be based on a cost/benefit analysis outlined in section 4 of this rule. Requests for short-term leave may be analyzed using the same procedure.

(4) An agency shall assess a request for a long-term leave of absence without pay based on a cost/benefit analysis which weighs both direct and indirect costs against benefits to the agency.

(5) Costs to the agency management shall consider when assessing requests for leave of absence without pay include, but are not limited to loss of productivity by the employee; overtime or compensatory time for other current employees; hiring and training a temporary replacement, and the impact on the agency budget.

(6) Benefits to the agency management shall consider when assessing requests for leave of absence without pay include, but are not limited to long-term retention of an employee and improved job performance as a result of the leave.

(7) The agency shall determine the supervisory level at which leave of absence without pay may be approved.

AUTH AND IMP: 2-18-102, MCA

RULE V REINSTATEMENT (1) An agency may establish a schedule of reinstatement rights for employees on long-term leave of absence without pay based on the duration of the leave, or an agency may determine reinstatement rights on a case-by-case basis.

(2) An agency shall inform an employee of reinstatement rights at the time a long-term leave of absence is approved.

(3) An agency is responsible for providing reinstatement as determined when leave is approved, when the employee gives notice of availability to be reinstated as required in section 4 of this rule.

(4) A deadline for notice of availability for reinstatement from a long-term leave of absence without pay must be established by the agency in the original leave approval. An employee must give notice of availability for reinstatement by the agency-set deadline. Failure to notify the agency by the deadline may result in the loss of all reinstatement rights and the employee may be terminated.

AUTH AND IMP: 2-18-102, MCA

RULE VI PAY AND BENEFITS (1) As provided in Montana Operations Manual, Volume III Policy 3-0505, the pay plan rules, service with the state shall not be considered interrupted by authorized leaves of absence.

(2) An employee on leave of absence without pay accrues sick leave and annual vacation leave in accordance with provisions of the sick leave and annual leave policies.

(3) As provided in the holidays and holiday pay policy, an employee who returns to a pay status from a long-term leave of absence without pay the day after a holiday is observed is not eligible to receive any holiday pay or leave.

(4) An employee may self-pay insurance premiums to the state employee group benefits plan for one calendar year from the effective date of a leave of absence without pay.

AUTH: 2-18-102 IMP: 2-18-604, MCA

RULE VII LEAVE TO SERVE IN A PUBLIC OFFICE (1) As provided in section 2-18-620 MCA, leave for purposes of serving in an elected or appointed public office must be approved for up to a maximum of 180 days annually.

AUTH: 2-18-102 IMP: 2-18-620, MCA

RULE VIII LEAVE FOR EXTENDED MILITARY SERVICE (1) As provided in sections 2-18-604, 10-2-211, 221, 222, 225-226 MCA, leave for purposes of serving for an extended period in the armed forces must be approved.

AUTH: 2-18-102 IMP: 10-2-211, 221, 222, 225, 226, MCA

RULE IX CLOSING (1) This policy shall be utilized unless it conflicts with negotiated labor contracts, Merit System rules or specific statutes, which shall take precedence to the extent applicable.

AUTH: 2-18-102 IMP: 2-18-102, MCA

3. These rules are proposed to establish minimum standards for the administration of leave of absence without pay for state agencies.

4. Interested parties may submit their data, views or arguments concerning the proposed adoption in writing to:

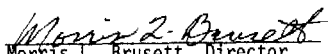
Dennis M. Taylor, Administrator
Personnel Division
Department of Administration
Room 130, Mitchell Building
Helena, Montana 59620

no later than October 15, 1982.

5. If a person who is directly affected by the proposed adoption of rules wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to: Dennis M. Taylor, Administrator, Personnel Division, Department of Administration, Room 130, Mitchell Building, Helena, Montana 59620, no later than October 15, 1982.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental sub-division 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 person of those persons directly affected has been determined to be at least 25 persons.

7. The authority of the agency to make the proposed adoption is based on Section 2-18-102, MCA, and the rules implement Sections 2-18-102, 2-18-620, 2-18-604, 10-2-211, 221, 222, 225, 226, MCA


Morris L. Brusett, Director
Department of Administration

Certified to the Secretary of State September 3, 1982.

17-9/16/82

MAR Notice No. 2-2-102

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of	)	NOTICE OF PROPOSED ADOPTION
a new rule, the amendment of rules	)	OF A NEW RULE, AMENDMENT OF
and the repeal of rules relating	)	RULES 2.21.216, 2.21.221,
to the administration of annual	)	2.21.222, 2.21.223, 2.21.224,
vacation leave	)	2.21.226, 2.21.227, 2.21.228,
	)	2.21.230, 2.21.232, 2.21.234,
	)	AND 2.21.241, AND REPEAL OF
	)	RULES 2.21.225, 2.21.231, AND
	)	2.21.233 RELATING TO ANNUAL
	)	VACATION LEAVE
	)	NO PUBLIC HEARING CONTEMPLATED

T0: All Interested Persons.

1. On October 17, 1982, the Department of Administration proposes to adopt a new rule, amend rules 2.21.216, 221-224, 226-228, 230, 232, 234 and 241, and repeal rules 2.21.225, 231 and 233 pertaining to annual vacation leave.

2. The proposed rule provides as follows:

RULE I POLICY AND OBJECTIVES (1) It is the policy of the state of Montana to grant executive branch employees annual vacation leave benefits in accordance with section 2-618-611 through 617, MCA.

(2) The objectives of this policy are to establish functional uniform procedures for calculating and granting annual vacation leave benefits in accordance with sections 2-18-611 through 617 and 621, MCA, and provide interpretation required for automation of the payroll system.

AUTH: 2-18-604 MCA IMP: 2-18-611 through 617, 621

3. The rules proposed to be repealed are on pages 2-602, 2-603 and 2-604 of the Administrative Rules of Montana.

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

2.21.216 DEFINITIONS As used in this sub-chapter the following definitions apply:

(1) "Break in service" means, ~~an absence from state employment for more than 5 working days in a row without an approved leave of absence or resulting from termination or resignation,~~ as provided in 2-18-601, MCA, "a period of time in excess of 5 working days when the person is not employed and that severs continuous employment."

(2) "Continuous employment" means, ~~for purposes of the qualifying period~~ as provided in 2-18-601, MCA, "working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days."

(3) "Jurisdiction" means the sphere of authority of any state, county or city local government.

(4) "Qualifying period" means a 6 calendar month period an employee must be continuously employed to be eligible to use vacation leave credits or to be eligible for a lump-sum payment upon termination for unused vacation leave credits.

(5) "Transfer" means, ~~an agency-to-agency employment change in the same jurisdiction without a break in service~~, as provided in 2-18-601, MCA, "a change of employment from one agency to another agency in the same jurisdiction without a break in service."

(6) "Vacation leave" means, ~~a leave of absence with pay requested by the employee for rest and relaxation or personal business and taken with the employer's approval~~, as provided in 2-18-601, MCA, "a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer."

(7) "Vacation leave credits" means the earned number of vacation hours an employee is eligible to use upon completion of the qualifying period.

AUTH: 2-18-604 MCA IMP: 2-18-611 through 617 and 621

2.21.221 ACCRUAL AND USE OF VACATION LEAVE CREDITS (1) As provided in 2-18-611, MCA, all employees:

(a) ~~whether permanent, temporary, intermittent, or seasonal, are eligible to earn vacation leave credits;~~

(b) ~~accrue vacation leave credits "from the first day of employment" and~~

(c) ~~must be "continuously employed for the qualifying period of 6 calendar months" to use vacation leave.~~ All permanent, full-time and part-time, intermittent, and seasonal employees are eligible to accrue vacation leave credits from the first day of employment.

(2) A temporary employee does not earn annual leave credits, unless the term of temporary employment is longer than 6 months. A temporary employee who is continuously employed longer than 6 months or who transfers to a permanent position without a break in service accrues vacation leave credits from the first day of employment.

(3) All employees must be continuously employed for the qualifying period of 6 calendar months to use vacation leave.

(4) Leave may not be advanced before the qualifying period is completed nor may leave be taken retroactively to cover absences which occurred before the qualifying period is completed.

(5) Unless there is a break in service, an employee only serves the qualifying period once, except as provided in section 17.

(6) After a break in service, an employee must complete anew the qualifying period to use annual vacation leave.

~~(7)~~ (7) A seasonal employee's Accrued vacation leave credits for seasonal employees may be:

(a) carried over to the next season if management has a continuing need for the employee; or

(b) paid out as a lump-sum payment to the employee when the season ends, in accordance with Rule 2.21.232.

~~(8)~~ (8) When a seasonal employee carries over vacation leave credits, If vacation credits are carried over, employment in two or

more seasons is continuous employment and can be counted toward the 6-month qualifying period, provided a break in service does not occur.

(4) (9) ~~As required by~~ provided in 2-18-611 (2), MCA, a seasonal "employees must immediately report back for work when operations resume to avoid a break in service."

(5) ~~After receipt of a lump sum payment or after a break in service, a seasonal employee must begin anew the qualifying period to use vacation leave.~~

(6) (10) An employee Persons simultaneously employed in two or more positions in the same or in different agencies.

(a) will accrue vacation leave credits in each position according to the number of hours worked, except overtime hours;

(11) Vacation leave credits will not accrue for overtime (those hours exceeding 40 per workweek that are paid at time and a half.)

(b) (12) must use Vacation leave credits will be used only from the position in which the credits are earned and with approval of the supervisor or appropriate authority for the that position; and .

(c) (13) will forfeit credits which exceed the maximum allowed on an apportioned basis When such persons exceed the maximum accrual of vacation leave credits, the number of hours forfeited will be apportioned to each position in proportion to the balance of vacation for each position.

(14) As provided in 2-18-611, MCA, "an employee may not accrue annual vacation leave credits while in a leave without pay status exceeding 15 working days."

(15) An employee who is in a leave without pay status for more than 15 consecutive working days may not accrue annual leave for hours in a leave without pay status during those consecutive working days in excess of 15.

(16) An employee who has worked the qualifying period for use of annual vacation leave does not have to repeat that period upon return to work from a continuous leave of absence without pay exceeding 15 working days.

(17) An employee who has not worked the qualifying period for use of annual vacation leave must repeat that period upon return to work from a continuous leave of absence without pay exceeding 15 working days. The employee does not lose any accrued vacation leave credits, but would not be eligible to use earned vacation leave credits until completing six consecutive months of employment.

(18) An employee who does not return to work from a continuous leave of absence without pay exceeding 15 working days forfeits any annual vacation leave credits accrued during the initial 15 days of leave of absence without pay.

AUTH: 2-18-604 MCA IMP: 2-18-611 MCA

2.21.222 CALCULATING ANNUAL VACATION LEAVE CREDITS (1) As provided in 2-18-612, MCA, "vacation leave credits are earned at a yearly rate calculated" ~~according to~~ in accordance with "the following schedule, which applies to the total years" of an employee's employment with all any agencies and jurisdictions, whether or not the employment is interrupted continuous or not:

RATE EARNED SCHEDULE

<u>Years of Employment</u>	<u>Working Days Credit Per Year</u>
1 day through 10 years	15
10 years through 15 years	18
15 years through 20 years	21
20 years on	24

(2) As provided by 2-18-611, MCA, "for calculating years--on employment, vacation leave credits, 2,080 hours (52 weeks x 40 hours) of employment shall equals 1 year.

(3) Time in an approved continuous leave of absence without pay may be credited toward years of employment for the first year, but not after that time. Time in an approved continuous leave of absence without pay of more than one year shall not be counted toward years of employment.

(4) ~~As required by 2-18-614, MCA,~~ The period of absence from employment with an agency for military service during a war or national emergency, including 90 days thereafter, shall be honored for computing years of employment for purposes of the rate earned schedule.

(5) ~~It is~~ will be the responsibility of the employee's ~~responsibility~~ to supply documentation of any previous employment time or military service time to be counted toward the rate earned schedule. The agency shall inform the employee at the time of hire that it is the employee's responsibility to provide such documentation within a time period established by the agency.

(6) An employee who provides appropriate documentation of eligible previous employment or military service after the agency-established deadline shall have that time used to calculate the future leave accrual rate. No retroactive leave credits shall be accrued to an employee.

AUTH: 2-18-604 MCA IMP: 2-18-611, 612, 614

2.21.223 PAY PERIOD ACCRUAL OF VACATION LEAVE CREDITS (1) If the employee is regularly scheduled to work 80 hours or more in a bi-weekly pay period, the employee accrues the number of hours of vacation leave credits indicated in the following schedule:

FULL-TIME BI-WEEKLY PAY PERIOD SCHEDULE

<u>No. of Completed Years of Employment</u>	<u>80 hours or more in pay status per pay period</u>
0-10 years	4.62 hours
10-15 years	5.54 hours
15-20 years	6.46 hours
20 on	7.38 hours

(2) If the employee is regularly scheduled to work less than 80 hours in a bi-weekly pay period or works on an intermittent basis, the employee accrues the number of hours of vacation leave credits

calculated by using the applicable amount from the following schedule multiplied by the hours worked:

PART-TIME BI-WEEKLY PAY PERIOD SCHEDULE

No. of Completed Years of Employment	Less than 80 hours in pay status per pay period
0-10 years	.058 x no. hours
10-15 years	.069 x no. hours
15-20 years	.081 x no. hours
20 on	.092 x no. hours

(3) When recording annual leave credits, they are to be rounded to two digits beyond the decimal point and carried in each employee's account in that configuration.

(4) Vacation leave credits are earned shall be credited at the end of each bi-weekly pay period. An employee may take vacation leave credits at the start of the next bi-weekly pay period.

AUTH: 2-18-604, MCA IMP: 2-18-611 MCA

2.21.224 MAXIMUM ACCRUAL OF VACATION LEAVE CREDITS (1) As provided in 2-18-614, MCA, An employee may, without restriction, carry over into the next calendar year twice the annual vacation leave credits the employee could earn in 1 year according to the rate earned schedule. Any additional accumulated credits are excess vacation leave credits and must be used in the first 90 days of the next calendar year or be forfeited.

(2) The calculation of excess vacation leave credits which must be used within the first 90 days of a calendar year will be made as of the end of the first pay period of that calendar year.

AUTH: 2-18-604, MCA IMP: 2-18-617 MCA

2.21.226 RATE OF SALARY COMPENSATION (1) An employee on authorized vacation leave is will be entitled to the employee's normal gross salary.

AUTH: 2-18-604, MCA IMP: 2-18-611 MCA

2.21.227 VACATION LEAVE REQUESTS (1) As provided in 2-18-616, MCA, "the dates when employees' annual vacation leaves are shall be granted must shall be determined by agreement between each employee and the employee's his employing agency," according "with regard to the best interests" of the employer and employee. state...as well as the best interests of each employee."

(2) to apply for vacation leave an employee must complete a standard request form and submit it to the employee's immediate supervisor or appropriate authority in advance of the leave whenever practical. An agency shall establish procedures for application for an approval of annual vacation leave in compliance with requirements of this policy.

(3) The vacation leave must be approved or denied in writing by the immediate supervisor or appropriate authority.

AUTH: 2-18-604 MCA IMP: 2-18-616 MCA

2.21.228 VACATION LEAVE RECORDS (1) Documentation of An employee's vacation leave credits earned and vacation leave credits used must

will be maintained recorded by each agency. the Payroll/Personnel/Position Control system.

(2) ~~Vacation leave credits used must be recorded to the nearest one-half hour when fractions of hours are used.~~ shall be used in increments of not less than one-half hour.

(3) ~~At the end of each calendar year, new employee leave records must be created.~~ Adjustments to an employee's accrual and use totals should be reported to the agency payroll clerk on a bi-weekly basis.

(4) ~~Once a year, an employee must be notified of the amount of vacation leave credits accrued and used and verify that the balance is accurate.~~

(5) ~~Carryover of vacation leave credits is computed on a calendar year basis.~~

(6) ~~Employee leave records must be retained for a minimum of 3 years.~~

AUTH: 2-18-604 MCA IMP; 2-18-611 MCA

2.21.230 ABSENCE DUE TO ILLNESS (1) ~~As provided in 2-18-615, MGA,~~ Unused vacation Leave credits may not be used when absence from employment is due to illness, unless the employee approves.

AUTH: 2-18-604 MCA IMP: 2-18-615 MCA

2.21.232 LUMP-SUM PAYMENT UPON TERMINATION (1) When an employee terminates employment with an agency, the employee is entitled to cash compensation for unused vacation leave upon the date of termination, providing:

(a) the reason for termination does not reflect discredit on the employee; and

(b) the employee has worked the qualifying period.

(2) ~~The computation value of unused vacation leave is based on the employee's salary rate at the time of termination.~~ Any reason for termination as provided in this section which results in forfeiture of the lump-sum payment is subject to the appropriate grievance procedure.

(3) ~~The value of unused vacation leave is computed based on the employee's salary rate at the time of termination.~~ Payment is the responsibility of the agency from which the employee is terminating.

(4) ~~Upon termination from one position where the employee works in more than one agency, the employee shall be cashed out, as provided in section (1) of this rule, for leave accrued to that position. Accrued leave liability shall not be transferred to the position in the other agency.~~

(5) ~~If both positions are in the same agency, the agency may choose to either cash out credits accrued to the terminated position or transfer credits to the position the employee continues to fill.~~

(6) ~~Under no circumstances will an employee accrue annual vacation leave credits for more than 40 hours of work in a week.~~

AUTH: 2-18-604 MCA IMP: 2-18-617

2.21.234 TRANSFERS (1) ~~As required by provided in 2-18-617, MCA,~~ "... if an employee transfers between agencies, the employee may not receive cash compensation for unused vacation credits, of the same jurisdiction, there shall be no cash compensation for unused vacation leave. "In such a transfer the receiving agency assumes the liability for the accrued vacation leave credits transferred with the employee."

(2) If a break in service occurs during a transfer change in employment between agencies or ~~if-an~~ the employee ~~transfers~~ moves to a ~~different~~ another jurisdiction, the employee must receive a cash-out lump-sum payment for accrued vacation leave credits and must begin anew the qualifying period for use of leave at the new agency or jurisdiction.

AUTH: 2-18-604 MCA IMP: 2-18-617 MCA

2.21.241 CLOSING (1) Provisions of this sub-chapter not required by statute shall be followed unless ~~if~~ the provisions conflicts with negotiated labor contracts, which shall take precedence to the extent applicable.

AUTH: 2-18-604 MCA IMP: 2-18-611 through 617 and 621 MCA

5. These rules are proposed to be adopted, amended, and repealed to clarify the administration of annual vacation leave for state agencies.

6. Interested parties may submit their data, views or arguments concerning the proposed adoption, amendment, and repeal in writing to:

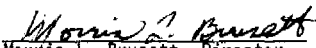
Dennis M. Taylor, Administrator
Personnel Division
Department of Administration
Room 130, Mitchell Building
Helena, Montana 59620

no later than October 15, 1982.

7. If a person who is directly affected by the proposed adoption, amendment, and repeal of rules wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to: Dennis M. Taylor, Administrator, Personnel Division, Department of Administration, Room 130, Mitchell Building, Helena, Montana 59620, no later than October 15, 1982.

8. If the agency receives requests for a public hearing on the proposed adoption, amendment, and repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption, amendment, and repeal; from the Administrative Code Committee of the Legislature; from a governmental sub-division 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 at least 25 persons.

9. The authority of the agency to make the proposed adoption, amendment, and repeal is based on Section 2-18-604, MCA, and the rules implement Sections 2-18-611 through 617 and 621, MCA.


Morris L. Brusett, Director
Department of Administration

Certified to the Secretary of State September 3, 1982

MAR Notice No. 2-2-103

17-9/16/82

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of	)	NOTICE OF PROPOSED REPEAL
rules 2.21.401 through 2.21.409	)	OF RULES 2.21.401 THROUGH
relating to military leave and	)	2.21.409 RELATING TO
the adoption of new rules	)	MILITARY LEAVE AND THE
	)	ADOPTION OF NEW RULES
)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons.

1. On October 17, 1982, the Department of Administration proposes to repeal rules 2.21.401 through 2.21.209 pertaining to military leave and adopt new rules.

2. The rules proposed to be repealed are on pages 2-641 through 2-644 of the Administrative Rules of Montana.

3. The proposed rules provide as follows:

RULE I SHORT TITLE (1) This sub-chapter may be cited as the military leave policy.

AUTH: 2-18-102, MCA IMP: 10-1-604 MCA

RULE II POLICY AND OBJECTIVES (1) It is the policy of the state of Montana to provide leave for an employee to attend training camp or other similar training of the organized militia of the state or the military forces of the United States or to attend regularly scheduled training, such as drills.

(2) It is the objective of this policy to provide leave in accordance with provisions of 10-1-604, MCA; to comply with Chapter 43 of Part III of Title 38, U.S. Code; and to comply with Article VI, Section 13, Constitution of the State of Montana.

AUTH: 2-18-102, MCA IMP: 10-1-604 MCA

RULE III DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "Employee" means any employee of the state of Montana, who has served the qualifying period.

(2) "Military leave" means a leave of absence with pay of up to 15 working days in any calendar year to attend regular encampments, training cruises and similar active duty training programs of the organized militia of the state or of the military forces of the United States.

(3) "Qualifying period" means a 6-calendar month period of continuous employment which an employee must complete to be eligible to receive military leave.

AUTH: 2-18-102, MCA IMP: 10-1-604 MCA

RULE IV ELIGIBILITY (1) A permanent, seasonal, or temporary full-time employee, who is a member of the organized state militia or the military forces of the United States and who has completed the qualifying period, is eligible to receive up to 15 working days per calendar year of military leave.

(2) A permanent, seasonal, or temporary part-time employee, who is a member of the organized state militia or the military forces of the United States and who has completed the qualifying period, is eligible to receive prorated military leave.

(3) As provided in 10-1-604, MCA, "this leave may not be charged to the employee's annual vacation time."

(4) An employee who has not completed the qualifying period is not eligible to receive military leave; however, the employee must be given time off work to attend encampments, cruises, or other similar training.

AUTH: 2-18-102 MCA IMP: 10-1-604 MCA

RULE V RATE OF COMPENSATION (1) An employee on military leave receives the regular gross salary and benefits.

AUTH: 2-18-102, MCA IMP: 10-1-604 MCA

RULE VI LEAVE NOT CUMULATIVE (1) Military leave which is not used in one calendar year may not be carried over to the next calendar year.

AUTH: 2-18-102, MCA IMP: 10-1-604 MCA

RULE VII REQUESTS FOR LEAVE (1) An agency shall establish procedures for the application for and approval of military leave.

(2) An employee shall submit a copy of his military orders with the request for military leave.

(3) The agency shall document the number of days per year of military leave taken by an employee.

AUTH: 2-18-102, MCA IMP: 10-1-604 MCA

RULE VIII MILITARY LEAVE TAKEN OVER A HOLIDAY (1) Military leave taken over a legal holiday may not be charged to an employee's account.

AUTH: 2-18-102, MCA IMP: 10-1-604 MCA

RULE IX MEMBERS OF THE NATIONAL GUARD OF THE STATE OF MONTANA (1) Employees of the state of Montana who are members of the Montana National Guard of the state of Montana may be ordered to active federal and state service by competent authority to aid in the execution of the laws, suppress insurrection, repel invasion, or protect life and property in natural disasters as provided in Article VI, Section 13 of the Constitution of Montana.

(2) When ordered to active duty for such exigencies, state employees shall have the option of taking annual vacation leave or being placed in a leave without pay status.

(3) If the employee elects to take leave without pay during the period for which ordered to active duty by the Montana National Guard, the employee shall continue to accumulate annual vacation leave, sick leave, and other employee benefits even if it extends beyond 15 working days, since the employee is paid from state monies for the time on active duty.

AUTH: 2-18-102, MCA IMP: 10-1-604 MCA

RULE X ACCOMMODATING REQUIRED DUTY (1) An agency must allow an employee to take time off to attend any required duty for which the employee presents the appropriate military orders.

(2) An agency may, at its discretion, allow an eligible employee to take military leave to cover active duty training other than encampments or cruises, for example, basic training, when an employee presents appropriate orders.

(3) Military leave shall not be taken for regularly scheduled drills.

(4) An agency is not required to allow an employee to make up any regular or overtime hours missed as a result of attending training such as drills.

AUTH: 2-18-102 MCA IMP: 10-1-604 MCA

RULE XI CLOSING (1) This policy shall be followed unless it conflicts with negotiated labor contracts which shall take precedence to the extent applicable.

AUTH: 2-18-102, MCA IMP: 10-1-604 MCA

4. These rules are proposed to be repealed and adopted to clarify the administration of military leave for state agencies.

5. Interested parties may submit their data, views or arguments concerning the proposed repeal and adoption in writing to:

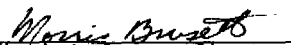
Dennis M. Taylor, Administrator
Personnel Division
Department of Administration
Room 130, Mitchell Building
Helena, Montana 59620

no later than October 15, 1982.

6. If a person who is directly affected by the proposed repeal and adoption of rules wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to: Dennis M. Taylor, Administrator, Personnel Division, Department of Administration, Room 130, Mitchell Building, Helena, Montana 59620, no later than October 15, 1982.

7. If the agency receives requests for a public hearing on the proposed repeal and adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental sub-division 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 at least 25 persons.

8. The authority of the agency to make the proposed repeal and adoption is based on Section 2-18-102, MCA, and the rules implement Section 10-1-604, MCA.


Morris L. Brusett, Director
Department of Administration

Certified to the Secretary of State September 3, 1982

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of	)	NOTICE OF PROPOSED ADOPTION OF
of new rules, repeal of rules and	)	NEW RULES, REPEAL OF RULES
amendment of rules relating to	)	2.21.135, 2.21.140 AND AMEND-
the administration of sick leave	)	MENT OF RULES 2.21.122, 2.21.132,
	)	2.21.133, 2.21.134, 2.21.137,
	)	2.21.138, 2.21.141, 2.21.142,
	)	2.21.143, 2.21.155 RELATING TO
	)	SICK LEAVE
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On October 17, 1982, the Department of Administration proposes to adopt new rules, repeal rules 2.21.135 and 2.21.140, and amend rules 2.21.122, 2.21.132-134, 2.21.137, 2.21.138, 2.21.141-143 and 2.21.155 pertaining to sick leave.

2. The proposed rules provide as follows:

RULE I POLICY AND OBJECTIVES (1) It is the policy of the state of Montana to grant executive branch state employees sick leave benefits in accordance with section 2-18-618, MCA.

(2) The objectives of this policy are to establish functional uniform procedures for calculating and granting sick leave benefits in accordance with section 2-18-618, MCA; provide interpretation required for automation of the payroll system, and ensure compliance with the State Maternity Leave Act, 39-7-203 and 204, MCA and the 1978 amendment to the Civil Rights Act of 1964 (42 USC S 20003, 78 statute 253) banning pregnancy discrimination.

AUTH: 2-18-604 MCA IMP: 2-18-618 MCA

RULE II INDUSTRIAL ACCIDENT (1) An employee who is injured in an industrial accident may be eligible for worker's compensation benefits. Use of sick leave must be coordinated with receipt of worker's compensation benefits on a case-by-case basis by contacting the Worker's Compensation Division, Department of Labor and Industry.

AUTH: 2-18-604 MCA IMP: 2-18-618 MCA

RULE III SICK LEAVE SUBSTITUTED FOR ANNUAL LEAVE (1) At the agency's discretion, an employee who experiences an appropriate use of sick leave as defined in this policy while taking approved annual vacation leave may be allowed to substitute accrued sick leave credits for annual leave credits.

AUTH: 2-18-604 MCA IMP: 2-18-618 MCA

3. The rules proposed to be repealed are on pages 2-564 and 2-566 of the Administrative Rules of Montana

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

2.21.122 DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "Abuse of sick leave" means misrepresentation of the actual reason for charging an absence to sick leave and may include chronic, persistent, or patterned use of sick leave.

~~(2) (2) "Break in service" means, absence from the state employment for more than five working days in a row without an approved leave of absence or resulting from termination or resignation.~~ as provided in 2-18-601, MCA, "a period of time in excess of 5 working days when the person is not employed and that severs continuous employment."

~~(3) (3) "Continuous employment" means, (for purposes of the qualifying period) as provided in 2-18-601, MCA, "working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days."~~

~~(4) (4) "Immediate family" means the employee's spouse and any member of the employee's household, or any parent, child, grandparent, grandchild or corresponding in-law.~~

(5) "Jurisdiction" means the sphere of authority of any state or local government.

~~(6) (6) "Qualifying period" means a 90-day period during which an employee must be continuously employed to be eligible to use sick leave credits, or to be eligible for a lump sum payment upon termination for unused sick leave credits.~~

~~(7) (7) "Sick leave" means, as provided in 2-18-601, MCA, "a leave of absence with pay for a medical condition of the employee, for a medical condition or death of an immediate family member or other relative, and for funeral attendance. sickness suffered by an employee or his immediate family."~~

~~(8) (8) "Sick leave credits" means the earned number of sick leave hours an employee is eligible to use upon completion of the qualifying period.~~

~~(9) (9) "Transfer" means, an agency-to-agency employment change in the same jurisdiction without a break in service, as provided in 2-18-601, MCA, "a change of employment from one agency to another agency in the same jurisdiction without a break in service."~~

AUTH; 2-18-604 IMP: 2-18-618

2.21.132 CONDITIONS FOR USE OF SICK LEAVE An employee may use sick leave credits for:

- (1) illness;
- (2) injury;
- (3) medical disability;
- (4) maternity related disability, including prenatal care, birth, miscarriage, abortion, or other medical care for either employee or child;
- (5) quarantine resulting from exposure to contagious disease;
- (6) medical, dental or eye examination or treatment;
- (7) care of or attendance to an immediate family member for above and care of or attendance to another relative for above at the agency's discretion; and
- (8) death or funeral attendance, for an immediate family member or, at the agency's discretion, for another person.

AUTH: 2-18-604 MCA IMP: 2-18-618 MCA

2.21.133 ACCRUAL AND USE OF SICK LEAVE CREDITS (1) As provided in 2-18-618, MCA, all employees:

~~(a) whether permanent, temporary, seasonal, part-time, or intermittent, are eligible to earn sick leave credits; All permanent, temporary, seasonal, part-time, and intermittent employees are eligible to earn sick leave credits.~~

~~(b) (2) accrue Sick leave credits accrue from the first day of employment; . and~~

~~(c) (3) An employee must be continuously employed for the qualifying period of 90 calendar days to use sick leave.~~

~~(4) Leave may not be advanced before the qualifying period is completed nor may leave be taken retroactively to cover absences which occurred before the qualifying period is completed.~~

~~(5) Unless there is a break in service, an employee only serves the qualifying period once.~~

~~(6) After a break in service, an employee must complete anew the qualifying period to use sick leave.~~

~~(2) (7) A seasonal employee's accrued sick leave credits may be:~~

~~(a) carried over to the next season if management has a continuing need for the employee; or~~

~~(b) paid out as a lump-sum to the employee when the season ends. in accordance with Rule 2.21.141.~~

~~(3) (8) When a seasonal employee carries over vacation leave credits, If sick leave credits are carried over, employment in two or more seasons is continuous employment and can be counted toward the 90-day qualifying period provided a break in service does not occur.~~

~~(4) (9) Seasonal employees must immediately report back for work when operations resume to avoid a break in service.~~

~~(5) After receipt of a lump-sum payment or after a break in service, a seasonal employee must begin anew the qualifying period to use sick leave.~~

~~(6) (10) An employee Persons simultaneously employed in two or more positions in the same or in different agencies:~~

~~(a) will accrue sick leave credits in each position according to the number of hours worked, . except overtime hours; and Only hours paid at the regular hourly rate will be counted.~~

~~(11) Sick leave credits will not accrue for overtime (those hours exceeding 40 per workweek that are paid at time and a half.)~~

~~(b) (12) Sick leave credits will be used may only use credits from the position in which the credits are earned and with approval of the supervisor or appropriate authority for that position.~~

~~(13) As provided in 2-18-618, MCA, "an employee may not accrue sick leave credits while in a leave without pay status exceeding 15 working days."~~

~~(14) An employee who is in a continuous leave without pay status for more than 15 consecutive working days may not accrue sick leave for hours in a leave without pay status during those consecutive working days in excess of 15.~~

~~(15) An employee who has worked the qualifying period for use of sick leave does not have to repeat that period upon return to work from a continuous leave of absence without pay exceeding 15 working days.~~

~~(16) An employee who has not worked the qualifying period for use of sick leave must repeat that period upon return to work from a continuous leave of absence without pay exceeding 15 working days. The employee would not lose any accrued sick leave credits but would not be eligible to use any earned sick leave credits until after working 90 continuous days.~~

(17) An employee who does not return to work from a continuous leave of absence without pay exceeding 15 working days will forfeit any sick leave credits accrued during the initial 15 days of leave of absence without pay.

AUTH: 2-18-604 MCA IMP: 2-18-618 MCA

2.21.134 CALCULATION OF SICK LEAVE CREDITS (1) As provided in 2-18-618, MCA, sick leave credits are "earned at the rate of 12 working days for each year of service" for full-time employees and are prorated for part-time employees.

(2) If an employee is regularly scheduled to work 80 hours or more in a bi-weekly period:

(a) the employee accrues 3.69 hours of sick leave credits a per pay period; and

(b) the sick leave credits are to be rounded to two digits beyond the decimal point and carried in the employee's account in that configuration.

(3) If the employee is regularly scheduled to work less than 80 hours in a bi-weekly pay period or works intermittently:

(a) the employee accrues .046 hours of sick leave credits for each hour worked; and

(b) the such sick leave credits are to be rounded to two digits beyond the decimal point and carried in the employee's account in that configuration.

(4) ~~As provided in 2-18-618, MCA, "sick leave credits shall be credited at the end of each pay period."~~ Sick leave credits are earned at the end of each bi-weekly pay period. An employee may take sick leave credits at the start of the next bi-weekly pay period.

(5) ~~As provided in 2-18-618, MCA,~~ There is no restriction as to the number of hours of sick leave credits that may be accumulated, nor to the number of accrued sick leave credits that may be used for a bona fide employee illness or disability, provided that the qualifying period has been completed.

AUTH: 2-18-604 MCA IMP: 2-18-618 MCA

2.21.137 SICK LEAVE REQUESTS (1) ~~to apply for sick leave an employee must:~~

(a) ~~complete a standard request form and submit it to the employee's immediate supervisor or appropriate authority;~~

(b) ~~submit anticipated requests for sick leave on the standard form as early as practical;~~

(c) ~~inform his supervisor or appropriate authority of the absence as soon as practical and not wait until he returns to work, when advance notice is not possible; and~~

(d) ~~receive approval in advance for medical, dental, and eye examination appointments. An agency shall establish procedures for application for and approval of sick leave in compliance with requirements of this policy.~~

(2) ~~The employee's immediate supervisor or the appropriate authority must review and approve the use of accrued sick leave credits, if not at the time the employee submits the request, then at least at the end of each pay period.~~

(2) The employee's immediate supervisor or the appropriate authority:

(a) may require medical certification of sick leave charged against any sick leave credits in the form of a physician's statement;

(3) A physician's statement may also be required to certify that the illness of a family member requires the immediate supervision of the employee.

(b) (4) ~~must inform the~~ Employees must be informed in advance of return to work if a physician's statement is required; and

(e) (5) ~~must require~~ Certification of maternity-related disabilities will be obtained in the same manner and under the same conditions as certification for other disabilities.

(6) The documentation of request for leave should contain sufficient detail so that improper use of sick leave credits can be discovered and corrected.

AUTH: 2-18-604 MCA IMP: 2-18-618 MCA

2.21.138 SICK LEAVE RECORDS ~~To maintain sick leave records:~~

(1) ~~documentation of~~ An employee's sick leave credits earned and sick leave credits used must be maintained recorded by each agency; the Payroll/Personnel/Position Control system.

(2) ~~documentation must contain sufficient detail so that improper use of sick leave credits can be discovered and corrected;~~

(3) (2) Sick leave credits used must be recorded to the nearest one-half hour when fractions of hours are used;

(4) ~~at the end of each calendar year, new employee leave records must be created;~~

(5) ~~once a year the employee must be notified of the amount of sick leave credits accrued and used and verify that the balance is accurate.~~

(3) Adjustments to an employee's accrual and use totals should be reported to the agency payroll clerk on a bi-weekly basis.

AUTH: 2-18-604 MCA IMP: 2-18-618 MCA

2.21.141 LUMP-SUM PAYMENT UPON TERMINATION (1) ~~As provided in 2-18-618(5), MCA,~~ When an employee terminates employment with an agency, the employee is entitled to a lump-sum payment for unused sick leave credits equal to one-fourth of the compensation the employee would have received if the employee had used the credits; ~~provided the employee has worked the qualifying period.~~

(2) As required by 2-18-618(6), MCA, "an employee who receives a lump-sum payment . . . and is again employed by any agency shall not be credited with any sick leave for which the employee has previously been compensated."

(3) ~~The computation value of unused sick leave is computed based on the employee's salary rate at the time of termination. Payment is the responsibility of the agency from which the employee is terminating.~~

(4) As provided in 2-18-618(5), MCA, "accrual of sick leave credits for calculating the lump-sum payment . . . begins July 1, 1971."

(5) ~~The payment is the responsibility of the last employing agency from which the employee is terminating.~~

(6) (5) ~~As provided in 2-18-618(5), MCA,~~ Employees retain sick leave credits earned before July 1, 1971, if recorded by the agency prior to that date.

(7) (6) Sick leave credits earned prior to July 1, 1971, can be transferred between agencies, but are not eligible for lump-sum payment when an employee terminates.

(8) (7) Sick leave credits earned prior to July 1, 1971, must be used first.

(8) Upon termination from one position where the employee works in more than one agency, the employee shall be cashed out, as provided in this rule,

for leave accrued to that position. Accrued leave liability shall not be transferred to the position in the other agency.

(9) If both positions are in the same agency, the agency may choose to either cash out credits accrued to the terminated position or transfer credits to the position the employee continues to fill.

(10) Under no circumstances will an employee accrue sick leave credits for more than 40 hours of work in a week.

AUTH: 2-18-604 IMP: 2-18-618 MCA

2.21.142 TRANSFERS (1) As required by 2-18-618(5), MCA, If "an employee transfers between agencies +---+ in the same jurisdiction, "the employee may shall not receive cash compensation for unused sick leave credits, . and the receiving agency assumes the liability for the accrued sick leave credits transferred with the employee."

(2) In such a transfer the receiving agency assumes the liability for the accrued sick leave credits transferred with the employee.

(2) (3) If a break in service occurs during a transfer change in employment between agencies, or the employee moves to another jurisdiction, the employee must receive a lump-sum payment for accrued sick leave credits earned after July 1, 1971, and must begin anew the qualifying period at the new agency.

(3) If an employee transfers to a different jurisdiction the employee must receive a lump-sum payment for sick leave credits and the employee must work the qualifying period in the new jurisdiction to be eligible to use any sick leave.

AUTH: 2-18-604 IMP: 2-18-618 MCA

2.21.143 ABUSE OF SICK LEAVE (1) As provided in 2-18-618, MCA, "abuse of Misrepresentation of the actual reason for charging an absence to sick leave is cause for dismissal and forfeiture of the lump-sum payment."

(2) Abuse of sick leave is misrepresentation of the actual for charging an absence to sick leave. Chronic, consistent, or patterned use of sick leave may be subject to progressive discipline. (See the Discipline Handling policy.)

(3) Improper absences may be charged to available compensatory time or without pay. Absences improperly charged to sick leave may, at the agency's discretion, be charged to available compensatory time or leave without pay. Annual leave may be used at the mutual agreement of the employee and the agency.

(4) Any charges of sick leave abuse that result in an employee's dismissal and forfeiture of the lump-sum payment are subject to that agency's the appropriate grievance procedure.

AUTH: 2-18-604 IMP: 2-18-618 MCA

2.21.155 CLOSING (1) This sub chapter Provisions of this policy not required by statute shall be followed unless it they conflicts with negotiated labor contracts, which will take precedence to the extent applicable.

(2) The form mentioned is available from the department of administration, publications and graphics division.

AUTH: 2-18-604 IMP: 2-18-618 MCA

5. These rules are proposed to be adopted, amended, and repealed to clarify the administration of sick leave by state agencies.

6. Interested parties may submit their data, views or arguments concerning the proposed adoption, amendment and repeal in writing to:

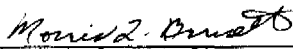
Dennis M. Taylor, Administrator
Personnel Division
Department of Administration
Room 130, Mitchell Building
Helena, Montana 59620

no later than October 15, 1982.

7. If a person who is directly affected by the proposed adoption, amendment and repeal of rules wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to: Dennis M. Taylor, Administrator, Personnel Division, Department of Administration, Room 130, Mitchell Building, Helena, Montana 59620, no later than October 15, 1982.

8. If the agency receives requests for a public hearing on the proposed adoption, amendment and repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption, amendment and repeal; from the Administrative Code Committee of the Legislature; from a governmental sub-division 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 at least 25 persons.

9. The authority of the agency to make the proposed adoption, amendment and repeal is based on Section 2-18-604, MCA, and the rules implement Section 2-18-618, MCA.



Morris L. Brusett, Director
Department of Administration

Certified to the Secretary of State September 3, 1982

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF MORTICIANS

IN THE MATTER of the proposed)	NOTICE OF PUBLIC HEARING ON
amendments of ARM 8.30.406 con-) THE PROPOSED AMENDMENTS OF	
cerning examinations; 8.30.407) ARM 8.30.406 EXAMINATIONS;	
concerning renewals; 8.30.602) 8.30.407 RENEWALS; 8.30.602	
concerning disclosure of funer-) DISCLOSURE OF FUNERAL ARRANGE-	
al arrangements; 8.30.605 con-) MENTS; 8.30.605 DISCLOSURE	
cerning the disclosure state-) STATEMENT; proposed repeal	
ments; proposed repeal of 8.30.) of 8.30.410 SUSPENSION AND	
410 concerning suspension and) REVOCATION; and proposed adop-	
revocation and proposed adop-) tion of a NEW SUB-CHAPTER 5,	
tion of a new sub-chapter 5) CONTINUING EDUCATION, rules	
concerning continuing education) I through XII and a NEW SUB-	
rules and a new sub-chapter 7) CHAPTER 7, RULES OF PROFES-	
concerning rules of profes-) SIONAL CONDUCT, rules XIII	
sional conduct.)	through XVIII

TO: All Interested Persons:

The notices of proposed Board of Morticians action published in the Administrative Registers on July 29, 1982 and August 12, 1982 is amended as follows because the required number of persons designated therein have requested a public hearing. The notices were published at pages 1428 through 1439, issue number 14 and pages 1498, issue number 15.

1. On Friday, October 8, 1982 at 10:00 a.m., a public hearing will be held in the auditorium of the Scott Hart building, 303 Roberts, Helena, Montana to consider the above entitled rule changes.

2. The proposed action is as noticed in the 1982 Montana Administrative Registers, issues 14 and 15, page numbers as shown above.

3. The changes are proposed for the reasons stated in those two notices.

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 Board of Morticians, 1424 9th Avenue, Helena, Montana, no later than October 14, 1982.

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

6. The authority of the board to make the proposed changes is based on sections 37-1-134, 37-1-136, 37-19-202, 315, 316, 403, MCA and implements sections 37-1-134, 136, 37-19-302, 303, 301, 304, 306, 403, 311, 315, 316, and 404, MCA.

BOARD OF MORTICIANS
VERNON VIAL, CHAIRMAN

BY:

GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 3, 1982.

17-9/16/82

MAR Notice No. 8-30-11

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of amendment of) rules governing special educa-) tion programs of the public) schools of the state of Mon-) tana.)	NOTICE OF PROPOSED AMENDMENT OF CHAPTER 16, SPECIAL EDU- CATION. NO PUBLIC HEARING CONTEMPLATED
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TO: All Interested Persons.

1. On October 18 the superintendent of public instruction proposes to amend rules found in Chapter 16, Special Education, which govern special education programs in the public schools of the state of Montana.

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

10.16.902 PARENTAL NOTIFICATION AND APPROVAL FOR TESTING, FORMAL EVALUATION AND INTERVIEWING.

(1) and (2) Remain the same.

(3) Prior to an evaluation or a reevaluation, the parent shall be provided with a written notice of intent to conduct an evaluation/reevaluation (~~Rule-10-16-1002--Sample-Forms~~). The written notice must be written in language understandable to the general public and provided in the native language of the parents. Where the native language of the parents is not in written form, interpretation shall be provided orally in the native language. The written notice will be delivered to the parent during a personal conference or by certified mail. Oral interpretation shall always be made available in the native language of the home and in English. When necessary, arrangements shall be made to facilitate communication with hearing and visually-impaired parents.

(a) through (c) Remains the same.

(4) Written parental consent to conduct the evaluation must be obtained prior to the evaluation process (~~Rule-10-16-1002--Sample-Forms~~). In addition to written parental permission to evaluate/reevaluate, the local agency should obtain written parental acknowledgement of receipt and understanding of the notice of intent. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

10.16.903 WRITTEN NOTIFICATION BEFORE CHANGE IN EDUCATION PLACEMENT/PROGRAM.

(1) Remains the same.

(2) The form to be used to notify parents of the proposed change in the educational placement/program or to deny initiation of a requested program should be included. (~~Rule-10-16-1002--Sample-Forms~~)

(3) The notice of placement/program change should include the following:

(a) a description of the proposed educational program, the reasons why the proposed placement is deemed appropriate, or the reasons why the requested program is being denied and the reasons why it is the least restrictive program setting appropriate for the education of the child;

(b) through (g) Remain the same. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

10.16.1002 STORAGE OF PUPIL RECORDS AND CUSTODY OF ASSESSMENT DATA.

(1) Remains the same.

(2) Local school districts shall provide public notices advising the public of procedures that have been established by the local school district board of trustees to protect confidentiality of the children's records.

(a) data items to be collected and maintained by local school districts will include, in addition to those required in ~~Standard-161~~, Standards for Accreditation of Montana Schools, professional diagnostic information, services needed and provided, and items related to cost accounting. If other personally identifiable information is to be collected in the future, the district shall advise parents.

(b) Remains the same.

(c) each participating school district and/or other participating agencies will be required to provide the superintendent of public instruction with a written notice which will assure the superintendent that personally identifiable data collected by that agency will be maintained in a confidential manner. In addition to the requirements found in ~~Standards-161 and-162~~, Standards for Accreditation of Montana Schools, this notice must include.

(i) through (iv) Remain the same. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

10.16.1003 DESTRUCTION OF DATA

(1) and (2) Remain the same.

(3) ~~Standards-161-and-162~~, Standards for Accreditation of Montana Schools shall also be followed by Montana schools. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

10.16.1101 PROTECTION IN EVALUATION PROCEDURES.

(1) Remains the same.

(2) (a) through (2) (f) Remains the same.

(g) the cultural differences of a child are taken into account in interpreting the assessment information.

(h) through (j) Remain the same. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

10.16.1102 INDEPENDENT EDUCATION EVALUATION.

(1) Remains the same.

(2) ~~Requests by parents for an independent educational evaluation should be made to the district superintendent or county superintendent when there is no district superintendent.~~ The parents must state the reason(s) for their request for an independent evaluation. The local school district utilizing special education funds is responsible for the financial expense of the independent evaluation. Advance approval of any contract for an independent evaluation must be obtained from the superintendent of public instruction.

(3) Remains the same. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

10.16.1108 OPPORTUNITIES TO PRESENT COMPLAINTS.

- (1) Remains the same.
- (2) Whenever a complaint has been received, the parents shall have an opportunity for an impartial due process hearing. ~~The hearing process as outlined in Sub-Chapter 14 of this manual shall be followed.~~ (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

10.16.1203 EVALUATION BY THE CHILD STUDY TEAM.

- (1) Remains the same.
- (2) Assessment results shall be summarized in writing, dated, and signed by the individual(s) responsible for conducting the assessments. The report shall be kept with the child's permanent records as required in Standard 161, Standards for Accreditation for of Montana Schools.
- (3) and (4) Remain the same.
- (5) Since conditions which cause a child to be handicapped can have the effect of depressing or distorting standardized intelligence and achievement test scores, these scores should not be used as the only criterion in determining a child's need for services. ~~Therefore, a child study team in conjunction with the parents will determine the appropriate educational program for a handicapped child.~~
- (6) ~~Individual tests of mental measurement (IQ results) done by an agency may be utilized by a child study team if that agency is recognized by the superintendent of public instruction (i.e., Child Development Center, Mental Health Center, Boulder River State School and Hospital). Psychologists participating on a child study team must be approved by the superintendent of public instruction.~~ When a school psychologist and child study team utilize the test results of another agency or person, that school district assumes responsibility for accuracy of the psychological information.
- (7) Remains the same. (Auth. Sec. 20-7-403, MCA; IMP, 20-7-403, MCA.)

10.16.1205 COMPOSITION OF SPECIFIC CHILD STUDY TEAMS.

- (1) Remains the same.
- (2) In addition to the core team, a physician's report and pertinent medical information shall be obtained and utilized in the ~~development of the child's individualized education program~~ comprehensive evaluation for a child who is orthopedically impaired.

The child study team shall determine the child's educational needs resulting from the orthopedic handicap including the need for changes in the physical environment, physical therapy, and occupational therapy. Physical and occupational therapy are the school's responsibility only if the orthopedic problem interferes with the student's ability to acquire academic and vocational skill. Generally orthopedically handicapped children should be accommodated in the regular classroom, unless there is a significant orthopedic handicap.

- (3) In addition to the core team, where a child is visually handicapped, a vision consultant should be utilized by the child study team when indicated by the severity of the handicap. The team shall also utilize a current evaluation from an ophthalmologist or optometrist.

~~The team must develop an appropriate educational program-- based on a comprehensive team assessment.~~ District and state services should be coordinated to ensure comprehensive services without unnecessary duplication.

(4) In addition to the core team where a child is hearing impaired, a consultant for the hearing impaired, audiologist, and speech pathologist may be needed. The team shall also utilize a physician's report and pertinent medical information. ~~The team will develop an appropriate educational program based on a comprehensive team assessment.~~ District and state services should be coordinated to ensure comprehensive services without unnecessary duplication.

(5) through (8) Remain the same. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

10.16.1211 STUDENT TRANSFERS.

(1) If a student transfers to a school district and has previously been in a self-contained special education program, the district may place the child in a similar program on a temporary basis provided parental consent is obtained. The temporary placement is only to provide the school district time to complete a comprehensive evaluation and establish the child study team process to determine the handicapping condition as well as the most appropriate placement. This temporary placement shall not extend ~~to~~ beyond a maximum of six weeks. (Auth. Sec. 20-7-403, MCA; IMP, 20-7-403, MCA.)

10.16.1212 PROMOTION OF STUDENTS FROM ELEMENTARY TO SECONDARY PROGRAMS. (1) Promotion of handicapped students from elementary to junior high and from junior high to senior high are developed and function between each level of educational instruction. Chronological age and physical development should be a strong factor in the decision to move a student from the junior to the senior high. Consideration also must be given to the least restrictive educational principle in planning for promotion.

(2) Remains the same. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

10.16.1309 CONTRACTED SERVICES. A school district may serve a handicapped child through contracted services. The contracted services may be diagnostic and/or instructional. ~~When instructional services are to be contracted, the educational objectives must be stated in the proposed contract and sent to the superintendent of public instruction for approval.~~ (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

10.16.1310 OUT-OF-DISTRICT SERVICES.

(1) through (3) Remain the same.

(4) It is the resident district's responsibility to convene the child study team and set the time and place for conducting a review of the child's needs and educational placement. The receiving district is responsible for providing program monitoring and assisting the resident district with conducting an annual review of the child's program and progress. The receiving district shall provide pertinent data regarding the child's program and progress to the resident district and parents.

(5) Remains the same.

~~(6) Travel funds to facilitate this process must be approved by the office of public instruction prior to the two districts convening a joint child study team.~~

(6) {7} A regional service cooperative staff may provide supportive services when such services are not available through the local district. Please refer to Rule 10.16.1204, Composition of a Core Child Study Team.

(7) {8} The resident school district is required to budget for room and board costs (0555-Transportation) in its special education budget. Budget approval does not mean the school district has authorization to send a specific child out of district. Approval shall also be obtained from the school district or agency which is providing the services. Program evaluation is the responsibility of both the resident school district and the providing school district or agency.

(8) {9} If a handicapped child is placed out-of-state, tuition charges are covered under Contracted Services 01-01-0280.

(9) {10} It is the responsibility of the resident school district to ensure that an out-of-district living facility is an appropriately licensed facility. An inquiry should be made to the local social and rehabilitation services division to secure appropriate facilities. The local division can provide the procedures by which a home can be licensed. Payment schedules should follow rates set by social and rehabilitation services division. Any deviation from that schedule should be based on severity of handicap and shall receive concurrence from social and rehabilitation services and approval from the superintendent of public instruction. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

10.16.1311 RESPONSIBILITIES FOR OUT-OF-DISTRICT SERVICES.

(1) Remains the same.

(2) (a) Remains the same

(2) (b) assure that the child study team, in recommending out-of-district placement, has:

(i) identified service options outside of the district,

~~(ii) specified date requested for placement, and-- outlined reasons why services cannot be provided by resident district; and~~

(iii) specified date requested for placement.

(c) Remains the same.

(d) ~~will~~ make transportation arrangements;

(e) ~~will~~ specify criteria for the student's return to the resident district; and

(f) ~~will~~ outline provisions for program monitoring and annual review.

(3) through (6) Remain the same. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

10.16.1701 SPECIAL EDUCATION TEACHERS

(1) and (2) Remain the same.

~~(3)--Provisional approval, until July 1, 1978, to teach special education may be granted by the superintendent of public instruction to an individual who has a valid teaching certificate and at least 15 quarter hours in special education and~~

~~is on a planned program with an accredited college or university to complete that institution's approved major or minor in special education.~~

~~(4) A teacher of the hearing-impaired will not be approved for funding if the teacher only has provisional approval for a special education endorsement. The teacher's training must be in the area of hearing-impaired through an approved program with an accredited college or university. (Auth. Sec. 20-7-403, MCA; IMP. Sec. 20-7-403, MCA.)~~

~~10.16.1704 SCHOOL PSYCHOLOGISTS. The superintendent of public instruction will approve persons to administer, score, and interpret individual tests of learning aptitude (I.Q.) insofar as these persons present an acceptable transcript of university or college courses adhering to the criteria set forth below:~~

~~(1) master's degree or fifth year in the pupil personnel services area that include the work set out below:~~

~~(a) twenty-one quarter-hour credits of undergraduate and graduate course work in the area of psychological foundations:~~

- ~~(i) general psychology;~~
- ~~(ii) educational psychology;~~
- ~~(iii) developmental psychology;~~
- ~~(iv) social psychology;~~
- ~~(v) learning;~~
- ~~(vi) physiological psychology;~~
- ~~(vii) personality;~~
- ~~(viii) abnormal psychology;~~
- ~~(ix) statistics; or~~
- ~~(x) research methods.~~

~~(b) twenty-one quarter-hour credits, of which not more than 12 hours may be undergraduate, in the area of psychological methods and techniques, including but not restricted to:~~

- ~~(i) individual intelligence testing (REQUIRED);~~
- ~~(ii) group intelligence and achievement testing;~~
- ~~(iii) personality assessment;~~
- ~~(iv) educational evaluation measurement;~~
- ~~(v) interviewing and counseling;~~
- ~~(vi) behavior modification and precision teaching;~~
- ~~(vii) school psychology practicum (STRONGLY RECOMMENDED--6 hours or letter of endorsement required); or~~
- ~~(viii) mental hygiene.~~

~~(c) seventeen quarter-hour credits, of which no more than 12 hours may be undergraduate, in the area of educational foundations and school organization and programs, including but not restricted to:~~

- ~~(i) history of education;~~
- ~~(ii) social foundation of education;~~
- ~~(iii) educational philosophy;~~
- ~~(iv) remedial instruction--speech, arithmetic, reading;~~
- ~~(v) school administration or supervision or curriculum;~~
- ~~(vi) school practices and methods of teaching;~~
- ~~(vii) school guidance programs;~~
- ~~(viii) education programs for exceptional children--organization, methods and materials; or~~

(ix)-----mental retardation.

(2)---The college or university person responsible for the applicant's learning aptitude testing program must submit a letter of endorsement to the superintendent of public instruction if the individual does not have a minimum of six quarter hours in a school psychology practicum.---A person who has met all of the aforementioned requirements is authorized to perform psychological services for exceptional children with written approval from the superintendent of public instruction.

(3)---Persons satisfying these criteria will receive a letter of authority from the office of public instruction of administer,---score,---and interpret individual tests of learning aptitude and to participate on child study teams as a school psychologist. Their authority to test is contingent upon confining their services to students enrolled in districts in which they are providing services.---in no way is this authority to be construed as licensure of psychologists or an endorsement for the private practice of psychology or for contracting directly with parents to test a child or children.---This authorization to administer, score, and interpret individual tests will be valid for six years and renewed upon evidence of satisfactory performance. As of July 1, 1984 Class 6 Certification will be required for all school psychologists. Until July 1, 1984 Class 6 Certification or school psychologist approval prior to 1980 is required. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

10.16.1712 TEACHER Aides. There is no certification requirements for teacher aides. School districts may establish any requirement felt necessary for these positions. It should be recognized that aides are not trained teaching personnel and should be under the supervision of professional staff and not in the primary teaching role. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

10.16.2003 ROOM AND BOARD APPROVAL. Room and board expenditures must be approved by the superintendent of public instruction. This approval is in addition to budget authority approval. The school district must submit a written request to the superintendent of public instruction to send a special education student(s) to another district (or agency). This request must include the student(s) initials and date of both birth, the name of the receiving agency, and an explanation which includes a statement of the problem and the reason services cannot be provided by the district. The foster home or the agency must be licensed to receive room and board funds. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

10.16.2004 PRESCHOOL PROGRAMS. (1) Educational programs may be developed for preschool handicapped children age three zero through five providing the district obtains prior written approval from the office of public instruction.

(2) Remains the same. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

10.16.2101 SPECIAL EDUCATION PUPIL (1) If a student spends less than half his time in the regular program and the balance of his time in school in the special education program,

he shall be considered a full-time special pupil but shall not be considered regularly enrolled for ANB purposes. If a student spends half or more of his time in the regular program and the balance of his time in the special education program, he shall be considered regularly enrolled for ANB purposes. ~~The number of full-time special education students for the current year will be used in establishing the ensuing year's special education budget. This definition is applicable to these line items which are determined by C and D calculations as defined in this subchapter.~~

(2) The specific number of full-time special education pupils is determined by using class assignments as of ~~February-December 1~~ of the current year. Documentation of this determination must be reduced to writing and kept within the special education files for reference. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

10.16.2104 TRANSFER OF LINE ITEM AMOUNTS. (1) The trustees of any district may transfer amounts between line items in the special education budget, ~~except that transfer into a line item that has reached the maximum statutory limitation is now allowed. All items that are determined by either C, D or E calculations (see Rule 10-16-2201) have limitations. Transfer out of these items is permissible.~~

(2) Remains the same. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

10.16.2107 SPECIAL EDUCATION CHILD ELIGIBILITY FOR TRANSPORTATION.

(1) Remains the same.

(2) Special student transportation for handicapped children to and from school is not an allowable cost under the special education budget in the general fund. Budget authority for transportation of handicapped children must be established in the transportation fund of the local school district and must follow the budgeting procedures established in the School Finance and Statistics Reference Manual, Topic 12, pages five and 23, and in accordance with Section 20-7-442, MCA. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

10.16.2301 FEDERAL PROGRAMS GENERALLY. (1) There are several federal programs which have a portion of the program charged to serve handicapped children. Specific regulations published by each program must be followed as well as the Special Education Rules and Regulations Administrative Rules of Montana. If the Special Education Rules and Regulations Administrative Rules of Montana are in conflict with the federal requirements, then the federal requirements supersede. The office of public instruction staff assigned to the federal program as well as the special education program staff will work cooperatively to assist districts to design a program which optimizes resources for children and takes into account both federal and state program regulations. If the handicapped portion of the federal program is not to be funded federally on an ongoing basis and is eventually going to be assumed by the local district utilizing special education funding, particular attention should be made to following the Special Education

Rules--and--Regulations Administrative Rules of Montana
to assure smooth conversion from federal program to the state program.

~~(2)--Federal programs that have set aside provisions for--
handicapped children include ESEA Title IV and Vocational Edu--
cation Special Needs.--School districts which are making ap--
plication under these two programs for service to handicapped--
children should submit their proposal to the Special Education
Regional Council for the Council's recommendation-- (Auth. Sec.
20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)~~

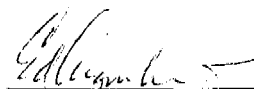
3. The rules are proposed to be amended to correct typographical errors, to correct inaccurate statements, and to facilitate rule changes at the state and federal levels.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Rick Bartos, Legal Services, Office of Public Instruction, State Capitol, Helena, Montana 59620, no later than October 15, 1982.

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 the public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Rick Bartos, Legal Services, Office of Public Instruction, State Capitol, Helena, Montana 59620, no later than October 15, 1982.

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 1,689 persons based on the 16,888 special education students in the state of Montana.

7. The authority and implementing sections are listed at the end of each rule.



Ed Argenbright
Superintendent of Public Instruction

Certified to the Secretary of State, September 3, 1982.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of repeal of)	NOTICE OF PROPOSED REPEAL OF
rules governing special educa-) RULES CONTAINED IN CHAPTER	
tion programs in the public) 16, SPECIAL EDUCATION.	
schools of the state of Mon-) NO PUBLIC HEARING	
tana.) CONTEMPLATED	

TO: All Interested Persons

1. On October 18 the superintendent of public instruction proposes to repeal rules:

Sub-Chapter 1, Responsibilities of the Superintendent of Public Instruction, Rule 10.16.101 through Rule 10.16.103. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

Sub-Chapter 2, Definitions, Rule 10.16.201 through Rule 10.16.211. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

Sub-Chapter 3, Hearing, Rule 10.16.301 through Rule 10.16.311. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

Sub-Chapter 4, Administrative Appeal, Rule 10.16.401 through 10.16.405. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

Sub-Chapter 5, Impartial Hearing Officer, Rule 10.16.501 through 10.16.503. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

Sub-Chapter 6, Hearing on Application to the Superintendent of Public Instruction, Rule 10.16.601 through Rule 10.16.609. (Auth. Sec. 20-7-403, MCA; IMP, 20-7-403, MCA.)

Sub-Chapter 7, Impartial Hearing Officer, Rule 10.16.701 through 10.16.703. (Auth. Sec. 20-7-403, MCA; IMP, 20-7-403, MCA.)

Sub-Chapter 8, Establishment of Special Education and Compulsory Attendance, Rule 10.16.801 through 10.16.804. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

Sub-Chapter 11, Evaluation Procedures, Rule 10.16.1109 CIVIL ACTION. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

Sub-Chapter 19, Budget and Program Applications, (Auth. Sec. 20-3-403, MCA; IMP, Sec. 20-7-403, MCA.)

Rule 10.16.1901 SUBMISSION DATES AND APPROVAL TIMELINES. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

Rule 10.16.1903 PROGRAM UNITS. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

Sub-Chapter 20, Budget and Program Approved by The Superintendent of Public Instruction, (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

Rule 10.16.2002 HOMEBOUND AND/OR HOSPITALIZED SERVICE. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

Rule 10.16.2006 POST HIGH SCHOOL PROGRAMS. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

Rule 10.16.2007 RENTAL OF FACILITIES. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

Rule 10.16.2008 REMODELING FACILITIES FOR PHYSICALLY HANDICAPPED. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

Rule 10.16.2009 CONTRACTED SERVICES. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

Rule 10.16.2010 LEARNING DISABLED, EXCEEDING TWO PERCENT. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

Sub-Chapter 21, Special Education Budgets - Definitions, (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

Rule 10.16.2108 CALCULATIONS FOR BUDGETING PURPOSES. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

Sub-Chapter 22, Special Education Budget, (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

Rule 10.16.2202 COMPUTATION AND LIMITATIONS. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

Sub-Chapter 23, Federal Programs, (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

Rule 10.16.2302 ELEMENTARY AND SECONDARY EDUCATION ACT, TITLE 1. (Auth. Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA.)

2. The rules proposed to be repealed are on pages 10-217 through 10-283 of the Administrative Rules of Montana.

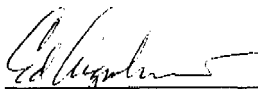
3. The agency proposes to repeal these rules because they are either covered in state law, no longer required by federal or state regulation, or are covered in the superintendent of public instruction's newly adopted uniform rules of procedure for all school controversy contested cases before the county superintendents of the state of Montana (Chapter 6 of Title 10).

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Rick Bartos, Legal Services, Office of Public Instruction, State Capitol, Helena, Montana 59620, no later than October 15, 1982.

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 Rick Bartos, Legal Services, Office of Public Instruction, State Capitol, Helena, Montana 59620, no later than October 15, 1982.

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 1,689 persons based on the 16,888 special education students in the state of Montana.

7. The authority and implementing sections are listed at the end of each rule.



Ed Argenbright
Superintendent of Public Instruction

Certified to the Secretary of State, September 3, 1982.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF PUBLIC HEARING ON
of Rule 12.6.901 relating to)	PROPOSED AMENDMENT OF RULE
water safety regulations)	12.6.901 WATER SAFETY
)	REGULATIONS

TO: All Interested Persons.

1. On October 14, 1982, at 7:00 p.m., a public hearing will be held at the Great Falls Civic Center, City Commission Chambers, 2nd Floor, Great Falls, Montana, to consider the amendment of Rule 12.6.901.

2. The proposed amendment would restrict a portion of Canyon Ferry Reservoir in Broadwater County and a portion of the Missouri River near Great Falls to no-wake speed.

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

12.6.901 WATER SAFETY REGULATIONS (1)(a) and (b) remain the same.

(c) The following waters are limited to a controlled no wake speed. No wake speed is defined as a speed whereby there is no "white" water in the track or path of the vessel or in created waves immediate to the vessel:

Broadwater County: (A) on Canyon Ferry Reservoir: White Earth, and Goose Bay, and the Silos, within 300 feet of dock or as buoyed;

Carbon County: (A) on Cooney Reservoir: all of Willow Creek arm as buoyed;

Cascade County: (A) Missouri River: the east portion of Broadwater Bay as buoyed between the Highway 91 bridge (Warden Bridge) on the south to the Burlington Northern Railway Bridge No. 1194;

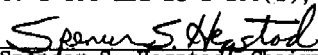
(remainder of rule remains the same)

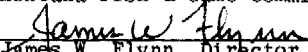
4. The department is proposing this amendment because of numerous requests from Great Falls and Broadwater County residents in the interest of public safety and protection of property.

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 Bob Chesterfield, Dept. Fish, Wildlife, & Parks, RR4041, Great Falls, MT 59405, no later than October 14, 1982.

6. Kevin Meek, Staff Attorney, Dept. Fish, Wildlife, & Parks, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendments is based on Sections 87-1-303 and 23-1-106(1), MCA and the rule implements Sections 87-1-303 and 23-1-106(1), MCA.


Spencer S. Hegstad, Chairman
Montana Fish & Game Commission


James W. Flynn, Director
Dept. Fish, Wildlife, & Parks

Certified to Secretary of State September 2, 1982

17-9/16/82

MAR Notice No. 12-2-111

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

In the matter of the repeal	)	NOTICE OF PROPOSED REPEAL
of ARM 16.28.711, requiring	)	OF ARM 16.28.711
schools to report exempted	)	AND PROPOSED AMENDMENT
pupils, and the amendment of	)	OF ARM 16.28.712
ARM 16.28.712, summary report	)	AND ARM 16.28.705
of immunization status, and)	
ARM 16.28.705, establishing)	
accepted documentation of)	
immunization status of pupils	)	(School Immunization)
enrolling for the first time)	
after July 1, 1981	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 18, 1982, the department proposes to repeal rule 16.28.711, which requires schools to file reports of pupils exempted from immunization requirements, and to amend rule 16.28.712, requiring a summary report of the immunization status of each school's pupils, and rule 16.28.705, establishing the type of documentation of immunization status which may be accepted by schools for students enrolling for the first time after July 31, 1981.

2. The rule proposed to be repealed can be found on pages 16-1231 and 16-1232 of the Administrative Rules of Montana.

3. Rules 16.28.705 and 16.28.712 as proposed to be amended provide as follows:

16.28.705 DOCUMENTATION OF IMMUNIZATION STATUS OF PERSONS
ENROLLING IN SCHOOL FOR THE FIRST TIME AFTER JULY 31, 1981

(1) Immunization data may be accepted by a school only if submitted must be kept on the department's certificate of immunization form and signed by a physician, physician's designee, local health officer, or that officer's designee, except if the data is submitted to the school on that form.

(2) If the documentation has not been provided to the school on the department's certificate of immunization form:

(a) immunization data must be transferred onto that form from one or more of the other types of documentation listed in subsection (3) below by November 15 of the year the pupil is first enrolled, or if attendance commences later than November 1 of that year, within 15 days after commencement of attendance; and

(b) the certificate of immunization must be signed by the person transferring the information, rather than a physician, physician's designee, local health officer, or that officer's designee.

(3) Immunization data may be transferred onto the certificate of immunization form from one or more of the types of documentation listed below:

(a) if immunization was performed outside of Montana, the school may accept the following documentation:

(i) (a) an official school medical record from any school;

(ii) (b) a record from any public health department, signed by a public health officer or nurse;

(iii) (c) a certificate signed by a physician;

(iv) (d) the international certificates of vaccination approved by the World Health Organization;

(v) (e) for measles (rubeola) only, a letter or statement signed by a physician indicating that the person had measles (rubeola) disease, with the date of diagnosis indicated;

(b) (f) data from the official parent-maintained immunization record of Montana or any other state may be accepted if signed by a physician, physician's designee, local health officer, or that officer's designee.

(g) any parent-maintained immunization record, if information has been verified by a physician, physician's designee, local health officer, or that officer's designee.

(e) if documentation of immunization comes from either (a) or (b) above, the data must be transferred to a certificate of immunization form and signed by the person performing the transfer by November 15 of the year the documentation is submitted, or, if commencement of attendance occurs later than October 1, within 45 days after the person commences attendance-

AUTHORITY: Sec. 20-5-407 MCA

IMPLEMENTING: Sec. 20-5-406 MCA

16.28.712 SUMMARY REPORT OF IMMUNIZATION STATUS (1) A report of the immunization status of the pupils in every school must be sent each year to the department by the principal or other person in charge of a school on a form provided by the department.

(2) During the 1981-1982 school year, the report of immunization status must include the status of all pupils through January 15, 1982, and must be submitted by February 1, 1982.

(3) For the 1982-1983 school year and each year thereafter, the report may either be limited in coverage to the immunization status of pupils enrolling in school for the first time and transfer students who commence attendance at that school by October 15 of each school year, or must include the immunization status of all pupils who commence attendance on or before November 15 and The report must be submitted by December 1 of each school year.

(4) A copy of the report must be sent concurrently from the school to the local health department, or, if there is no local health department, to the local board of health.

(5) The school must keep a record of any change in immunization status of a pupil from that stated on the summary report, plus the immunization status of any transfer pupil commencing attendance after ~~October 15~~ November 15 of the

pertinent school year. Such records must be available upon request to the department or local health authority.

AUTHORITY: Sec. 20-5-407 MCA

IMPLEMENTING: Sec. 20-5-408(2) MCA

4. The rationales for the proposed repeal and amendments contained in this notice are as follows:

a. Rule 16.28.711, which requires schools to report in October of each school year those pupils exempted from immunization requirements, is proposed to be repealed because school enrollment is often still in flux that early in the school year, making complete compliance difficult; and because the same information can be gotten from the report due in December, by revision of the summary report form to include exempted pupils as well (see ARM 16.28.712 and its proposed revision in this notice). The burden on schools will thereby be eased by requiring them to submit one report instead of two, and at a more relaxed time of the year, also thereby increasing the completeness and reliability of the data the department receives.

b. Rule 16.28.712 is proposed to be amended because its references to a "summary" report are no longer accurate since the report form will include a segment for listing exempted pupils individually; because changing the cutoff date from October 15 to November 15 for those pupils to be included will give more complete statistics while preserving a reasonable amount of time to prepare the report, and because all students in a school, rather than new enterers only, should be included for statistics to be valid.


c. Rule 16.28.705 is proposed to be amended because the rule in its present form, requiring as it does that the only acceptable documentation of immunization done within Montana is that submitted on the department's own certificate of immunization form, can only work if every doctor in the state doing immunizations not only has the form but is willing to use it to the exclusion of any other, a precondition which has proved highly unlikely ever to occur. Therefore, acceptable documentation from July 31, 1981, on will be the same as that in ARM 16.28.704 (setting standards for the 1980-81 school year), with the exception that the department's cumulative health record will no longer be acceptable documentation because it has no place for signature of a responsible medical person to verify the information.

5. Interested persons may submit their data, views, or arguments concerning the proposed repeal and amendments in writing to Robert L. Solomon, Cogswell Building, Helena, MT., 59620, no later than October 14, 1982.

6. If a person who is directly affected by the proposed action 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 Robert L. Solomon no later than October 1, 1982.

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

8. The authority of the department to repeal the rule and make the proposed amendments is based on section 20-5-407, MCA, and implements sections 20-5-406 and 20-5-408(2), MCA.


JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State September 3, 1982

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the REPEAL,	)	NOTICE OF PUBLIC HEARING ON
AMENDMENT AND ADOPTION OF	)	PROPOSED REPEAL, AMENDMENT
RULES pertaining to the sale,	)	AND ADOPTION OF RULES regu-
service and installation of	)	lating the sale, service and
fire protection equipment.	)	installation of portable
	)	fire extinguishers, fire ex-
	)	tinguishing systems, fire
	)	alarms and fire alarm systems.

TO: All Interested Persons:

1. On October 18, 1982, at 10:00 a.m., a public hearing will be held in Room 473 of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the repeal, amendment and adoption of rules pertaining to the sale, service and installation of fire protection equipment.

2. The rule proposed to be repealed (ARM 23.7.153 DUTY TO REPORT EMPLOYEES AND LOCATION CHANGE) can be found on page 23-367 and 23-368 of the Administrative Rules of Montana.

The rules proposed to be amended provides as follows:

23.7.122 SUSPENSION OR REVOCATION OF PERMIT, LICENSE OR CERTIFICATE The State Fire Marshal shall suspend or revoke a permit, license, or certificate of registration, following notice and opportunity for hearing, if the holder has:

(1) Obtained or attempted to obtain a permit, license or certificate of registration by fraudulent misrepresentation;

(2) Committed ~~gross~~ malpractice or exhibited ~~gross~~ incompetency in the sale, installation, repair, or servicing of any portable fire extinguisher, fire extinguishing system, fire alarm, or fire alarm system;

(3) Advertised or sold a portable fire extinguisher, fire extinguishing system, fire alarm, or fire alarm system by knowingly making false or deceptive statements; ~~or~~

(4) Sold or installed a portable fire extinguisher, fire extinguishing system, fire alarm, or fire alarm system not permitted approved by the State Fire Marshal Bureau-to-be-sold in Montana, under ARM 23.7.143;

(5) Failed, upon request, to produce the items required by ARM 23.7.157;

(6) Employed a person who is required to have a certificate of registration under ARM 23.7.131 but who does not have such a certificate to install, service, charge, recharge or inspect a portable fire extinguisher, fire extinguishing system, fire alarm, or fire alarm system; or

(7) Violated any provision of this chapter.

AUTH: 50-3-102 MCA; IMP: 50-3-102 MCA.

23.7.123 DUPLICATE PERMITS, LICENSES, OR CERTIFICATES

The State Fire Marshal Bureau may upon request replace any previously issued permit, license, or certificate of registration that has been lost or destroyed. The request must include a written statement from the holder attesting to the loss or destruction of his or her permit, license, or certificate. The request must also be accompanied by a fee of \$2.

AUTH: 50-3-102 MCA; IMP: 50-3-102 MCA.

23.7.131 WHO MUST OBTAIN A CERTIFICATE OF REGISTRATION

(1) Except as provided in subsection (2), a natural person must obtain a certificate of registration from the State Fire Marshal prior to installing, servicing, charging, recharging, or inspecting portable fire extinguishers, fire extinguishing systems, fire alarms, or fire alarm systems. An applicant must be a proprietor or an employee of a place of business that is licensed under ARM 23.7.151 or a member of a fire department who intends to recharge or service portable fire extinguishers.

(2) The following persons need not obtain a certificate of registration:

(a) A manufacturer filling or charging a portable fire extinguisher prior to its initial sale.

(b) Trained personnel An apprentice of a fire extinguishing or alarm system firm installing or servicing the firm's own system, portable fire extinguishers, fire extinguishing or fire alarm systems. However, the firm must have certified verified to the State Fire Marshal Bureau that the personnel apprentices performing these services, listed by name, have successfully completed a firm training program and are complying with all applicable laws and rules adopted by the Fire Marshal Bureau, will perform the installation or servicing of portable fire extinguishers, fire extinguishing systems, or fire alarm systems under the personal immediate supervision of a qualified registrant. An apprentice is a person who is engaged in a training position by a firm licensed pursuant to ARM 23.7.151. A person may serve as an apprentice to a firm for no more than 1 year before obtaining a certificate of registration.

(c) For the first 90 days of employment, new employees of a person or firm licensed to install portable fire extinguishers, fire extinguishing systems, fire alarms or fire alarm systems who are servicing that equipment under the direct supervision of a registrant. An electrical contracting firm who has a contract to physically install and wire a fire alarm system with drawings and the final connections of the system is supervised by a qualified registrant.

(3) A certificate of registration is valid for 1 year unless it is renewed by the registrant. To renew a certificate of registration, the registrant shall submit an application during the month preceeding its scheduled expiration. A registrant need not take an examination in order to renew a current certificate of registration.

(4) A certificate of registration is valid only when the

holder is a proprietor or an employee of a place of business that is licensed under ARM 23.7.151, or a member of a fire department if certified to recharge or service portable fire extinguishers.

AUTH: 50-3-102 MCA; IMP: 50-3-102 MCA.

23.7.132 CERTIFICATE FEE (1) Except as provided in subsection (2), ~~original fee for a certificate of registration is \$5.~~

(a) The original fee for a certificate of registration is \$5.

(b) There is no fee for annual renewal of a certificate of registration.

(2) The State Fire Marshal Bureau shall examine and certify the following persons without a fee:

~~(a) --The personnel of a firm or agency who service only that firm's or agency's own portable fire extinguishers, fire extinguishing systems, fire alarms, or fire alarm systems.~~

(ba) The personnel of a non-profit fire department who intend to recharge or service portable fire extinguishers. To qualify under this subsection, the non-profit fire department must provide a public service and use any money generated to serve the public interest.

AUTH: 50-3-102 MCA; IMP: 50-3-102 MCA.

23.7.133 EXAMINATION FOR CERTIFICATE (1) "The fire marshal shall issue a certificate of registration to an applicant who scores a passing grade on an examination devised by the fire marshal and who pays the required fee." Section 50-39-102(3) MCA. The examination shall include a written examination and may include practical tests or demonstrations that the State Fire Marshal finds necessary to determine the applicant's knowledge and ability to service portable fire extinguishers, fire extinguishing systems, fire alarms or fire alarm systems.

(2) The written examination may include information from the latest edition of the Fire Protection Handbook, ~~(13th Edition), and 1974~~ the latest editions of the Uniform Fire Code Standard No. 10.1, and the National Fire Protection Association (NFPA) Pamphlets Number 10 ~~(Standard for the Installation of Portable Fire Extinguishers)~~, 13, 13A, and 13D, 72-A, 72A, 72B, 72C, 72D, and 72E, and 74.

(3) An examination may be waived in the discretion of the State Fire Marshal if the applicant provides satisfactory documentation that he or she has received the training required by the manufacturer and that he or she is qualified to install or service that fire extinguishing or alarm system.

(34) The examination may also include information concerning hydrostatic testing of Department of Transportation listed cylinders contained in the Compressed Gas Association Pamphlet C-1 (Methods for Hydrostatic Testing of Compressed Gas Cylinders).

(45) A passing grade for the written examination is a score of 70 or better. An applicant who fails may reapply to take another examination.

AUTH: 50-3-102 MCA; IMP: 50-3-102 MCA.

23.7.134 ENDORSEMENT OF QUALIFICATIONS (1) The certificate of registration shall be endorsed with the type of qualifications of the holder, as determined by the types of work to be performed listed on the application, and by the examination.

(2) Possible endorsements are:

(a) Hydrostatic testing of wet chemical or non-Department of Transportation listed cylinder,

(b) Hydrostatic testing of any Department of Transportation listed cylinder, or

(c) Installation, servicing, charging, recharging, or inspecting: ~~portable fire extinguishers, fire extinguishing systems, fire alarms, or fire alarm systems;~~

(i) portable fire extinguishers;

(ii) fire extinguishing systems;

(iii) fire alarms; or

(iv) fire alarm systems.

(3) A registrant may only perform the type of work endorsed on his or her certificate of registration.

AUTH: 50-3-102 MCA; IMP: 50-3-102 MCA.

23.7.135 DUTY TO REPORT ADDRESS CHANGE A registrant shall report a change in his address to the State Fire Marshal Bureau within 15 days of the change. The registrant shall also record the new address on the reverse side of the certificate.

AUTH: 50-3-102 MCA; IMP: 50-3-102 MCA.

23.7.141 WHO MUST OBTAIN A PERMIT TO SELL A self-employed person, firm, corporation, or partnership engaged in selling or leasing portable fire extinguishers, fire extinguishing systems, fire alarms, or fire alarm systems must obtain a permit to sell for each separate business location.

AUTH: 50-3-102 MCA; IMP: 50-3-102 MCA.

23.7.143 APPROVAL OF EQUIPMENT PRIOR TO SALE OR INSTALLATION No person or firm may sell, ~~or lease or install~~ a portable fire extinguisher or components of a fire extinguishing system, fire alarm, or fire alarm system unless the equipment has been approved, labeled, or listed by Underwriter's Laboratories, Inc., Underwriter's Laboratories of Canada, Factory Mutual Laboratories or other testing laboratories approved by the State Fire Marshal, Bureau.

AUTH: 50-3-102 MCA; IMP: 50-3-102 MCA.

23.7.151 WHO MUST OBTAIN A LICENSE TO INSTALL (1) Except as provided in subsection 2 (2), a self-employed person, firm, public agency, corporation, or partnership engaged in the installation, testing, or servicing of portable fire extinguishers, fire extinguishing systems, fire alarms, or fire alarm systems must obtain a license to install for each separate business location, specifying the type of work to be performed.

(2) A manufacturer engaged only in filling or charging portable fire extinguishers prior to initial sale need not obtain a license to install.

(3) A license is valid for 1 year unless it is renewed by the licensee. To renew a license, the licensee shall, during the month preceeding its scheduled expiration, submit an application and proof of manufacturer authorization and insurance, as required by ARM 23.7.156.

(4) A license is valid only so long as the holder is engaged in the installation, testing or servicing of portable fire extinguishers, fire extinguishing systems, fire alarms, or fire alarm systems.

AUTH: 50-3-102 MCA; IMP: 50-3-102 MCA.

23.7.152 LICENSE FEE (1) The original fee for a license to install is \$5.

(2) There is no fee for an annual renewal for a license.

~~(2)--The Fire Marshal Bureau shall license the following persons or firms without a fee:~~

~~(a)--A firm or agency that uses its own State Fire Marshal-certified personnel to service only its own portable fire extinguishers, fire extinguishing systems, fire alarms, or fire alarm systems;~~

~~(b)--A non-profit fire department that uses its own State Fire Marshal-certified personnel to recharge or service portable fire extinguishers. To qualify under this subsection, the non-profit fire department must provide a public service and use any money generated to serve the public interest.~~

AUTH: 50-3-102 MCA; IMP: 50-3-102 MCA.

23.7.154 SERVICE TAGS (1) A licensee shall attach a service tag to each portable fire extinguisher, fire extinguishing system, or fire alarm system. ~~the first time a service is performed.~~ A licensee who places a tag on a new fire extinguishing or fire alarm system shall notify the State Fire Marshal and other appropriate fire authority of the address and completion date of the installation of the system within 3 months following the completion date.

(2) A service tag ~~must~~ shall measure not more than 5-1/4 inches by 2-5/8 inches, or less than 4-1/2 inches by 2-1/2 inches. It must not be red.

(3) A service tag must bear the following information:

(a) Name of servicing firm;

- (b) Address and phone number of servicing firm;
- (c) License number of servicing firm;
- (d) Type of service performed; and
- (e) ~~Date of servicing~~, Month and year of servicing; and
- (f) Name of individual performing service.

A licensee or registrant shall indicate the type of service performed and date of servicing by punching the appropriate section of a tag. A tag must bear dates for 5 years, or fewer.

(4) The licensee or registrant must attach the service tag in a position so that it can be conveniently inspected, but it does not hamper the operation of the system or removal of the extinguisher from its bracket.

(5) No person may remove a service tag except when further service is performed and a new tag is attached. No person may alter or deface a service tag attached to or required to be attached to a portable fire extinguisher, fire extinguishing system, or fire alarm system.

AUTH: 50-3-102 MCA; IMP: 50-3-102 MCA.

23.7.155 RED TAGS A licensee or registrant shall attach a red tag to a portable fire extinguisher that does not conform with minimum standards and is permanently removed from service, and mark the extinguisher "condemned" or "rejected." The red tag may not be smaller than a service tag.

AUTH: 50-3-102 MCA; IMP: 50-3-102 MCA.

The rules proposed to be adopted provides as follows:

I. DENIAL OF A CERTIFICATE, PERMIT OR LICENSE The State Fire Marshal may deny a permit, license, or certificate to an applicant if the granting of one would adversely affect public safety or welfare.

AUTH: 50-3-102 MCA; IMP: 50-3-102 MCA.

II. INVESTIGATION OF COMPLAINTS (1) Upon the receipt of a signed complaint of improper installation or inadequate servicing by a holder of a permit, license, or certificate, the State Fire Marshal shall conduct an investigation of the complaint.

(2) A licensee is responsible for the installation and workmanship of apprentices and registrants employed by the licensee.

AUTH: 50-3-102 MCA; IMP: 50-3-102 MCA.

III. PROOF OF MANUFACTURER AUTHORIZATION AND INSURANCE An applicant for a license to install or service fire extinguishing systems shall file the following items, if applicable, with the State Fire Marshal each time he or she applies for an original license or for an annual license renewal:

- (1) If the applicant is a distributor, a statement from

the manufacturer of a system that the applicant intends to install or service, stating:

(a) The applicant is an authorized distributor of the manufacturer;

(b) What type of liability insurance and the liability limits thereon that the manufacturer requires of each distributor.

(2) A certificate of insurance issued by the applicant's insurer stating that the applicant's policy provides contractor's blanket liability insurance for bodily injury, property damage, and products and completed operations. The limits of liability may not be less than those required by the manufacturer, or \$100,000/\$300,000 bodily and property damage, whichever is greater.

(3) A statement from the insurer stating that the insurer agrees to notify the State Fire Marshal within 10 days of the cancellation or termination of the policy.

AUTH: 50-3-102 MCA; IMP: 50-3-102 MCA.

IV. EQUIPMENT REQUIRED (1) A licensee shall equip each of the licensee's business locations or mobile units with the equipment, material, and spare parts that the State Fire Marshal considers necessary to install or service portable fire extinguishers, fire extinguishing systems, fire alarms or fire alarm systems. Each registered employee of a licensee must have immediate access to that equipment, material, and spare parts.

(2) The State Fire Marshal may inspect a licensee's business locations and mobile units for compliance with this rule before granting or renewing a license.

AUTH: 50-3-102 MCA; IMP: 50-3-102 MCA.

V. LICENSE LIMITATIONS A licensee may only perform the type of work which he or she has specified is to be performed on the license application, and for which the applicant:

(1) Has submitted satisfactory proof of manufacturer authorization and insurance as required by ARM 23.7.156; and

(2) Is properly equipped as required by ARM 23.7.157.

AUTH: 50-3-102 MCA; IMP: 50-3-102 MCA.

3. The repeal, amendments and adoptions are being proposed because the present rules do not provide for annual licensing and certification of people installing and servicing fire protection equipment, and they do not require a person servicing fire protection equipment to show that he has the facilities, tools and equipment necessary to service fire protection equipment. The proposed repeal, amendments and adoptions will keep the State Fire Marshal Bureau records current and provide for better enforcement of the rules. Some of the enforcement enabling sections have been repealed at some previous time. The proposed repeal, amendments and adoptions will also enable the State Fire Marshal to safeguard life and property of the citizens of

Montana from hazards of fire, and assist in carrying into effect the fire prevention laws of Montana.

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 Robert E. Kelly, State Fire Marshal, 1409 Helena Avenue, Helena, Montana 59620, no later than October 18, 1982.

5. Mike McGrath, Assistant Attorney General, State Capitol Building, Helena, Montana, has been designated to preside over and conduct the hearing.

6. The authority of the agency to make the proposed repeal, amendments and adoptions is based on section 50-3-102 MCA, and the rule implements section 50-3-102 MCA.


ROBERT E. KELLY
State Fire Marshal

Certified to the Secretary of State September 3, 1982

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF PUBLIC HEARING ON
AMENDMENT OF RULES 42.19.101	)	PROPOSED AMENDMENT OF RULES
and 42.19.103 relating to	)	42.19.101 and 42.19.103
the utilization of appraisal	)	relating to the utilization
manuals.	)	of appraisal manuals.

TO: All Interested Persons:

1. On October 18, 1982, at 10:00 a.m., a public hearing will be held in the First Floor Conference Room in the Mitchell Building, Helena, Montana, to consider the amendment of Rules 42.19.101 and 42.19.103 relating to the utilization of appraisal manuals.

2. The proposed amendment to Rule 42.19.101 would adopt, by reference, a new manual for the appraisal of commercial property. The proposed amendment to Rule 42.19.103 would adopt, by reference a new manual for the appraisal of residential property.

3. The rules as proposed to be amended provide as follows (deletions interlined and additions underlined):

42.19.101 MARSHALL VALUATION SERVICE (1) The Department of Revenue has herein adopted and incorporated the January 1, 1982 "Marshall Valuation Service," 1916 Beverly Boulevard, Los Angeles, California 90026 by reference. Copies of this publication may be reviewed in this Department or purchased from the publisher.

(2) ~~Marshall Valuation Service shall be used for the valuation for tax purposes, in all Montana counties, of real and personal properties not specifically or sufficiently covered in other valuation schedules made a part of administrative codes by reference for property tax purposes~~ All improvements to commercial property shall be appraised and valued in accordance with and pursuant to the Marshall Swift Valuation Service Manual. If the subject property is not adequately listed in the Marshall Valuation Service, other replacement cost manuals will be used.

~~(3) Replacement sections and updated cost multiplier tables for Marshall Valuation Service, that are received monthly, shall be used to replace the outdated sections only as of January of each year. This will insure that the same levels of values are used for the appraisal of all properties valued from the publication for the assessment year.~~

~~(4) (3) This rule would will be effective for tax years beginning after December 31, 1978 commencing on January 1, 1986.~~
(History: Sec. 15-1-201 MCA; IMP, Sec. 15-7-103 MCA; Eff. 12/31/72; AMD, Eff. 5/5/77; AMD, 1979 MAR p. 984, Eff. 8/31/79; AMD, 1979 MAR p. 1304, Eff. 10/26/79.)

MAR NOTICE NO. 42-2-195

17-9/16/82

42.19.103 MONTANA APPRAISAL PLAN MANUAL (1) The Department of Revenue has herein adopted and incorporated the "Montana Appraisal Plan", by reference. - Copies of the plan may be obtained from the Property Assessment Division, Department of Revenue, Mitchell Building, Helena, Montana 59601. The department of revenue has herein adopted and incorporated the January 1, 1982 Montana Appraisal Manual by reference. Copies of this publication may be reviewed in the department or purchased from the department.

(2) All real property and improvements residential property thereto shall be revalued appraised and valued in accordance with and pursuant to the Montana Appraisal Plan Manual (January 1, 1982). The Montana Appraisal Manual is an expanded version of the January 1, 1982 Marshall Valuation Service Manual and is wholly derived from the data contained therein.

(3) This rule will be effective commencing on January 1, 1986. (History: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 through 15-7-114 MCA; NEW, Eff. 9/4/75.)

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 no later than October 18, 1982, to:

Larry Schuster, Counsel
Department of Revenue
Mitchell Building
Helena, Montana 59620

5. Authority of the Department to make the proposed amendments is based upon §15-1-201, MCA. The proposed amendments implement §15-8-111, MCA.

Ellen Feaver

ELLEN FEAVER
Director of Revenue

Certified to Secretary of State 09/03/82

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF PROPOSED AMENDMENT
Amendment of Rules 42.21.102,	)	OF RULES 42.21.102, 42.21.104,
42.21.104, 42.21.106,	)	42.21.106, 42.21.107,
42.21.107, 42.21.123,	)	42.21.123, 42.21.131, relating
42.21.131, relating to the	)	to the valuation of specific
valuation of specific kinds	)	kinds of personal property.
of personal property.)	

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 18, 1982, the Department of Revenue proposes to amend rules 42.21.102, 42.21.104, 42.21.106, 42.21.107, 42.21.123 and 42.21.131. The Department proposes to amend the depreciation schedules provided in the above-referenced rules and to amend the dates when said rules shall be applicable.

2. The rules proposed for amendment are found in the Administrative Rules of Montana, Title 42, Chapter 21, at pages 42-2105 through 42-2127.

3. The rules as proposed to be amended provide as follows (deletions interlined and additions underlined):

42.21.102 BOATS AND MOTORS (1) The average market value of outboard boats shall be the estimated current value less repairs - high of such property as listed in the "Official Outboard Boat Trade-In Guide Bluebook", of the year of assessment, ABOS Marine Publications Division, Intertec Publishing Corporation, P. O. Box 12901, Overland Park, Kansas 66212. This bluebook may be reviewed in the department or purchased from the publisher.

~~(3)~~(2) The average market value of inboard/outboard boats shall be the estimated current value less repairs - high of such property as shown in the "Official Inboard/Outboard Boat Trade-In Guide Bluebook", of the year of assessment, ABOS Marine Publications Division, Intertec Publishing Corporation, P. O. Box 12901, Overland Park, Kansas 66212. This bluebook may be reviewed in the department or purchased from the publisher.

~~(4)~~(3) The average market value of sailboats shall be the estimated current value less repairs - high as shown in the "Official Sailboat Trade-In Guide Bluebook", of the year of assessment, ABOS Marine Publications Division, Intertec Publishing Corporation, P. O. Box 12901, Overland Park, Kansas 66212. This bluebook may be reviewed in the department or purchased from the publisher.

(4) The average market value of inboard boats shall be the estimated current value less repairs - high of such property as listed in the "Official Inboard Boat Trade-In Guide Bluebook", of the year of assessment, ABOS Marine Publications Division,

Intertec Publishing Corporation, P. O. Box 12901, Overland Park, Kansas 66212. This bluebook may be reviewed in the department or purchased from the publisher.

~~(6)~~(5) The average market value of pontoon and houseboats shall be the estimated current value less repairs - high of such property as listed in the "Official Pontoon and Houseboat Trade-In Guide Bluebook", of the current year of assessment, ABOS Marine Publications Division, Intertec Publishing Corporation, P. O. Box 12901, Overland Park, Kansas 66212. This bluebook may be reviewed in the department or purchased from the publisher.

~~(7)~~(6) If the above-named publications do not value these properties, then the following chart will be used to determine the average market value of all watercraft ~~and boat motors~~ that cannot be valued under subsections (1) through ~~(6)~~(5):

To determine the average market value, apply the following percentages to the retail purchase price to arrive at the estimated current value less repairs - high:

<u>Year of Purchase</u>	<u>Purchased</u>	<u>Percentage</u>
1982	Current	72%
1981	1 Year Ago	64% 69%
1980	2 Years Ago	56% 64%
1979	3 Years Ago	52% 61%
1978	4 Years Ago	48% 58%
1977	5 Years Ago	40% 55%
1976	6 Years Ago	36% 53%
1975	7 Years Ago	30% 51%
1974	8 Years Ago	24% 49%
1973	9 Years Ago	20% 47%
1972	10 Years Ago	16% 45%
	11 Years Ago	43%
	12 Years Ago	41%
	13 Years Ago	39%
	14 Years Ago	37%
	15 Years Ago	35%
	16 Years Ago	33%
	17 Years Ago	31%
	18 Years Ago	29%
	19 Years Ago	27%
	20 Years Ago and before	25%

~~(8)~~(7) These percentages approximate the estimated current value less repairs - high of all watercraft ~~and boat motors~~, as calculated from the guidebooks listed in subsection (1) through (5).

(8) For all watercraft that cannot be valued under subsections (1) through (5), the owner or applicant must certify to the department or its agent, the year acquired, the retail purchase price and whether acquired new or used, before it can

be applied to the table in subsection (6).

~~(2)~~ (9) The average market value of outboard motors shall be the estimated current value less repairs-high of such property as shown in the "Official Outboard Motor Trade-In Guide Bluebook", of the year of assessment, ABOS Marine Publications Division, Intertec Publishing Corporation, P. O. Box 12901, Overland Park, Kansas 66212. This bluebook may be reviewed in the department or purchased from the publisher.

(10) If the above named publication does not value these properties, then the following chart will be used to determine the average market value of all boat motors that cannot be valued under subsection (9):

To determine the average market value, apply the following percentage to the retail purchase price to arrive at the estimated current value less repair-high:

<u>Year Purchased</u>	<u>Percentage</u>
<u>Current</u>	<u>72%</u>
<u>1 Year Ago</u>	<u>65%</u>
<u>2 Years Ago</u>	<u>61%</u>
<u>3 Years Ago</u>	<u>58%</u>
<u>4 Years Ago</u>	<u>55%</u>
<u>5 Years Ago</u>	<u>52%</u>
<u>6 Years Ago</u>	<u>48%</u>
<u>7 Years Ago</u>	<u>44%</u>
<u>8 Years Ago</u>	<u>40%</u>
<u>9 Years Ago</u>	<u>36%</u>
<u>10 Years Ago</u>	<u>32%</u>
<u>11 Years Ago</u>	<u>29%</u>
<u>12 Years Ago</u>	<u>26%</u>
<u>13 Years Ago</u>	<u>24%</u>
<u>14 Years Ago</u>	<u>22%</u>
<u>15 Years Ago</u>	<u>20%</u>
<u>16 Years Ago</u>	<u>18%</u>
<u>17 Years Ago</u>	<u>16%</u>
<u>18 Years Ago</u>	<u>14%</u>
<u>19 Years Ago</u>	<u>12%</u>
<u>20 Years Ago and before</u>	<u>10%</u>

(11) These percentages approximate the estimated current value less repairs - high of all boat motors, as calculated from the guidebook listed in subsection (9).

(12) For all boat motors that cannot be valued under subsection (9), the owner or applicant must certify to the department or its agent the year acquired, the retail purchase price and whether acquired new or used, before it can be applied to the table in subsection (10).

~~(9)~~ (13) This rule is effective for tax years beginning after December 31, 1981 1982.

~~(10) Depreciation and valuation tables will not be included in the rules beginning January 1, 1983. The rules will then in-~~

~~clude the methodology for computing the tables used.~~ (History: Sec. 15-1-201 MCA; IMP, Sec. 15-6-138 MCA; Eff. 12/31/72; AMD, Eff. 1/5/74; AMD, 1979 MAR p. 1004, Eff. 8/31/79; AMD, 1979 MAR p. 1304, Eff. 10/26/79; AMD, 1982 MAR, p. 102, Eff. 1/29/82.)

42.21.104 MOTORCYCLES (1) The average market value for motorcycles shall be the estimated current value less repairs -high of such property as shown in the "Official Motorcycle and Mini-Bike Trade-In Guide", of the year of assessment, Publications Division, Intertec Publishing Corporation, 1014 Wyandotte, Kansas City, Missouri 64105. This guide may be reviewed in the department or purchased from the publisher.

(2) If the above-named publication does not value the property, then the following chart will be used to determine the average market value of motorcycles. To determine the average market value, apply the following percentages to the retail purchase price to arrive at the estimated current value less repairs-high:

<u>Year of Purchase</u>	<u>Purchased</u>	<u>% Good-Estimated Current Value Less Repairs-High</u>
1982	<u>Current</u>	<u>72%</u>
1981	<u>1 Year Ago</u>	<u>57%</u>
1980	<u>2 Years Ago</u>	<u>50%</u>
1979	<u>3 Years Ago</u>	<u>42%</u>
1978	<u>4 Years Ago</u>	<u>34%</u>
1977	<u>5 Years Ago</u>	<u>28%</u>
1976	<u>6 Years Ago</u>	<u>25%</u>
1975	<u>7 Years Ago</u>	<u>21%</u>
1974	<u>8 Years Ago</u>	<u>19%</u>
1973	<u>9 Years Ago</u>	<u>17%</u>
1972	<u>10 Years Ago</u>	<u>15%</u>
	<u>11 Years Ago</u>	<u>14%</u>
	<u>12 Years Ago</u>	<u>13%</u>
	<u>13 Years Ago</u>	<u>12%</u>
	<u>14 Years Ago</u>	<u>11%</u>
	<u>15 Years Ago and before</u>	<u>10%</u>

(3) These percentages approximate the estimated current value less repairs - high for motorcycles, calculated from the guidebook listed in subsection (1).

(4) For all motorcycles that cannot be valued under subsection (1), the owner or applicant must certify to the department or its agent, the year acquired, the retail purchase price and whether acquired new or used, before it can be applied to the table in subsection (2).

~~(4)~~(5) This rule is effective for tax years beginning after December 31, ~~1981~~ 1982.

~~(5) Depreciation and valuation tables will not be included in the rules beginning January 1, 1983. The rules will then in-~~

~~clude the methodology for computing the tables used.~~ (History: Sec. 15-1-201 MCA; IMP, Sec. 15-6-138 MCA; Eff. 12/31/72; AMD, Eff. 1/5/74; AMD, 1979 MAR p. 1007, Eff. 8/31/79; AMD, 1979 MAR p. 1304, Eff. 10/26/79; AMD, 1982 MAR, p. 102, Eff. 1/29/82.)

42.21.106 TRUCKS AND COMMERCIAL TRAILERS (1) Market value for trucks rated over 3/4 ton is 80% of the average retail value for the trucks, as shown in the "Truck Bluebook Official Used Truck Valuation," January 1 edition of the year of assessment. This guide may be reviewed in the department or purchased from the publisher National Market Report, Inc., 900 South Wabash Avenue, Chicago, Illinois 60600.

(2) If the above-named publication cannot be used to value these properties, then the average market value will be determined using the ~~depreciation schedule in subsection (3)~~ following chart.

(3) To determine the average market value for those models not included in the "Truck Bluebook" and for commercial trailers apply the following percentages to the Retail Purchased New or Retail Purchased Used price to arrive at wholesale value:

Purchased New		Purchased Used	
Model Year	% Good Wholesale Depreciation	Year Purchased Used	% Good Wholesale Depreciation
1982	64%	1982	71%
1981	60%	1981	63%
1980	54%	1980	56%
1979	47%	1979	50%
1978	42%	1978	45%
1977	38%	1977	40%
1976	34%	1976	35%
1975	30%	1975	31%
1974	26%	1974	28%
1973	24%	1973	25%
1972	21%	1972	22%
1971	18%	1971	20%
1970	17%	1970	18%
1969	15%	1969	16%
1968	13%	1968	14%
1967	12%	1967	12%
and		and	
before		before	

Purchased New		Purchased Used	
Year Purchased	% Good	Year Purchased	% Good
New	Wholesale	Used	Wholesale
Purchased current year	64%	Purchased current year	83%
1 yr. after purchase	58%	1 yr. after purchase	66%
2 yrs. after purchase	56%	2 yrs. after purchase	61%
3 yrs. after purchase	54%	3 yrs. after purchase	55%
4 yrs. after purchase	50%	4 yrs. after purchase	50%
5 yrs. after purchase	48%	5 yrs. after purchase	46%
6 yrs. after purchase	46%	6 yrs. after purchase	42%
7 yrs. after purchase	44%	7 yrs. after purchase	38%
8 yrs. after purchase	42%	8 yrs. after purchase	34%
9 yrs. after purchase	40%	9 yrs. after purchase	31%
10 yrs. after purchase	36%	10 yrs. after purchase	28%
11 yrs. after purchase	32%	11 yrs. after purchase	26%
12 yrs. after purchase	28%	12 yrs. after purchase	23%
13 yrs. after purchase	24%	13 yrs. after purchase	21%
14 yrs. after purchase	20%	14 yrs. after purchase	19%
15 yrs. after purchase	15%	15 yrs. after purchase	18%
and before		and before	

(3) These percentages approximate the wholesale value as calculated from the guidebook listed in subsection (1).

(4) The valuation tables referred to in subsections subsection (2) and (3) also apply applies to prorated trucks and commercial trailers. For all trucks that cannot be valued under subsection (1) and commercial trailers, the owner or applicant must certify to the department or its agent the year acquired, the acquisition cost, retail purchase price, and whether acquired new or used.

(5) This rule is effective for tax years beginning after December 31, 1981 1982.

~~(6) Depreciation and valuation tables will not be included in the rules beginning January 1, 1983. The rules will then include the methodology for computing the tables used.~~ (History: Sec. 15-1-201 MCA; IMP, Sec. 15-6-139 and 15-6-140 MCA; Eff. 12/31/72; AMD, 1979 MAR p. 1002, Eff. 8/31/79; AMD, 1979 MAR p. 1304, Eff. 10/26/79; AMD, 1979 MAR p. 1554, Eff. 12/14/79; AMD, 1981 MAR p. 93, Eff. 1/30/81; AMD, 1982 MAR, p. 102, Eff. 1/29/82.)

42.21.107 BOAT, SNOWMOBILE, UTILITY AND OTHER LIGHT TRAILERS. (1) The high - estimated current value less repairs for boat trailers, as shown in the "Official Boat Trailer Trade-In Guide Blue Book," current edition, for the year of assessment, shall be the market value. This guide may be reviewed in the department or purchased from the publisher; ABOS Marine Publications Division, Intertec Publishing Corp., P. O. Box 12901, Overland Park, Kansas 66212.

(2) If the above-named publication cannot be used to value a boat trailer, then the average market value will be determined by ~~using the valuation table provided in subsection (3).~~ ~~The market value for utility and other light trailers will also be determined using the valuation table provided in subsection (3) applying the following percentages to the retail purchase price to arrive at the estimated current value less repairs-high:~~

~~(3) To determine the average market values for these trailers, apply the following percentages to the purchase cost:~~

<u>New</u>	<u>1981</u>	<u>1980</u>	<u>1979</u>	<u>1978</u>	<u>1977</u>	<u>1976</u>	<u>1975</u>	<u>1974</u>	<u>1973</u>	<u>1972</u>
72%	64%	56%	52%	48%	40%	36%	30%	24%	20%	16%

<u>Year</u> <u>Purchased</u> <u>Current</u>	<u>% Good - Estimated</u> <u>Current Value</u>
	<u>Repairs-High</u>
1 Year Ago	72%
2 Years Ago	63%
3 Years Ago	59%
4 Years Ago	55%
5 Years Ago	50%
6 Years Ago	46%
7 Years Ago	44%
8 Years Ago	42%
9 Years Ago	40%
10 Years Ago	38%
11 Years Ago	36%
12 Years Ago	34%
13 Years Ago	32%
14 Years Ago	30%
15 Years Ago	28%
16 Years Ago	26%
17 Years Ago	24%
18 Years Ago	22%
19 Years Ago	20%
20 Years Ago and before	18%
	16%

(3) These percentages approximate the high estimated current value less repairs-high for boat, snowmobile, utility and other light trailers.

(4) For all boat, snowmobile, utility and other light trailers that cannot be valued under subsection (1), the owner or applicant must certify to the department or its agent, the year acquired, the retail purchase price and whether acquired new or used, before it can be applied to the table in subsection (2).

(5) This rule is effective for tax years beginning after December 31, ~~1981~~ 1982.

~~(6) Depreciation and valuation tables will not be included in the rules beginning January 1, 1983. The rules will then in-~~

~~clude the methodology for computing the tables used.~~ (History: Sec. 15-1-201 MCA; IMP, Sec. 15-6-138 and 15-6-139 MCA; Eff. 12/31/72; AMD, Eff. 11/5/73; AMD, 1981 MAR p. 93, Eff. 1/30/81. AMD, 1982 MAR, p. 102, Eff. 1/29/82.)

42.21.123 FARM MACHINERY AND EQUIPMENT (1) The as-is value of farm machinery, as shown in the "Official Guide Tractors and Farm Equipment", Spring Edition for the year of the assessment, shall be the market value for this property. This guide may be reviewed in the department or purchased from the publisher: National Farm and Power Services, Inc., 10877 Watson Road, St. Louis, Missouri 63127.

(2)(a) ~~If the above-named publication cannot be used to does not value these properties, then the following chart will be used to determine the average market value of all farm machinery that cannot be valued under subsection (1) will be determined using the depreciation schedule and trend factor analysis in subsection (2)(b). To determine the average market value, apply the following percentages to the retail purchase price to arrive at the as-is value:~~

~~In order to arrive at market value, the original cost of the property will be trended annually to reflect changes in price indices published by the Marshall and Swift Valuation Service.~~

~~(b) The following 15-year depreciation schedule will be used to determine the average market value of farm machinery that cannot be valued as provided in subsection (1):~~

Year Purchased	% Good As Is	Trend Factor	% Good As Is Trended
1981 1 Year Ago	66%	1.000	66%
1980 2 Year Ago	61%	1.103	64%
1979 3 Years Ago	55%	1.214	61%
1978 4 Years Ago	50%	1.326	57%
1977 5 Years Ago	45%	1.427	51%
1976 6 Years Ago	42%	1.502	45%
1975 7 Years Ago	36%	1.596	41%
1974 8 Years Ago	32%	1.700	41%
1973 9 Years Ago	29%	2.061	43%
1972 10 Years Ago	27%	2.136	36%
1971 11 Years Ago	27%	2.207	35%
1970 12 Years Ago	26%	2.330	34%
1969 13 Years Ago	15%	2.480	32%
1968 14 Years Ago	14%	2.596	29%
1967 15 Years Ago	13%	2.690	27%
or older and before			

(3) These percentages approximate the as-is value of all farm machinery as calculated from the guidebook listed in subsection (1).

(4) For all farm machinery that cannot be valued under subsection(1), the owner or applicant must certify to the

department or its agent, the year acquired, the retail purchase price and whether acquired new or used, before it can be applied to the table in subsection (2).

(3) (5) This rule is effective for tax years beginning after December 31, 1982 1982.

(4) ~~Depreciation and valuation tables will not be included in the rules beginning January 1, 1983. The rules will then include the methodology for computing the tables used.~~ (History: Sec. 15-1-201 MCA; IMP, Sec. 15-6-138 MCA; Eff. 12/31/72; AMD, Eff. 1/5/74; AMD, Eff. 5/6/76; AMD, 1979 MAR p. 995, Eff. 8/31/79; AMD, 1979 MAR p. 1304, Eff. 10/26/79; AMD, 1981 MAR p. 93, Eff. 1/30/81; AMD, 1982 MAR, p. 102, Eff. 1/29/82.)

42.21.131 HEAVY EQUIPMENT (1)(a) The wholesale value of heavy equipment including coal and ore haulers, as shown in the current volumes of the "Green Guides", shall be the market value for this property. This guide may be reviewed in the department or purchased from the publisher: Equipment Guide Book Company; 2800 West Bayshore Road, P. O. Box 10113; Palo Alto, California 94303.

(b) (2) If the above-named publications cannot be used to value these properties, then the following charts will be used to determine the average market value ~~will be determined by the following valuation tables. These tables reflect the approximate wholesale values and will be used for the 1982 tax year of all heavy equipment that cannot be valued under subsection (1). To determine the average market value, apply the following percentage to the retail purchase price to arrive at the whole-sale value:~~

TABLE I

Coal and Ore Haulers, Wheel Loaders, Lift Trucks, Crawler Tractors, Log Skidders, Concrete Equipment, Belt Loaders, Hydraulic Cranes, Crawler Cranes and Shovels, Truck Mounted Cranes and Shovels, Off-Highway Haul Units, Draglines.

Crawler Cranes and Shovels, Truck Cranes and Shovels, Hydraulic Cranes, Wheel Loaders, Crawler Loader, Motor Graders, Skid Steer Loaders, Log Skidders, Rollers and Other Compaction Equipment, Wheel Tractors, Draglines, Lift Trucks, Crawler Tractors.

Year of Purchase	% Good Wholesale	Trend Factor	% Good Wholesale Trended
1982	---	---	65%
1981	62%	1.000	62%

1980	54%	1.115	60%
1979	48%	1.231	59%
1978	43%	1.349	58%
1977	38%	1.454	55%
1976	34%	1.534	52%
1975	30%	1.635	49%
1974	26%	1.893	49%
1973	24%	2.194	53%
1972	21%	2.271	48%
1971	19%	2.351	45%
1970	17%	2.492	42%
1969	15%	2.640	40%
1968	14%	2.773	39%
1967	12%	2.907	35%
1966	11%	3.010	33%
1965	10%	3.107	31%
1964	9%	3.174	29%
1963	8%	3.240	26%
1962	8%	3.293	26%
and older			

<u>Year Purchased</u>	<u>% Good Wholesale</u>
Current	65%
1 Year Ago	58%
2 Years Ago	50%
3 Years Ago	43%
4 Years Ago	38%
5 Years Ago	33%
6 Years Ago	31%
7 Years Ago	26%
8 Years Ago	25%
9 Years Ago	22%
10 Years Ago	18%
11 Years Ago	16%
12 Years Ago	15%
13 Years Ago	13%
14 Years Ago	12%
15 Years Ago	10%
16 Years Ago	10%
17 Years Ago	9%
18 Years Ago	8%
19 Years Ago	6%
20 Years Ago and before	6%

TABLE II

~~Crushing Equipment, Road Maintenance Equipment, Motor Graders, Crawler Loaders, Asphalt Finishers, All Other Miscellaneous Equipment not Included in Table I or III:~~

Coal and Ore Haulers, Off-Highway Haul Units,
Asphalt Finishers, Motor Scrapers, Hydraulic
Excavators.

<u>Year of Purchase</u>	<u>% Good Wholesale</u>	<u>Trend Factor</u>	<u>% Good Wholesale Trended</u>
1982			65%
1981	50%	1.000	50%
1980	44%	1.115	49%
1979	39%	1.231	48%
1978	33%	1.349	45%
1977	30%	1.454	44%
1976	26%	1.534	40%
1975	23%	1.635	38%
1974	20%	1.893	38%
1973	17%	2.194	37%
1972	16%	2.271	36%
1971	15%	2.351	35%
1970	14%	2.492	35%
1969	13%	2.640	34%
1968	12%	2.773	33%
1967	11%	2.907	32%
1966	10%	3.010	30%
1965	10%	3.107	31%
1964	9%	3.174	29%
1963	8%	3.240	26%
1962	7%	3.293	23%
and older			

<u>Year Purchased</u>	<u>% Good Wholesale</u>
Current	65%
<u>1 Year Ago</u>	<u>55%</u>
<u>2 Years Ago</u>	<u>45%</u>
<u>3 Years Ago</u>	<u>37%</u>
<u>4 Years Ago</u>	<u>31%</u>
<u>5 Years Ago</u>	<u>28%</u>
<u>6 Years Ago</u>	<u>23%</u>
<u>7 Years Ago</u>	<u>20%</u>
<u>8 Years Ago</u>	<u>17%</u>
<u>9 Years Ago</u>	<u>15%</u>
<u>10 Years Ago</u>	<u>14%</u>
<u>11 Years Ago</u>	<u>12%</u>
<u>12 Years Ago</u>	<u>10%</u>
<u>13 Years Ago</u>	<u>8%</u>
<u>14 Years Ago</u>	<u>6%</u>
<u>15 Years Ago</u>	<u>6%</u>
<u>16 Years Ago and before</u>	<u>3%</u>

TABLE III

Air Equipment, Hydraulic Excavators, Motor Scrapers, Wheel Tractors, Ditchers, Rollers, Other Compaction Equipment.

Ditchers, Pumps, Air Equipment, Crushing Equipment, Concrete Equipment, Belt Loaders, Mobile Asphalt Equipment, Road Maintenance Equipment, Water Well Drilling Units, All Other Miscellaneous Equipment Not Included in Table I or II.

<u>Year of Purchase</u>	<u>% Good Wholesale</u>	<u>Trend Factor</u>	<u>% Good Wholesale Trended</u>
1982			65%
1981	48%	1.000	48%
1980	42%	1.115	47%
1979	37%	1.231	46%
1978	32%	1.349	43%
1977	28%	1.454	41%
1976	25%	1.534	38%
1975	22%	1.635	36%
1974	19%	1.893	36%
1973	17%	2.194	37%
1972	14%	2.271	32%
1971	10%	2.351	24%
1970	9%	2.492	22%
1969	8%	2.640	21%
1968	7%	2.773	19%
1967	6%	2.987	17%
1966	5%	3.010	15%
1965	5%	3.107	16%
1964	4%	3.174	13%
1963	4%	3.240	13%
1962	3%	3.293	10%
and older			

<u>Year Purchased</u>	<u>% Good Wholesale</u>
<u>Current</u>	<u>65%</u>
<u>1 Year Ago</u>	<u>49%</u>
<u>2 Years Ago</u>	<u>42%</u>
<u>3 Years Ago</u>	<u>37%</u>
<u>4 Years Ago</u>	<u>34%</u>
<u>5 Years Ago</u>	<u>31%</u>
<u>6 Years Ago</u>	<u>28%</u>
<u>7 Years Ago</u>	<u>25%</u>

<u>8 Years Ago</u>	<u>23%</u>
<u>9 Years Ago</u>	<u>20%</u>
<u>10 Years Ago</u>	<u>18%</u>
<u>11 Years Ago</u>	<u>16%</u>
<u>12 Years Ago</u>	<u>15%</u>
<u>13 Years Ago</u>	<u>13%</u>
<u>14 Years Ago</u>	<u>12%</u>
<u>15 Years Ago</u>	<u>10%</u>
<u>16 Years Ago</u>	<u>10%</u>
<u>17 Years Ago</u>	<u>9%</u>
<u>18 Years Ago</u>	<u>8%</u>
<u>19 Years Ago and before</u>	<u>6%</u>

(3) These percentages approximate the wholesale value of all heavy equipment as calculated from the guidebooks listed in subsection (1).

(4) The types of equipment contained in the tables listed in subsection (2) have been regrouped to more accurately reflect depreciation as calculated from the guidebooks listed in subsection (1).

(5) For all heavy equipment that cannot be valued under subsection (1), the owner or applicant must certify to the department or its agent, the year acquired, the retail purchase price, and whether acquired new or used, before it can be applied to the table in subsection (2).

(2) In addition to using the values from the guidebooks in subsection (1), or the schedule in subsection (1)(a) (2), the department multiplies those values by a factor based on equipment use. This adjustment is determined from the following table:

<u>ANNUAL HOURS OF USE (T)</u>	<u>MULTIPLIER</u>
0 < T < 2,920	1.
2,920 < T < 3,650	.87
3,650 < T	.784

(3) (6) This rule is effective for tax years beginning after December 31, 1981 1982.

(4) ~~Depreciation and valuation tables will not be included in the rules beginning January 1, 1983. The rules will then include the methodology for computing the tables used.~~ (History: Sec. 15-1-201 MCA; IMP, Sec. 15-6-135, 15-6-138, and 15-6-140 MCA; Eff. 12/31/72; AMD, Eff. 1/5/74; AMD, 980 MAR p. 1727, Eff. 6/27/80; AMD, 1981 MAR p. 93, Eff. 1/30/81; AMD, 1982 MAR p. 102, Eff. 1/29/82.)

4. The proposed amendments would change the depreciation schedules which are used in order to establish the tax value of specific kinds of personal property. Moreover, the dates when the foregoing rules are to be effective would be changed.

5. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing no later than October 15, 1982, to:

Larry Schuster
Property Assessment Division
Department of Revenue
P. O. Box 5865
Helena, Montana 59620

6. 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 that request along with any written comments he has to Larry Schuster at the address given in Paragraph 5 above no later than October 18, 1982.

7. If the Department receives a request for a public hearing on the proposed amendments 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 directly affected has been determined to be 25 persons.

8. The authority of the Department to make these amendments is given by §§15-1-201. These rules implement various sections as indicated beneath each rule.



ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 09/03/82

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE)	NOTICE OF PROPOSED ADOPTION OF
ADOPTION of Rule I to Clarify)	RULE I to Clarify Reporting
Reporting Requirements for)	Requirements for Certain Metal
Persons Subject to the)	Mine Operators.
Gross Proceeds Tax.)	

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 18, 1982, the Department of Revenue proposes to adopt a rule to clarify the reporting requirements for persons subject to metal mines gross proceeds tax, codified at §15-23-801, MCA, et seq.

2. The proposed rule provides as follows:

RULE I. REPORTING REQUIREMENTS Each person mining or extracting gold, silver, copper, lead, or other metals from any mine or mining property located within this state shall assay each shipment of ore, concentrate or slimes prior to its leaving the state. These assays shall be provided to the state upon request, and records of all assays taken in conjunction with this rule shall be maintained by the taxpayer for a period of 5 years following the year in which the assays were conducted.

3. The proposed rule is in response to House Bill 629 passed by the 47th Legislature amending §15-23-802, MCA. This rule is necessary in order to provide a framework for reviewing assay records by state governmental auditors. Because current technology in the smelting process does not allow 100% recovery of the metal content in ores and concentrates, such records as smelter returns are used to determine the metal content. This rule allows assays to be used as an auditing check in verifying metal content.

4. Interested parties may submit their data, views, or arguments concerning the proposed adoption in writing no later than October 15, 1982, to:


Michael J. Rieley
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 com-

ments he has to Michael J. Rieley at the address given in Paragraph 4 above no later than October 15, 1982.

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 directly affected has been determined to be 25 persons.

7. Authority of the Department to adopt the proposed rule is given by §15-1-201, MCA. This rule implements 15-23-802, MCA.



ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 9/3/82

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE)	NOTICE OF PROPOSED ADOPTION OF
ADOPTION of Rule I to Clarify)	RULE I to Clarify Reporting
Reporting Requirements for)	Requirements for Certain Metal
Persons Subject to the)	Mine Operators.
Metaliferous Mines Tax.)	
	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 18, 1982, the Department of Revenue proposes to adopt a rule to clarify the reporting requirements for persons subject to metaliferous mines tax, codified at §15-37-101, MCA, et seq.

2. The proposed rule provides as follows:

RULE I. REPORTING REQUIREMENTS Each person mining or extracting gold, silver, copper, lead, or other metals from any mine or mining property located within this state shall assay each shipment of ore, concentrate or slimes prior to its leaving the state. These assays shall be provided to the state upon request, and records of all assays taken in conjunction with this rule shall be maintained by the taxpayer for a period of 5 years following the year in which the assays were conducted.

3. The proposed rule is in response to House Bill 629 passed by the 47th Legislature amending §15-37-104, MCA. This rule is necessary in order to provide a framework for reviewing assay records by state governmental auditors. Because current technology in the smelting process does not allow 100% recovery of the metal content in ores and concentrates, such records as smelter returns are used to determine the metal content. This rule allows assays to be used as an auditing check in verifying metal content.

4. Interested parties may submit their data, views, or arguments concerning the proposed adoption in writing no later than October 15, 1982, to:

Michael J. Rieley
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 com-

ments he has to Michael J. Rieley at the address given in Paragraph 4 above no later than October 15, 1982.

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 directly affected has been determined to be 25 persons.

7. Authority of the Department to adopt the proposed rule is given by §15-1-201, MCA. This rule implements 15-37-104, MCA.



ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 9/3/82

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the repeal	)	NOTICE OF PROPOSED REPEAL OF
of rules on advisory opin-	)	RULES, TITLE 44, CHAPTER 4,
ions from the Secretary of	)	ETHICS
State.)	
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 18, 1982, the Secretary of State proposes to repeal Chapter 4 of Title 44, Ethics.

2. The rules proposed to be repealed are on pages 44-207 through 44-245 of the Administrative Rules of Montana.

3. The Secretary of State proposes to repeal the rules because a court of competent jurisdiction has declared them to be null and void.

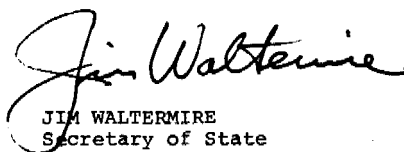
4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Larry Akey, Office of the Secretary of State, Montana State Capitol, Helena, Montana 59620, no later than October 14, 1982.

5. If a person who is directly affected by the proposed repeal 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 Larry Akey, address in paragraph four above, no later than October 14, 1982.

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

7. The authority for the Secretary of State to repeal the rules is 2-2-132(3), MCA.

Dated this third day of September, 1982.


JIM WALTERMIRE
Secretary of State

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PSYCHOLOGISTS

IN THE MATTER OF the adoption	)	NOTICE OF ADOPTION OF NEW
of a new rule concerning	)	RULES 8.52.620 EQUIVALENT
equivalent degrees and a new	)	DEGREES and 8.52.621 ORAL
rule concerning oral examina-	)	EXAMINATION
tions.)	

TO: All Interested Persons:


1. On July 29, 1982, the Board of Psychologists published a notice of proposed adoption of new rules concerning equivalent degrees and oral examinations at pages 1440 through 1442, 1982 Montana Administrative Register, issue number 14.

2. The board has adopted the rules exactly as proposed.

3. One letter of objection was received from Albert Bellante, Ph.D., in which he expressed concern that the board could deny licensure based on an individual's performance on the oral examination. The board felt the rule was necessary to clarify the content of the oral examination as well as who would be required to take the examination to eliminate any questions which might arise as to the intent of the exam.

BOARD OF PSYCHOLOGISTS
J. BAILEY MOLINEUX, Ph.D.
CHAIRMAN

BY:


GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 3, 1982.

BEFORE THE OFFICE OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the Adoption)	NOTICE OF ADOPTION OF UNIFORM
of Uniform Rules of Procedure)	RULES OF PROCEDURE FOR ALL
for all School Controversy)	SCHOOL CONTROVERSY CONTESTED
Contested Cases Before the)	CASES BEFORE THE COUNTY SUPER-
County Superintendents of the)	INTENDENTS OF THE STATE OF
State of Montana)	MONTANA (Rules 10.6.101
	through 10.6.130)

TO: All Interested Persons.

1. On July 29, 1982, the superintendent of public instruction published notice of a proposed adoption of a rule concerning uniform rules of procedure for all school controversy contested cases before the county superintendents of the state of Montana at page 1443 of the Montana Administrative Register, issue number 14.

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

10.6.101 SCOPE OF RULES (1) These rules govern the procedure for conducting all hearings on school controversy cases appealed to the county superintendent and the county transportation committee. These rules shall be construed to secure the just, speedy and inexpensive determination of every action. All rules promulgated by former state superintendents with regard to school controversies contrary to these rules are hereby repealed.

(a)-(e) same as proposed rule.

10.6.106 NOTICE OF HEARING

(1)-(2) same as proposed rule.

(3) If the county superintendent does not have details of the issues and matters to be discussed at the time of issuing the notice of hearing, the party or county superintendent may later demand a more detailed account of the issues and matters to be discussed. The dates scheduled by the county superintendent in the notice of hearing may be continued by the county superintendent to such a convenient date as stipulated by the parties and approved by the county superintendent.

(4) same as proposed rule.

10.6.127 APPELLATE PROCEDURE - TIME (1) Appellant shall appeal from the Order of the county superintendent of schools to the state superintendent of public instruction within 30 days after the rendering of such Order unless the time is shortened or extended by an Order entered by the state superintendent upon good cause showing. If a party petitions for a re-hearing before they appeal the final decision to the state superintendent, then the 30-day statute of limitations shall be tolled until a final decision has been rendered by the county superintendent.

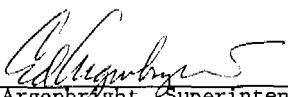
(2)-(3) same as proposed rule.

3. Three individuals attended the hearing. They represented the Montana School Boards Association, the Montana Association of County Superintendents, and the Montana Education Association. The following questions and comments were raised at the hearing.

(a) The concern was raised as to requiring a repealer clause to repeal former statesuperintendents' rules of controversy. The concern arose from the ambiguity and the apparent confusion as to whether prior state superintendents had promulgated rules. In response, a repealer clause has been added to these uniform rules to address that problem.

(b) A second concern raised was whether the Family and Education Privacy Act disputes were a legal element in these rules. These rules are not intended to interfere with local school district policies regarding the Family and Education Privacy Act. The appeal process provided for educational records is placed here so that if administrative review is beneficial to resolve a dispute, then the county superintendent may assume jurisdiction. The parties may choose to directly file suit in federal district court and avoid these rules in matters relating to the Family and Education Privacy Act.

(c) Concern was raised on the decision that school controversy means contested cases and the extent to which any controversy may arise before the county superintendent. The wording "contested case" is developed from the Montana Administrative Procedures Act and incorporated into these rules. Limitations on disputes that may qualify as a contested case have been and will continue to be developed by the decision of the state superintendent, Montana District Courts, and the Montana Supreme Court.


Ed Argenbright, Superintendent
Office of Public Instruction

Certified to the Secretary of State, September 3, 1982.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of)	CORRECTED
Rule 24.9.801, relating to the)	NOTICE OF THE
definition of the terms "mental)	AMENDMENT OF
handicap" and "physical handicap")	RULE 24.9.801

TO: All Interested Persons:

1. On April 29, 1982, the Human Rights Commission published notice of the proposed amendment of rule 24.9.801 concerning the definition of the terms "mental handicap" and "physical handicap" as those terms relate to complaints of discrimination filed with the Commission at page 811 of the 1982 Montana Administrative Register, issue number 8. A hearing regarding the proposed amendment was held May 19, 1982. On July 15, 1982, the Commission published notice of the amendment of the rule. That notice contained a typographical error, however, in that a word was omitted from the amended rule as approved by the Commission. The Commission is therefore publishing this corrected notice.

2. The Commission has amended the rule with the following changes:

24.9.801 DEFINITIONS. (1) and (2) same as proposed amendment.

(3) The terms "mental handicap" and "physical handicap" shall have the meanings stated in section 49-2-101, MCA, with the following clarifications:

(a) A "handicapped individual" is a person who
(i) has a physical or mental handicap which substantially limits one or more of such person's major life activities, ~~and either;~~

(ii) has a record of having such an impairment, or
(iii) is regarded as having such an impairment.

(b) same as proposed amendment.


3. At the public hearing, the Handicapped Employment Coordinator from the Montana Department of Administration, Personnel Division, appeared in support of the proposed amendment but suggested changes which would clarify the amended rule. First, the Department of Administration suggested editorial changes which would make the definition correspond more closely with the language contained in the federal Rehabilitation Act of 1973, 29 U.S.C. 3706. The Commission has incorporated these suggested changes in the rule as adopted. Second, the Department of Administration suggested that the phrase "short term", section 24.9.801(3)(b), be further defined. The Commission has chosen not to further define the phrase as it believes complaints alleging handicap discrimination should be

evaluated on a case-by-case basis and it is impossible to place a limit on the amount of time that any illness or injury could be considered short term in nature. Further, the language in section 24.9.801(3)(b) is merely intended to be illustrative.

4. The authority of the Commission to make the amendment is based on section 49-2-204, MCA, and the rule as amended implements section 49-2-101(13) and (16), MCA.

HUMAN RIGHTS COMMISSION
JOHN FRANKINO, CHAIR

By:


RAYMOND D. BROWN
ADMINISTRATOR
HUMAN RIGHTS DIVISION

Certified to the Secretary of State September 3, 1982.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF THE ADOPTION OF RULE
ADOPTION OF RULE I	)	I (42.11.104) relating to the
(42.11.104) relating to the	)	retail selling prices of
retail selling prices of	)	liquor and wine.
liquor and wine.)	

TO: All Interested Persons:

1. On June 17, 1982, the Department of Revenue published notice of public hearing on the proposed adoption of Rule I (42.11.104) relating to the retail selling prices of liquor and wine, at pages 1188 and 1189 of the 1982 Montana Administrative Register, Issue No. 11. On July 7, 1982, the public hearing was held.

2. The Department hereby adopts Rule I (42.11.104) with the following changes (deletions interlined and additions underlined and capitalized):

RULE I (42.11.104) RETAIL SELLING PRICE (1) Except as provided in subsection (6), the retail selling price of liquor, other than fortified wine, as defined in 16-1-106(9), MCA, is determined by adding:

(a) the department's base case cost; and

(b) the state mark up of ~~48%~~ 40% on the department's base case cost.

(2) Except as provided in subsection (6), the retail selling price of fortified wine containing more than 14% but no greater than 24% alcohol by volume is determined by adding:

(a) the department's base case cost; and

(b) the state mark up of 60% on the department's base case cost if less than ~~\$20~~ \$18 or 40% on the department's base case cost if equal to or more than ~~\$20~~ \$18.

(3) The retail selling price of table wine containing not less than 7% or more than 14% alcohol by volume is determined by adding:

(a) the department's base case cost; and

(b) the state mark up of 60% on the department's base case cost if less than ~~\$20~~ \$18 or 40% on the department's base case cost if equal to or more than ~~\$20~~ \$18.

(4) For liquor and fortified wine, "base case cost" means the supplier's quoted price plus all freight charges. For table wine, "base case cost" means the supplier's quoted price plus all freight charges and applicable taxes as provided in Title 16, chapter 1, part 4, MCA.

(5) For liquor and fortified wine, the cost to the retail purchaser is the retail selling price plus applicable state taxes as provided in Title 16, chapter 1, part 4, MCA. For table wine, the cost to the retail purchaser is the retail selling price as provided in subsection (3).

(6) The state mark up of liquor shall be reduced by 10% as provided in 16-2-202, MCA.

3. The public hearing was well attended by interested parties. The proposed rule generated an abundance of oral testimony and written comments. The oral testimony and written comments can be briefly characterized in the following manner:

a. Montana retail liquor licensees opposed the proposed rule as an increase in liquor prices adversely affecting retail liquor sales in an already recessionary economy;

b. interested parties questioned the Department's discretion in proposing increased liquor prices in light of the projected general fund surplus for the 1982-83 biennium; and

c. interested parties questioned the Department's necessity to increase liquor prices to comply with the \$13 million liquor profit depository requirement found in Appropriations House Bill 500, Laws of 1981, when representatives of the 47th Legislature have assured the Department the depository requirement will not be enforced.

4. All three concerns have been disposed of by the changes to Rule I (42.11.104) deleting any increase in the prices of liquor and wine. These changes conform to the hearing examiner's recommendation.

5. The rule, as adopted, represents the Department's current pricing formula for liquor and wine.

6. Authority to promulgate this rule is found in §16-1-303, MCA.



ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 09/03/82

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

In the matter of the amendment of Rule 46.12.570 and the adoption of Rules 46.12.571, 46.12.572 and 46.12.573	) NOTICE OF THE AMENDMENT OF RULE 46.12.570 AND THE ADOPTION OF RULES 46.12.571, 46.12.572 AND 46.12.573
pertaining to clinic services under the state medicaid program	) PERTAINING TO CLINIC SERVICES) ICES

TO: All Interested Persons

1. On July 29, 1982, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.570 and the adoption of rules pertaining to clinic services under the state medicaid program at page 1467 of the Montana Administrative Register, issue number 15.

2. The agency has amended Rule 46.12.570 and adopted Rules 46.12.571, 46.12.572 and 46.12.573 as proposed with the following changes:

46.12.570 CLINIC SERVICES, DEFINITIONS ~~clinic-services are-available-only-through-those-medical-facilities-that-have-a-specific-contract-with-the-department.~~

(1) "Clinic services" means preventive diagnostic, therapeutic, rehabilitative, or palliative items or services provided on an outpatient basis by a facility that is not part of a hospital, but is organized and operated to provide medical care to outpatients independent of a hospital. CLINIC SERVICES MAY BE PROVIDED IN MENTAL HEALTH CENTERS, DIAGNOSTIC CENTERS, AND SURGICAL CENTERS.

(2) AMBULATORY SURGICAL CENTER SERVICES MEANS CLINIC SERVICES WHICH ARE PROVIDED IN A LICENSED, FREESTANDING AMBULATORY SURGICAL CENTER, BUT DO NOT INCLUDE PHYSICIANS SERVICES, ANESTHESIOLOGISTS SERVICES, AMBULANCE SERVICES, OR MAJOR PROSTHETIC APPLIANCES SUCH AS INTRAOCULAR LENSES.

~~(2)~~ (3) "Class I anesthesia risk" means an individual with no detectable systemic diseases and no physical abnormalities which would in any way impair the functioning of his jaw, neck, airway, chest, or abdominal function.

~~(3)~~ (4) "Class II anesthesia risk" means an individual who has only one systemic disease which can potentially threaten the safe outcome of an anesthesia.

46.12.571 CLINIC SERVICES, REQUIREMENTS (1) Clinic services must be provided by a clinic which is licensed as an outpatient facility by the appropriate licensing entity of the state where the facility is located and meet the require-

ment for participation in medicare. and-may-be-provided-only in:

~~(a)--mental-health-centers;~~

~~(b)--diagnostic-centers;~~

~~(c)--surgical-centers;~~

(2) Clinic services must be provided by, or under the direction of a licensed physician or, where appropriate a licensed dentist.

(3) Patients receiving ambulatory surgical center clinic services must be either class I anesthesia risk or a class II anesthesia risk.

(4) Conditions for coverage of listed ambulatory surgical center procedures:

(a) ~~c~~Covered surgical procedures are limited to those procedures that do not generally exceed:

(i) a total of 90 minutes operating time; and

(ii) a total of 4 hours recovery or convalescent time.

(b) If the covered surgical procedure requires anesthesia, the anesthesia must be:

(i) local or regional anesthesia; or

(ii) general anesthesia of 90 minutes or less duration.

(c) Covered surgical procedures may not be of a type that:

(i) generally result in extensive blood loss;

(ii) requires a major or prolonged invasion of body cavities;

(iii) directly involves major blood vessels;

(iv) are generally emergency or life threatening in nature; or

(v) can safely be performed in a physician's or dentist's office.

(d) Covered surgical procedures can only be rendered by a licensed ambulatory surgical center.

46.12.572 CLINIC SERVICES, COVERED PROCEDURES

(1) Ambulatory surgical center ~~p~~rocedures which are covered by medicare and medicaid:

Subsections (1)(a) through (1)(h)(v) remain the same as proposed.

(i) Female Genital System:

(i) Laparoscopy - IV;

(ii) Colpotomy, with exploration - III;

(iii) Dilation and curettage, diagnostic and/or therapeutic (nonobstetric) - III;

~~(iv)---Bartholin-cystectomy---II;~~

~~(v)~~(iv) Hysterosalpingogram - II;

~~(vi)~~(v) Perineoplasty - II;

~~(vii)~~(vi) Vaginal tumor (cyst) excision - II;

~~(viii)~~(vii) Vulva (labia) biopsy - I;

~~(ix)~~(viii) Examination under Anesthesia (pelvic) - I;

~~(x)~~(ix) Vaginal Stenosis Release (Dilation of Vagina

under anesthesia) - I;

~~(x)~~ (x) Culdoscopy (Culdocentesis) - I.

Subsections (1)(j) through (1)(m)(v) remain the same as proposed.

(2) Ambulatory surgical center Procedures which are covered by medicaid but not by medicare:

Subsections (2)(a) through (2)(k)(iv) remain the same as proposed.

46.12.573 CLINIC SERVICES, REIMBURSEMENT (1) Rates for ambulatory surgical centers services shall be the lower of the provider's actual (submitted) charge for the service or the fee specified in the following fee schedule:

(a) group I procedures \$227;

(b) group II procedures \$270;

(c) group III procedures \$291; and

(d) group IV procedures \$331.

(2) Reimbursement for major prosthetic appliance shall be made in accordance with ARM 46.12.805 and 806.

3. The Department has thoroughly considered all verbal and written commentary received:

COMMENT: It is not clear whether the Department intends to cover surgical procedures in clinics other than surgical centers.

RESPONSE: The Department agrees that the coverage and limitations on procedures performed in surgical centers need to be clarified. ARM 46.12.570 has been revised to specify the kinds of clinics covered under Medicaid. Rule I has been revised to specify the limitations that apply to surgical centers; and Rule II has been revised to make clear that the lists of covered surgical procedures applies only to surgical centers.

COMMENT: Rule I (4)(c)(iv) was a misprint and should read "nonemergency" services.

RESPONSE: Rule I (4)(c) lists types of surgical procedures that are not covered by medicaid in surgical centers. Therefore, a careful reading will show that only nonemergency services are covered in surgical centers.

COMMENT: The Department should require that surgical centers be licensed as outpatient facilities and meet the criteria for participation in Medicare. In addition, facilities should be required to have a certificate of need.

RESPONSE: We concur. Rule I has been modified to indicate that surgical centers must also meet the criteria for par-

ticipation in Medicare. A certificate of need is required by 50-5-301, MCA. Therefore, it is not necessary to include this requirement in the Administrative Rules of Montana.

COMMENT: Three comments were received indicating that the Department's fees were too low. Two indicated that the Department should rely on the savings from hospital room charges to effect a savings from the use of surgical centers. The third pointed out that hospitals charge extra for certain prosthetic devices.

RESPONSE: The fees were adopted from those developed by Medicare. Since they will be used by Medicare, it does not seem appropriate to exceed fees that have been determined to be appropriate for nation-wide application by HHS. Further it seems inadvisable and unnecessary for the department to set fees higher than the level found appropriate by HHS where the Department has had no historical experience with costs involved in surgical centers. It is true that surgical centers have a great potential for cost savings to the program because there is no need to keep patients overnight or to pay for the full range of costs not specifically related to the surgery done that are part of a hospitals overhead. As the Department gains experience with this new method of services delivery, it will continue to alter reimbursement rates for surgical centers to insure that these services are available to as many of its claimants as possible while staying within its appropriations. The fees for surgical centers were not designed to cover the cost of major prosthetic devices such as interocular lenses. These items will be reimbursed in accordance with ARM 46.12.805 and 806.

COMMENT: Does the reimbursement for surgical center services include the anesthesia, anesthesiologist, and the surgeon fees?

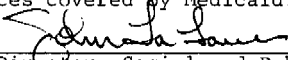
RESPONSE: The surgical center fee does include the cost of anesthesia. It does not include the anesthesiologist's fee or the surgeon's fee whose fees are listed at ARM 46.12.2003 through 2006.

COMMENT: The comment was made that surgical centers should be required to have the same kind of credentialing criteria for physicians using these facilities that hospitals have. In addition, the recommendation was made that surgical centers meet the same licensing criteria as surgical day care centers in hospitals.

RESPONSE: The Department's authority is limited to requiring licensure and/or certification. The licensing standards are within the purview of the Department of Health and Environ-

mental Sciences. Interested parties may utilize the procedure outlined at 2-4-315, MCA to petition for changes they feel appropriate to other agencies Administrative Rules.

COMMENT: The final regulations published for Medicare Coverage excluded Bartholin Cystectomy from the list of covered procedures. Since the Department is using the same criteria for covered procedures, this procedure is being removed from the list of services covered by Medicaid.



Director, Social and Rehabilitation Services

Certified to the Secretary of State September 3, 1982.

LIENS - Continuation of liens for penalties and interest on delinquent taxes when property acquired by United States;
LIENS - Priority of lien securing payment of penalties and interest on delinquent taxes;
LIENS - Securing payment of penalties and interest on delinquent property taxes;
TAXATION - Enforcement of liens for penalties and interest on delinquent property taxes;
UNITED STATES - Enforcement of liens for penalties and interest on delinquent property taxes where property subject to SBA mortgage and where title held by United States;
UNITED STATES CODE - 15 U.S.C. § 646, 28 U.S.C. § 2409a, 28 U.S.C. § 2410;
MONTANA CODE ANNOTATED - Title 14, chapter 17, section 15-16-403, Title 15, chapter 17, Title 15, chapter 24, parts 11 and 12, sections 71-1-223, 71-1-224, 71-1-225, 71-1-226, 71-1-227, 71-1-228.

- HELD: 1. The tax lien provided by section 15-16-403, MCA, secures both the delinquent tax and any penalties and interest due thereon.
2. The lien for penalties and interest on delinquent taxes under section 15-16-403, MCA, does not enjoy statutory priority over an SBA mortgage.
 3. The lien for penalties and interest is not extinguished when, after the lien attaches, the United States takes title to the property without foreclosure.
 4. A county may not enforce a lien for penalties and interest under section 15-16-403, MCA, through the tax sale procedures under Title 15, chapter 17, MCA, if there are other prior security interests in the property.
 5. A county may foreclose on a tax lien for penalties and interest on property to which the United States holds title by suit under 28 U.S.C. § 2409a.

17 August 1982

Conrad Fredricks, Esq.
Sweet Grass County Attorney
Sweet Grass County Courthouse
Big Timber, Montana 59011

Dear Mr. Fredricks:

You have requested my opinion on the following questions pertaining to a parcel of property subject to a Small Business Administration (hereinafter "SBA") mortgage:

1. Does the tax lien provided by section 15-16-403, MCA, secure payment of penalty and interest due on delinquent taxes as well as payment of the tax itself?
2. Is the tax lien provided by section 15-16-403, MCA, extinguished when title to the property subject to the lien is acquired by the United States after the lien attaches?
3. If not, may the property to which such a lien has attached be sold under Title 15, chapter 17, MCA, to enforce the tax lien?

Your first question was answered in United States v. Christensen, 218 F. Supp. 722, 729 (D. Mont. 1963), a case in which the United States brought suit to foreclose mortgages held by the SBA. The State of Montana, Yellowstone County, and Musselshell County were made defendants because each had a recorded interest in the property in the form of liens for delinquent taxes plus penalties and interest. The question before the court was whether the SBA mortgage had priority over the state tax liens. The court found that under 15 U.S.C. § 646, SBA mortgages were subordinated to state tax liens entitled to priority under state law. However, the court held that although a tax lien included penalties and interest under Montana law, Congress intended to subordinate SBA mortgages to the state lien for delinquent taxes but not to the accrued interest and penalties. The priority of the lien for penalties and interest was held to be governed by the principle of "first in time, first in right." 218 F. Supp. at 729. Christensen was cited with approval in Salvation Army v. Board of Equalization, 144 Mont. 415, 420, 396 P.2d 463, 465 (1964), and the Montana Supreme Court may therefore be deemed to have approved the federal court's interpretation of Montana law.

Your second question is whether state tax liens for penalty and interest are extinguished when the United States takes title to the property. As a matter of federal law the answer is clearly no. United States v. Alabama, 313 U.S. 274, 281-82 (1941), explicitly holds that state tax liens are not extinguished when the United States acquires the property subject to the lien. Likewise, nothing in Montana law requires the conclusion that the county's lien was extinguished. This is not a case in which the interests of all lienors are foreclosed, either judicially or through exercise of a power of sale clause which, under Montana law, is the functional equivalent of foreclosure. §§ 71-1-223 to 71-1-228, MCA. Moreover, the county is not seeking to tax property when title is held by the United States. Rather the county merely seeks to enforce penalties and interest validly imposed against the United States' predecessor in interest, a private party not tax exempt. In the former case, a lien which impairs the interest of the United States is obviously constitutionally infirm as Montana law clearly recognizes. See Title 15, ch. 24, pts. 11 and 12, MCA. This constitutional infirmity is absent when the lien attached before the United States took title, under the Supreme Court's holding in Alabama. 313 U.S. at 280. I find nothing in Montana law to suggest that a tax lien of which the United States had notice when it took title must cease to exist merely to give the United States a more marketable title. See Alabama, 313 U.S. at 282.

Your final question involves the enforcement of the lien for penalties and interest. You inquire whether the county may institute a summary tax sale proceeding under Title 15, chapter 17, MCA, while the United States holds title. In my opinion it may not. Christensen holds that a lien for penalties and interest does not enjoy statutory priority over an SBA mortgage under 15 U.S.C. § 646. 218 F. Supp. at 729. The tax sale provisions of Title 15, chapter 17, are designed to enforce liens entitled to statutory priority over all other claims, and they therefore make no provision for satisfaction of prior liens out of the proceeds of the sale. Assuming arguendo that the SBA mortgage has priority, a statutory tax sale could not satisfy SBA's interest.

The question arises, however, whether the county could bring an action against the United States to force foreclosure of its security interest. In 1941, when Alabama was decided, such an action was barred by the doctrine of sovereign immunity. 313 U.S. at 281-82. Since that time, Congress has waived the sovereign immunity of the United States in cases involving property in which the United States owns an interest. 28 U.S.C. § 2410 allows a suit against the United

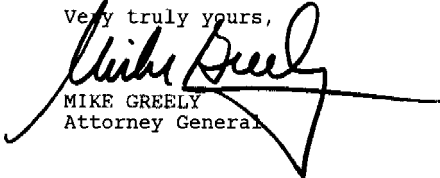
States raising issues regarding "real or personal property on which the United States has or claims a mortgage or lien." This section would authorize a foreclosure action by the county here but for the fact that the United States now owns fee title to the property. See Bank of Hemet v. United States, 643 F.2d 661, 664-65 and n.1 (9th Cir. 1981); Bertie's Apple Valley Farms v. United States, 476 F.2d 291, 292 (9th Cir. 1973); see also United States v. Bedford Associates, 657 F.2d 1300, 1317 (2nd Cir. 1981), cert. denied, 50 U.S.L.W. 3802 (1982). However, 28 U.S.C. § 2409a has been construed to authorize an action to foreclose a mortgage against property in which the United States has a leasehold interest. Bedford Associates, 657 F.2d at 1314-17. The case involved an action by a bank to foreclose a mortgage on property owned by Bedford but leased to the United States. 28 U.S.C. § 2409a authorizes suit against the United States "to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights." The Second Circuit Court of Appeals reasoned that a mortgage foreclosure was a "title dispute" under this statute, and that the United States claimed an interest in the property under its status as lessee. The Court held that the statute authorized the foreclosure action. Under the reasoning, the county could bring an action to foreclose its lien under 28 U.S.C. § 2409a. In such an action, the interest of the United States would be satisfied first, assuming its priority in time, with any remainder applied to satisfy the county's lien. See, e.g., H. B. Agsten & Sons v. Huntington Trust & Savings Bank, 388 F.2d 156 (4th Cir.), cert. denied, 390 U.S. 1025 (1967).

A second option is available to the county to enforce its lien. Alabama clearly held that when the United States took title a state tax lien was not extinguished, but merely unenforceable against the United States because of sovereign immunity. 313 U.S. at 281. Under this rationale, the lien would follow the property into the hands of persons buying from the United States. Id. at 282. If those persons are not entitled to sovereign immunity and the prior lien of the United States is released, the county could apply the provisions of Title 15, chapter 17, MCA, to compel the purchase to either satisfy the lien or see the property sold. While the lien clouds the United States' title and impedes its marketability, Alabama states that this fact alone does not render the lien unlawful or void. 313 U.S. at 281-82.

THEREFORE, IT IS MY OPINION:

1. The tax lien provided by section 15-16-403, MCA, secures both the delinquent tax and any penalties and interest due thereon.
2. The lien for penalties and interest on delinquent taxes under section 15-16-403, MCA, does not enjoy statutory priority over an SBA mortgage.
3. The lien for penalties and interest is not extinguished when, after the lien attaches, the United States takes title to the property without foreclosure.
4. A county may not enforce a lien for penalties and interest under section 15-16-403, MCA, through the tax sale procedures under Title 15, chapter 17, MCA, if there are other prior security interests in the property.
5. A county may foreclose on a tax lien for penalties and interest on property to which the United States holds title by suit under 28 U.S.C. § 2409a.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 39

OPINION NO. 70

COUNTY GOVERNMENT - Interest rate on delinquent property taxes;
DEPARTMENT OF REVENUE - Interest rate on delinquent property taxes;
FINES - Interest rate on delinquent property taxes;
INTEREST - Interest rate on delinquent property taxes;
PROPERTY, REAL - Interest rate on delinquent taxes;
TAXATION AND REVENUE - Interest rate on delinquent taxes;
MONTANA CODE ANNOTATED - Sections 1-2-109, 15-16-102.

HELD: Interest on all taxes delinquent prior to December 31, 1980 should be $\frac{2}{3}$ of 1% per month until December 31, 1980. Interest on all taxes delinquent January 1, 1981 to November 30, 1981 should be $\frac{5}{6}$ of 1% per month for the first \$3,000 in taxes, and 1% per month on all remaining delinquent taxes, until November 30, 1981. Finally, the interest rate on all delinquent taxes after November 30, 1981 should be a uniform $\frac{5}{6}$ of 1% per month.

19 August 1982

Mr. Robert L. Deschamps, III
Missoula County Attorney
Missoula County Courthouse
Missoula, Montana 59801

Mr. Ted O. Lympus
Flathead County Attorney
P.O. Box 1516
Kalispell, Montana 59901

Gentlemen:

You have requested my opinion concerning the interest rate on delinquent taxes as per section 15-16-102, MCA.

Prior to 1981 the interest rate on delinquent taxes was $\frac{2}{3}$ of 1% per month. § 15-16-102, MCA (1979). Then, the regular 1981 legislative session amended section 15-16-102, MCA, to provide an interest rate of $\frac{5}{6}$ of 1% per month on the first \$3,000 of delinquent taxes, and 1% per month on the remaining delinquent taxes. 1981 Mont. Laws, ch. 576,

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§ 2. Subsequently the November 1981 special legislative session amended section 15-16-102, MCA, to provide for a uniform interest rate of 5/6 of 1% per month on all delinquent taxes. 1981 Mont. Laws 1st Spec. Sess., ch. 6, § 2. The issue is whether either amendment is retroactive.

When determining whether a statute is retroactive, the intent of the Legislature must be taken from the statute, and no other source. Penrod v. Hoskinson, 170 Mont. 277, 281, 552 P.2d 325, 327 (1976). Montana has a statutory and case law presumption that a statute is not retroactive. § 1-2-109, MCA; Burr v. Department of Revenue, 175 Mont. 473, 476, 575 P.2d 45, 47 (1978); Penrod v. Hoskinson, 170 Mont. 277, 281, 552 P.2d 325, 327 (1976). Thus, all reasonable doubt will be resolved against retroactive operation. Burr, 175 Mont. at 476, 575 P.2d at 47.

But, "If it is unmistakable that an act was intended to operate [retroactively], that intention is controlling..." Davidson v. Love, 127 Mont. 366, 370, 264 P.2d 705, 707 (1953).

The Legislature clearly intended the first 1981 amendment to section 15-16-102, MCA, to be retroactive. The amendment was approved May 1, 1981, but it specifically provides that "This act applies to taxes assessed and levied after December 31, 1980." 1981 Mont. Laws, ch. 576, § 4. Thus, the first amendment to section 15-16-102, MCA, is retroactive to December 31, 1980. See Mills v. State Board of Equalization, 97 Mont. 13, 22, 33 P.2d 563, 566 (1934) (retroactive income tax law upheld); State ex rel. Rankin v. District Court, 70 Mont. 322, 332, 225 P. 804, 808 (1924) (retroactive inheritance tax upheld); cf. Webster v. Auditor General, 80 N.W. 705, 707 (Mich. 1899) (retroactive statute, increasing interest on delinquent property taxes, upheld).

The second 1981 amendment to section 15-16-102, MCA, was clearly not intended to be retroactive. The amendment by the 1981 special legislative session provides that:

This act is effective on passage and approval and applies to real and personal property taxes that become due on or after November 30, 1981, or that became due prior to November 30, 1981, and remain unpaid on or after November 30, 1981. (Approved Nov. 25, 1981.) 1981 Mont. Laws 1st Spec. Sess., ch. 6, § 4.

Nothing in the second 1981 amendment indicates it should be retroactive, and it is therefore presumed to be prospective only. See State, By and Through State Hwy. Com'n v. Marsh, 175 Mont. 460, 468, 575 P.2d 38, 43 (1978) (old 6% interest rate used until effective date of amendment, then new 10% interest rate on condemnation awards was applied); cf. People v. Sexton, 29 N.E.2d 469, 471 (N.Y. 1940) (old interest rate on delinquent taxes used until effective date of amendment, then new interest rate used).

THEREFORE, IT IS MY OPINION:

Interest on all taxes delinquent prior to December 31, 1980 should be $\frac{2}{3}$ of 1% per month until December 31, 1980. Interest on all taxes delinquent January 1, 1981 to November 30, 1981 should be $\frac{5}{6}$ of 1% per month for the first \$3,000 in taxes, and 1% per month on all remaining delinquent taxes, until November 30, 1981. Finally, the interest rate on all delinquent taxes after November 30, 1981 should be a uniform $\frac{5}{6}$ of 1% per month.

Very truly yours,



MIKE GREELY
Attorney General

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 128, Montana State Capitol, Helena, Montana 59620.

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

Definition: 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 Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1982. This table includes those rules adopted during the period July 1, 1982 through September 30, 1982, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1982, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1982 Montana Administrative Registers.

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